## DCPI 1580/2010

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1580 OF 2010

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##### BETWEEN

KONG LIN FAT JOHNNY Plaintiff

### and

THE INCORPORATED OWNERS OF

CHANG PAO CHING BUILDING 1st Defendant

WINCOME PROPERTY

MANAGEMENT COMPANY LIMITED 2nd Defendant

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Before : Deputy District Judge CK Siu in Court

Dates of Hearing : 20, 21, 24, 25 & 26 March 2014 and 7 May 2014

Date of Judgment : 12 September 2014

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JUDGMENT

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1. This is a personal injury claim arising from a lift accident that happened on 18 March 2008. The plaintiff claims against the incorporated owners and the management company of the building for his physical and psychiatric injury.

*Background*

1. The following facts are undisputed by the parties.
2. The plaintiff, aged 38 at the time of the accident on 18 March 2008, was the proprietor of his own travel agency business. The plaintiff’s office was on the 17th floor of Chang Pao Ching Building, 427-429 Hennessy Road, Wanchai, Hong Kong (“the Building”).
3. At all material times, the 1st defendant the incorporated owners of the Building.
4. The Building is a multi-storey building which was completed in about 1980. It was served by two lifts, Lift No 1 and Lift No 2. Lift No 1 served the odd-numbered floors from 19th to 5th floors, all floors from the 4th floor to the 1st floor and the mezzanine floor (“M/F”). Lift No 2 served the even-numbered floors from the 20th floor to the 6th floors, all floors from the 4th floor to the 1st floor and the M/F. The M/F was connected to the Ground Floor and the street. The lift in question is Lift No 1 (“the Lift”). At all material times, a valid use permit issued by the Electrical and Mechanical Services Department was displayed inside the Lift.
5. The 1st defendant had already engaged Nikko Lift and Escalator Services Limited (“Nikko”) to provide lifts maintenance and repair services since about 1992.
6. In early 2007, the 1st defendant’s management committee decided to entrust the management of the Building to a management company. It then invited for tenders from various management companies. On about 28 September 2007, the 1st defendant resolved to engage the 2nd defendant as the management company of the Building.
7. The 2nd defendant is a property management company. It provided building management services to the 1st defendant from 1 October 2007, although their formal written management contract was later signed on about 14 November 2007. Under clause 4.16 and clause 4.26 of the management contract, the 2nd defendant shall provide management services to the 1st defendant, including providing regular reports to the 1st defendant about management issues and providing maintenance records and repair records respectively. The 2nd defendant was the management company of the Building for the 1st defendant at the time of the accident on 18 March 2008.
8. At about 1315 hours on 18 March 2008, the plaintiff left his office. He took the Lift from the 17th floor. As the lift car of the Lift was travelling down towards the M/F, the lift car suddenly stopped in the middle of 1st floor and the M/F of the Building. The plaintiff was trapped inside the lift car for about 20 minutes (“the Accident”). During the Accident, the plaintiff was alone and the power of the lift car was still on.
9. After 20 minutes, the plaintiff was helped out of the lift car of the Lift by a fireman and was then sent to the Accident and Emergency Department of Ruttonjee & Tang Shiu Kin Hospital (“RTSKH”) by an ambulance.

*Pleading*

1. It was pleaded in the plaintiff’s Statement of Claim that, inter alia, on 18 March 2008, the plaintiff was travelling alone in the Lift from 17th floor to the M/F of the Building. While the Lift was reaching or close to reaching the 13th floor, the descent rate accelerated to almost double when the Lift continued to plunge its downward course. When the Lift finally came to a halt between the 1st floor and M/F, it jerked violently causing the plaintiff to fall on the floor of the Lift. The plaintiff shouted for help and pressed the emergency button. It took nearly 20 minutes before the plaintiff was rescued by the fire service and the lift technicians.
2. The plaintiff sued the 1st defendant and the 2nd defendant for negligence. In the particulars of negligence, the plaintiff pleaded, inter alia, that both the 1st defendant and the 2nd defendant had:-
3. failed to ensure that the Lift was working properly;
4. failed to provide a safe lift or proper servicing and maintenance of the same; and
5. caused or permitted to be used at the Building a lift which was unsafe.
6. The plaintiff also sued the defendants for breach of common duty of care under the Occupiers Liability Ordinance (Cap 314).
7. Further or in the alternative, the plaintiff sued the defendants for breach of statutory duties under ss 18 and 24 of the Building Management Ordinance (Cap 344); and ss 19, 23, 26, 27A, 27H of Lifts and Escalators (safety) Ordinance (Cap 327) including the Code of Practice referred thereto. But at the opening submission, the plaintiff abandoned his claim under this heading.
8. Further, the plaintiff relied on res ipsa loquitur and averred that the lift accident was caused by the negligence of the 1st and 2nd defendant.
9. The plaintiff claimed that he had sustained physical and psychiatric injury as a result of the Accident. The plaintiff claimed against the defendants for a total sum of HK$950,908.90 under the following headings:-
10. PSLA HK$250,000.00
11. Pre-trial loss of earnings HK$419,826.90
12. Loss of Earning Capacity HK$200,000.00
13. Special Damages HK$54,082.00
14. Future Medical Expenses HK$27,000.00
15. The 1st defendant denied that it was negligent. It did not admit that it was an occupier of the Building within the meaning of the Occupiers Liability Ordinance (Cap 314). The 1st defendant pleaded that if it was found to be the occupier of the Building within the meaning of the ordinance, it had discharged its duties to the plaintiff, inter alia, in that:-
16. the 1st defendant had reasonably entrusted and appointed the 2nd defendant as the building manager of the Building;
17. the 1st defendant had taken steps to satisfy itself that the 2nd defendant was competent;
18. the 1st defendant had appointed Nikko, a registered lift and escalator contractor, to regularly examine, maintain and service the Lift in accordance with the Lifts and Escalators (Safety) Ordinance (Cap 327); and
19. it was the responsibility of the 2nd defendant to supervise and oversee the performance of Nikko and to ensure that Nikko’s work was carried out in accordance with the Lifts and Escalators (Safety) Ordinance (Cap 327).
20. Further, or in the alternative, the 1st defendant averred that, if the Accident occurred as alleged by the plaintiff, the alleged accident was caused by or contributed to the negligence and/or breach of statutory duties and/or breach of common duty of care on the part of the 2nd defendant, its servants and/or agents.
21. The 1st defendant alleged that the Accident was contributed to or caused by the plaintiff’s own negligence.
22. The 1st defendant disputed the plaintiff’s statement of damages. If liability was established, the 1st defendant pleaded that the plaintiff was only entitled to receive HK$152,596.00 as compensation with the following breakdown:-
23. PSLA HK$100,000.00
24. Pre-trial loss of earnings HK$47,250.00
25. Loss of earning capacity Nil
26. Special Damages HK$5,346.00
27. Future medical expenses Nil
28. After the plaintiff had given his evidence at the trial, the 1st defendant sought leave to amend its Answer to the Revised Statement of Damages by reducing the amount of pre-trial loss of earnings from HK$47,250 to HK$28,490, on the ground that the plaintiff had conceded that his monthly income was below HK$11,000 odd before the Accident, instead of HK$35,000 as originally stated in the plaintiff’s Re-revised Statement of Damages and his witness statement. Leave was granted by this court. That would bring the 1st defendant’s assessment of the plaintiff’s damages to a total of HK$133,836.
29. The 2nd defendant pleaded that the 1st defendant had since 1 March 1997 engaged professional service from Nikko for the maintenance of both lifts of the Building, including the Lift. The 2nd defendant also relied on s 3(4)(b) of the Occupiers Liability Ordinance (Cap 314) and said that it had acted reasonably in entrusting the maintenance work of the lifts to Nikko, an independent and registered lift contractor. The 2nd defendant said that it had taken such steps to satisfy itself that Nikko was competent. The 2nd defendant also pleaded that Nikko had provided satisfactory lift maintenance service to the Building for over 10 years and had received no complaints or criminal prosecution regarding its lift maintenance service to the Building.
30. In relation to the quantum of damages, if liability is established, the 2nd defendant adopted the 1st defendant’s Answer to the plaintiff’s Revised Statement of Damages.
31. There was no contribution notice served by the defendants. Counsel for both defendants submitted that there was no need for this court to apportion the respective liability between the two defendants, in case they were held liable by this court.

*The witnesses*

1. Apart from himself, the plaintiff had no other factual witnesses.
2. Mr Cheung Kai Yung, the treasurer of the 1st defendant, testified for the 1st defendant.
3. Mr Wong Wai Hing, the managing director of Nikko, filed his witness statement for the 1st defendant. Counsel for parties jointly submitted to the court that they did not need to call Mr Wong Wai Hing to give viva voce evidence whether in the examination-in-chief or in the cross-examination. Counsel for the parties jointly applied to admit the witness statement of Wong Wai Hing as his evidence-in-chief. Leave was granted for the 1st defendant to admit the witness statement of Wong Wai Hing under O 38 r 2A(9) RDC (Cap 336H) and s 51(2)(a) of the Evidence Ordinance (Cap 8).
4. Miss Chan Ka Ting, senior property officer of the 2nd defendant, testified for the 2nd defendant.
5. Regarding expert evidence on liability, the parties agreed to adduce the joint experts report on liability, without calling the experts to testify.
6. With respect to medical evidence, the parties had no dispute to the authenticity of all medical reports or consultation notes of the plaintiff. These medical reports and consultation notes were all admissible. The parties also relied on the joint psychiatric report prepared by their experts for this case without the need to call the psychiatrists to testify in court.

