## DCPI 78/2006

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 78 of 2006

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| --- | --- | --- |
| BETWEEN | LAI WING SUN | Plaintiff |
|  | and |  |
|  | HIGH LINK TECHNOLOGY LIMITED | 1st Defendant |
|  | SHUN WO ENGINEERING CONSULTANT SERVICES LIMITED formerly known as  SHUN WO TECHNICAL SERVICES LIMITED | 2nd Defendant |
|  | WU KWOK MAN | 3rd Defendant |
|  | WU KWOK LEUNG | Third Party |

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 12, 16, 17 & 24 September, 2008

Date of handing down Judgment : 13 November, 2008

# JUDGMENT

**Background**

1. Mr. Lai was working in the computer room ("**Computer Room**") on the ground floor of the Hong Kong Convention & Exhibition Centre ("**Site**") on 18 January 2003 at about 5:50 p.m. when he met with an accident. He was in the process of installing a heavy mineral board weighing about 70 kg and measuring about 8 feet x 3 feet in the ceiling of the Computer Room, standing on a platform about 7 feet from the ground. The platform was a temporary structure constructed by putting a wooden board on top of two A-shaped wooden ladders. A leg of one of the wooden ladders broke, as a result of which Mr. Lai fell onto the ground and fractured his right upper arm. Mr. Lai claims that he has sustained damages in the sum of $709,200 as a result of the Defendants' negligence, and breach of statutory and common law duties of care. At trial, he concedes that he was 25% to be blamed for the accident which was caused partly by his own negligence.
2. It is not in dispute that the 1st Defendant ("**High Link**") is the principal contractor for carrying out works at the Site. High Link sub-contracted the renovation works at the Site to the 2nd Defendant ("**Shun Wo**"). The works for which Shun Wo was engaged to do included the provision of labor and equipment to demolish the existing partition wall, false ceiling system and floor system in the Computer Room; to build a concrete curb with cement sand plastering along the perimeter of the Computer Room; to erect a mineral board ceiling; and to install a false ceiling system in mineral fiber tiles.
3. Mr. Lai claims that he was employed by the 3rd Defendant ("**Kwok Man**"), who was Shun Wo’s sub-contractor. Alternatively, he claims that Kwok Man carried on a business with the Third Party ("**Kwok Leung**"), and/or other workers and Mr. Lai himself as partners, and that they carried out work at the Site with a view to profit.
4. All the Defendants deny liability. High Link claims that it was not the employer of Mr. Lai. It claims that Mr. Lai had fabricated the accident himself because he needed money and wished to recover a handsome amount from High Link by way of compensation. It is High Link's case that Mr. Lai had used an unauthorized wooden ladder and self-made platform to do his work, and that he had conspired with others including Kwok Man to cut one leg of the wooden ladder after the usual and authorized working hours at the Site to create the accident. High Link claims that it and Shun Wo had provided all safety equipment and taken all safety measures at the Site. It had on site supervisors present, and had instructed Mr. Lai and his co-workers to use the aluminium platform provided by the client at the Site for carrying out the work in question.
5. Shun Wo claims that Mr. Lai was carrying out the work in question as a partner of Kwok Leung, and that they were independent subcontractors of Shun Wo. It is Shun Wo's case that Mr. Lai had used the wooden ladders and the wooden platform in breach of the safety instructions given to him, and that the accident occurred after Mr. Lai had been instructed to leave at 5:30 p.m.. Shun Wo denies that it was in breach of any duty owed to Mr. Lai.
6. Kwok Man denies that he was either Shun Wo's subcontractor, or Mr. Lai's employer. He claims that Shun Wo's subcontractor was Sam Tung Construction Engineering Co ("**Sam Tung**"), a business solely owned by his brother Kwok Leung, and that Mr. Lai was employed by Kwok Leung. Kwok Man also denies that he was Kwok Leung's partner, and claims that he was Kwok Leung's employee. Kwok Man denies that he owes any duty to Mr. Lai as he was neither the occupier nor in control of the Site. He claims that he was not present and was not doing any work at the Site on 18 January 2003.

