DCPI 1471/2008

**IN THE DISTRICT COURT OF THE**

HONG KONG SPECIAL ADMINISTRATIVE REGION

**PERSONAL INJURIES ACTION NO. 1471 OF 2008**

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BETWEEN

LEE SAU FAT Plaintiff

and

F. H. SECURITY SERVICES

COMPANY LIMITED Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

DCEC 120/2007

**IN THE DISTRICT COURT OF THE**

HONG KONG SPECIAL ADMINISTRATIVE REGION

**EMPLOYEES’ COMPENSATION CASE NO. 120 OF 2007**

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IN THE MATTER OF

AN APPLICATION BETWEEN

LEE SAU FAT Applicant

and

F. H. SECURITY SERVICES

COMPANY LIMITED Respondent

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Her Honour Judge Anthea Pang in Court

Dates of Hearing: 26-28 & 30 April 2010

Date of Judgment: 21 June 2010

**J U D G M E N T**

***Introduction***

1. This is a consolidated hearing in respect of a claim for damages for personal injuries and a claim for employees’ compensation brought by the Plaintiff/Applicant (“Madam Lee”) against the Defendant/Respondent (“FH”) in relation to an accident which allegedly happened on 17 March 2006 while Madam Lee was at work.

1. There is no dispute that, at the material time, Madam Lee was employed by FH and she worked as a security guard at Block 7, Beverly Garden, Tseung Kwan O, Hong Kong (“Block 7”). In fact, Madam Lee had been working in that post since 31 December 2003.
2. There is also no dispute that, on 7 May 2005, Madam Lee sustained some injuries to her back and right wrist when she slipped and fell from a stool while at work. This was the subject matter of DCEC 1720 of 2006 which was ordered to be consolidated with the present employees’ compensation claim, that is, DCEC 120 of 2007. However, as the claim made under DCEC 1720 of 2006 was settled between the parties on 19 August 2009, this Court is no longer concerned with it. At trial, when references were made to this incident, it was referred to as the “***1st accident***”.
3. On 15 February 2006, while Madam Lee was on her way to work, she again slipped and fell, landing on her knees. When she later arrived at Block 7, an ambulance was called and she was sent to the hospital for treatment. Although Madam Lee did report this to FH, no claim was brought against FH in respect of this incident which was referred to as the “***2nd accident***”.
4. After the second accident, Madam Lee resumed work on 9 March 2006. It was her case that she had told FH, upon resumption of work, that her injuries were still causing her pain and difficulties in movement so much so that she was unable to perform patrolling work. According to Madam Lee, a relief worker was then arranged for her by FH and she was not required to conduct any patrol duties.
5. Madam Lee said that, however, on 17 March 2006, when the relief worker fell sick, she was asked to resume her patrolling work. It was on this occasion that Madam Lee said she met with what was referred to in this trial as the “***3rd accident***”. Briefly, Madam Lee’s account was that while she was walking down the staircase on the 16th Floor of Block 7 during her patrol, she twisted her right knee/ankle. As a result, she sustained some injuries. This is the subject matter in respect of the present personal injuries and employees’ compensation claims now requiring this Court’s determination.
6. FH’s position is that the 3rd accident did not happen and if it did, then it did not cause any fresh injuries to Madam Lee or aggravated any of her old injuries. Further, FH says that even if the 3rd accident indeed happened and that there were fresh/aggravated injuries, FH was not negligent as FH had never been told by Madam Lee that she could not perform patrol duties. Alternatively, FH argues that if Madam Lee were unfit to perform patrolling work, which was part and parcel of her daily duties as a security guard, then she should not resume work but as a matter of fact, she did not seek further sick leave on the day in question.
7. In respect of Madam Lee’s claim for employees’ compensation, FH has lodged an appeal pursuant to section 18 of the Employees’ Compensation Ordinance, Cap. 282, against the assessment made by the Assessment Board.

