## DCPI 736/2011

[2018] HKDC 1631

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 736 OF 2011

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BETWEEN

CHENG KWING YEUNG（鄭烔揚） Plaintiff

and

HONG KONG HAM HOLDINGS LIMITED Defendant

（香港火腿廠控股有限公司）

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Before: Deputy District Judge Jonathan Chang in Court

Dates of Hearing: 22 to 25 February 2016 and 18 March 2016

Date of Judgment: 31 December 2018

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JUDGMENT

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*A. Introduction*

1. The plaintiff was employed by the defendant as a night shift factory worker in the defendant’s factory. The defendant was in the business of producing ham. The plaintiff’s work duties included, inter alia, cleaning the metal moulds used in producing ham and cleaning the lids of the metal moulds. The plaintiff was instructed to place the moulds and the lids on the floor, to use a high pressure water gun to clean them on both sides with plain tap water, and to place the cleaned moulds in a plastic container. He was not instructed to use detergent in the cleaning process, nor was he given any.
2. The plaintiff usually carried out the cleaning process at the corner of the “meat-soaking zone” in the defendant’s factory. That zone measured about 200 square feet and had a drain in the corner.
3. The night shift started at 11:00 pm on 26 April 2008. The usual spot for cleaning was not available because the cement floor was being re-paved and the plaintiff had to carry out the cleaning around a circular drain in the corridor next to the “meat-soaking zone” (“Work Area”). This Work Area measured 61 square feet, and was positioned in between a meat-mixing machine and an ice-making machine.
4. At around 2:00 am on 27 April 2008, when the plaintiff was using the high pressure water gun to clean about 60 lids on the floor in the Work Area, he saw his co-worker Mr Tang Kam Hung (“Mr Tang”) pushing two carts loaded with ice cubes past the Work Area. The plaintiff intended to help Mr Tang to pull one of the carts, so he put down the high pressure water gun on the floor in front of him and turned to Mr Tang to assist. In so doing, the plaintiff said that his left foot was tripped by the hose of the water gun, he lost balance and slipped, then fell onto the floor and injured himself (“the Accident”).
5. There was no eye witness to the Accident. Mr Tang in his witness statement claimed that the plaintiff tripped himself when he was pulling one of the carts backward, forgetting that he had placed the water gun on the floor. However, Mr Tang confirmed in cross-examination that he did not witness the fall, and had only noticed that the plaintiff had fallen after the plaintiff had cried out and was already on the floor.
6. After the fall, the plaintiff felt great pain in his left waist and left buttock and was unable to walk. After some rest, the plaintiff was taken to the A&E Department of the Tuen Mun Hospital (“TMH”) for treatment. The plaintiff’s injury, medical treatment and complaints are set out in the section below where I address the question of quantum.
7. The plaintiff contended that the Accident was caused by the defendant’s negligence in failing to provide a safe system of work and a safe workplace. His key arguments may be summarized as follows:-
8. The floor of the Work Area was wet, greasy and slippery. The boots provided by the defendant to the plaintiff were seriously worn out and failed to provide sufficient traction to avoid any slip and fall.
9. The Work Area was congested in light of the size of the area needed to carry out his duties, the fact that 60 lids were lying on the floor, the looping of the long hose of the water gun, and the presence of a number of large containers for holding the dirty and cleaned lids around the plaintiff, all positioned in between a meat-mixing machine and an ice-making machine. This left less room for the plaintiff to manoeuvre, and as a result inhibited his ability to regain balance when he was tripped and slipped and was about to fall.
10. A combination of the foregoing rendered it unsafe for the plaintiff to clean the lids in the Work Area.