*Plaintiff’s factual evidence*

1. The plaintiff adopted his two witness statements as his evidence in court. In his 1st witness statement, the plaintiff said that he was born in October 1969. He stated that starting from about January 2006, he was employed by a travel company called Y2 Holidays Travel Limited (“Y2”) as director of sales (營運總監). Y2’s office was on the 17th floor of the Building. While he was working for Y2, he had no basic salary and he earned commission and end of year bonus. His average monthly wages were about HK$9,298.50. He received bonus at the end of the year of about HK$24,176.00.
2. The plaintiff also stated in his witness statement that in about January 2008, he ceased working for Y2. Instead, the plaintiff started his own travel agency business in the name of Meiou. Meiou used Y2’s office and facility at the Building. The plaintiff had to pay Y2, his ex-employer, HK$8,500 as monthly rental and charges. The plaintiff’s job title in Meiou was sales director. The plaintiff had to pay for the wages of his own staff. In Meiou, the plaintiff continued to work as a travel planner and consultant, he organized trips or tours for his clients from Hong Kong to the United States or Australia. The plaintiff stated that he would withdraw HK$18,000 from Meiou’s bank account every month. He also stated that he earned HK$51,556.60 between January 2008 and March 2008. Therefore, his monthly earning was HK$17,185.50. As a result, at the time of the Accident on 18 March 2008, the plaintiff said that his total monthly income was HK$35,185.50 (HK$18,000 + HK$17,185.50).
3. In his 1st witness statement, the plaintiff accounted for the event of the Accident which was basically consistent with his evidence-in-chief in the court.
4. In his examination-in-chief, the plaintiff said that at about 1:15 pm on 18 March 2008, he left his office at the Building for the bank. At the lift lobby on 17th floor, he met his colleague who was returning to his office. His colleague told him that the Lift did not function properly. His colleague suggested the plaintiff to take another lift, ie Lift No 2 which served the even-numbered floors. As the plaintiff was in a hurry, he ventured to take the Lift from 17th floor down to the M/F of the Building. He supplemented that the size of the lift car of the Lift was about 2 m x 2 m. In the past, he had complained to the watchman of the Building about the lift problems on numerous occasions.
5. While the plaintiff was travelling alone downward in the Lift, he heard a series of clank caused by metal chains outside the lift car. When the lift car of the Lift reached about the 13th floor, he felt that the speed of the Lift started to increase. He felt that the speed was “one to two times” faster than the usual speed, meaning that the speed was double or triple of its usual speed.
6. The plaintiff immediately pressed the floor buttons for the 11th floor, 9th floor, and 7th floor, hoping that the Lift would stop at the respective floors, but to no avail. He then pressed the alarm button but the alarm bell was silent.
7. At the same time, he felt that the Lift shook. The plaintiff said that he was very frightened. He thought that he was going to die.
8. Eventually, the Lift came to a halt. As a result of the sudden stop of the Lift, the plaintiff lost his balance, making him squat down and lean backwards a little. He nearly fell onto the floor of the Lift. He twisted his right ankle as a result of the sudden stop of the Lift.
9. Then, the door of the lift car (“the Interior Door”) opened and closed repeatedly, but the exterior door connected to the lift lobby remained closed. The plaintiff realized that he was trapped in the lift-shaft between two floors which were later known to be the 1st floor and the M/F.
10. The Interior Door was an old-styled lift door, it was in fact a set of two sliding doors, both closing from left to right of the lift car. Fearing that the Lift might move upward and dropped again if the Interior Door was closed, the plaintiff used his right hand to block the Interior Door from closing. He continued to use his right hand to keep the Interior Door open throughout the Accident despite the Interior Door attempted to close again. Then, the plaintiff shouted for help. Later on, when the watchman of the Building attended to the scene, the plaintiff asked the watchman to find someone to rescue him, and to call the police and ambulance. The plaintiff also told the watchman that he had asthma, the ventilation was poor inside the lift car and his palms were sweating. In the meantime, the plaintiff ventilated his grievance to the watchman about the lift problems by referring to his previous complaints to the watchmen of the Building about lift problems.
11. While the plaintiff was waiting for the police and ambulance, he repeatedly kicked on the exterior door. The exterior door that the plaintiff kicked upon was in fact the upper part of the exterior lift door of the M/F (“the Exterior Door”).
12. About 20 minutes later, the plaintiff was rescued by a fireman from the Fire Services Department. The technician of Nikko was also there. He took a rest at the lobby of the Building and he was then sent to hospital by an ambulance.
13. At about 2:40 pm on the same day, the plaintiff reached the A&E Department of RTSKH for treatment. At about 4:00 pm on the same day, the plaintiff was discharged from RTSKH and he returned to his office on foot.
14. Later on, the plaintiff found that he had persistent pain on his neck and left knee. He further found that he had fear and phobia about travelling by lift. When he had no other alternative but to take a lift, he had to close his eyes while he was travelling inside the lift. He would sweat when he was travelling inside the lift. The plaintiff found that he had subsequent onset of psychiatric symptoms. He started to have nightmares about lift accidents or falling from height. He said he had insomnia. Sometimes, he could not sleep until 6 o’clock in the morning.
15. After the Accident, the plaintiff said that he could not concentrate his mind on his work and had poor memory. He felt hard to organize his work or make arrangements for his clients’ travel plans because he easily forgot their travel details. He had difficulties in promoting travel plans to other potential clients convincingly. As a result, his clients and potential clients had no confidence on him.
16. On about 28 March 2008, the plaintiff attended RTSKH again. He told the doctor that he had fear of taking lifts. The plaintiff was then referred to Prince of Wales Hospital (“PWH”) for psychiatric treatment.
17. The plaintiff’s first psychiatric consultation was on 3 November 2008 at PWH. He was given drugs for his psychiatric symptoms which will be detailed below.
18. The plaintiff attempted to commit suicide on 6 November 2008.
19. The plaintiff said that before the Accident, he was a football coach and he played football about 2 to 3 times a week. He had the habit of running and playing table tennis every week. He also swam twice a week. He said that after the Accident he had ceased these activities because of the pain on his neck, left knee and his psychiatric symptoms.
20. Furthermore, the plaintiff said that he easily lost his temper after the Accident. He frequently quarreled with his wife. He also complained of decreased sex drive and insomnia. If he could sleep, he would have bad dreams about falling from height. He claimed that he started smoking, drinking alcohol, gambling heavily and fell into the habit of visiting prostitutes (“the Vice Habits”) after the Accident.
21. As a result of the Accident, the plaintiff was unable to concentrate on his work. He had to close down his business of Meiou in October 2008 because he was affected by the side effects of the psychiatric drugs. He then made various attempts to find a job to do but he was not successful until November 2009. In November 2009, the plaintiff worked as a salesman for a beer company, with a monthly wages of HK$10,000. But the plaintiff said that the job required him to walk and stand for too long. This made him felt pain at his feet and waist. He only worked for 10 days and earned a total of HK$2,500 only. Then the plaintiff became unemployed again. He had to rely on comprehensive social security assistance of about HK$11,000.
22. The plaintiff worked as a taxi driver in about December 2009. He only worked on night shift for about 3 to 4 nights every week. The plaintiff said that from December 2009 to March 2012, he only earned between HK$2,000 to HK$4,000 a month. The plaintiff supplemented that his driving licence was suspended during January 2011 and April 2011 and he had no income during this period of time. In March 2012, the plaintiff’s driving licence was suspended again. The plaintiff found a job at a travel agency company with a monthly wages of HK$13,000. However, after working for 1 month, his boss invited him to tender his resignation. The plaintiff said that it was because the wife of the boss did not like him as his work performance was poor. In about September 2012, the plaintiff resumed working as a taxi driver again because his driving licence suspension period had expired. He said his average monthly income as a taxi driver was between HK$3,000 to HK$7,000.
23. Regarding the plaintiff’s medical treatment, he relied upon his medical reports prepared on his behalf by the doctors from different hospitals and clinics. These medical reports and records were not disputed by the parties and were accepted as admissible evidence. The plaintiff’s medical evidence will be referred to at the latter part of this judgment.
24. With respect to the plaintiff’s income before the Accident, the plaintiff mainly relied on an undated and unsigned letter purportedly issued by Y2 (at page 601 of the Bundle of Documents). According to this letter, it was stated that from December 2006 to December 2007, the plaintiff earned a total of HK$241,762. Therefore, the monthly income of the plaintiff was HK$18,597 (HK$241,762 ÷ 13). The plaintiff also produced extracts of his bankbook record, MPF contribution record and a copy of his previous employment contract with Y2.
25. Under cross-examination, the plaintiff said that he was very frightened during the Accident because he was alone and he felt helpless. He was scared by the clank, speed and vibration/shaking of the Lift.
26. Also under cross-examination was the plaintiff’s concession that he was not sure if his left knee injury was caused by the sudden stop of the Lift or not.
27. The plaintiff also admitted under cross-examination that he gave slightly different account of facts about the Accident when he described the Accident to the doctors. He explained that when he told the doctors about how the Accident happened, he did not mean to tell each and every detail to the doctors, his focus was on his injury at the time of consultations.
28. The plaintiff admitted that after he had been discharged from RTSKH at about 4 o’clock pm on 18 March 2008, he walked to the bank to complete the banking matter that he was originally supposed to do on that day. He also returned to his office at the Building in the evening on that day. He took Lift No 2 to go up and down the Building. He admitted that he had not yet developed any fear to taking lifts at that time. Yet, he denied that his left knee injury was a fabrication.
29. As regards his pre-accident income, the plaintiff said under cross-examination that he was employed by Y2 from 1 January 2006 to 31 December 2006. He started his travel agency business in the name of Meiou on 1 January 2007 instead of 1 January 2008. The plaintiff later conceded that he was not sure whether he started Meiou on 1 January 2007 as alleged under cross-examination or on 1st January 2008 as stated in his witness statement. When the plaintiff was asked how he could substantiate his claim for HK$51,556.60 as his income for the period between January 2008 to March 2008, the plaintiff admitted that he had not seen any documents which showed this figure.
30. Regarding the plaintiff’s monthly income and profit before the Accident, the plaintiff readily and frankly admitted that he was actually earning around HK$8,000 to HK$10,000 a month and in any event less than HK$11,000. Despite the fact that there were repeated deposits of HK$18,000 into his bank account as evidenced by the extract of his bankbook, the plaintiff told the court that of these repeated deposits of HK$18,000, not all of the money represented his income. In fact, he had to pay his staff’s wages out of these HK$18,000 deposits each month. The plaintiff confirmed that his business of Meiou was not good, his monthly net income was less that HK$11,000 in any event. He said that his business of Meiou from August to December 2007 might have suffered a loss. He said that he was not sure how the alleged monthly income of HK$35,185.50 as stated in his witness statement was arrived at. He clarified that this sum of money should be his total income between January 2008 and March 2008, instead of his monthly income of any particular month.
31. More importantly, the plaintiff unequivocally confirmed that in the preceding 12 months before the Accident, ie March 2007 and February 2008, his average monthly net income was below HK$11,000 or HK$12,000.
32. Furthermore, the plaintiff also readily admitted that after the Accident up to the day he ceased his business of Meiou, ie from March 2008 to October 2008, his average monthly income was also about HK$11,000 or below.
33. Regarding his current conditions, the plaintiff also readily admitted to the court that he had already ceased the Vice Habits as mentioned hereinabove. He even said that he had ceased heavy gambling back in 2008. He had a harmonious relation with his wife. His divorce petition was not proceeded by mutual consent of his wife and him. He further said that he had in fact resumed playing football in about 1 year after the Accident and he also played football in an amateur football league from October to December 2009.
34. Regarding his mental condition, the plaintiff first claimed that he was affected by the side effects of the psychiatric drugs which made him feel very drowsy and unable to carry on with his business of Meiou before October 2008. He had to close down Meiou in about October 2008. However, under cross-examination, he conceded that he was first prescribed psychiatric drugs on 3 November 2008 by PWH. By that time, the business of Meiou had been closed down already. The plaintiff admitted that he had made a mistake in relation to the reason for closing Meiou. The plaintiff also admitted under cross-examination that the business of Meiou was not good. He described Meiou’s business as “all along suffering from a blow” before the Accident, meaning that the business of Meiou was all along in a difficult financial position.
35. Between about April and August 2008, the plaintiff admitted that he failed to issue air-tickets to his clients or organize certain tours for some of his clients after he had received money from his clients. When he closed down Meiou in October 2008, he had not refunded the money to those clients, totaling HK$160,000. Eventually, he was prosecuted in the Eastern Magistrates’ Court for appropriating HK$160,000 from his clients. The court case was disposed of in late 2010 or early 2011 and the plaintiff received a suspended sentence. The plaintiff admitted that the court case in Eastern Magistrates’ Court had some impact on his mental condition as he worried about being sentenced to jail. But the plaintiff added that the impact on his mental condition was limited.
36. Regarding his psychiatric treatments, medical findings and his mental conditions, the plaintiff confirmed all of the important matters stated in the relevant medical reports and records, although he had some disputes about some unimportant matters, such as whether he had ever told the doctor that he had wrongly transferred money to others (North District Hospital, Out-Patient Progress Sheet dated 2 December 2009), etc.
37. The plaintiff was prescribed antidepressants, such as sertraline (zoloft), since his psychiatric consultation on 3 November 2008. At the time of the trial, the plaintiff was still taking antidepressants which were prescribed by the doctors.

*Medical evidence of the plaintiff*

1. The Accident happened on 18 March 2008, the plaintiff was treated at the A&E Department of RTSKH for his physical injury and he was discharged on the same day.
2. On about 28 March 2008, the plaintiff attended RTSKH again for consultation. The medical examinations of these two consultations were contained in a medical report dated 16 February 2009 by Dr Yip of the A&E Department of RTSKH. Regarding the medical examination on 18 March 2008, it was found that the plaintiff’s neck was "soft with full range of movement". There was mild tenderness over the right trapezius muscle. There were no abnormalities detected over the right ankle. He was given tubigrip for his right ankle. Regarding the examination on 28 March 2008, the plaintiff complained of right ankle, neck and left knee pain. Physical examination showed mild tenderness over the right neck. There was no neurological deficit. There was tenderness over the left knee with associated bruising. There was no effusion. The range of movement was full over the left knee.
3. On about 3 November 2008, the plaintiff was referred to PWH for his alleged psychiatric symptoms. He complained to the doctor that he had fear of taking lift and he had to walk up to 17th floor to his office in the first month after the Accident. He also complained that he had low mood, loss of confidence, decreased work performance and etc. He was angry with the building guard and building owners because he had complained about the lifts before the Accident occurred, but no one repaired the lifts. The plaintiff told the doctor that his bankruptcy period ended in that month. The plaintiff was diagnosed with post-traumatic stress disorder (“PTSD”) and depression. He was prescribed zoloft by the doctor.
4. On about 6 November 2008, the plaintiff was admitted to Acute Integrated Unit because of his suicide attempt by drug overdose of sertraline. He was rescued and treated. He was discharged from hospital on 7 November 2008 against medical advice. This incident was recorded in the medical report of Dr Fung Hing Kai Linus of RTSKH dated 7 November 2008 and the medical report of Dr Wan Man Choi Timothy of RTSKH dated 4 March 2009.
5. On about 7 November 2008, the plaintiff consulted Dr Chan Chung Mau, a doctor in private practice, for his sleeping problem. The plaintiff was found to have insomnia. He was given one day sick leave.
6. On about 5 December 2008, the plaintiff consulted PWH again. He complained to the doctor that the Accident had affected his work performance and he could not speak fluently after taking the drugs. The plaintiff told the doctor that he had started the Vice Habits.
7. On about 16 January 2009, the plaintiff was treated by Dr Wong Kit Yi of the psychiatric clinic of PWH. The plaintiff complained that he had the problems of slow-thinking and poor sleeping. Dr Wong found that the plaintiff could give detailed information about the Accident and the plaintiff had no more avoidance of lifts. Dr Wong wondered if the plaintiff was still suffering from post traumatic stress disorder. In the plaintiff’s mental status examination, Dr Wong assessed that the plaintiff had a subjectively low mood but he was not clinically depressed. The plaintiff was prescribed zoloft for 9 weeks.
8. On about 20 March 2009, the plaintiff was treated by Dr Wong Kit Yi again. The plaintiff complained that he had nightmares of falling from high places. Dr Wong found that the plaintiff’s mood was not depressed, he was neither psychotic nor aggressive. The plaintiff’s speech was coherent and relevant. The plaintiff was prescribed zoloft again.
9. Dr Wong Kit Yi of PWH prepared a psychiatric report dated 18 May 2009 for the plaintiff. In the psychiatric report, Dr Wong Kit Yi stated that:-

“4. I last saw this patient on 20th March, 2009. He felt stressful for childcare as his second child was born in February, 2009. He complained of shallow sleep with nightmares, which were not directly related to the accident. He had no avoidance of taking lift, and he did not appear distressed when he volunteered to give a detailed account of what happened on the day of accident. Mood was not depressed, speech was coherent and relevant. Appetite was well with no weight low. He was neither psychotic nor suicidal. There were no cognitive deficits identified. He is currently treated on an antidepressant, namely, Sertraline.