***Madam Lee’s Case***

*The 1st Accident (7 May 2005)*

1. Since Madam Lee’s claim in respect of the 1st accident was settled between the parties, not much was said of it at trial. Madam Lee, however, admitted under cross-examination that it was about a month after the 1st accident took place that she filled in one of FH’s proforma accident reports and submitted it to FH.
2. Insofar as the report to the Labour Department is concerned, it bore a receipt stamp dated 15 June 2006. When asked about the delay of one year in reporting the 1st accident to the Labour Department, Madam Lee denied that there was any delay. She maintained that she had made the report on the day in question at the Kwun Tong Office of the Labour Department. However, she was then asked to make the report at the Cheung Sai Wan Office and that was why the form was only submitted to the Labour Department on 15 June 2006.

*The 2nd Accident (15 February 2006)*

1. Concerning the 2nd accident, although no claim was brought by Madam Lee against FH, for reasons which will become apparent below, this accident was often referred to at trial.
2. According to Madam Lee, the 2nd accident happened in this way. In the evening of 15 February 2006, while Madam Lee was on her way to work, she tripped and fell. After the accident, Madam Lee returned to Block 7. She said in her statement that she then informed her supervisor Mr. Lau Ming-pang (“Lau”) of the accident. She further told Lau that she could not perform patrol duties due to the injuries sustained and she then asked Lau to call an ambulance for her. Madam Lee said that Lau, however, just asked her to get changed and to work but somehow, a while later, an ambulance arrived and took her to the hospital.
3. Under cross-examination, Madam Lee agreed that an inspector of FH must have dialled 999 to call the ambulance. Madam Lee further agreed that at that time, she considered the 2nd accident as an accident at work and believed that she could claim employees’ compensation in respect of the accident.
4. When Madam Lee was examined in the hospital, she was found to have swelling and bruising over her right knee and the diagnosis was knee contusion. As a result of the 2nd accident, Madam Lee was granted sick leave from 15 February 2006 to 8 March 2006. She was also given physiotherapy and occupational therapy treatments which continued for some time.

*The 3rd Accident (17 March 2006)*

1. Madam Lee returned to work on 9 March 2006. Madam Lee said that as she was still suffering from her injuries, she requested Lau to provide a relief worker to perform patrol duties for her. According to Madam Lee, Lau acceded to her request and did make such an arrangement. Madam Lee further said that the relief worker was usually assigned by the inspector in the control room.
2. However, on 17 March 2006, Madam Lee said that when she reported for night shift duties (from 8:00 p.m. to 8:00 a.m. the following day), the male relief worker sent by the Head Office told her that he was felling unwell and he therefore could not perform patrol duties for her. Madam Lee said she then told her senior Mr. Cheung Hok-kan (“Cheung”) about that. However, according to Madam Lee, she was asked by Cheung to perform patrol duties herself although Cheung said she could walk slowly.
3. Madam Lee told the Court as she was afraid that FH would dismiss her if she refused to perform patrol duties, she did as instructed by Cheung.
   1. ***Details of the 3rd Accident***
4. Madam Lee stated in her witness statements, the contents of which were adopted as her evidence in chief, that she patrolled from the top of Block 7 (46th Floor) to the Ground Floor. At about 11:00 p.m., while she was performing such patrol duties, she said she felt very painful on her right knee. There was friction between the cartilages of her right knee and it could not be straightened. She had to grab hold of the handrails on both sides of the staircase when descending. Madam Lee said she then lost her balance and she fell down while she was at the 6th step of the 16th Floor. In the course of falling, Madam Lee claimed she twisted her right knee and right ankle. To use Madam Lee’s words, she described what happened at the time was that, “*I felt that there was some liquid between the cartilages of my right knee coming out. It was so painful that I could not walk.*”
5. At trial, Madam Lee supplemented during her evidence in chief that she slipped and stepped down one step. Her ankle then bumped against the staircase and her previously injured knee (the right knee) then got abraded.
6. Under cross-examination, Madam Lee said that when she reported for duty on 17 March 2006, she had to use a dual-purpose umbrella/walking stick. However, when she did the patrol that night, she did not carry the stick with her and she therefore had to walk slowly and to use the walls to support herself when she did the patrol.
7. Madam Lee further described that when she met with the 3rd accident, her right foot slipped, she sprained her right ankle and the front of her right knee then hit against the metal banister with great force, causing much pain and reddish bruises on her right knee. She also said that she had turned her body at the time and she therefore twisted her left knee as well.
8. When asked why she did not mention in her witness statements the left knee injury, the hitting against the metal banister and the bruising on her right knee, Madam Lee first said that she did not say so as she was not asked. However, she later claimed that she did tell her lawyers about those but they did not record them. She also maintained that she had told the doctors and the nurses about the 3rd accident and those injures, but perhaps, they did not understand what she said and so there were omissions in the medical notes taken on various occasions.
9. Madam Lee also claimed that she had shown her right knee to the doctor on 18 March 2006 when she sought medical treatment that morning after work. Counsel, however, pointed out to her that there was only the mentioning of an old bruise in the medical notes, not any new bruise. In reply to that, Madam Lee then said that as she had been applying some ointment on the bruised area during the night, the bruise was disappearing.