*B. The defendant’s boots*

1. There are two preliminary points that I should deal with.
2. First, the plaintiff alleged in his witness statement that the boots provided by the defendant were relatively narrower at the ankle than general water-proof shoes. The result is that movement of the person wearing such boots would be restricted and movement of the ankle would be hindered. This was not a pleaded complaint by the plaintiff. Ms Tsui confirmed that the plaintiff would not pursue such complaint.
3. Second, Ms Tsui in her opening contended that the boots provided to the plaintiff did not have any anti-slip function. I agree with Mr Sakhrani that this was not the plaintiff’s pleaded case, which focused on the boots being worn out rather than whether they were of a make that provided an anti-slip function. Ms Tsui also accepted that there was no relevant evidence in this regard. I will disregard this contention.
4. The plaintiff claimed that the boots that he was wearing at the time of the Accident had been worn by him for about one year prior to the Accident. The defendant disputed this, and claimed that on 21 March 2008 the plaintiff was provided with a new pair of boots, evidenced by a note titled “Acknowledgment of Material” (領料單) (“the Note”) with the plaintiff’s name written, stating “change of water boots” (更換水鞋) and “slippery sole” (跣底). The boot size was stated to be 44.
5. Mr Tang’s evidence may be summarized as follows:-
6. The plaintiff’s name on the Note was written by Mr Cheung King Loi (“Mr Cheung”). He could recognize Mr Cheung’s handwriting.
7. It was the defendant’s regulation that a worker must return his old pair of boots to the material dispatch department to get a new pair of boots.
8. On 20 March 2008 after the end of his shift, he saw a pair of boots placed on the floor next to Mr Cheung’s desk in the factory office. The Note was half inserted into the right boot affixed to the arch with the upper part exposed. He saw the plaintiff’s name written on the Note, so he realized that they were the plaintiff’s old pair of boots returned for replacement.
9. On the following day (21 March 2008), the plaintiff collected a new pair of boots from the factory office before his shift started. I note that Mr Tang said that he did not see anyone delivering a new pair of boots to the office for the plaintiff to collect, nor was he aware that anyone had asked the plaintiff to collect a new pair of boots from the office before his shift started on 21 March 2008. In my view, he had just assumed that if the plaintiff had not collected a new pair of boots, he would have no boots to wear that day.
10. I have no hesitation in rejecting Mr Tang’s evidence as to how he came to see the Note half inserted in the plaintiff’s old pair of boots in the office on 20 March 2008. It was incredible for him to pay attention to a pair of boots on the floor next to Mr Cheung’s desk (let alone a Note half inserted into the right boot) when he said he entered the office only to “do some writing” at a desk opposite to Mr Cheung’s. It was incredible for him to claim to have spotted the plaintiff’s name written in the bottom part of the Note when according to him only the upper part of the Note was exposed. There was also no reference in Mr Tang’s witness statement to the plaintiff being given a new pair of boots at any time.
11. In addition, the Note stated that the boot size was 44. It was the uncontested evidence of the plaintiff that his boot size was 42. In such circumstances, coupled with my rejection of Mr Tang’s evidence in this regard, I am unable to place any weight on the Note.
12. The plaintiff was asked in cross-examination whether at any time prior to the accident he had requested a change of his boots to his supervisor. He gave three different answers. When asked by Mr Sakhrani, he said he did not make a request. Then when asked by me, he said he did make a request. Finally, when asked to clarify his two different answers, he said he could not recall whether he had made a request.
13. The plaintiff’s witness statement did not mention that he had requested for a change of his boots. Mr Sakhrani queried why he had worn his boots for so long and did not apply for a change. I believe the answer may be, as the plaintiff had said, that the defendant’s supervisor somehow only cared about whether there was water leakage in the boots, and not how worn out the boots was, which I take it to mean that absent water leakage the boots would not be easily changed. I do not believe anything turns on this, and I make no finding in this regard.
14. It is unnecessary to come to a finding whether the plaintiff had requested to change his pair of boots or whether he got a new pair of boots on 21 March 2008. Ultimately it is the conditions of the plaintiff’s boots at the time of the Accident that is most relevant. I do not believe the plaintiff’s answers to this line of questioning affected the overall reliability of his evidence as Mr Sakhrani submitted.