5. Based on medical record and my most updated assessment of the above named patient, at the time of assessment there were no genuine features of depression, and the post traumatic stress disorder was in remission. Prognosis of his condition was good.”

1. On about 5 June 2009, the plaintiff was treated by Dr Wong Kit Yi again. The plaintiff complained that he had insomnia. The plaintiff said that he dreamt of his deceased relatives and he was worried that he would die soon. The plaintiff had no avoidance of taking lifts/escalators, but he needed somebody to accompany him when he took lifts. Dr Wong found that the plaintiff had no psychotic features. There were no major flashbacks but the plaintiff had anger towards lift repair workers. Dr Wong assessed that the plaintiff’s mood was euthymic, he was not depressed, not suicidal and not psychotic.
2. On about 21 August 2009, the plaintiff was treated by Dr Chan Sheung Yan of the psychiatric clinic of PWH. The plaintiff told Dr Chan that he was investigated by police about his appropriation of HK$160,000 from his clients. He also told Dr Chan that he had repeated conflicts with his wife. Dr Chan assessed that the plaintiff’s mood was euthymic, he was talkative and not psychotic or suicidal.
3. On about 23 September 2009, the plaintiff received out-patient psychiatric service in North District Hospital (“NDH”) because he had moved to Fanling, New Territories for living. The doctor in charge found that the plaintiff was tense, anxious, in low mood but not suicidal.
4. On about 7 October 2009, the plaintiff told the doctor of NDH that he had trouble with his wife. The doctor in charge found that the plaintiff was tense, anxious, not depressed and not suicidal.
5. On about 4 November 2009, the plaintiff consulted NDH again. The doctor in charge found that the plaintiff was tense, anxious, not depressed and not suicidal.
6. At his consultation on about 2 December 2009 at NDH, the plaintiff told the doctor that he had argument with his friends when they played soccer together. The doctor in charge found that the plaintiff was tense, anxious, in low mood but not suicidal.
7. On about 30 December 2009, 10 February 2010 and 28 April 2010, the plaintiff consulted NDH. On each occasion, the doctor in charge found that the plaintiff was tense, anxious, not depressed and not suicidal.
8. On about 21 July 2010, the plaintiff told a doctor of NDH that he only took lifts with others. The doctor in charge found that the plaintiff was reactive and demanding. Based on the plaintiff’s medical record on 21 July 2010, Dr Li Cheuk Wing of NDH prepared a medical report dated 16 September 2010. Dr Li Cheuk Wing’s medical report stated that the plaintiff had a history of gambling problem and domestic violence prior the Accident. The plaintiff’s prognosis depended on environmental stress including marital, financial and legal. The plaintiff was likely to require ongoing psychiatric treatment and monitoring.
9. On about 22 August 2011, the plaintiff was treated by Dr Chan Wing Yan of the psychiatric clinic of PWH. According to the plaintiff's consultation summary, the plaintiff told Dr Chan Wing Yan that he had no more nightmares or flashback. He could take lifts. He had no conflicts with wife and had no domestic violence. Dr Chan assessed that the plaintiff’s mood was euthymic, his speech was coherent and relevant and he was not psychotic or suicidal. The plaintiff's consultation summary on 22 August 2011 was referred to by Dr Chan Wing Yan in the plaintiff's medical report dated 15 November 2011.

*Joint experts report on orthopaedic evidence*

1. The plaintiff was examined by Dr Arthur Chiang Si Chung and Dr Henry Ho, specialists in orthopaedics and traumatology, who were appointed by plaintiff and the defendants respectively. Both Dr Chiang and Dr Ho examined the plaintiff on 17 February 2011 which was nearly 3 years after the Accident. Dr Chiang and Dr Ho prepared a joint orthopaedic report dated 24 March 2011.
2. According to Dr Chiang and Dr Ho’s joint orthopaedic report, the plaintiff repeated his complaints about his physical injury caused by the Accident. The plaintiff further claimed that there was still residual neck pain, left knee pain, anterior ribs pain, despite nearly three years had lapsed after the Accident. Both doctors examined the plaintiff’s neck including the trapezius muscle, both knees, abdomen, cervical spine, chest and his anterior ribs. Dr Ho opined that there was a minor sprain of the right trapezius muscle which was caused by the sudden stop of the lift. The contusion of the right heel was due to his kicking on the lift door. Based on the objective evidence and the plaintiff’s previous medical reports, Dr Ho did not believe that the relatively minor strain of the right trapezius muscle and right heel contusion would have led to any permanent disability. There was no documented injury to the left knee.
3. Dr Chiang opined that the plaintiff should have satisfactory capacity in working in the pre-injury job. Dr Ho opined that the plaintiff was fully able to resume his pre-injury job. Both doctors agreed that the plaintiff should be given 2 weeks sick leave for the plaintiff orthopaedic injury. Dr Chiang opined that any sick leaves given after 2 November 2008 due to psychiatric symptoms should be given by a psychiatrist.

*Joint psychiatric report*

1. Dr Benjamin Lai and Dr Wong Chung Kwong were appointed by the plaintiff and the defendants respectively to prepare a joint psychiatric report dated 11 January 2012. Both Dr Lai and Dr Wong were experienced psychiatrists and their expertise was not disputed by the parties.
2. Dr Lai and Dr Wong examined the plaintiff on 2 December 2011. They also went through the previous medical reports and records of the plaintiff. Both doctors agreed that the plaintiff had no history of psychiatric illness before the Accident.
3. Both Dr Lai and Dr Wong opined that the plaintiff only had some symptoms of PTSD and the plaintiff’s clinical features did not meet the full diagnostic criteria of PTSD. Both of them found that the plaintiff suffered from adjustment disorder. As to which sub-type of adjustment disorder, Dr Lai opined that the plaintiff had adjustment disorder with mixed anxiety and depressed mood. Dr Wong was of the opinion that the plaintiff had adjustment disorder with depressed mood. However, both experts agreed that the difference in subtype was not a substantial issue in the present case. At the trial, counsel for the plaintiff and defendants also agreed that the difference in the subtype of adjustment disorder was not significant for the purpose of this case and the court did not need to resolve this issue. Thus, I shall refer simply refer to these two subtypes of adjustment disorder as “Adjustment Disorder” in this judgment.
4. Dr Lai opined that the plaintiff was mentally normal before the Accident in March 2008. Dr Lai stated that the plaintiff had not required psychiatric treatment because of his previous failure in his business, his gambling problem, his bankruptcy and his marital problem. Dr Lai opined that based on the timing and nature of the development of his psychiatric symptoms, it was compatible that the psychiatric symptoms of the plaintiff were caused by the Accident and the current residual psychiatric symptoms are all related to the Accident (at paragraph 99 of the joint psychiatric report). Dr Lai also concluded that the plaintiff was suffering from mild residual psychiatric symptoms. Dr Lai further stated that the previous stressors of childcare, gambling and debt did not appear to be affecting him at the time of the examination on 2 December 2011. Dr Lai thought the current residual psychiatric symptoms were all related to the Accident (at para 103 of the joint psychiatric report).
5. Dr Wong, however, opined that there were two main groups of causes in the plaintiff’s case, namely the precipitating stressors and the predisposing factors. Dr Wong believed that the Accident was the key precipitating stressor in this case. Dr Wong also identified other stressors, such as financial worries, perception of the change of friends’ and other people’s attitude to the plaintiff. Dr Wong found that the predisposing factors were the plaintiff’s history of gambling leading to debts and bankruptcy, the failure of his business, his attitude towards his first marriage, his history of past court cases in the magistrates’ court, including the domestic violence cases with his girlfriend who later became his wife in his second marriage.
6. Dr Wong said that mental health existed in three states, namely the state of illness, the subclinical state and the state of health. With those predisposing factors, Dr Wong believed that the plaintiff’s predisposing factors probably put him in a not mentally healthy state before the Accident. Dr Wong opined that the plaintiff was probably in a subclinical psychiatric state. Dr Wong said that without the predisposing factors, the precipitating factors alone probably would not have led to the Adjustment Disorder. Dr Wong opined that it was difficult to apportion the weight of the two factors in this case. A broad approach was to put equal weight on the two sets of factors, ie each contributed to 50% of the causation.
7. Dr Wong stated that Adjustment Disorder with depressed mood was usually a relatively mild disorder and the disorder was usually self-limiting in that many patients improved and often recovered from it even without treatment. Dr Wong assessed that the plaintiff had suffered from adjustment disorder with depressed mood for a total duration of about one year. The onset was shortly after the Accident up to March 2009. After March 2009, the plaintiff should have recovered fully from the disorder. He said that Dr Wong Kit Yi’s psychiatric report dated 18 May 2009 strongly supported his opinion.
8. Regarding the assessment of the impairment of the whole person caused by psychiatric disorders, Dr Wong referred to *Guides to the Evaluation of Permanent Impairment, Fifth Edition* (American Medical Association, 2004)(“the Guides”). Dr Wong said that in the past it was customary practice to quantify the impairment due to psychiatric disorder in percentage terms. This practice was no longer recommended by the Guides. The Guides recommended the assessment of such impairment according to broad classes. According to the Guides, there were five classes of impairment due to mental and behavioral disorder, with Class 5 being the most serious one. Dr Wong opined that during the first year after the Accident, the plaintiff functioned between Class 2 (Mild Impairment or “Impairment levels are compatible with most useful functioning”) and Class 1 (No Impairment), being closer to Class 1 than Class 2. Afterwards, the plaintiff functioned in Class 1. Dr Wong added that although the current trend was not to use percentage figures to denote impairment of functioning due to psychiatric disorders, such figures might still be required. If so, his estimation was that during the first year after the Accident, the plaintiff suffered from 3% impairment on psychiatric ground.
9. Dr Lai also based his opinion on the Guides. Dr Lai opined that the plaintiff’s psychiatric impairment was in the “very mild range” (para 117 of the joint psychiatric report) and the plaintiff’s levels of impairment were compatible with most useful functioning. For the purpose of a rough indication of the degree of severity, Dr Lai estimated that the permanent impairment of the whole person based on his psychiatric conditions as a result of the Accident was about 1% to 3%.
10. Dr Lai also estimated that the loss of earning capacity based on the plaintiff’s psychiatric symptoms as a result of the Accident was about 1% to 3%. Dr Wong opined that there was only a 3% loss of earning capacity during the first year when the plaintiff suffered from Adjustment Disorder. Apart from that, the plaintiff had no loss of earning capacity.
11. Despite the above differences, both Dr Lai and Dr Wong agreed that:-
12. the plaintiff suffered from Adjustment Disorder; and
13. the plaintiff was mentally able to return to his previous job on psychiatric ground (see paras 113, 119, 127 of the joint psychiatric report).