**Issues**

1. These are ***NOT*** employee compensation proceedings. The Defendants’ liability does not depend on whether they have a contract of employment with Mr. Lai. The absence of a relationship of employment, by itself, does not absolve a Defendant of liability. The parties, in my judgment, spent unnecessary time and energy, prior to trial at least, in placing focus on the employment relationship, or the lack thereof, between Mr. Lai and the parties involved in the project.
2. For the purpose of determining the Defendants' respective liability, the issues at trial are:
   1. Did Mr. Lai sustain injury in the manner he described?
   2. Was Mr. Lai's injury caused by the Defendants’ negligence or breach of duty?
   3. What are the damages recoverable by Mr. Lai?

**Did Mr. Lai sustain injury in the manner he described?**

1. High Link claims that Mr. Lai had made up the entire accident in order to get compensation. No evidence was adduced to support such allegation, save for the fact that Mr. Hui of High Link was informed that after he had had a meeting with Mr. Lai and Kwok Leung after the accident, Kwok Leung was overheard to have expressed joy at the prospect of Mr. Lai's and his ability to claim “millions of dollars” from High Link by way of compensation as a result of the accident, and that they could go back to China and enjoy life together. Whilst there may be debate as to whether this, even if true, represents a macabre or optimistic view of events on Mr. Lai’s or Kwok Leung’s part, I fail to see how it can possibly prove that the accident did not happen as accounted by Mr. Lai.
2. According to Mr. Lai's evidence, he, Kwok Leung and another worker, Mr. Cheng, were in the course of installing some mineral boards in the false ceiling of the Computer Room. The false ceiling was about 14 feet from the ground. To reach the false ceiling, Mr. Lai and his co-workers used 2 A-shaped wooden ladders, and placed a wooden batten approximately 10 inches wide across the top of the 2 ladders to form a wooden platform. At the material time, Mr. Lai and Kwok Leung were standing on the wooden platform, and Mr. Cheng was standing on one of the 2 wooden ladders. The wooden platform was about 7 or 8 feet from the ground.
3. Mr. Lai's evidence is that the mineral boards weighed approximately 70 kg, measuring 8' x 3'. Mr. Cheng had passed the mineral board to Mr. Lai as he stood on the wooden platform atop the 2 ladders. Mr. Lai was screwing the mineral board into the false ceiling, with Kwok Leung’s help. It was while he was completing the screwing of a mineral board that a leg of the ladder on which Mr. Cheng was standing broke, causing the ladder and the wooden platform to fall. Mr. Lai fell from the wooden platform onto the ground, landing on his right and injuring his arm as a result.
4. None of the Defendants’ witnesses who gave evidence was present when the accident occurred at about 5:50 p.m. on 18 January 2003. However, the contemporaneous report to the Wanchai Police confirmed that a report was made to the police at about 5:51 p.m. in relation to Mr. Lai carrying out renovation works in the Computer Room and falling from a wooden ladder because one leg of the ladder broke.
5. Mr. Lai was sent to the nearest Ruttonjee & Tang Shiu Kin Hospitals, the contemporaneous records of which show that he was admitted at 6:28 p.m. on 18 January 2003, and sent to the doctors on a stretcher. His complaint to the attending doctors was that he had fallen from a ladder from a height of about 8 feet, with right upper arm injury. The findings made by the doctors were that Mr. Lai had a "fractured mid right humerus with angulation". It was noted that Mr. Lai had fallen from a ladder of about 8 feet, landing on his right upper arm. "Deformity and reduced range of motion", "bulging, tenderness, bruise and swelling" were all noted.
6. According to the report from the Ruttonjee and Tang Shiu Kin Hospitals, Mr. Lai was examined on 18 January 2003 and found to have tender swelling over the right shoulder region. X-rays of his right shoulder showed fracture of the mid-shaft of the right humerus with angulation. He was treated and transferred to the Orthopaedic unit of Pamela Youde Nethersole Eastern Hospital. Mr. Lai had a humeral brace applied at the Pamela Youde Nethersole Hospital, received follow up treatment at the outpatient clinic from January to April 2003, and then had physiotherapy. These injuries as recorded in the hospital reports are consistent with a fall from a height, as described by Mr. Lai. On the evidence, I find no basis to reject Mr. Lai's evidence in relation to the circumstances of the accident as he described.