15. There is a dispute as to whether the photographs of the pair of boots taken by the plaintiff’s wife and son at the defendant’s factory on 11 February 2011 with the assistance of Mr Tang was the pair worn by the plaintiff at the time of the Accident. In his oral evidence, Mr Tang said that he retrieved the plaintiff’s boots from where he normally placed them for photographs to be taken, but he claimed that he had in fact retrieved the wrong pair of boots. He said that he realized that he had made a mistake two or three days after the photographs were taken when he took out the boots for another look given he “had a feeling that something was wrong”, and it was then that he realized that they were not the plaintiff’s boots which should have an additional sole float inside. However, he did not tell anyone, including the plaintiff’s wife and son or the defendant that he had made a mistake. His witness statement also did not state that he had made a mistake when he retrieved the boots. When asked by me why he did not tell the plaintiff’s wife and son about his mistake at any time, he said the defendant did not allow further pictures to be taken. However, this could not have stopped him from simply telling them that he had made a mistake, and he said that the defendant did not stop him from doing so.
16. This is the re-trial of the action. In the first trial, Mr Tang’s evidence was that he realized he had made the mistake in mid-2011 when a newcomer asked for a new pair of boots, which was inconsistent with his evidence given in this trial as summarized in [18] above.
17. When I asked Mr Tang to confirm which version was the correct one, initially he said it was the version given in this trial. When I asked him to explain how then a different account was given in the first trial, he claimed that the previous version was accurate and said his evidence given in this trial was not.
18. Mr Tang agreed that when he retrieved the boots for the plaintiff’s wife and son to take photographs, he intended to act for the goodness of the plaintiff. That being so, by keeping silent about his mistake, he would have misled them into thinking that the pair of boots which they had photographed were truly the pair worn by the plaintiff at the time of the Accident. There was no plausible explanation why he did not inform the plaintiff’s wife and son, or even the defendant, about his mistake, and left it until he gave oral evidence in the first trial.
19. I find Mr Tang’s evidence on discovering his mistake not capable of belief. It is simply incredible that he was somehow prompted by a “bad feeling” to take another look at the pair of boots two or three days after photographs were taken and yet he kept silent about such a mistake until he gave oral evidence at the first trial. As noted above, his evidence given in this trial contradicted that in the first trial.
20. I reject Mr Tang’s evidence in this regard. I find that he was untruthful when he claimed that he had made a mistake in retrieving the wrong pair of boots for photographs to be taken on 11 February 2011. I find that the photographs did in fact show the pair of boots worn by the plaintiff at the time of the Accident.
21. The photograph of the boots showed that the ridges of the outside edge and back of the soles had been smoothened out and as a result gave a shiny surface. Mr Tam Sing Leung (“Mr Tam”), the defendant’s production manager, accepted that if someone in the plaintiff’s position washing lids with a high pressure water gun had come and asked for a replacement of a pair boots in such condition, the defendant would have done so. He further accepted that the boots shown in the photographs would barely give sufficient traction to the floor when the person wearing them was washing lids with a high pressure water gun.
22. The plaintiff said in his oral evidence that he had previously slipped on the floor of the defendant’s factory with the same pair of boots before the Accident. He was not clear how many times that happened. He said that he did not complain about these previous slips to the defendant because they were not very serious. No reference to previous slips was made in the plaintiff’s witness statement. I do not consider it necessary to make a finding whether the plaintiff had previously slipped on the floor in the same pair of boots as he alleged. On the defendant’s own evidence, the pair of boots worn by the plaintiff “barely” provided sufficient traction. I therefore find that the pair of boots worn by the plaintiff at the time of the Accident could not provide a firm grip of the floor surface at the Work Area in the course of cleaning the lids with the water gun.