*Documentary evidence on liability*

1. Nikko prepared an undated and unsigned incident report about the breakdown of the Lift on 18 March 2008 (“Nikko’s Incident Report”). It seemed that Nikko’s Incident Report was made between 25 March 2008 and 3 April 2008. It was because the plaintiff had issued a demand letter dated 25 March 2008 to the 1st defendant for compensation. The plaintiff’s demand for compensation was referred to in Nikko’s Incident Report. Nikko's Incident Report was a one paged document. On about 3 April 2008, Nikko submitted this incident report to the Electrical & Mechanical Services Department (“EMSD”) for further investigation.
2. In Nikko’s Incident Report, it was stated that no one was injured in the Accident. Nikko described the cause of the Lift’s breakdown on 18 March 2008 in one single sentence, ie “機身門電閘鎖接點接觸不良” (contact point failure at the electric switch of the lift car’s door).
3. Later on, EMSD learnt about the plaintiff’s alleged injury from a local newspaper which reported the Accident and described it as a lift plunge. EMSD immediately investigated into the Accident on about 3 April 2008. The investigation reported of EMSD was completed on about 11 April 2008.
4. According to the investigation report of EMSD, it was found that the Lift had been put into service in 1980. The last periodic testing of the Lift’s safety equipment with rated load was 28 May 2005. The last periodic testing of the Lift’s safety equipment without rated load was on 14 May 2007. The last periodic maintenance was in the morning on 18 March 2008. The Lift was equipped with CCTV but the video clip of the Lift during the Accident was erased one week after the Accident because the security guard had not received any instruction either from the 1st defendant or the 2nd defendant to retain the video clip of the Accident. EMSD also found out that there were seven minor breakdowns of the Lift from January 2008 up to 3 April 2008. Out of these seven breakdowns, the latest five breakdowns mainly related to the Lift’s car door operation. No irregularity was found by EMSD during the investigation. EMSD concluded that there was no sufficient evidence to identify the safety issue of the Lift as complained by the press.
5. It should be noted that according to EMSD’s investigation report, it was stated that the last periodic maintenance of the Lift was in the morning of the day of Accident. The watchmen of the Building kept a logbook for their work (“the Watchmen’s Logbook”) which was a contemporaneous record made by the watchmen. According to the Watchmen’s Logbook, Nikko's technicians came to the Building in the morning on 18 March 2008 for routine inspection and they replaced some parts of the Lift. As far as the car door switch of the Lift is concerned, there is no direct or specific evidence that the car door switch of the Lift was actually inspected, maintained or repaired on that occasion. In the Watchmen’s Logbook, there was only a brief description of what happened between 17 March 2008 and 18 March 2008. According to the entry of 1110 hours on 17 March 2008, ie the day before the Accident, it was recorded in the Watchmen’s Logbook that “19樓客戶通知1號**車立**落到G/F不開門自動走向上層空置樓層，職觀察2次屬實。致電力建電梯師父來廈檢查處理” (The occupant of the 19/F informed that the door of Lift No 1 did not open when it reached the G/F, it travelled upwards to the upper vacant floors. The staff had observed it twice and it was verified. Technicians of Nikko were called upon to come to the Building to inspect and deal with it). At 1115 hours on 17 March 2008, it was recorded in the Watchmen’s Logbook that “1號**車立** 回復正常再聯絡**車立** 師父。對方稱既然已正常，沒有人困等緊急情況，可待明天換零件時一併處理” (Lift No 1 returned to normal. Call up lift technicians again. The other side claimed that as [the Lift] was back to normal and there was no urgent situation, such as passenger trapping, [the matter] could be dealt with together when the parts [of the Lift] was replaced tomorrow). There were other records along this issue up to the entry at 1625 hours on 17 March 2008.
6. In relation to the entries in the Watchmen's Logbook regarding 18 March 2008, the first entry concerning the Lift was on 1040 hours which stated that “力建師父到廈, **車立**例檢, 換一號**車立** 零件” (Nikko’s technicians reached the Building for routine inspection and replacement of parts of Lift No 1). Then, in the entry of 1230 hours on the same day, it was recorded that “力建師父完工離廈” (Nikko’s technicians finished their job and left the Building).
7. Thus, EMSD investigation report and Watchmen’s Logbook could not be regarded as the sufficient evidence that the car door switch of the Lift had been properly inspected, maintained, replaced or repaired in the morning on 18 March 2008. This is because neither EMSD investigation report nor the Watchmen’s Logbook had mentioned the car door switch of the Lift at all. On the issue of what had actually been inspected, maintained, replaced or repaired in the morning on 18 March 2008, the court must consider the evidence of the defendants and the witness from Nikko, or other relevant documents. The Watchmen’s Logbook can only show that Nikko’s technicians had come to the Building for a routine inspection of the lifts and replaced certain parts of the Lift.

*Joint experts’ evidence on liability*

1. Dr Cheung Kie Chung and Dr Eric Lim are mechanical engineers. They both have extensive experience in mechanical engineering work. Dr Cheung Kie Chung has teaching experience on the subject of building, lift and escalator services. Dr Eric Lim has experience in lift accident investigations. Dr Cheung Kie Chung and Dr Eric Lim provided their joint expert report dated 24 June 2013 and their supplemental expert report dated 30 September 2013 for this case regarding the cause of the Accident.
2. By the order of Deputy District Judge Lui dated 5February 2014, the joint expert report and the joint supplemental report on liability was adduced as expert evidence without calling of the relevant experts.
3. In their joint expert report, Dr Cheung and Dr Lim opined that:-

“11. The car door switch is used to ensure that the car doors have been closed properly. If the car doors are not closed, the lift car should not be allowed to move. Otherwise passengers could be injured.

12. As the lift car was able to move after Mr Kong entered it, the contacts of the car door switch must have closed...

13. It is very likely that the contacts of the car door switch opened while the lift car was travelling down with Mr Kong inside. This may be caused by a faulty car door switch. When the contacts failed to close, the lift control system “thought” that the car doors were opened and therefore would stop the lift car from moving by engaging the main brake in an emergency manner. The lift car would be brought to a stop fairly quickly.

14. A remark of the Investigation Report prepared by the Electrical and Mechanical Services Department says: “The latest 5 breakdowns [from 1 January 2008 to 3 April 2008] mainly related to car door operation.” It seems that Nikko Lift & Escalator Services Limited had not been able to identify the problem that caused the breakdowns of the lift and hence had not been able to effectively solve the problem.”

1. In their supplemental expert report, Dr Cheung and Dr Lim identified 4 possible causes for the failure to car door safety switch of the Lift. However, given that the Lift car was able to move after the plaintiff had entered the lift car and no faults were discovered in the wiring or control panel after the Accident, Dr Cheung and Dr Lim opined that it was more likely that one or more parts of the car door safety switch had loosened by vibration during the lift car’s downward travel.

*Factual evidence of the 1st defendant*

1. Mr Cheung Kai Yung (DW1), the treasurer of the 1st defendant, testified for the 1st defendant. He did not witness the Accident. He was one of the members of the management committee of the 1st defendant. He said that Nikko had been appointed by the 1st defendant since 1992.
2. Mr Cheung (DW1) said that Nikko was responsible for the inspection, maintenance and testing of the two lifts of the Building. He also said that Nikko had a routine inspection and testing of the lifts on a bi-weekly basis.
3. According to Mr Cheung (DW1), Nikko came to the Building for routine maintenance of the lifts as usual at about 1030 hrs on 18 March 2008. He also testified that after the Accident, Nikko’s technician(s) had come to inspect the Lift and no improper or unsafe situations were found.
4. He also said that EMSD had subsequently inspected and tested the Lift but nothing improper was found.
5. Mr Cheung (DW1) also said that the 1st defendant had appointed the 2nd defendant to be its management company. The 2nd defendant was responsible for the daily affairs of the Building and the common parts of the Building, including the two lifts. He said that the 2nd defendant’s scope of duties also included employment of watchmen and cleaners. The 2nd defendant was also responsible for drafting the agenda and the minutes of the owners’ meetings. The 2nd defendant had to be present at the meetings. Mr Cheung (DW1) exhibited the management contract between the 1st defendant and the 2nd defendant as evidence in support of his testimony.
6. Mr Cheung (DW1) further said that although Nikko was appointed by the 1st defendant, Nikko was supervised by the 2nd defendant with respect to all matters of lifts maintenance. In support of his evidence, Mr Cheung (DW1) referred to Nikko's lifts maintenance records. He said that whenever Nikko’s technicians came to the Building for maintenance of the lifts, they had to sign the lifts maintenance records which would then be countersigned by the 2nd defendant or the watchmen employed by the 2nd defendant.
7. Under cross-examination, Mr Cheung (DW1) said that the Building was a commercial building. He was an owner of one of the units in the Building in 2008. Although he had sold his unit in the Building in about 2012, he still worked in the Building. His office was on the 7th floor of the Building. In about 2008, he worked in the Building for about 5 hours a day from Monday to Saturday.
8. When Mr Cheung (DW1) was cross-examined about the arrangement for calling an owners’ meeting, he said that the 1st defendant had about two to four owners’ meetings a year. It was the 2nd defendant who decided the agenda for each owners’ meeting. As to the person who could decide if owners meetings should be held, Mr Cheung (DW1) said that he did not know who had such authority, but he thought it was the chairman of the 1st defendant. He only knew that the notices of owners’ meetings were issued by the 2nd defendant. He admitted that if he found anything improper in the Building, he seldom contacted the 2nd defendant directly. Instead, he would talk to the chairman of the 1st defendant.
9. Mr Cheung (DW1) agreed that in addition to owners’ meetings, 1st defendant had its management committee meeting every month. The 2nd defendant would be present at management meetings as evidenced by the minutes of the meetings.
10. Mr Cheung (DW1) admitted that the 2nd defendant had to report to the 1st defendant in relation to the Building’s affairs. According to his recollection, the 2nd defendant mainly reported important matters, such as the danger created by the Building’s water tank. Then, Mr Cheung (DW1) was cross-examined about the frequent breakdowns of the Lift between 2007 and 2008 as recorded by the 2nd defendant’s watchmen in the Watchmen's Logbook and Nikko's lifts maintenance records. For example, Mr Cheung (DW1) was asked if he had any recollection about a lift trapping incident occurred on about 1 February 2008 at lift no 2; and if Mr Cheung (DW1) had any recollection about the breakdowns of both lifts of the Building on 3 February 2008; and if he had any recollection about the continuous breakdowns or malfunction of the Lift on 5 March, 6 March and 7 March 2008. For all of the above-mentioned lift breakdowns incidents, Mr Cheung (DW1) said that he either had no impression at all or he had forgotten all about them.
11. Mr Cheung, counsel for the plaintiff, asked Mr Cheung (DW1) if the 2nd defendant had ever reported to him about these frequent breakdowns of the Lift after the incidents. Mr Cheung (DW1) said that he had forgotten.
12. Mr Cheung (DW1) confirmed that between 2007 and 18 March 2008, the 1st defendant’s management committee had only one discussion about the lifts of the Building at the management committee meeting on 29 January 2008. According to the minutes of that meeting, the management committee approved the costs for replacement of three electricity resistance parts of the Lift at HK$1,500. Apart from that, Mr Cheung (DW1) confirmed that the 1st defendant had never discussed about anything relating to the lifts of the Building in all of its management committee meetings and owners’ meetings.
13. After the Accident, Nikko had repaired the Lift. Nikko's Incident Report was prepared. In Nikko's Incident Report, it was stated that the cause of breakdown of the Lift was due to “機身門電閘鎖接點接觸不良” (contact point failure at the electric switch of the lift car’s door). However, Mr Cheung (DW1) testified that he had never seen this report before. The first time he saw the Nikko’s Incident Report was in the witness box.
14. As to why the lift problems were not even discussed in any of the meetings, Mr Cheung (DW1) said that the 1st defendant had engaged Nikko to handle the lift matters. Nikko had not told him about the lift problems, he did not know about it. He further added that if Nikko had already completed the repair work of the lifts, there was no need for the management committee to discuss about the lifts problems at its meetings. He also said that between 2007 and 2008, he was not aware of any complaints lodged by the occupants of the Building regarding the lift service.
15. Regarding the Lift, Mr Cheung (DW1) said that he had never heard of any complaints about its frequent breakdowns in about 2008 before the Accident. He had no recollection that the management had ever mentioned about the frequent breakdowns of the Lift at any of the meetings.
16. When it was put to Mr Cheung (DW1) that the 1st defendant had not supervised the work of Nikko, Mr Cheung (DW1) said that it was impossible for 1st defendant to supervise Nikko. He said if Nikko had already repaired the lifts and the lifts resumed working, the 1st defendant had to accept it (我地冇可能監管㗎喎，佢維修，維修好架**車立**架**車立**可以行得，咁我哋就收貨).