**Was Mr. Lai's injury caused by the Defendants’ negligence or breach of duty?**

1. Mr. Lai 's causes of action for breach of statutory duties (under Cap.59, Cap.509 and Cap.314), contractual duties and negligence at common law all involve the same standard, i.e. to take reasonable care.
2. In particular, Mr. Lai claims that the Defendants were occupiers of the Site, and that Mr. Lai was a lawful visitor. As such, it is claimed that the Defendants owe a duty at common law and under Cap. 314 to take reasonable care to see that Mr. Lai would be reasonably safe in working at the Site.
3. The foundation of occupier's liability is occupational control, which has been clearly established to mean "control associated with and arising from presence in and use of or activity in the premises" (*Wheat v. E. Lacon & Co. Ltd* [1966] A.C. 552). Clearly, as the main contractor engaged to carry out the works undertaken at the Site, High Link had occupational control of the Site. It is clear from the evidence that High Link retained general control and supervision of the Site for the purposes of ensuring, amongst other things, that the work contracted out was done. Mr. Hui himself claims that High Link's supervisors and engineers were at the Site to supervise work and progress, and admits in his evidence that High Link was the occupier of the Site.
4. Shun Wo, the sub-contractor engaged by High Link to do the false ceiling and other work in the Computer Room, also had control of the Site. Mr. Yeung Kam Yip (“**Yip**”) who gave evidence on behalf of Shun Wo claims he was at the Site every day to supervise and to give instructions to the workers.
5. Mr. Lai, as one of the workers carrying out work on the false ceiling in the Computer Room, was within the class of persons reasonably foreseeable by High Link and Shun Wo to sustain harm or damage should the Site be unsafe, or the work system in the Computer Room was unsafe, or generally as a result of any act or omission on the part of High Link and Shun Wo. As such, both High Link and Shun Wo owe a duty at common law to take reasonable care as against Mr. Lai. This includes, at common law, the duty to provide a safe system of work for Mr. Lai, whether he is an employee or an independent contractor of them (*Yeung Wan Chun (Administratrix of the Estate of Yu Chi Wai, deceased) v. Kwok Wing Kwan trading as Golden Harvest Transportation & Another* [1987] 3 HKC 288).
6. High Link and Shun Wo claim that an aluminium platform had been provided at the Site for high-level work, and that workers, including Kwok Man, Kwok Leung and Mr. Lai, had been instructed to use only the aluminium platform, and not any wooden ladder, for their work. It is their case that they had taken all steps to ensure that Mr. Lai could work safely by providing the aluminium platform which was a safe and appropriate means of support to be used by Mr. Lai for the work which he was engaged to do at the Site, and that the accident was caused as a result of Mr. Lai using the wooden ladders and wooden platform against their instructions.
7. According to Shun Wo's evidence, Mr. Yeung Kam Yuen ("**Yuen**"), his brother Yip (both of whom were from Shun Wo), Mr. Tam from High Link, Kwok Man and Kwok Leung had visited the Site together prior to commencement of work, in the course of which Yip had explained to Kwok Man and Kwok Leung the job requirements and safety guidelines for work at the Site. It is accepted that Mr. Lai was not present at this first visit. They were all shown the aluminium platform which was to be constructed for use for high-level work at the Site. It could be freely constructed with aluminium frames, was freely adjustable and could be dismantled. Mr. Tam had explained to Yuen that more aluminium platforms or frames were available, if required.
8. It is not disputed that Kwok Man was the first worker from Mr. Lai's group to commence work at the Site. According to Kwok Man, his first day of work at the Site was 9 January 2003, and his involvement was to dismantle the original false ceiling in the Computer Room. In his Statement, Kwok Man claims that an aluminium platform was already in the Computer Room on his first day of work. According to Yip’s evidence, on the first day of Kwok Man's work, there was only a partly constructed aluminium platform in the Computer Room, and some parts or frames. Yip said that he showed Kwok Man how to construct the aluminium platform with the aluminium frames and parts, and that they erected the aluminium platform together on the first day. Kwok Man used this platform to dismantle the original false ceiling in the Computer Room. Kwok Man worked alone on this, and on the third day after he had commenced work, he completed the dismantling of the false ceiling. On Kwok Man's evidence, he dismantled the aluminium platform then, and replaced the aluminium frames and parts in the corridor of the Computer Room.