*C. Condition of the floor surface*

1. The plaintiff contended in his witness statement that it was the defendant’s practice that workers in the production department would wash and clear up their working space and production apparatus at the end of their shift if they had spare time. But the plaintiff said that despite such a practice, the environment in the production department was always wet and slippery when he started his shift.
2. In his evidence in-chief, Mr Tam claimed that the defendant had a strict policy that at the end of each shift, the workers had to wash the floor with water and then clean the floor with a broom. He added under cross-examination that workers were also required to use detergent to clean the floor, and claimed this “slipped his mind” when he gave his evidence in-chief. He said that such a policy was set out in a work guideline which was placed with each department in the factory for the workers to read themselves. I note that no such work guideline was produced as evidence at trial. No record of cleaning was kept.
3. Mr Tang did not mention in his evidence any alleged strict policy by the defendant that workers must clean the floor at the end of their shift. When cross-examined, initially he said there was no one to check or supervise the floor condition every night, and he accepted it was down to the workers’ self-awareness to clean the floor at the end of their shift. He then somewhat changed his evidence and said that the supervisor would usually supervise to make sure that the workers had finished all the work before they left. I find such change in evidence entirely unsatisfactory. I further note that Mr Tang only referred to the use of water and broom to clean the floor of the factory at the end of each shift, but not detergent, which contradicted Mr Tam’s evidence.
4. It is unnecessary for me to come to a finding whether the defendant had a strict policy of requiring workers to clean the floor at the end of each shift with water and broom, and whether with or without detergent. It is the floor condition at the time of the Accident that is relevant. Mr Tang claimed that the floor was very clean when the night shift started on 27 April 2008. The plaintiff also said that the floor had just been washed when his shift began and so it would not be very dry. He said it was “a bit damp”. There was no evidence to suggest that the floor of the Work Area at the beginning of the plaintiff’s shift on 27 April 2008 was so wet, greasy and slippery as creating a hazard at that point in time.
5. The floor condition however was clearly not the same once the cleaning process started. The defendant admitted in its Defence that in the process of washing the lids, the Work Area “would be wet and to a certain extent, slippery and greasy for obvious reason”. There could be no dispute that oil and ham remnants would be washed off 60 lids onto the floor of the Work Area before they were drained away. Mr Tang accepted that oil and ham remnants, although in “very little” quantity, would come off the lids. It is unhelpful and unnecessary to embark on a quantitative analysis on precisely how much oil and ham remnants came off the lids in the cleaning process. It is sufficient for me to conclude that the presence of oil and ham remnants on the floor of the Work Area, splashed around the floor area by massive volume of water generated within a short period of time by the high pressure water gun, and without dissolving the grease by use of detergent, inevitably increased the risk of slipping over the floor surface. This is particularly so when according to Mr Tang, the surface of the floor tiles in the Work Area was not entirely smooth, which further increased the chance of the water (together with the oil and ham remnants) remaining on the floor surface rather than being drained away completely, even though the four sides around the drain were “very slightly indented” and “slanted downwards” towards the drain as Mr Tang described.
6. For the avoidance of doubt, in coming to the above finding, I did not take into account the plaintiff’s allegation in the Statement of Claim that water dripping from the ice-making machine and oil spilling from the meat-mixing machine had contributed to the slipperiness of the floor in the Work Area on the day of the Accident. As Mr Sakhrani rightly submitted, these allegations did not form part of the plaintiff’s witness statement. In cross-examination, the plaintiff also said he was not sure whether it was water or oil dripping from the meat-mixing machine.

*D. Looping of the water hose*

1. It was the plaintiff’s uncontested evidence that there would be looping of the water hose connected to the high pressure water gun on the floor of the Work Area. This is particularly so when the high pressure water gun was normally used for cleaning lids in the “meat-soaking zone” which was further down the hallway and away from the water tap.

*E. Safety instructions given to the plaintiff*

1. Mr Tang said that the workers were instructed to wear safety goggles when using the high pressure water gun. Mr Tam added that the workers were instructed to use the high pressure water gun carefully and not to direct it at other people. No other safety instruction, including in particular the need to space out the items in the Work Area when cleaning the lids, or to pay attention to the loops of the water hose formed on the floor, was given to the workers, including the plaintiff.

*F. Discussion on liability*

1. It is trite law that employers owe a duty to take reasonable care of their employees’ safety. Such duty includes provision of a safe system of work and a safe workplace.
2. The duty of an employer to care for his workers is personal and non-delegable, and an employer could not expect his employee to discharge his duty of care for him: *Tsang Chung Wan v Li Ming* [1998] 2 HKLRD 354 at 361A. The employer’s duty is not lessened because the employee is experienced enough: *Mak Woon King v Wong Chiu*, HCPI 385/1998 (unreported, 21 October 1999) at pp.5-6. See also *General Cleaning Contractors Ltd v Christmas* [1953] AC 180 at 189-190:-

“In my opinion, it is the duty of an employer to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workmen … Employers are not exempted from this duty by the fact that their men are experienced and might, if they were in the position of an employer, be able to lay down a reasonably safe system of work themselves.”

1. In *Lai Wah Wai v Castco Testing Centre Ltd* [1996] 2 HKC 44 at 48F-I, a safe system of work covers the following aspects:-
2. the organization of the work;
3. the way in which it is intended the work shall be carried out;
4. the giving of adequate instructions (especially to inexperienced workers);
5. the sequence of events;
6. the taking of precautions for the safety of the workers and at what stages;
7. the number of such persons required to do the job;
8. the part to be taken by each of the various persons employed; and
9. the moment at which they shall perform their respective tasks.
10. In*蘇錫安 訴 香港瀝青(環保)有限公司*, DCPI 2112/2009 (unreported, 5 November 2010) at [24], it was held that it is not for the court to indicate what was reasonably safe, or a reasonable practicable system or equipment, but it is up to the employer to provide evidence to show that reasonable efforts have been made:-