*Evidence of Wong Wai Hing*

1. Witness statement of Wong Wai Hing (“Mr Wong”) was filed on about 19 July 2012 on the 1st defendant’s behalf. By consent of all parties and with leave of this Court, Mr Wong’s witness statement was admitted as his evidence without requiring him to testify.
2. Mr Wong’s witness statement was quite brief. In his witness statement, Mr Wong mainly said that he was the managing director of Nikko, a registered lifts contractor. It had been engaged by the 1st defendant to maintain, inspect and test the lifts of the Building since 1992. In case of breakdown of the lifts, Nikko’s lift technicians or engineers would immediately reach the Building to deal with the breakdown and repair the lifts.
3. According to Mr Wong’s witness statement, Nikko’s registered lift engineer Mr Tsang Chun Man and EMSD had checked the Lift after the Accident. Mr Wong exhibited the correspondence between Nikko and EMSD in April 2008. He averred that Nikko had not been prosecuted by EMSD and Nikko had not followed up on the matter (及後，機電工程署並沒有向力建採取任何行動及提出起訴，力建亦沒有再跟進此事).
4. Mr Wong also stated that Nikko had a bi-weekly routine check of the lifts of the Building in accordance with a maintenance checklist (“Nikko’s Maintenance Checklist”). He exhibited a copy the Nikko’s Maintenance Checklist for reference purpose.
5. Mr Wong relied on two certificates issued by EMSD under s 26(1)(a) and s　39(1) of Lifts and Escalators (Safety) Ordinance (Cap 327), ie Form 11, dated 16 May 2007 and 19 May 2008. Mr Wong concluded that the Lift was safe and was functioning properly at the time of the Accident (升降機於意外當時安全妥善亦運作正常).

*Factual evidence of the 2nd defendant*

1. The 2nd defendant called Miss Chan Ka Ting (DW2) as its only factual witness. Miss Chan (DW2) confirmed that the 2nd defendant was engaged by the 1st defendant as the 1st defendant’s management company to provide management services from 1 October 2007 onwards.
2. Miss Chan (DW2) said that as a senior property manageress of the 2nd defendant, she was responsible for the management of the Building and its daily operations. She said that if there were any parts or components of the lifts that had to be replaced, Nikko would inform the 2nd defendant. Then, the 2nd defendant would inform the 1st defendant. Upon the approval by the 1st defendant, the 2nd defendant would tell Nikko to carry out the work immediately. According to her recollection, the 1st defendant had never turned down any requests for repair of the lifts of the Building. Miss Chan (DW2) further said that the 2nd defendant did not have any lift engineers, all lifts repairing and maintenance work of the Building had to be entrusted to Nikko.
3. Miss Chan (DW2) said that the 2nd defendant, including herself, had requested the watchmen of the Building to record in the Watchmen’s Logbook the dates on which Nikko had checked the lifts. She also said that in case of lift incidents, Nikko would provide an incident report to the 1st defendant afterwards. As the 2nd defendant had no expertise on lift repair, it had to rely upon Nikko’s assessment to repair or improve the lifts.
4. The evidence of Miss Chan also covered the lift incidents concerning the two lifts of the Building from 4 March 2008 up to 14 April 2008. Miss Chan (DW2) admitted that she was not at the scene when the lifts of the Building were repaired or at the time of the Accident.
5. Upon cross-examination, Miss Chan (DW2) said that her jobs in Nikko included management of seven to eight blocks of commercial buildings on Hong Kong Island and in Kowloon. As far as the Building was concerned, she would talk to the chairman of the 1st defendant about what to discuss in the 1st defendant’s meetings. She would also draft up the notices of meetings for the 1st defendant.
6. Concerning lift problems, Miss Chan (DW2) said that for minor repairs of the lifts of the Building, the watchmen would not normally inform her.
7. Miss Chan (DW2) was cross-examined on the lift incidents which occurred in late 2007. Miss Chan admitted that she did not have any knowledge of those lift incidents. She said that Nikko had not told her about those incidents.

*Legal principles*

1. In tort of negligence, the burden of proving negligence generally rests on the plaintiff who shall prove his claim on the balance of probability.
2. In the context of lift incidents, it is important to emphasize that the duties of the owner or manager of the lifts should not be elevated to that of an insurer. It does not follow that the owner or manager shall be held liable for any lift incidents simply because of they are the owner or manager of the lifts concerned. The liabilities of the lift owner or lift manager shall be found on reasonableness and foreseeability. Whether a lift owner or lift manager is in breach of his duties must be decided on its own facts. The court should take into account of all relevant evidence, including circumstantial evidence.
3. Further, it must be borne in mind that even if a lift owner or lift manager has properly maintained his lift, the lift may still break down due to sudden, unforeseeable, or even unknown reasons. It is because accidents sometimes happen without the fault or negligence of anyone. Thus, the facts of each particular case must be closely scrutinized to see if it is a case of negligence, a case of accident without negligence of any persons or otherwise.
4. As regards the maxim of res ipsa loquitur, three criteria must be satisfied before it can apply. A useful summary of the law is summarized in *Clerk & Lindsell on Torts*, *20th Edition*, at paragraph 8-172 which reads:-

“...Res ipsa loquitur, which stems from the judgment of Erle C.J. in *Scott v London an St Katherine Docks*, applies where (1) the occurrence is such that it would not have happened without negligence, and (2) the thing that inflicted the damage was under the sole management and control of the defendant, or of someone for whom he is responsible or whom he has a right to control. If these two conditions are satisfied it follows, on the balance of probability, that the defendant, or the person for whom he is responsible, must have been negligent. There is, however, a further negative condition: (3) there must be no evidence as to why or how the occurrence took place. If there is, then appeal to res ipsa loquitur is inappropriate for the question of the defendant’s negligence must be determined on that evidence.”

1. These three criteria were analyzed and applied in *Kam Wai Ming v MTR Corporation Limited and another*, unrep DCPI 408/2002, an authority on which the defendants rely.
2. Regarding the plaintiff's a claim for breach of Deed of Mutual Covenant (“DMC”), the duties and obligations thereunder bind the owners for the time being of the Building.

*Analysis and findings: plaintiff’s evidence*

1. At the time the plaintiff testified at this court, the Accident had happened for more than 6 years. In assessing his evidence, I am prepared to give him some margin for error in respect of peripheral factual issues.
2. The plaintiff gave his evidence in the first 4 days of the trial. I have sufficient opportunity to observe the way how he gave his evidence and his demeanour as well.
3. When the plaintiff gave his testimony, the plaintiff was ready and willing to disclose his previous troubles, such as divorce, bankruptcy, his involvement in domestic violence and other criminal matters, and etc. The plaintiff also frankly told the court the he actually earned less than HK$11,000 a month at the time of the Accident, despite the fact that there were periodic entries of HK$18,000 recorded in his bankbook record.
4. When he gave evidence, the plaintiff said that he had been troubled by the Accident and the litigation for more than 6 years, he wished to disclose everything to this court and let the court rule on the facts. As a result, the plaintiff did not seek to maintain his claim based on an alleged monthly earning of HK$35,000 which was pleaded in his pleading and stated in his witness statement. On the contrary, he frankly and voluntarily told the court that in about 2008 he withdrew HK$18,000 from his bank account per month, but he needed to pay for his own staff’s wages at about HK$8,000 per month and he would keep the remaining HK$10,000.
5. Further, the plaintiff also readily told the court that he had already ceased his Vice Habits, he and his wife had agreed to stay the divorce proceedings and they had harmonious relationship, he had resumed playing soccer and etc.
6. Although it is highly undesirable for the plaintiff to overstate his monthly income in his pleading and witness statement, I am impressed by the plaintiff’s frankness while he was in the witness box. While departure from one’s pleading and witness statements generally suggests that one is not telling the truth, each case must be decided on its own facts. In the present case, the plaintiff had been testifying for 4 days, he consistently demonstrated that he was a frank witness regarding how the Accident happened. On the issue of quantum, however, he was ready to make concessions even if they were against his own claim and interest. Save and except he had on two occasions tried to express his grievance about the Accident to the defence counsel during the cross-examination, the plaintiff basically gave his evidence in a strict forward way.
7. The defendants challenged the plaintiff’s case by adducing evidence to prove that the lift car of the Lift could not possibly travel downwards at a speed double of its designed speed. The defendants also challenged the plaintiff’s case by pointing out some inconsistencies between the plaintiff testimony and other documents regarding the speed of the alleged plunge of the Lift and the vibration of the Lift. For example, in the plaintiff’s witness statement, the plaintiff estimated that the plunge of the Lift was one or two times faster than the normal speed, ie at twice or thrice the normal speed. However, in the joint psychiatric report, the plaintiff told the experts that the Lift plunged at double or about double its usual speed. The defendants also complained that the plaintiff had different versions of facts about the shaking of the Lift. In the plaintiff’s complaint letter to the 1st defendant dated 25 March 2008, the plaintiff had not mentioned anything about the shaking of the Lift. However, in a newspaper reported dated 13 April 2008, the plaintiff seemed to have told the reporter that the lift car shook sideways during the plunge. Yet, in his statement to the EMSD, the plaintiff stated that the lift doors were shaking during the plunge, but he had not mentioned about the shaking of the lift car.
8. I accept the plaintiff’s explanation that the alleged plunge was his own feeling. I also accept the plaintiff’s evidence that he was very frightened during the Accident when the lift car was travelling downwards with clank caused by metal chains. At that time, the floor buttons and the emergency alarm button were not functioning. The plaintiff thought that he was going to die. Regarding whether it was the lift car or the lift door that shook during the Accident, I also accept the plaintiff’s testimony that the whole lift car shook during the Accident and the plaintiff heard clank sound at the same time. The plaintiff’s explanation is reasonable, he said that when he first made the complaint to the 1st defendant on 25 March 2008, his main objective was to lodge a complaint to the 1st defendant and to demand for compensation, he had not fully set out all of the details of the Accident.
9. In conclusion, I accept the plaintiff’s testimony regarding what happened to him inside the Lift during the Accident. I also accept his testimony about his income prior to and after the Accident. On the issue of quantum, if his testimony is different from the relevant parts of his witness statement, the relevant parts of his witness statement are not accepted by this court. Furthermore, I do not accept his testimony about the reasons for closing down the business of Meiou. Undisputed documentary evidence clearly shows that when Meiou was closed down in October 2008, the plaintiff had not yet been given any psychiatric drugs by any doctors. He first received psychiatric treatment on 3 November 2008. Thus, it was impossible that the close of Meiou was due to the side effects of the psychiatric drugs.
10. I find that the plaintiff was a lawful visitor who was permitted by the 1st defendant and the 2nd defendant to use the Lift on 18 March 2008. Prior to the Accident, the plaintiff was a person with obvious marital, personal and financial problems. He was also troubled by court proceedings. The plaintiff’s average net income in the last 12 months prior to the Accident was about HK$11,000. After the Accident up to the time he closed down the business of Meiou in about October 2008, the plaintiff’s income was still around HK$11,000.
11. I also find that prior to the Accident, the plaintiff had made verbal complaints to the watchmen of the Building about the service of the Lift. But the watchmen had not related the plaintiff’s complaints to the defendants or Nikko.
12. Regarding the plaintiff’s physical injuries, I accord full weight to the medical findings contained in the plaintiff’s medical report by Dr Yip of the A&E Department of RTSKH dated 16 February 2009 which was made by reference to the plaintiff’s consultations at RTSKH on 18 March 2008 and 28 March 2008.
13. I also accept the experts' opinion contained in the joint orthopaedic experts’ report dated 24 March 2011. Thus, I find that the plaintiff’s his neck injury was directly caused by the sudden stop of the Lift. The plaintiff’s right ankle or right heel injury was either caused by the sudden stop of the Lift or by kicking the Exterior Door of the Lift as a means to open the Exterior Door or to alert other people to rescue him. Regarding the plaintiff’s complaint of left knee injury, I only accepted that his left knee was found to have tenderness with associated bruising on 28 March 2008. However, I find that the plaintiff has not discharged his burden to prove on balance of probability that his left knee injury was related to the Accident. Obviously, when he kicked on the Exterior Door with his right foot during the Accident, he stood with his left foot. It was unclear how his left knee was injured. After the Accident, the plaintiff had not mentioned to the doctor of the A&E Department of RTSKH that his left knee was injured. He also walked for a relatively long distance back to his office and the bank immediately after he was discharged from A&E Department of RTSKH on 18 March 2008.
14. I also find that the neck injury and the right ankle injury were relatively minor. When the plaintiff was examined by the Dr Chiang and Dr Ho jointly on 17 February 2011, the alleged residual pain on the plaintiff’s neck, left knee and anterior ribs, if any, had nothing to do with the Accident. I accept the joint orthopaedic experts’ evidence that the plaintiff was fully able to resume his pre-injury job. I also accept the joint experts’ opinion that the plaintiff should be given 2 weeks sick leave for his orthopaedic injuries.
15. It should be mentioned that my rejection of certain parts of the plaintiff’s evidence about his injuries has already been taken into account when I assess the plaintiff’s credibility as a whole. The plaintiff was aggrieved by the Accident and his neck and right ankle were actually injured during the Accident. Thus, when he felt pains on his left knee about 10 days after the Accident, it was not unreasonable for him to suspect that his left leg injury was also related to the Accident. It is also not unreasonable for him to suspect that the alleged residual pain on various parts of his body were also related to the Accident.