9. Mr. Lai denies that he had ever been instructed by anyone not to use wooden ladders at the Site. According to Mr. Lai, all the workers at the Site used A-shaped wooden ladders, and he had never seen the aluminium platform in the Computer Room. He had seen it before in the corridor (which is consistent with Kwok Man’s evidence that he had left the frames and parts of the aluminium platform in the corridor), far away from the Computer Room. He had never been involved in its erection, although he had seen others do it. According to Mr. Lai, no one from Shun Wo had shown him how to use or construct the aluminium platform. Mr. Lai claims that the aluminium platform was too heavy and inconvenient to take into the Computer Room. It had to be erected inside the Computer Room, and it took too long to construct or dismantle the platform. According to Mr. Lai, there were too many workers working in the Computer Room at the same time, all doing different work, and it was inconvenient if not impossible to use the aluminium platform for his work on the ceiling in the Computer Room. He claims that the aluminium platform would be in the way of everyone's work if it was used in the Computer Room. Moreover, as Mr. Lai claims, the floor level was uneven and it was not possible to use the aluminium platform.
10. I do not entirely accept Mr. Lai's evidence that it was impossible to use the aluminium platform in the Computer Room. However, I can envisage that for the majority of the workers in the Computer Room, the aluminium platform would be an unpopular choice for their work. They would find it inconvenient and time-consuming. From Mr. Lai's evidence, many workers were working at the same time in the confined space, and the erection of a large aluminium platform would inevitably cause problems. Obviously, workers have to bear the consequences of taking shortcuts and preferring convenience to safety, and Mr. Lai accepts that he is partly to be blamed for not using the aluminium platform which is clearly safer than the wooden makeshift platform he constructed.
11. Mr. Lai's evidence is that he and his co-workers had brought the A-shaped wooden ladders to the Site. The wooden ladders were found at the scene of the accident after the event, with one leg broken.
12. According to Yip, after Kwok Man had completed dismantling the false ceiling, he was joined at the Site by Mr. Lai, Mr. Cheng and Kwok Leung on about the 4th day. According to Yip, he taught these workers again how to use the aluminium platform, and that the platform was in the Computer Room throughout their work from 9th to 18th January 2003.
13. Yuen and Yip deny that they had ***ever*** seen any A-shaped wooden ladders in the Computer Room. It is Yip's case that he was at the Site every day from 9th to 18 January 2003, and the aluminium platform was in the Computer Room throughout this time. Yip said that Mr. Lai and his co-workers used the aluminium platform all along, even on the day of the accident.
14. According to Mr. Hui of High Link, he had never seen anyone use the aluminium platform in the Computer Room, but this may be due to the fact that Mr. Hui himself would only visit the Site once a month. He claims that he left site inspection and supervision to his site supervisor, Mr. Tam, who reported to Mr. Hui on a daily basis, and to High Link's other engineers. Mr. Tam was not called to give evidence, but Mr. Hui claims that he had assumed that Yuen of Shun Wo would instruct the workers at the Site on how to use the aluminium platform. However, it is Mr. Hui's evidence that his site supervisor had complained to him before about Mr. Lai's team of workers on 2 or 3 occasions. The complaint was about their incompetence and their age, without further particulars provided by Mr. Hui. When asked what he had done as a result of such complaints, Mr. Hui said that he had informed Mr. Tam that he "could do the right thing" as may be required by the nature of the complaint, but Mr. Hui had not received any subsequent report of action taken.