“法院無須指出什麼是適當或合理的安排足以確保僱員的安全，法院只需要考慮的，是僱主一方提出的証供，是否足以顯示僱主已經採取了合理地切實可行的安排。”

1. That said, the law does not require an employer to treat his workers, in the carrying out of their everyday normal jobs which do not entail any special risk or damage by the workers, as though they were kindergarten pupils who if not told, would not be aware of the kind of common everyday risks that a reasonable person should be aware of: *Lam Ka Lok Louis v Swire Properties Management Ltd*, HCPI 914/2003 (unreported, 30 April 2005) at [39].
2. As the Court of Appeal noted in the appeal judgment of the first trial of this action (CACV 24/2014, unreported, 27 January 2015) at [22], the duties the defendant required the plaintiff to perform “would inevitably cause the release of oily and greasy material”. See also [30] above. Mr Sukhrani submitted in closing that whether it would have been better to wash the lids in another way, or whether the present method created some risk of falling, is not the issue in the case. As McWalters JA noted at [23]-[24] of the Court of Appeal judgment:-

“[23]. That, in itself is not an inherently dangerous duty to perform. Had the means of removal been one of washing the lids in a wash basin with the aid of detergents then the system of work would have been quite uncontroversial. But neither of these means was employed. Rather than using detergents, the [defendant] used a high pressure water gun, relying on the blast of water under pressure to remove the oil and greasy material from the lids. Rather than using wash basins, the area for cleaning the lids was a section of tiled floor in which a drain was located. It was intended that by hosing down the lids over the drain, the water, oil and greasy material would be flushed away through the drain. But *commonsense tells one that when a high pressure water gun is being employed to remove oil and greasy material, a certain amount of water and greasy material will be splashed around the working environment. It is not all going to drain away neatly and cleanly through this circular drain of approximately 6 inches in diameter. Inevitably the surrounding area will be affected by the use of the high pressure water gun.* Here, the surrounding area was an area of floor on which the [plaintiff] would be standing, walking and performing his employer’s duties.

[24]. It is not for us to comment on why the [defendant] chose to have an otherwise safe and mundane duty performed in the way it did. But the reality is that *by choosing this method it introduced an element of danger, of unsafeness, into the [plaintiff’s] system of work*. This is the context in which the accident happened …” [emphasis added]

1. I agree. I add the following findings of fact which render the Work Area unsafe for the plaintiff to wash the lids with the high pressure water gun on the day of the Accident:-
2. I find that on the day of the Accident, there was not much room for the plaintiff to freely manoeuvre in the Work Area when he was surrounded by 60 lids, the containers for the dirty and cleaned lids, and the loops formed by the water hose of the high pressure water gun. As a matter of commonsense, this inhibited his ability to regain balance if he was tripped and slipped.
3. The water (and oil and ham remnants) which may not be completely or quickly flushed down the drain in the Work Area increased the risk of slipping.
4. The boots supplied to the plaintiff did not provide a firm grip on the floor of the Work Area.
5. No relevant safety instruction, including the need to space out the items in the Work Area, was given.
6. As to how the Accident happened, Mr Sakhrani submitted that the plaintiff said in his witness statement that he was tripped by the water hose and then slipped when he tried to regain balance, but in his oral evidence the plaintiff said that he slipped and was then tripped by the water hose and he fell down. But as Mr Sakhrani fairly accepted, such confusion is not surprising given the Accident happened very quickly and suddenly after the plaintiff decided to put down the water gun to help Mr Tang. In any event, this does not affect my analysis at [40] above that the Work Area was unsafe for the plaintiff to wash the lids with the high pressure water gun on the day of the Accident, regardless of whether he was first tripped and then slipped, or he slipped and was then tripped:-
7. Mr Sakhrani submitted that it was not reasonably foreseeable that the plaintiff would trip on the hose which was “the real cause of the Accident”. In my view, given my conclusion that the Work Area was unsafe on the day of the Accident, it was reasonably foreseeable that the defendant’s adoption of such an unsafe system of work would give risk to risks of the plaintiff tripping and slipping.
8. If the plaintiff had “tripped and slipped”, the defendant cannot escape liability given the Work Area as found by me was so congested that the plaintiff could not freely manoeuvre to regain balance after his slip.
9. If the plaintiff had “slipped and tripped”, as found by me, it was part of the unsafe system of work that the water, oil and ham remnants washed out from the lids increased the risk of slipping on the floor of the Work Area before they were drained away.
10. Mr Sakhrani submitted that there was inconsistency in the place where the plaintiff put the high pressure water gun and hose down and also the direction to which the plaintiff turned to help Mr Tang, with reference to the sketches attached to his witness statement. With respect, the sketches were plainly prepared for illustrative purpose only and to demonstrate the relative positions of the parties and the items. I do not see how this could affect my analysis of how the Accident had happened.
11. Mr Sakhrani further submitted that when Mr Tang came over to help the plaintiff after his fall, the plaintiff only said to him that he was tripped by the water hose and did not mention anything about the slippery floor or his boots being worn out. Mr Sakhrani submitted that this showed the plaintiff’s allegation of slipperiness “is an afterthought to shift blame”. I reject his submissions. Being in shock and in pain after his sudden fall, it is plainly not to be expected that the plaintiff would give a full account to Mr Tang of how he came to fall onto the floor, when the pressing matter was to alleviate his pain and receive medical treatment. Also as Ms Tsui pointed out, which I accept, both Mr Tam and Mr Tang agreed that the plaintiff had been a hard-working and loyal worker. He had hardly taken sick leave during his employment. Mr Tam confirmed that the plaintiff was never a known trouble-maker during his employment. This goes against the suggestion that the plaintiff was making up stories about the Accident to shift the blame or to cheat the defendant.
12. Given my foregoing findings on the facts of this case, I find that the plaintiff has established liability against the defendant.