*Analysis and findings: psychiatric evidence*

1. In respect of the psychiatric injury suffered by the plaintiff, I accept the expert opinion of Dr Benjamin Lai and Dr Wong Chung Kwong that the plaintiff’s clinical features did not meet the full diagnostic criteria of PTSD. I find that the plaintiff actually suffered from Adjustment Disorder and the Accident is the direct cause of the plaintiff’s psychiatric injury of Adjustment Disorder.
2. I accept Dr Wong’s evidence that the plaintiff’s mental condition was in a sub-clinical state at the time of the Accident. The Accident was the key precipitating stressor in the present case. The plaintiff’s personal, marital and financial problems prior to the Accident were the predisposing factors.
3. Another significant difference between the evidence of Dr Lai and Dr Wong is the severity of the plaintiff’s psychiatric injury and the length of sick leave that the plaintiff should be entitled to. On this issue, both experts based their opinion on the Guides. Dr Lai was of the opinion that the plaintiff’s Adjustment Disorder was in the very mild range. Yet, Dr Lai estimated that the plaintiff’s had up to 3% permanent impairment. Dr Lai further opined that the loss of earning capacity of the plaintiff as a result of the Accident was up to 3%. Dr Wong, however, opined that the plaintiff’s Adjustment Disorder lasted for a total duration of about one year only. During that particular year, the plaintiff functioned between Class 2 and Class 1 within the definition of the Guides (or 3% impairment).
4. After the Civil Justice Reform, experts are generally not expected to testify at the court, unless there is a real need. Experts will prepare a joint experts’ report in which they will state their common grounds and differences. If further elaborations on their differences of opinion are needed, a supplemental report may be adduced with leave of the court, so that the experts may have a further chance to explain their opinion in detail on the disputed issues.
5. In the present case, however, there is no such supplemental psychiatric experts’ report. Thus, the court has to resolve their differences by evaluating the basis upon which their opinion is made; the authoritative texts annexed to their joint expert report, ie the Guides; the plaintiff’s contemporaneous medical reports; and other evidence of the present case.
6. The extract of the Guides cited by Dr Lai and Dr Wong reads as follow:-

“Diagnostic Features

The essential feature of an Adjustment Disorder is a psychological response to an identifiable stressor or stressors that results in the development of clinically significant emotional or behavioral symptoms. The symptoms must develop within 3 months after the onset of the stressor(s) (Criterion A). The clinical significance of the reaction is indicated either by marked distress that is in excess of what would be expected given the nature of the stressor or by significant impairment in social or occupational (academic) functioning (Criterion B). In other words, a reaction to a stressor that might be considered normal or expectable can still qualify for a diagnosis of Adjustment Disorder if the reaction is sufficiently severe to cause significant impairment. ... By definition, an Adjustment Disorder must resolve within 6 months of the termination of the stressor (Criterion E). However, the symptoms may persist for a prolonged period (ie longer than 6 months) if they occur in response to a chronic stressor (eg a chronic, disabling general medical condition) or a stressor that has enduring consequences (eg the financial and emotional difficulties resulting from a divorce)...” (at p 679 of DSM-IV-TR)

“By definition, the disturbance in Adjustment Disorder begins within 3 months of the onset of a stressor and lasts no longer than 6 months after the stressor or its consequences have ceased. If the stressor is an acute event (eg being fired from a job), the onset of the disturbance is usually immediate (or within a few days) and the duration is relatively brief (eg no more than a few months). If the stressor or its consequences persist, the Adjustment Disorder may also persist. ...” (at p 681 of DSM-IV-TR)

1. I have already set out the gist of the plaintiff’s medical reports in the foregoing part of this judgment. When the plaintiff was first treated in PWH on 3 November 2008 for his psychiatric symptoms, his psychiatric symptoms were relatively serious when compared with his condition 5 months later. He even attempted to commit suicide on the 6 November 2008, ie 3 days after his first psychiatric consultation.
2. At the plaintiff’s medical consultation on about 20 March 2009, the plaintiff had no avoidance of taking lift. Dr Wong Kit Yi opined that the plaintiff had no genuine features of depression and his prognosis was good. The plaintiff’s medical consultation record on 20 March 2009 was contained in Dr Wong Kit Yi’s medical report dated 18 May 2009. I have also considered the plaintiff's mental condition as recorded in Dr Li Cheuk Wing's medical report dated 16 September 2010 and Dr Chan Wing Yan's medical report dated 15 November 2011. These two medical reports suggested that the plaintiff's mental condition after July 2009 was unrelated to the Accident. According to Dr Wong Cheuk Wing, the plaintiff's prognosis depended on "environmental stresses, including marital, financial, and legal".
3. After scrutinizing all of the plaintiff’s contemporaneous medical consultation records and his medical reports, it seems that Dr Wong Chung Kwong’s opinion that the plaintiff’s mental injury of Adjustment Disorder only lasted for 1 year is supported by contemporaneous medical evidence, especially Dr Wong Kit Yi’s medical report dated 18 May 2009. Evidence is clear that the plaintiff’s mental condition was improving after his first consultation in PWH. After about 1 year of the Accident, the plaintiff had no genuine features of depression or fear in taking lifts, and his prognosis was good according to Dr Wong Kit Yi’s medical report dated 18 May 2009. Based on the evidence of this case, I am not persuaded that the plaintiff’s psychiatric impairment is permanent impairment as suggested by Dr Lai.
4. Regarding the severity of the plaintiff’s Adjustment Disorder, I prefer the expert opinion of Dr Wong Chung Kwong on balance of probability. Thus, I make a finding that, as a result of the Accident, the plaintiff suffered from Adjustment Disorder for a total duration of 1 year.
5. Regarding the onset of the Adjustment Disorder, I take into account of the fact that the plaintiff returned to his office immediately after he was discharged from RTSKH on 18 March 2008. After 2 days sick leave, he returned to his work. Thus, the plaintiff’s mental stressor out of the Accident is unlikely to have arisen on the date of Accident. On this point, I accept the opinion of both Dr Lai and Dr Wong. Dr Lai opined that the plaintiff's psychiatric symptoms was developed in the month after the Accident (para 102 (iv) of the joint psychiatric report). Dr Wong also opined that the onset of the plaintiff’s Adjustment Disorder was shortly after the Accident (para 106 of the joint psychiatric report). After considering the joint psychiatric report and the plaintiff’s contemporaneous medical records, I make a factual finding that the onset of the plaintiff’s Adjustment Disorder was in about April 2008.
6. In conclusion, the plaintiff had suffered from Adjustment Disorder from April 2008 to March 2009.
7. I also find that after about 1 year, ie after April 2009, the plaintiff’s psychiatric symptoms, if any, were not related to the Accident on balance of probability. The plaintiff’s psychiatric symptoms after about April 2009, if any, might be developed because of the plaintiff’s bizarre perception to the birth of the his second child in February 2009, his personality, police investigation about the appropriation of HK$160,000, his repeated conflicts with his wife or other reasons. Yet, without any concrete evidence from psychiatrists, I need not make any specific finding regarding the cause of the plaintiff’s mental condition after about April 2009. I suffices for this court to find that there is insufficient evidence to prove that the plaintiff’s psychiatric symptoms after about April 2009, if any, were related to the Accident.
8. I have also considered if the plaintiff’s subsequent and current anger and hatred towards lift technicians or lift companies were caused by the Accident. In particular, I have taken into account of paragraph 102 (viii) of the joint psychiatric report in which it is stated that “Dr Lai believes that the factors hindering him from further progress of his psychiatric symptoms have included his anger towards the management and maintenance of elevator”. This statement cannot be read as Dr Lai’s suggestion that the plaintiff’s anger or hatred towards the management company and lift company amounts to a chronic stressor resulting from the Accident. I believe if this were Dr Lai’s suggestion, he would have expressed it in a direct way. Even if the plaintiff has anger or hatred towards lift technicians, the management companies or lift companies, whether his anger or hatred can clinically be regarded as a chronic stressor need concrete evidence from psychiatrists. The plaintiff’s anger or hatred might well be caused by his own personal character, the refusal to pay compensation by the insurance company, or other reasons.
9. For avoidance of doubt, I am satisfied that the plaintiff’s attempted suicide on 6 November 2009 was related to his mental condition of Adjustment Disorder.