15. According to Yip's evidence, he had instructed Kwok Man and Kwok Leung that the hours of work on the Site were 9 a.m. to 5:30 p.m., and that workers had to leave by 5:30 p.m.. This was denied by Mr. Lai, who claims that their working hours were 9 a.m. to 6 p.m., with one hour for lunch. On the day of the accident, at about 5:15 p.m., Yip told Mr. Tam he was leaving the Site but that Mr. Tam could call him if Mr. Tam needed him. Yip also told the workers to leave. Yip said that he had been at the Site for most of the day, and that Mr. Lai and his co-workers had been using the aluminium platform until Yip's departure.
16. It cannot be disputed that the accident took place because the wooden ladders and wooden platform were used by Mr. Lai instead of the aluminium platform which Yip claims to have been in use until at least 5:15 p.m.. I do not find it credible, as Yip claims, that he had never seen any wooden ladders at the Site. The evidence of Mr. Lai and Kwok Leung is that they had brought the wooden ladders to the Site, which is inherently very probable, and photographs taken after the accident show that the wooden ladders had the name of Shun Wo marked on them. Whether the wooden ladders belonged to or were brought onto the Site by Shun Wo, or by Mr. Lai's team and marked with the name of the subcontractor, Shun Wo, makes no difference in my judgment. It simply demonstrates that the wooden ladders had indeed been put at the Site, and that their presence must have been apparent to anyone working there. This, coupled with the matters outlined in paragraph 24 above, lead me to find that the evidence of Yuen and Yip, that they had never seen any A-shaped wooden ladders at the Site at all, is unbelievable. Either Yip was lying when he said that he had never seen any worker using A-shaped wooden ladders at the Site, or, as is more probable, he turned a blind eye when the wooden ladders were used by workers including Mr. Lai.
17. On the evidence, I consider that both High Link and Shun Wo had failed to take all reasonably practicable steps to ensure that a safe platform be used by Mr. Lai and his co-workers in the course of their high level work at the Site. It is insufficient for High Link to simply delegate or entrust to Shun Wo the task of ensuring the use of the aluminium platform in the Computer Room by workers. Nor is it sufficient for High Link as main contractor and Shun Wo as subcontractor to simply mouth safety rules and regulations or put them in place without taking all reasonable steps to enforce them and to ensure their compliance. Particularly because there had been complaints in this case, as Mr. Hui and Yip claim, about the alleged incompetence or manner of work on the part of Mr. Lai and his team of workers, High Link and Shun Wo had been put on notice of such complaints and of non-compliance with their alleged safety rules, and both High Link and Shun Wo should have taken more action to supervise and to ensure compliance by Mr. Lai and his co-workers with these alleged work and safety instructions, including the use of the aluminium platform instead of the A-shaped wooden ladders for high level work, and otherwise to enforce such instructions. On Mr. Hui's evidence, no such enforcement action was taken despite the complaints made.
18. Yip claims that Mr. Lai and his team of workers had demonstrated throughout that they were not up to standard so far as their technical skills and knowledge of false ceiling work was concerned, such that, as he said, he had to pay more attention and give more instructions to these workers. Despite such claims, however, Yip thought fit to leave Mr. Lai and his co-workers at their work at 5:15 p.m. on the day of the accident, instead of remaining to ensure that they worked from the aluminium platform and not on the wooden ladders, or otherwise to ensure that they leave the Site at the same time, if it is important that the workers leave by 5:30 p.m., as is alleged by High Link and Shun Wo.
19. It is also important to bear in mind Yuen’s evidence that Sam Tung (of which Kwok Leung is the registered sole proprietor) was not on Shun Wo's list of contractors to which Shun Wo would subcontract work of the type undertaken by Shun Wo at the Site. Nor is Mr. Lai or any other member of Kwok Leung's team on such list. Yuen admits in his evidence that he had not known Kwok Leung or any member of his team before this project, nor had Shun Wo given any work to Sam Tung or Kwok Leung before. Yuen only knew Kwok Man, who had introduced him to his brother Kwok Leung, but Yuen knew that Kwok Man had only done work related to fire services equipment or installation, and not renovation or construction work. This is accordingly not a case of Shun Wo subcontracting the work to a contractor which is known by it to be experienced and qualified in the field of work for which it was engaged to do.