***(2) Events Afterwards***

1. Madam Lee claimed that after the accident, she then used her walkie-talkie to try contacting the console. However, as there was no response and she could not move, she waited there and stood on the staircase for 30 minutes. Afterwards, according to Madam Lee, since there was no battery for both her walkie-talkie and her mobile phone, she had no alternative but to bear the pain and to hold onto the handrails while walking down the staircases very slowly from the 16th Floor to the Ground Floor.
2. When Madam Lee arrived at the lobby on the Ground Floor, she said Cheung was at the lobby and asked her why it took her so long to perform the patrol. Another female colleague called “Ah Mui” then told Madam Lee that she had been trying to contact her by walkie-talkie for 30 minutes but there was no response. Madam Lee said as she felt very painful and was angry at that time, she scolded them for giving her a walkie-talkie without battery. “Ah Mui” then helped her to limp to her duty post. Madam Lee claimed that although she had reported the accident to Cheung, no ambulance was called for her. She then applied some medicated oil to her knee and she only went for medical treatment after she had finished her work in the morning of 18 March 2006.
3. Upon medical examination, it was found that Madam Lee had an old bruise over her right knee and there was mild tenderness over the lateral aspect of her right ankle. The provisional diagnosis at that time was sprained right ankle and right knee with persistent pain. She was discharged on the same day and 3 days’ sick leave was given. Thereafter, Madam Lee sought further medical treatments and was given sick leave from time to time, totalling 610 days during the 2-year period from 18 March 2006 to 20 May 2008.
4. Under cross-examination, Madam Lee mentioned for the first time that, after the alleged 3rd accident, she patrolled the rest of the floors from the 16th Floor to the Ground Floor by using the lift to go from floor to floor and then patrolled the staircase and the refuse room on each floor. When asked why the taking of the lift was not mentioned in her witness statements, Madam Lee said that as she was not allowed to use the lift to do the patrol, she was afraid that she would be fired. It is, however, noted that at the time when Madam Lee made those statements, she had already left FH.