*Analysis and findings: defendants’ witnesses*

1. Turning to the defendants’ witnesses, I do not find Mr Cheung (DW1) a helpful witness. He only knew that Nikko had a routine lifts inspection and testing on a bi-weekly basis. As far as the Lift is concerned, given the fact that there were numerous breakdowns of the Lift due to failure of car door operation prior to the Accident, Mr Cheung (DW1) could not explain why there were no meetings to discuss this issue. Nor had he explained how the 1st defendant had responded to the numerous car door switch incidents of the Lift.
2. Save that the 1st defendant had sub-contracted the lift maintenance and repair work to Nikko, being a registered lift company, the 1st defendant had not produced any evidence regarding how the Lift was maintained or inspected. Further, there was no iota of evidence in relation to how the 1st defendant had responded to the repeated failures of the Lift prior to the Accident.
3. Likewise, I also find the evidence of Wong Wai Hing not helpful. The Lift’s use permit was issued by EMSD on a yearly basis. A valid use permit is required before the Lift is allowed to operate. The fact that the use permit is issued by EMSD is not the evidence that it has been properly maintained subsequent to the issuance of the use permit. Moreover, the fact that the defendants were not prosecuted by EMSD for the present Accident only mean that EMSD did not consider the Accident as an incident of criminal nature. All lifts must have a valid use permit issued by EMSD before they can be put into service. Not all lift breakdowns will result in criminal prosecution. I do not accept that Wong Wai Hing’s evidence that the defendants had discharged their duties because the Lift had a valid use permit and the defendants were not prosecuted for the Accident.
4. There are two other highly undesirable features in Wong Wai Hing’s witness statement. Firstly, he stated that the Lift was safe and it was functioning properly at the time of the Accident. This allegation was directly contradicted by the joint experts’ report on liability. I have no hesitation to reject Wong Wai Hing’s allegation. It also defies common sense to suggest that a lift can be regarded as functioning properly even if its interior doors open when the lift car is travelling in the lift shaft and suddenly stops between two floors as a result.
5. Secondly, it is sceptical to what extent Nikko’s Maintenance Checklist can assist the defendants. The Nikko’s Maintenance Checklist enclosed to Wong Wai Hing’s witness statement is no more than a blank form. At highest, it can only show that what items of work are expected to be done. For this pro forma blank form, we can expect that there are some of them with particulars filled in, dated and duly signed. So that it can be shown which parts of the Lift were actually inspected, examined, replaced; who did the inspection or repair; when those maintenance jobs were done; and etc. Yet, a completed and duly signed maintenance checklist of the Lift in respect of, at least, January 2008 and February 2008 are nowhere to be found in the documents of this trial. In fact, the defendants have not produced any duly completed lift maintenance checklists at all.
6. As regards the evidence of Chan Ka Ting (DW 2), her evidence cannot assist the 2nd defendant. Although I accept her evidence that the 2nd defendant has no expertise in lift maintenance and repair and it had to rely on the expertise of Nikko, I do not accept that this is a complete answer to the present case. Building management companies in Hong Kong do not generally possess the necessary skills and qualification to maintain or repair the lifts under their management. They have to engage a qualified lift company to assist them in fulfilling their duties as a building manager. However, it does not follow that once the management companies have sub-contracted the lift maintenance job to a registered lift company, the management companies’ duties are fully discharged. In my view, management companies have a continuing duty. Management companies must from time to time review the condition of the lifts under their management. If the lifts have any problems, they must, with assistance from their lift companies, solve the problems. Sometimes, a lift problem may not stem from the quality of service of the lift company, it may stem from the lift itself. Sometimes, a lift problem may arise from a combination of reasons. In such circumstances, the management company and the owner of the lifts should take reasonable steps to solve the problem with the lift company or any other persons with necessary skills and qualification.
7. After considering the evidence of Mr Cheung (DW1) and the evidence of Wong Ka Ting (DW2), it is clear that the 1st defendant engaged the 2nd defendant as the Building’s manager. The 1st defendant allowed the 2nd defendant to handle the lift maintenance matters and the 1st defendant did not care about the daily operation of the lifts, including the Lift. The 1st defendant simply left the 2nd defendant to deal with Nikko. However, the 2nd defendant left the lift maintenance matters to be dealt with by its watchmen and Nikko’s technicians. As a result, despite there were frequent breakdowns of the lifts, including the Lift, prior to the Accident, the 1st defendant and the 2nd defendant were not notified because the watchmen might think that the lift incidents were minor. As admitted by Miss Wong (DW2), for minor repair of the lifts, the watchmen would not normally inform her. It is highly undesirable to leave the watchmen to decide what kind of lift problems are significant or minor.
8. Consequently, the 1st defendant and 2nd defendant were not informed about the repeated breakdowns of the lifts. Thus, they had not put the lift maintenance and lift service matters on agenda in any of the 1st defendant’s meetings in 2007 up to early March 2008. As a result, the 1st and 2nd defendants had not taken sufficient and reasonable steps to look into the cause of repeated breakdowns of the Lift. As far as the Lift is concerned, evidence shows that after each lift breakdown incident, the watchmen would call Nikko’s lift technicians to repair the Lift with a view to make the Lift work again. The root of the problem and the cause of the breakdown was not found out.
9. Worse still, despite the Lift having a poor service record and several recent breakdowns related to car door switch prior to the Accident, the 1st defendant and the 2nd defendant continued to leave the lift maintenance matters to be handled by the 2nd defendant's watchmen and Nikko’s lift technicians. The root of the breakdowns of the Lift was not solved. Eventually, the Accident occurred.
10. Mr Lee, counsel for the 1st defendant, argued that lifts were designed to stop in case of emergency, so as to minimize the danger caused to their passengers. However, I am of the view that the root of the problem in the present case is not the sudden stop of the Lift. The real issue is what causes the Lift’s emergency bake to engage. According to the joint experts’ evidence on liability, it was the faulty car door switch which brought about the sudden stop of the Lift. The car door switch was faulty because it was not properly engaged and it had loosened due to the vibration caused during the operation of the lift car. In my view, the car door switch of the Lift is not designed to lose contact while the lift car is travelling. The car door switch is not supposed to loosen due to the vibration caused by the operation of the lift car. On the contrary, it is designed to be properly engaged while the lift car is travelling. Otherwise, the interior door of the lift car will open while the lift car is travelling in the lift shaft. As a consequence, the emergency brake will be engaged to stop the lift quickly.
11. In the present case, evidence from the defendants regarding the maintenance, inspection or repair of the car door switch’s part(s) or the vibration of the Lift, was flimsy, if not lacking.
12. Bearing in mind that the burden of proving negligence rests on the plaintiff, I am of the view that the car door of the Lift ought not to have opened while the car door is travelling if the defendants had taken reasonable care to maintain the Lift. After considering all of the evidence, including circumstantial evidence and evaluation of the defendants’ evidence, I am satisfied that an inference of negligence should be drawn against the each of the defendants. In the present case, the evidence strongly shows a prima facie case of negligence for the defendants to answer: *Ng Chun Pui and others v Lee Chuen Tat and Another* [1988] 2 HKLRD 425 at 427G-H.
13. Mr Lee, counsel for the 1st defendant, took a pleading point. Mr Lee submitted that the plaintiff’s whole case was founded on a factual basis of a plunge of the Lift at a speed double or triple of its usual speed. Thus, if evidence showed that it was impossible for the Lift to fall at a speed double of its designed speed, the plaintiff’s case would collapse entirely.
14. I am not persuaded by the above argument. Firstly, the plaintiff was no more than a normal lift user. He was not assisted by a speedometer while he was inside the Lift. The alleged speed of the Lift during the Accident was no more than the plaintiff’s perception or feeling. By referring to the speed of the Lift, the plaintiff was simply providing the background of the Accident as perceived by him.
15. When the plaintiff pleaded his case of negligence in his Statement of Claim, he did not rely on the speed of the Lift. It is not the plaintiff’s pleaded case that the lift car was travelling in a speedy way which formed his claim for negligence against the defendants. According the particulars of negligence, the plaintiff’s pleaded case against the defendants included:-
16. failing to ensure that the Lift was working properly;
17. failing to provide a safe lift or proper servicing and maintenance of the same; and
18. causing or permitting to be used at the Building a lift which was unsafe.
19. The plaintiff is not expected to check each and every part of the Lift before using it. In this case, the Lift’s Interior Door opened during its downward course and then the Lift stopped in the middle of two floors. It is sufficient for the plaintiff to rely on the above particulars of negligence. The defendants were clearly aware of the plaintiff’s pleaded case and the defendant clearly knew what case they had to meet at the trial. The defendants’ argument on pleading point fails.
20. The defendants further submitted that the stop of the Lift in the middle of its intended course was not a case of negligence, nor was it any basis for any inference of negligence. The defendants relied on *Kam Wai Ming v MTR Corporation Limited & CNIM-Hong Kong Limited*, DCPI 408 of 2002.
21. *Kam Wai Ming* case (above) was concerned with an unexpected stop of an escalator. The cause of the stoppage was uncertain. The court held that the evidence was equivocal as to the two possible causes (para 39 of the judgment). More importantly, the court was unable to hold that there was any defects (para 59 of the judgment). Furthermore, the defendants had produced three types of inspection reports to the court. The inspection reports consistently showed that the machine brake and the emergency brake were in safe working order. The inspection record noted that the combs, fault indication panel and emergency stop button were looked at and were found to be in good working order. Thus, the court was satisfied that the defendants had properly inspected the subject escalator (paras 20 to 25 of the judgment). Hence, the court concluded that the inspection and maintenance regime required by the Lift and Escalators (Safety) Ordinance had been fully complied with.
22. In the present case, I have accepted the liability experts’ evidence and found that the vibration of the Lift had caused its car door switch loosened. As a result, the Interior Door opened. The lift control system stopped the lift car from moving by engaging the main brake in an emergency manner. The car door switch was not designed to lose contact while the lift car was travelling. On the contrary, the car door switch was designed to ensure that the Interior Door closed properly while the lift car was travelling. Thus, I have no doubt in holding that the car door switch was not in good working order at the time of the Accident. Further, there is no direct evidence that the defendants had properly inspected the car door switch prior to the Accident. Through the witness statement of Mr Wong, the defendants only produced a blank maintenance checklist. The defendants chose not to produce any actual inspection records of the Lift. There is simply no reliable evidence that the subject car door switch was actually inspected. But there is evidence that the subject car door switch was not in a good working order at the time of inspection. Hence, *Kam Wai Ming* case (above) is distinguished. Likewise, *So Cho Yin v MTR Corporation Limited*, DCPI 1069/206, 7 April 2008, another case that the defendants relied upon, is also distinguished. In *So Cho Yin* case (above), the court was satisfied that the defendant had provided sufficient documentary proof to show that the escalator was properly maintained, such as weekly and half-annual inspection reports (at para 16 of the judgment). In the present case, I am not satisfied that the defendants had done what they ought to have done. No pre-accident inspection reports, maintenance reports or repair reports were produced by the defendants for the court to consider.
23. The defendants also relied on an English Court of Appeal decision in *Haseldine v CA Daw and Son Limited and others* [1941] 2 KB 343. In *Haseldine* case, a landlord contracted with a firm of engineers to adjust, clean and lubricate the machinery of a thirty-five years old lift once a month. The engineers told the landlord that the rams of the lifts were badly worn and scored and ought to be replaced with new rams. The landlord and the engineers did not consider to replace the rams because they doubted if they could get the necessary bars and tubes due to the war. The engineers suggested that the lift should be lubricated twice a month. The landlord agreed. However, an employee of the engineers repacked one of the glands and he negligently failed to replace it properly. The plaintiff sustained injury when he used the lift. The trial judge held that both the landlord and the engineers were negligent. The Court of Appeal allowed the appeal by the landlord. The Court of Appeal was satisfied that the landlord had done what a reasonable man could do towards seeing that the lift was safe (at p 374).
24. The injury of the plaintiff in *Haseldine* case (above) was not caused by the badly worn and scored ram directly. The engineers had made a proposal to the landlord that they would lubricate the rams twice a month. Thereafter, on 25 April 1940 the lift was inspected by other engineers from an insurance company and it was reported on 29 April 1940 that the lift was generally in good working order. Later on, on 18 June 1940, an employee of the engineers failed to replace the gland properly on the worn ram, thereby causing the gland to fracture when the lift was operated. *Haseldine* case (above) is distinguished on the ground that the plaintiff’s injury in the present case was caused by the faulty part of the Lift. There is no suggestion or evidence that Nikko had negligently damaged any parts of the Lift and that Nikko’s conduct was entirely beyond the reasonable contemplation of the defendants, so that only Nikko, as an independent contractor, was liable, but not the defendants.
25. Mr Gidwani, counsel for the 2nd defendant, submitted that the 1st defendant and the 2nd defendant had different proximity towards the plaintiff. The 2nd defendant could not be under a duty to take care of something which was not given care of. The 2nd defendant was a management company but not a lift contractor. Mr Gidwani further submitted that the 2nd defendant was not engaged to ensure the mechanical safety of the Lift. Mr Gidwani pointed out from the management contract and the lift maintenance contract that the 1st defendant only paid the 2nd defendant HK$2,000 a month for the 2nd defendant’s service and HK$3,700 for Nikko’s service. If the 2nd defendant was held to be an occupier of the Lift, the 2nd defendant relied on s 3(4)(b) of the Occupiers Liability Ordinance (Cap 314).
26. In my view, the Lift was a common part of the Building and it was owned by the 1st defendant. It must be within the reasonable contemplation of the 1st defendant that occupants of the Buildings relied on the 1st defendant in the maintenance and repair the Lift. I find that the 1st defendant was the occupier of the Building, including the Lift, for the purpose of Occupiers Liability Ordinance (Cap 314).
27. According to the management contract between the 1st defendant and the 2nd defendant, the 2nd defendant was appointed as the management company to manage of the Building for the 1st defendant. Evidence shows that the 2nd defendant had employed two watchmen to take care of the Building. Each watchman worked on a 12-hour shift. The wages of the watchmen would then be reimbursed by the 1st defendant.
28. It is clear that the management of the Lift was within the scope of duties of the 2nd defendant, although the maintenance and repair work was performed by Nikko. Evidence also shows that on each occasion when the lifts were repaired, the watchman would require Nikko’s staff to provide their particulars. It is clear that without the permission of the 2nd defendant or its watchmen, no one was allowed to stop the Lift for maintenance or repair. To facilitate its management of the Lift, the 2nd defendant also monitored the Lift through a CCTV. In addition, on about 22October 2008, the 2nd defendant issued a notice in its own name to all occupants of the Building regarding suspension of the service of the Lift from 27 October 2008 to 25 November 2008. The power of suspending the service of the Lift, though exercised after the Accident, was consistent with the above stated facts that the 2nd defendant had effective and sufficient control of the Lift. Thus, I find that the 2nd defendant is an occupier who has sufficient degree of control over the Lift. Hence, I also find that the 2nd defendant is an occupier of the Building, including the Lift, for the purpose of Occupiers Liability Ordinance (Cap 314).

*Analysis and findings: cause of the accident*

1. Turning to the expert evidence of Dr Cheung Kie Chung and Dr Eric Lim on liability, after reading their joint reports against all factual evidence of the present case, I attach full weight to their reports. I find that at the time of the Accident, the Lift was travelling downwards either at its designed speed of 1.5m/second or in any event below 1.72m/second.
2. I accept Dr Cheung and Dr Lim’s evidence that there was a sudden stop of the Lift when the Lift came to a halt fairly quickly in the Accident (paragraphs 13 and 15 of joint report on liability). I also attach full weight to their joint evidence regarding the cause of the Accident, especially paragraphs 14 and 16 of the joint report on liability in which Dr Cheung Kie Chung and Dr Eric Lim concluded as follows:-

“14. A remark of the Investigation Report prepared by the Electrical and Mechanical Services Department says: “The latest 5 breakdowns [from 1 January 2008 to 3 April 2008] mainly related to car door operation.” It seems that Nikko Lift & Escalator Services Limited had not been able to identify the problem that caused the breakdowns of the lift and hence had not been able to effectively solve the problem.

...

16. The sudden stop of the lift was caused by a faulty car door switch. Most likely, the contacts of the car door switch came apart while the lift was travelling down. The lift control system then engages the main brake to bring the lift car to a stop.”

1. I also attach full weight to Dr Cheung and Dr Lim’s joint supplemental report, especially paragraph (1)(a) in which they concluded:-

“Given that the lift car was able to move after Kong Lin Fat entered the lift car, and no faults were discovered in the wiring or control panel after the accident, we believe it is more likely that one or more parts of the car door safety switch had loosened by vibration during the lift car's downward travel.”

1. The evidential rule of res ipsa loquitur does not apply to the present case as the cause of the Accident was known. On preponderance of evidence, I find that the 1st and 2nd defendants had not taken reasonable steps to maintain and repair the Lift prior to the Accident, such as by asking Nikko to identify the cause(s) of the repeated breakdowns of the Lift, by asking Nikko to solve the root of the problem, etc. On balance, I am satisfied that if the 1st and 2nd defendants had taken reasonable steps to maintain and repair the Lift, such as by paying heed to the car door switch of the Lift prior to the Accident, the Accident could be avoided.

