## DCPI 1535/2009

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1535 OF 2009

--------------------

##### BETWEEN

YAM BIK KWAN Plaintiff

### and

KOWLOON-CANTON RAILWAY 1st Defendant

CORPORATION

--------------------

Coram : H.H. Judge Chow

Dates of Hearing : 9th & 10th September, 2010

Date of handing down Judgment : 5th November, 2010

JUDGMENT

1. This is the Plaintiff’s action against the Defendant for compensation in respect of injuries suffered by her when she was boarding a light train of the Defendant on 31.3.2007 (“the Incident”). She sustained a contusion injury over her right thigh near her groin area and bruises over her left knee.
2. In the Statement of Claim filed on 22.7.2009, the Incident was particularized as below:-

‘2. At about 7:00 p.m. on 31st March 2007, the Plaintiff was standing at the platform of the Light Rail Transit station at Yuen Long Square, Yuen Long about to board the LRT train. A train with route no. 610 arrived at the platform and its train door swung open. The Plaintiff stepped up and attempted to board one of the train compartments located in the middle of that train. As the Plaintiff was going past the train door, the train door suddenly closed thereby causing her to be trapped in the middle of the train door.

3. Before the train door closed, the Plaintiff heard no “beeping” sound. As the train door closed, each side of the train door struck the Plaintiff’s body with great force. The inside of the upper part of the Plaintiff’s right leg and the knee joint of her left leg were severely hit. Beside, the impact resulting from the closing of the train door was so great that the Plaintiff lost her balance and fell to the ground when being struck. As a result, she sustained such injuries as particularized in the Statement of Damages filed herein.’

(Underlines provided)

The Statement of Claim does not contain any reference to the trapping of her right leg between the train and the platform.

The Plaintiff’s evidence

1. Regarding the occurrence of the Incident, in her revised witness statement filed on 25.8.2010, the Plaintiff said:-

“我便行去停在614號列車後面的610號列車之門中間，當時亦有人從610號列車下車，因當時沒有 Do Do 之警號聲，我待他們下車後便立即上車，當我進入了車內一半時，車門突然很大力關上，當時車門夾著我右大腿內脾及右邊膝頭，而關門的撞力令我跌倒，當時610號列車是未開出的，跌倒時我右邊身體跌落在地上，右邊頭及身體亦撞在地上，然後平卧，我痛至大聲喊出來，那時我是整個人都是在車廂內的，隨著車門再打開，610號列車的女司機就離開她的坐位出來瞄了一瞄，她沒有出聲，亦沒有查問我覺得如何，她看了我一眼便返回駕駛座上… … … 。”

(Underlines provided)

1. The Plaintiff said that at the time of the Accident, she was in a group of 4 to 5 passengers at the light train platform at Yuen Long Square. Following the group she boarded the train by way of the middle door of the light train. When she was doing so the door was closing very fast, with a bang. At that time she had already lifted her right leg. She had no time to go inside the train, and she was caught by the door. A “bang” sound will only be created when the 2 door leaves of a set of door come into contact with each other quickly and with great force. Therefore it cannot be true that the door closed with a “bang” sound, because the door leaves did not and could not come into contact with each other when her body was caught in between the two door leaves.

The evidence of the Defendant

1. Miss Lun Wai Yin was a witness for the Defendant. She was the driver of the light train in question. Regarding the incident, she said, in her witness statement:-

“3. 過了一會兒，本人透過後鏡看見沒有乘客正在上落車時，本人便按下關門掣。當關門掣被按下時，便會有嘟嘟聲發出提醒乘客車門即將關上。事發時當本人按下關門掣後，看見一名女乘客忽然衝前，在列車的1號門位置想衝上車。為免車門夾到該名乘客，本人便立即又按下開門的按掣。但期間只見關閉中的車門接觸到乘客的身體（印象中是小腿位置，但不記得是右腿或左腿），她隨即失去平衡，右腳誤踏進車廂與月台間之空隙，本人即時離開駕駛艙下車協助，該乘客在其他月台上的乘客協助下，右腳很快便離開了空隙。她坐在月台地上，告訴我說她右腳痛，本人便即時返回駕駛艙透過車內的電台向輕鐵的控制中心報告事件，要求協助。當時控制中心通知本人將會有同事到場協助該名乘客，本人可以繼續執行行車職務，把列車駛離月台。”

(Underlines Provided)

1. The second witness for the Defendant is Mr. Ng Siu Tat. He is a supervisor of the Defendant. His duties include the investigation of accidents relating to the light train. He made a report on 3.4.2007 regarding the Incident:-

“The incident

1. On the date of 31 March 2007, LRV1023 running as a single car on Route 610 and Run 52 forming the 1826 hours passenger service trip from Yuen Long to Ferry Pier and was under the control of LRV Driver Lun Wai Yin, staff number: 52944 (Driver Lun). At 1833 hours, when Driver Lun was performed platform duties at Stop570, Fung Nin Road Platform 2 (Stop 570/RL.2) second stopping position. She pressed the close door push button to close passenger doors having checked clear from both exterior and interior rear view mirror that there was no passengers boarding or alighting. At this moment, Driver Lun scanned from the exterior view rear mirror that a female passenger suddenly stepping on the LRV1023 from no. 1 door in a hurry manner. So Driver Lun re-opened passenger doors at once. Unfortunately, the female passenger was hit by closing door leaf D1. As result, the female passenger lost balance and her right foot was mis-stepped into the platform gap of no. 1 doorway.
2. The warning label, door buzzer, ‘Onboard Passenger Information System’ and doors operation of LRV 1023 was checked normal by undersizned after the incident.”