***(3) Reporting of the 3rd Accident***

1. There is no dispute that Madam Lee reported both the 1st and the 2nd accidents to the Labour Department on 15 June 2006 whereas the report in respect of the 3rd accident was received by the Labour Department on 12 October 2006. When asked why she did not, on 15 June 2006, also report the 3rd accident which allegedly happened on 17 March 2006, Madam Lee initially said that she did do so but the staff of the Labour Department did not write it down for her. Later, when it was put to her that it was she herself who filled in those forms on 15 June 2006, not any officer of the Labour Department, and that there was nothing to stop her from filling in a form reporting the 3rd accident, Madam Lee, after long pauses, then said she was not given a form for the 3rd accident on that day.
2. Madam Lee accepted that the injuries she sustained during the 2nd accident caused her great pain in the knees and she was worried that she might not be able to return to work. She also accepted that in July 2006, she was concerned after receiving a letter from the Labour Department informing her that the 2nd accident was not regarded as an accident at work and she, therefore, was not entitled to any employees’ compensation in relation to that. However, she denied it was for this reason that she fabricated the 3rd accident and later made the report to the Labour Department in October 2006. She further claimed that the reason why she did not mention in the report to the Labour Department about banging her right knee against the metal banister and about twisting her left knee was only because she had omitted to include those in the report.
3. Madam Lee insisted that in respect of the 3rd accident, she had filled in the FH’s proforma accident report and submitted it to FH in October 2006. She further claimed that she completed the form in triplicate and had given one copy to the Legal Aid Department. However, this form is nowhere to be found in the trial bundles.
4. When cross-examined, Madam Lee mentioned for the first time that she had had two other accidents while working for FH. According to Madam Lee, these accidents happened after the 1st accident and both took place in the toilet, one in Block 10 and another in Block 7. She said that on one occasion, she slipped and fell with her two legs stretched, like doing a split. She told the Court that she was in great pain at that time, but she applied some ointment to the injured area and then continued to work. Madam Lee said she never reported these two accidents to FH or to the Labour Department.

***(4) Current Conditions***

1. According to Madam Lee, she developed depression after the 3rd accident. On 4 July 2006, Madam Lee was sent to the hospital for overdosing sleeping tablets. Since September 2007, she also developed paranoid ideas and she attempted suicide by hanging herself on 11 October 2007.
2. In around December 2007, Madam Lee resigned from her job and left F.H.. Madam Lee’s sick leave expired on 20 May 2008. She said she then tried to look for a job but her attempts were unsuccessful.
3. On 19 November 2008, Madam Lee was assessed by the Employees’ Compensation (Ordinary Assessment) Board to have 17.5% permanent loss of earning capacity due to bilateral knee injuries as well as psychiatric impairment and depression.
4. Madam Lee told the Court that, at present, she is still suffering from persistent pain on both knees and over the lateral aspect of her right ankle. She cannot now squat or walk for a long time. She claims she has difficulties climbing up/down stairs and has to hold onto handrails for support when walking downstairs. She also has difficulties in lifting heavy objects. Madam Lee said that she is therefore now not able to resume her work as a security guard.
5. During cross-examination, Madam Lee was shown two sets of footage which captured her going to the market on the 7th and the 9th of September 2009. The footage in respect of the 7th showed that Madam Lee did not need to hold onto the handrails when going up and down the staircase. When asked about that, Madam Lee claimed that there was no need for her to do so as those were just a few short steps and she moved slowly. For the footage in respect of the 9th, Madam Lee denied that she was walking briskly and she claimed that as the tape was played at a fast speed, it gave the impression of a brisk movement. Madam Lee further said that she was actually not walking steadily and she swung from side to side.
6. Madam Lee’s daughter Chan Nei was also called to give evidence. She said Madam Lee had told her about the 3 accidents and after each medical consultation, either she or her younger sister would send Madam Lee’s sick leave certificates to the control room of Beverly Garden. She said that later, the certificates were sent by fax to the Head Office of FH or sent by hand in order to avoid the documents being misplaced.
7. Ms. Chan also confirmed that Madam Lee’s mental condition has improved and she is now able to look after Ms. Chan’s baby for her. Insofar as Madam Lee’s physical condition is concerned, Ms. Chan said that Madam Lee cannot walk for a long time and cannot carry heavy objects.