*Conclusion of findings*

1. In conclusion, I find that on 18 March 2008, the plaintiff was allowed to use the Lift by the 1st and 2nd defendants. The Lift was a common part of the Building. The 2nd defendant has sufficient degree of control over the use of the Lift. The 1st and 2nd defendants owed a common duty of care to the plaintiff as the owner and manager of the Lift respectively.
2. Prior to the Accident, the 1st and 2nd defendants had not taken reasonable steps in the maintenance and repair of the Lift as expected to have taken by a reasonable lift owner and lift manager. The Accident was caused by the faulty car door switch of the Lift. Due to the vibration of the lift car of the Lift, the faulty car door switch loosened. As a result, the Interior Door opened while the lift car was travelling in the lift shaft. The opening the Interior Door triggered the main brake to operate. The main brake brought the lift car to a halt fairly quickly in a sudden manner. The sudden stop of the Lift is directly caused by the faulty car door switch. The Accident was a foreseeable consequence if the car door switch of the Lift was not properly maintained or repaired.
3. Thus, the 1st defendant and the 2nd defendant were negligent in maintaining and repairing the Lift. As a result of 1st defendant and 2nd defendant’s negligence, the Accident occurred. Section 3(4)(b) of the Occupiers Liability Ordinance (Cap 314) does not afford a defence to the 2nd defendant. The plaintiff is not contributorily negligent.
4. As a result of the Accident, the plaintiff sustained physical injuries. He also developed psychiatric symptoms of Adjustment Disorder about a month after the Accident. The plaintiff’s psychiatric impairment of Adjustment Disorder lasted for 1 year, ie until March 2009.
5. Whether before or after the Accident up to October 2008, the plaintiff’s income was about HK$11,000 a month. The plaintiff was fully able to return to his pre-accident job.

*Quantum*

1. Based on the above finding of facts, I am satisfied that the Adjustment Disorder suffered by the plaintiff was caused by the negligence of defendants. Although it seems that the plaintiff was a stressful person prior to the accident and his mental state was described by Dr Wong Chung Kwong as sub-clinical state, the defendants must take their victim as they find him. I am of the view that the “thin skull” rule applies to the issue of causation.
2. In the assessment of the damages, Mr Gidwani, counsel for the 2nd defendant, submitted that the principle of assessment of damages is to put the victim to the same position as he would have been if he had not sustained the wrong: *Heil v Rankin* [2001] QB 272 at 293 followed. Mr Gidwani submitted that the plaintiff was a vulnerable and stressed out person, he should be placed back to his same vulnerable or stressed out position but for the Accident by way of monetary compensation. I accept the above legal proposition submitted by Mr Gidwani as the general principle.
3. However, I do not accept the defendants’ suggestion that the plaintiff’s Adjustment Disorder was a pre-existing one. It should be emphasized that the plaintiff’s pre-accident mental condition was one of sub-clinical state according to Dr Wong Chung Kwong. The plaintiff was clinically diagnosed as suffering from Adjustment Disorder with its onset in about April 2008. Thus, the plaintiff’s psychiatric impairment caused by the Accident was not a pre-existing one.

*PSLA*

1. I take into account the duration of the Adjustment Disorder suffered by the plaintiff only lasted for one year, ie from April 2008 to March 2009. With reference to the Guides, Dr Lai found that the plaintiff’s degree of psychiatric impairment belonged to the “very mild range”, while Dr Wong Chung Kwong found that the plaintiff functioned between Class 2 and Class 1. I also take into account that the impact on the plaintiff’s life due to his psychiatric impairment was quite significant. For example, he experienced the symptoms of low mood, loss of confidence, feeling worthless, fleeting suicidal thought, slow thinking, decreased sex drive and lack of motivation. He even attempted to commit suicide by drug overdose. These symptoms affected the plaintiff personally and socially. He had a low self esteem. Of course, the minor physical injuries sustained by the plaintiff in the Accident cannot be ignored.
2. Before the Accident, the plaintiff was seriously troubled by his personal, marital and financial affairs. The Accident was like the last straw on his back. Yet, this “last straw” is very heavy in term of nature and magnitude.
3. The plaintiff submitted that damages for PSLA should be between HK$180,000 to HK$250,000. The plaintiff relied on the following cases with the following award for PSLA:-
4. *Chan Chun Keung v Greenroll Ltd t/a Conrad Hong Kong*, HCPI 275/2005: HK$180,000; and
5. *Ng Lai Fan Fanny v The Hong Kong Golf Club*, HCPI 511/205: HK$250,000.
6. The defendants, on the other hand, submitted that award for PSLA for minor soft tissue injury and short term adjustment disorder should be in the range of HK$100,000. The defendants relied on the following cases with the following award for PSLA:-
7. *Mak Sze Ying Felix v Chui Chak Yung*, DCPI 2151 of 2009: HK$80,000;
8. *Ho Kar Chee v Tam Kwong Man*, HCPI 439 of 2007: HK$100,000;
9. *Chow Lai Chun v Hong Kong Housing Authority*, DCPI 1666 of 2007: HK$100,000;
10. *Cheung Chak Fui v Sun Hing Organization Plastic Management Ltd*, DCPI 1666 of 2007: HK$150,000;
11. *Chang Tsun Tein v Wai Lee Scaffolding Co Ltd*, DCPI 818 of 2008: HK$150,000;
12. *Lau Chi Keung v Wong Wai Kei*, DCPI 1846 of 2008: HK$150,000;
13. *Siu King v Wong Chak Wing*, HCPI 479 of 2003: HK$150,000;
14. *Chu Chung Wah v Ng Tung Pak*, HCPI 547 of 2003: HK$160,000;
15. *Tse Sin Yee v Wing Wah Cake Shop Limited*, DCPI 1618 of 2010: HK$175,000; and
16. *Wu Leung Kui Jacky v Leung Ming Yun*, DCPI 1154 of 2008: HK$215,000.
17. I take into account of a recent Court of Appeal decision in *鍾建英 訴 英華清潔服務有限公司*, CACV 209/2013, 10 June 2014 in which the Court of Appeal pointed out that when the trial judge considered previous case authorities in assessing the award for PSLA, the trial judge should consider current economic factors and then make an appropriate adjustment to the award for PSLA (at para 23 of the judgment). The Court of Appeal allowed the plaintiff’s appeal and adjusted the compensation for PSLA to HK$230,000.
18. I also note that there is another recent Court of First Instance decision in *Yeung Mei Hoi v Tam Cheuk Shing and anor,* HCPI 901/2011, 6 June 2014 in which the plaintiff, aged 44 at the time of the incident and 51 at the time of the trial, had sustained physical injury and psychiatric injury of adjustment disorder. As far as the psychiatric injury is concerned, it is also noteworthy that the psychiatric experts in *Yeung Mei Hoi* case (above) were Dr Benjamin Lai and Dr Wong Chung Kwong for the plaintiff and the defendants respectively, ie the same psychiatric experts for the parties in the present case. Further, in *Yeung Mei Hoi* case (above), both Dr Lai and Dr Wong found that the plaintiff suffered from adjustment disorder with depressive mood. Dr Lai opined that the plaintiff had mild and permanent psychiatric impairment in the range of 1 to 3%, whilst Dr Wong opined that the plaintiff’s degree of impairment was 1%. Both Dr Lai and Dr Wong agreed that the plaintiff was able to resume his pre-accident job. In *Yeung Mei Hoi* case (above), plaintiff’s adjustment disorder lasted for about 2 years (paras 45 to 46 of the judgment). After considering the plaintiff’s physical and psychiatric injuries, the Court of First Instance awarded the plaintiff HK$220,000 for PSLA.
19. I agree with the judgment of Suffiad J said in *Joan Carol Boivin v Wing Kin Yin & Anor*, HCPI 195/2000, 14 February 2001 (at para 15 of the judgment) in which his Lordship said that what the importance was the condition of the plaintiff as opposed to how his condition was medically termed.
20. In my view, the plaintiff's life was significantly affected by his psychiatric illness of Adjustment Disorder. It had brought extra pain to the plaintiff’s unfortunate background. The plaintiff was a person with strong character before the Accident. His business was quite successful in the past. He associated with the celebrities. Unfortunately, after the 9/11 incident, his tour agency business which was focused on the USA market, was deeply affected; the SARS and economic turmoil further exacerbated the situation. Nevertheless, prior to the Accident, he still managed to make his own living even if he was a bankrupt. He had reported his income to the official receiver. He and his business had the support from his ex-wife. It seems that the plaintiff, though in a stressful condition, still managed to lead a normal life as any other mentally healthy persons would do. However, the psychiatric impairment rendered him to have a low self-esteem, he had no confidence, and had low motivation at work. Even with his previous unfortunate background, the plaintiff had not attempted to commit suicide. Yet, due to his psychiatric impairment, he attempted suicide by drug overdose. The pain and suffering experienced by the plaintiff from April 2008 (the onset of his Adjustment Disorder) to November 2008 (his first consultation for his psychiatric symptoms) must be taken into account.
21. Having considered the abovementioned case authorities and all of the evidence in this case, including the plaintiff’s mental condition prior to the Accident and his physical injuries, I am satisfied that the plaintiff should be awarded HK$200,000 under his claim for PSLA.
22. The decisions in both *鍾建英* case (above) and *Yeung Mei Hoi* case (above) were handed down after the parties of this case had made their closing submissions. However, the principles referred to in these two recent cases are well established. Some of the cases cited in these two recent cases were also cited by the parties of this action in their closing submissions. Thus, I do not need further assistance from the parties regarding the quantum of PSLA to be awarded, unless the amount to be awarded by this court is drastically different from the range of award for PSLA as suggested by the parties.

*Pre-trial loss of earning*

1. The plaintiff was granted 2 days sick leave after the Accident for his physical injury. He then resumed working. He confirmed that whether before and after the Accident, his income was about HK$11,000 or below. He worked in Meiou until the end of October 2008.
2. Dr Benjamin Lai opined that the plaintiff should be granted 1 year sick leave from the first day of his consultation for his psychiatric symptoms, ie from 3 November 2008 to 2 November 2009. Dr Wong Chung Kwong opined that the onset of the plaintiff’s Adjustment Disorder was shortly after the Accident and the total duration of his Adjustment Disorder was about 1 year. He said that the plaintiff had totally recovered by March 2009. Nevertheless, Dr Wong only suggested a short period of sick leave of 2 months to cover the time when the plaintiff was suffering from a relatively more severe degree of Adjustment Disorder during 1 November 2008 to 31 December 2008.
3. After considering the views of both experts, the plaintiff should be granted sick leave to cover the whole period of his Adjustment Disorder. Thus, the plaintiff is entitled to have sick leave up to the end of March 2009.
4. As the plaintiff had worked until the end of October 2008 and his earning before the end of October 2008 was not affected by the Accident, he had no loss in his earning between April 2008 and October 2008 whether on physical or psychiatric grounds. From November 2008 to March 2009, the plaintiff’s loss of earning was HK$55,000 (HK$11,000 x 5 months).

*Post-trial loss of earning*

1. The plaintiff did not proceed with his claim for post-trial loss of earning. I shall not deal with this claim.

*Loss of earning capacity*

1. The plaintiff claims for $72,000 for his loss of earning capacity on the ground that he had suffered a disadvantage in the labour market.
2. I agree with Mr Gidwani that there is no evidence that the plaintiff has suffered any disadvantage in the labour market, nor is there any risk that the plaintiff will lose his present job at some time before the estimated end of his working life.
3. The plaintiff’s claim for loss of earning capacity is disallowed.

*Special damages*

1. As regards special damages, the parties agreed that the award under this heading be fixed at HK$5,346. Thus, for special damages, I make the order accordingly.

*Summary of compensation*

1. In summary, the plaintiff is entitled to the following compensation:-
2. PSLA HK$200,000
3. Pre-trial loss of earning HK$55,000
4. Post-trial loss of earning nil
5. Loss of earning capacity nil
6. Special damages HK$5,346

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Total : HK$260,346

*Interest*

1. Interest on general damages of PSLA should be 2%, from the date of writ until judgment. Interest on pre-trial loss of earning and other special damages should be half of the judgment rate, from the date of the Accident until judgment. Interest from the date of the judgment runs at the judgment rate until full payment.

*Costs*

1. I am satisfied that costs should follow the event with certificate for counsel. Thus, I make a costs order nisi that costs of this action, including any costs reserved, if any, be to the plaintiff with certificate for counsel. The costs order nisi will become absolute after 14 days.
2. The plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.
3. I am indebted to counsel on both sides for their assistance.

( CK Siu )

Deputy District Judge

Mr YL Cheung, instructed by ONC Lawyers, assigned by the Director of Legal Aid, for the plaintiff

Mr Lee Tung Ming, instructed by Deacons, for the 1st defendant

Mr Victor Gidwani, instructed by Ho Tse Wai & Partners, for the 2nd defendant