(Underlines provided)

When writing the report, he was just recording what Lun Wai Yin told him. There is no reason for him to distort what she said at that time. At that moment there is no reason for Lun Wai Yin to lie from which door the Plaintiff boarded the train. During cross-examination the Plaintiff agreed that the Incident occurred at the 1st door, although subsequently she reverted to the 2nd door. I have no doubt that she boarded the train from the 1st door, and not from the 2nd door of the light train.

1. Shortly after the Incident Ng Siu Tat did test the buzzer sound system and the broadcast system of LRT 610. He found that both systems did work normally. I am satisfied that that was the situation at the material time. I also accept the evidence of Wu Lap Kei in respect of the testing of both systems in this regard. The testing result is that both systems were working normally.

Analysis of the evidence

1. The Plaintiff’s claim was not made on the basis that her right leg was trapped between the train and the station. This is made clear by her witness statement that she was lying flat (“平卧”) and her whole body was inside the train compartment. However, this is inconsistent other pieces of documentary evidence.

8(i) The ambulance record (dated 30.3.07) states:-

“At around 1845 hours slipped at LRT Fung Nin Rd. stn. Rt leg trapped between train and platform. Found both knee injury.”

(Underline provided)

8(ii) The record of the Accident & Emergency Department of the Tun Mun Hospital (dated 31.3.2007) states:-

“S/F & Rt leg trapped between the LRT and the platform.”

“Knocked by closing door of LRT”

(Underline provided)

“S/F” is the short form for “slipped and fell”. She must have told the ambulance people and staff of the A & E Dept. of the Tuen Mun Hospital about the Incident, otherwise the people concerned would not have made the records having those contents.

8(iii) In a letter dated 27.4.2007 to the Defendant, the Plaintiff asked for compensation. In the letter she described how the Incident occurred:-

“當時有架列車到達，打開車門，我準備上車，但車門突然關上，事出突然，來不及開，結果給車門夾到膝頭，因而令到本人身體失去平衡跌到，而右腳在月台與輕鐵之間，導致身體多處地方受傷及扭傷，事後有位輕鐵職員到達，幫我叫求護車，送去屯門醫院急証室醫治………。”

(Underlines provided)

8(iv) The joint medical report by experts from both parties (dated 5.2.2010) revealed that the Plaintiff was examined on 21.1.2010, Paragraph 44 of this report states:-

“According to Madam Yam, while boarding a light rail train, the train door suddenly closed and struck her right groin. Her right leg was trapped between the train and the station and her body was inside the train. She was sent to A & E, TMH after the accident by ambulance. X-rays of right knee and right thigh taken at TMH confirmed no fracture. We opine the diagnosis of soft tissue injury to right thigh and right knee was compatible with the mechanism of injury given by her.”

(Underlines provided)

1. The above documents clearly show that during the Incident her right leg was trapped between the train and the platform. Of course she also slipped down. I find that the Plaintiff’s right leg was trapped between the train and the station at the material time, just as what she told the joint experts on 21.1.2010. What actually happened leading to her right leg being so trapped? There is a total lack of evidence on her part. I am not satisfied that she presented the whole picture of the Incident to this Court during the trial. She just told this Court part of what had happened. The evidence adduced in Court is inconsistent with her claim. She slipped and fell, and her right leg was trapped between the train and the station. This part of material facts do not appear in her Statement of Claim, her revised witness statement and her evidence in chief.
2. If she had not rushed into the train compartment, but had boarded the train normally, how is it that her right leg would be trapped in the gap between the train and the station? She said that the door leaves were closing with great force, and came into contact with her right leg. Then she should have injuries on the points of contacts of her right leg with the door leaves, namely, on both sides of her right thigh. But she only got injury on the inner part of her right thigh at the groin area. There was no injury on the other side of the right thigh which also came into contact with another door leaf which was closing in with great force as alleged by her. The light train did emit buzzer sounds, warning people that the door was being closed. There is no reason she did not hear them, if she was paying attention to the state of the closing door. I am not satisfied that her evidence is credible. In so far as it is inconsistent with the evidence of Lung Wai Yin, I do not accept her evidence.
3. I am satisfied that Lun Wai Yin was telling the truth. At the material time the Plaintiff was boarding the train compartment in a hurry when the door was closing and when the buzzer sound were on. When Lun Wai Yin saw this, she immediately pressed the door button to re-open it. But it was too late. The door leaves hit the Plaintiff’s body. She lost balance and her right leg slipped into the gap between the train and the station. It cannot be true that the force of the closing door made her fall down. Before she fell, the door leaves must have been opened. If they had not been opened, they would simply have continued to her up between them, and she would not have fallen down. She fell down because the door was opened. It would only open if Lun Wai Yin pressed the control button to open the door leaves. She must have done so. So during those 2 or 3 seconds she must have been paying attention to the closing of the door. It is inconceivable that she would only have done so during these 2 to 3 seconds. She must have done so right at the beginning of its being closed for the whole period, in order to see that the door would not pose any threat to boarding passengers. So what she said in her witness statement in this regard must be true. I accept her evidence. There is no negligence on her part. Accordingly I dismiss the Plaintiff’s claim.

Costs

1. I make an order nisi, be made absolute in 14 days’ time, that the Plaintiff do pay costs of this action to the Defendant, to be taxed, if not agreed, with certificate for Counsel.

( S. Chow )

District Judge

The Plaintiff: represented by Mr. Alex Y.H. Lai, instructed by M/S Kenneth Poon & Co., Solicitors

The Defendant: represented by Mr. Ashok K. Sakhrani instructed by M/S Deacons, Solicitors