***FH’s Case***

1. Madam Cheng Man-yee, the officer in charge of FH’s Personnel Department, gave evidence at trial. She recalled that insofar as the 1st accident was concerned, Madam Lee only submitted the report to FH on 28 June 2005 and to the Labour Department on 15 June 2006. According to Madam Cheng, she had told Madam Lee that if she met with any accident at work, she had to report it immediately to FH. Madam Cheng said, despite that reminder to Madam Lee, FH only heard of the 3rd accident on 17 October 2006 when the Labour Department sent the relevant notice to FH. Madam Cheng maintained that prior to that date, Madam Lee had never informed FH about the 3rd accident. Madam Cheng explained that after she had received notice of an accident from an employee, she would arrange for a file to be opened. However, after searching the relevant files, she could not locate any proforma report submitted by Madam Lee in respect of the 3rd accident.
2. Further, Madam Cheng said that FH was not aware that Madam Lee was unwell or unsuitable to perform patrolling work on 17 March 2006. If FH had been made aware of it and if Madam Lee had a sick leave certificate, Madam Cheng stated that FH would not require Madam Lee to report for duty.
3. Madam Cheng also told the Court that, under normal circumstances, the battery for the walkie-talkie issued to a security guard should be fully charged and that there should be two sets of battery, one as a spare set, for each walkie-talkie. Further, the issuing officer and the receiving officer would need to check that the equipment was functioning properly before carrying it.
4. Under cross-examination, Madam Cheng admitted that there had been a manpower shortage problem at Beverly Garden but she could not be sure if such was the position in March 2006. However, she confirmed that it was FH’s company policy that if an employee reported that he/she was unwell, the employee would be asked to see a doctor and a relief worker would then be assigned to take over the work.
5. Madam Cheng said that if an employee had submitted an accident report to the control room of the site office, then the report would be sent to the Head Office for further processing. She said that, under normal circumstances, the documents delivered to the Head Office, either by hand, by fax or by despatch, should not have been misplaced although there were about 1,000-1,200 security guards under the employment of FH during the time in question.
6. Cheung, Madam Lee’s supervisor at the material time, also testified at trial. Cheung told the Court that he had already retired from his job. However, Cheung said he could remember events in relation to the alleged 3rd accident as it was unusual for a guard to take longer than the usual time to conduct a patrol and also because Madam Lee had injured herself previously and had been on sick leave for some time before returning to work.
7. Cheung explained that usually it would take a security guard about 60 to 75 minutes to conduct a patrol. However, on the day in question, the relief worker who manned the post for Madam Lee informed the control room that Madam Lee had taken much longer time for the patrol. Cheung said he therefore went to Block 7 to see what had happened.
8. When he arrived at the lobby of Block 7 sometime after mid-night, Cheung said that Madam Lee happened to finish the patrol and arrived at the lobby. He therefore asked her why it had taken her so long to conduct the patrol. In reply, Madam Lee told him that as she had sustained some injuries in the past, she had to walk slowly. Cheung further said that although Madam Lee had mentioned to him about “almost falling” when conducting the patrol just then, she did not mention any accident, nor any injury. Cheung stated that if Madam Lee had reported to him about having an accident or if she had mentioned about any pain or if he had seen her walking in pain, an ambulance would have been called for her. Cheung denied under cross-examination that “Ah Mui” had mentioned anything about calling Madam Lee through the walkie-talkie as “Ah Mui” did not have any walkie-talkie. Cheung said that only Madam Lee had the walkie-talkie for the patrol.
9. Cheung mentioned under cross-examination that for Beverly Garden, there were 30 security guards under the employment of FH, with 27 guards on duty and 3 as relief workers. When put to him that a relief worker had been arranged by Lau to perform patrol duties for Madam Lee after she had resumed work on 9 March 2006, Cheung said it was not the case and that, at most, Madam Lee was not required to perform patrol duties for one or two days. He maintained that, thereafter, it was decided that as Madam Lee had resumed work, she should conduct the patrol as well. Cheung further said that if Madam Lee had used a walking stick to assist her to go to work, FH would simply not allow her to resume duties. He also denied that Madam Lee had scolded him and “Ah Mui” when they met her at the lobby after mid-night on the day in question.

***The Issue : Did The Alleged 3rd Accident Happen?***

1. As Madam Lee was the only person present during the alleged 3rd accident and there were no other eyewitnesses, the credibility of Madam Lee is crucial in determining whether there was indeed such an accident. After careful consideration, I do not find Madam Lee a credible witness and I reject her claim that there was the 3rd accident on 17 March 2006 which caused her the alleged injuries. Madam Lee’s evidence was full of inconsistencies, contradictions and did not accord with common sense.
2. On the contrary, I find Cheung a credible and reliable witness. Cheung was honest and was direct in giving evidence. I do not consider that the lapse of time had caused him to forget what happened at that time. As explained by Cheung, he could remember what happened as it was seldom that a security guard would take longer than the usual time to conduct a patrol but that it happened to Madam Lee and also because Madam Lee had injured herself previously and had been on sick leave for some time.