20. As the main contractor engaged to carry out work in the Computer Room, it was High Link's responsibility to co-ordinate the work of the different subcontractors at the Site, to ensure that the aluminium platform could be safely used by all workers without hindering the work of others. According to Mr. Lai, it was inconvenient to use the aluminium platform for his work in the Computer Room because there were too many workers carrying out work in the Computer Room at the same time. On Hui's evidence, there were 10 workers working in the Computer Room at the relevant time. In failing to properly coordinate such work in the Computer Room, High Link had failed to take all reasonable and practicable steps to ensure that Mr. Lai could use the aluminium platform safely and properly in the course of his work.
21. It is clear from the above that both High Link and Shun Wo were in breach of their common-law duty, and their duty as occupiers of the Site, to take all reasonably practicable steps to ensure Mr. Lai's safety at the Site, and to provide a safe system and place of work.
22. Further, the applicable version of regulation 38C of the Construction Sites (Safety) Regulations under Cap. 59 provides that where work cannot be safely done on or from the ground, the contractor responsible for the construction site concerned ***shall ensure the use*** of a scaffold, ladder or other means of support, all of which shall be safe for the purpose. In failing to properly supervise Mr. Lai, and failing to enforce the safety and work instructions claimed by High Link and Shun Wo to have been given to Mr. Lai in relation to the carrying out of high level work, High Link as the principal contractor undertaking work at the Site is in breach of regulation 38C (*Choi Yiu Tat v. Fong Man Chi* HCPI 742/2001).
23. So far as Kwok Man is concerned, Mr. Lai admits in his evidence in court that he, Mr. Cheng, Kwok Man and Kwok Leung were partners in the project. On his understanding, the work was sourced by Kwok Leung and he only knew Kwok Man through Kwok Leung's introduction. They had discussed and agreed to share the proceeds from the work, and Mr. Lai had envisaged receiving 25% of the share of the profits. On such evidence, I do not accept that Kwok Man was Mr. Lai's employer, as originally pleaded in the Statement of Claim.
24. From Mr. Lai's evidence, he never received any instructions from Kwok Man in his work. According to Mr. Lai, they all knew their work and could and did work independently. There is no evidence from Mr. Lai that it was Kwok Man who had instructed him to bring the wooden ladder onto the Site, or to use the wooden platform for Mr. Lai's work. On the evidence available, I am unable to find on a balance of probabilities either that Kwok Man had control of the Site or Mr. Lai’s work, or that any act or omission by Kwok Man had caused the accident.
25. On the evidence as a whole, I accept that Mr. Lai was told and knew that an aluminium platform was available for use in the Computer Room for high level work. He had seen it in the corridor. He had seen others construct it. He was able to give reasons why it was inconvenient to use the aluminium platform for his work in the Computer Room. It may have been inconvenient to use the platform, but I do not accept that it was impossible to use it for the work which Mr. Lai had to do at the Site. Kwok Man was able to use it for his work in dismantling the false ceiling in the Computer Room. Nevertheless, Mr. Lai did not use the aluminium platform when the heavy mineral boards had to be lifted and screwed into the false ceiling. The use of the wooden batten put across 2 A-shaped wooden ladders, as devised by Mr. Lai and his co-workers, was clearly unsafe and unsuitable for the work which he had to do at a height. Mr. Lai ought to have known that there was danger of the wooden batten or wooden ladder giving way or collapsing in view of the weight of the mineral boards, which required 2 workers to lift and handle. Despite the concession made by Mr. Lai that he was 25% to be blamed, after considering the cases cited by Counsel for Kwok Man (*Manwaring v. Billington* [1952] 2 All ER 747, *Lane v. Shire Roofing Company (Oxford) Ltd* [1995] PIQR P417, *Boyle v. Kodak Ltd* [1969] 1 WLR 661 and *Williams v. Port of Liverpool Stevedoring Co Ltd* [1956] 1WLR 551), I consider that Mr. Lai is 50% to be blamed for the accident.