1. Let me first deal with the events on the day in question. If, as alleged by Madam Lee, Lau had specifically arranged for a relief worker to carry out patrol duties on Madam Lee’s behalf, then the relief worker must have been made aware that he was given a special task and that it was to relieve Madam Lee from patrolling work as she was unfit to perform the task. If so, and if the relief worker suddenly fell sick on that day, then it must have occurred to him that he could no longer carry out that special task and it would be logical for him to immediately report his illness direct to the control room or to Lau/Cheung so that other arrangements could be made. To suggest that the relief worker simply told Madam Lee about it and sort of expected her to carry out the work herself is, in my view, unlikely.
2. Further, it was not disputed that there was another female guard “Ah Mui” stationing at the post of Block 7 while Madam Lee conducted the patrol. If Madam Lee had indeed told Cheung about not being able to perform patrol duties, it would appear to be just a simple re-assignment of work to have “Ah Mui” standing in for Madam Lee to perform the patrol whereas Madam Lee was to man the post. Such could easily be arranged without requiring any extra manpower. Therefore, Madam Lee’s claim that Cheung simply ignored her request for a relief worker and insisted that she did the patrol but, at the same time, allowing her to perform the patrol slowly does not make much sense.
3. As I said, I find Cheung a credible and honest witness and I accept his evidence that, on the day in question, Madam Lee had never told him about any relief worker suddenly falling sick and not being able to perform patrol duties for her. Like what Cheung said, the arrangement for a relief worker to help out Madam Lee was only made for the first one or two days. Afterwards, Madam Lee had resumed patrol duties without any assistance from a relief worker.
4. I shall now come to what allegedly happened after the 3rd accident. It was Madam Lee’s evidence that the injuries she sustained during the 3rd accident caused her great pain at the time. If so, it is inconceivable that she would still continue with her patrolling work. She could simply take the lift to go to the lobby and report the accident to “Ah Mui” or to the control room.
5. Her claim of continuing with the patrolling work was particularly unreasonable when, according to Madam Lee, she did intend to seek help by using her walkie-talkie and mobile phone. First putting aside the question of whether it was likely that these two sets of equipment would run out of battery at the same time, it would appear that if Madam Lee were so eager to seek help at the time, it must have occurred to her that when her means of communication were cut off, a simple way of seeking assistance was to take the lift and go to the lobby to tell “Ah Mui” about the accident. Madam Lee, however, did not do so. She told the Court that she merely stayed in the staircase for half an hour. Afterwards, when she was able to move, instead of seeking assistance, she then took the lift to go from floor to floor and continued with her patrol duties. This is unbelievable.
6. It is also inconceivable for Madam Lee to continue with the patrol after the alleged 3rd accident for, according to her, she was already not suitable to perform patrol duties even before she met with this alleged accident. Madam Lee said that she had told Lau about it and that Lau had arranged for a worker to relieve her from such duties. Madam Lee’s evidence was that it was only upon Cheung’s instruction on the day in question that she performed patrol duties unwillingly. If so and if she were so badly injured during the alleged 3rd accident, there was no reason why she would force herself to continue with the patrolling work. If it were because of any fear of Cheung, then this did not accord with Madam Lee’s own account that she had scolded both Cheung and “Ah Mui” when she reached the lobby of Block 7.
7. Now, even assuming for the moment that the 3rd accident indeed happened with injuries caused to Madam Lee, and assuming that Madam Lee indeed told Cheung about it at the lobby, then it is inconceivable that Cheung would refuse to call an ambulance for Madam Lee. When cross-examined, Madam Lee admitted that she could get along with Cheung and there was no suggestion of any animosity between the two of them.
8. Pausing here, it would be recalled that Madam Lee gave different accounts about requesting for an ambulance. She, at one time, told the Court that it was about dawn when the inspector patrolled to Block 7 and she knew they would not call an ambulance for her as it was about time for them to report off duty. However, when put to her that she met Cheung sometime after mid-night at the lobby, she then said Cheung did not call an ambulance for her. I find the claim that Cheung refused to call an ambulance for her to be quite beyond comprehension bearing in mind that they did not have any personal grudges and that it was FH’s policy for an ambulance to be called if an employee met with an accident at work.
9. In any event, according to Madam Lee, she waited until she reported off duty before seeking medical treatment. Now, at that stage, one would expect Madam Lee to then immediately mention the 3rd accident and her injuries to the attending nurse and doctor. However, insofar as the medical notes are concerned, all that was recorded on 18 March 2006 was, “*Both leg weakness then nearly fell since midnight both knee(s) pain*” and “*1 month ago (15.2.06) fall : right ankle sprain; right knee contusion, now still pain & claim almost fall over today but hold onto railing. No other fall episode for past 1 month.*” Apart from this brief description of what appeared to be a “near-fall” incident, nothing further was mentioned. There were no details about how the incident took place. There was also no mentioning about any alleged injuries sustained during the incident or any complaint from Madam Lee about any discomfort caused by this incident.
10. Counsel for Madam Lee, in her closing submissions, referred this Court to the record on 24 May 2006 when it was mentioned that, “*…* *acute pain while patrol at work climbing for stairs and so could not continue work, persistent bilateral knee pain since then on and off …*” I, however, do not consider this to be related to the alleged 3rd accident. The record refers to acute pain while climbing for stairs, not any “near-fall” incident. It also referred to “*could not continue work*” but Madam Lee’s evidence was that she continued to perform her patrol duties after the alleged 3rd accident. Therefore, I do not accept that this is a reference to the alleged 3rd accident.

1. It was only about one year later then there was a clearer reference to the alleged 3rd accident. In the medical notes dated 8 March 2007, it was recorded that, “*patient had another slipped and fell on 18/3/2006 on her way to work*”. From then onwards, references to the alleged 3rd accident started to appear in the medical notes.
2. In relation to this late reporting, Madam Lee claimed that she had mentioned the 3rd accident to the attending doctor and nurse when she sought medical treatment on the day in question and she had mentioned it afterwards as well. She said that perhaps due to some misunderstanding, the doctors had omitted to mention it in the notes.
3. In my view, while it was possible that, sometimes, what was mentioned by a patient might have been misunderstood by the attending medical staff or not recorded in the medical notes, I do not accept this explanation of Madam Lee. If the alleged 3rd accident indeed happened in the manner described by Madam Lee and it indeed caused her the injuries she mentioned, and if Madam Lee had, as she claimed, provided such particulars to the attending doctor, it would be rather inconceivable for all these to have been omitted in the medical notes. Pausing here, it should be recalled that while no injuries relating to the alleged 3rd accident were mentioned in the notes of 18 March 2006, there were references to the injuries sustained by Madam Lee on 15 February 2006.
4. To suggest that the doctor could have omitted to include the most recent injuries sustained just hours ago by the patient and which were the subject matter of the then consultation is quite beyond comprehension. It should be remembered that Madam Lee’s evidence was that the injuries had caused her great pain and discomfort so much so that she had requested, at work, for an ambulance to be called. If so, and if Madam Lee had indeed mentioned the particulars to the attending doctor, it was highly improbable for such to have been omitted, and instead for the old injuries to have been included, in the medical notes. To further suggest that the mentioning of the 3rd accident and the related injuries was repeatedly omitted in the notes compiled by different medical officers during the subsequent consultations is, in my view, untenable.
5. The other matter which does not sit comfortably with Madam Lee’s claim that there was indeed the 3rd accident with injuries sustained was the late reporting of this to the Labour Department. It would be recalled that on 15 June 2006, Madam Lee made two reports to the Labour Department, one in respect of the 1st accident and another in respect of the 2nd accident. No report, however, was made on that day in respect of the 3rd accident although, according to Madam Lee, that was the most recent one which only happened three months ago. It was not until October 2006 was a report then made by Madam Lee to the Labour Department in respect of the alleged 3rd accident.
6. Madam Lee initially claimed that the late reporting of the alleged 3rd accident was because the staff of the Labour Department did not write it down for her. When put to her that it was she herself who filled in the forms for the 1st and the 2nd accidents, she then changed her evidence to say that no form was given to her by the Labour Department on the day in question. Such an explanation is an affront to common sense. Even if the Labour Department indeed ran out of forms on that day, which I regard to be highly unlikely, there was nothing to stop Madam Lee from making the report on the following day or the following week or month. In this regard, I consider it more probable, as suggested by Mr. Lim for FH, that the delay was because the 3rd accident with the alleged injuries never took place.
7. There is no dispute that it was in July 2006 that Madam Lee learned from the Labour Department and others helping her that the 2nd accident was not regarded as an accident at work and therefore, she would not be entitled to any employees’ compensation. Mr. Lim suggested that it was probably after this realisation then Madam Lee fabricated the 3rd accident and the related injuries and she therefore made the report to the Labour Department in October 2006.
8. Concerning the report allegedly made to FH in respect of the 3rd accident, I do not accept Madam Lee’s claim that such was submitted but was then misplaced by FH. Madam Lee also claimed that a copy of the report was given to the Legal Aid Department. However, this document is now nowhere to be found.
9. Further, as pointed out by Mr. Lim, the banging of her right knee against the metal banister and the twisting of her left knee were never mentioned in any of the documents. In my view, if Madam Lee was able to record details like “*I felt that there was some liquid between the cartilages of my right knee coming out. It was so painful that I could not walk.*” in her witness statements, it is inconceivable that she would forget to mention the bruising of the right knee, and the other details or that her lawyers would have omitted to include those. The conclusion I draw in respect of these further particulars given in Court by Madam Lee is that the claims are not true. It was another attempt by Madam Lee to try to give the impression that extensive injuries were caused to her as a result of the alleged 3rd accident.
10. After observing Madam Lee’s responses in Court, I find that her medical condition should not have affected her performance as a witness. She was alive to the issues and she understood the implications of counsel’s questions. She was eager to provide explanations and at times, she retorted.
11. For the reasons set out above, I do not find Madam Lee a credible witness and I do not accept her evidence. She exaggerated matters and when confronted, she was evasive. As I mentioned above, Madam Lee’s evidence was full of inconsistencies, contradictions and did not accord with common sense.