**What are the damages recoverable by Mr. Lai?**

1. Mr. Lai fractured his right arm as a result of the accident, was hospitalized for 3 days and was given sick leave from 18 January 2003 to 20 May 2003, for a total of 123 days. The fracture was treated by bracing, and upon healing of the fracture, Mr. Lai had undergone physiotherapy until April 2003. He did not receive further treatment after the expiry of his sick leave. Mr. Lai claims that he currently still suffers from residual shoulder pain, has difficulties in carrying heavy objects, and could not resume his job as a construction site worker.
2. According to Dr. Tsoi who examined Mr. Lai on 31 August 2007, Mr. Lai had recovered in a satisfactory manner, with pulpable bony deformity along the humerus, no wasting of the shoulder griddle and arm muscle, and no tender spot. The strength of the right shoulder and elbow was normal, and Dr. Tsoi reported no neurovascular deficit over the right upper limb. The right elbow enjoyed full range of motion, and stiffness of the right shoulder was minimal. According to Dr. Tsoi, Mr. Lai could resume his pre-injury job upon the expiry of his sick leave in May 2003.
3. I consider that Mr. Lai's injuries are less serious than those suffered by the plaintiffs in the cases cited (*Sin Sau Mui v. Yuen Sai Kwong* HCA 11319/1993, [1996] HKCU 2 *and Lam Chiu v. Poon Tat Hing and Another* DCPI 203/2001). I will award a sum of **$110,000** for Mr. Lai's pain and suffering.
4. Mr. Lai claims loss of earnings from 18 January 2003 to 17 August 2003, on the basis of his full loss of earnings at $16,000 per month. Thereafter, he claims partial loss of earnings at $6,000 a month. He claims that after his sick leave, he could only work as a casual worker with light duties at a construction site, earning $10,000 per month. According to Mr. Lai, he was not as flexible as he was before the accident and could not work long hours to lift heavy equipment
5. I accept Mr. Lai's evidence that his daily wage was $800 at the time of the accident, and that he could work 20 days in a month. I allow his claim for full loss of earnings from 18 January 2003 to 20 May 2003, for 4 months, at **$64,000** ($16,000 x 4), on the basis of Dr. Tsoi's opinion that Mr. Lai could resume work upon the expiry of his sick leave in May 2003.
6. I will also allow Mr. Lai's claim for partial loss of earnings at $6,000 a month from the expiry of his sick leave in May 2003 for 3 years, at **$216,000** ($6,000 x 36 months). Mr. Lai claims no further loss of earnings beyond that point, as he was already 67 years old by then.
7. Mr. Lai informed Dr. Tsoi that he had retired in 2006, but was able to work as a part-time carpenter for 2 or 3 days a month. I will not award any further amount for loss of future earnings.
8. Considering the evidence, I will allow Mr. Lai's claim for medical and traveling expenses in the sum of $9,000, and a reasonable amount of $1,000 for tonic food, giving a total sum of **$10,000**.

**Award**

1. The total award for damages to be paid by High Link and Shun Wo to Mr. Lai is :
   1. PSLA $110,000
   2. Pre-trial loss of earnings $280,000
   3. Pre-trial loss of MPF $ 14,000
   4. Special damages $ 10,000

Total $414,000

50% **$207,000**

1. I will award interest on the award of PSLA at the rate of 2% per annual from the date of the writ to the date of judgment, and on the award of special damages at half the judgment rate from the date of the accident to the date of judgment.

1. I will further make an order nisi that the costs of the action be paid by High Link and Shun Wo to Mr. Lai, with certificate for counsel, to be taxed if not agreed; and that Kwok Man’s costs of the action be paid by Mr. Lai, with certificate for counsel, to be taxed if not agreed. Mr. Lai and Kwok Man’s own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan)

District Judge

*Mr. Victor Gidwani, instructed by Messrs. Deacons (assigned by D.L.A.) for the Plaintiff*

*1st Defendant appearing in person and represented by Mr. Hui Fai Kin, its director*

*Mr. Sam Yeung of Messrs. Rowdget W. Young & Co. for the 2ndDefendant*

*Mr. Brian Wong, instructed by Messrs. Edward Lau, Wong & Lou (assigned by D.L.A.) for the 3rd Defendant*