1. However, given that there were references to “*nearly fell*” and “*claim almost fall over today but hold onto railing*” in the medical notes dated 18 March 2006 and that Cheung’s evidence was that Madam Lee had mentioned to him at the lobby about “almost falling”, I am prepared to accept that Madam Lee might have had an “almost fall” incident on 17 March 2006. Nevertheless, I find that nothing like what she described to the Court concerning the alleged 3rd accident happened and I reject her claim that she had sustained any injuries or aggravated any of her existing injuries in relation to the “near-fall” incident even if such an incident indeed happened on the day in question.

***Conclusion***

1. Since Madam Lee has failed to prove on a balance of probabilities her case against FH, both the employees’ compensation claim and the personal injuries claim are dismissed. As liability is not proved, there is no need for me to deal with the issue of quantum.
2. The Plaintiff/Applicant is to pay the costs of this action to the Defendant/Respondent, to be taxed if not agreed, with a certificate for counsel. Madam Lee’s own costs are to be taxed in accordance with the Legal Aid Regulations. In the absence of an application to vary the order within 14 days from the date of this judgment, the costs order nisi shall become absolute.

(Anthea Pang)

District Judge

Ms. Christina Lee, instructed by Messrs. Yeong & Co., on the assignment of the Director of Legal Aid, for the Plaintiff/Applicant

Mr. Patrick D. Lim, instructed by Messrs. Leung & Lau, for the Defendant/Respondent