*G. Contributory negligence*

1. Mr Sakhrani submitted that whilst all cases are fact sensitive, he invited me to find contributory negligence on the part of the plaintiff at 30% by reference to the case of *Mohammad Waheed Khan v Rising Sun Transport Co* Ltd, HCPI 241/2010 (unreported, 10 December 2012).
2. It is trite law that the burden of establishing contributory negligence is on the defendant. I am also helpfully assisted by Ms Tsui’s submissions on the issue of contributory negligence and she relies principally on the cases of *Gurung Krishna Jang v Precious Swine Ltd*, HCPI 486/2009 (unreported, 16 November 2000) and *Chung Yuen Yee v Sam Woo Bore Pile Foundation Ltd* [2011] 4 HKLRD 580.
3. In summary, Mr Sakhrani’s submission is that the Accident was a result of the plaintiff’s “sheer carelessness” and a total failure to take reasonable care for his own safety, since he could have walked about 8 to 10 feet to hang up the water gun before rendering assistance to Mr Tang, or put down the water gun some safe distance away from him. Mr Sakhrani also emphasized that the plaintiff was a very experienced worker with 16 years’ experience; he had washed lids in the Work Area before; he had received a briefing; and his duties did not require training.
4. Given my findings on how the plaintiff was instructed to carry out his duties in the Work Area and the way in which the Accident took place, clearly the environment to carry out his duties was risky and unsafe such that it would be highly unfair that contributory negligence would be found against the plaintiff in this case, particularly when what the plaintiff had done leading to the Accident was to put down the high pressure water gun intending to render assistance to a co-worker, which was what a reasonable worker would do and within his ordinary course of duty. As Recorder H Wong SC pointed out in *Gurung* (above) at [43]:-

“In this regard, it is important to emphasize that the duty on the part of the employer is personal to him and it does not lie in his mouth to say that the employee could equally have foreseen the risks associated with the unsafe system of work, and could have designed for themselves a safe system of work.”

1. As the learned Recorder further pointed out at [51], it is not that every carelessness or inattention to his own safety will amount to contributory negligence on the workman’s part so long as the proximate cause of the accident is the employer’s negligence. In the present case, it was the unsafe Work Area that put the plaintiff at risk of injury which was therefore also the proximate cause of the Accident.
2. I do not find that the defendant has made out a case that the plaintiff is liable for any contributory negligence.

*H. Quantum*

1. The issue of quantum was equally and forcefully contested by the parties. To better explain the parties’ respective positions and this court’s findings, the injuries and treatment of the plaintiff is best explained in a chronological manner which has a bearing on the findings to be given. I have not recited in verbatim the points made by the parties and I hope I do no disservice to their submissions in this judgment.

*H1. Injuries and treatment*

1. The plaintiff was aged 59 at the time of the Accident. The plaintiff was working at the defendant’s factory when the Accident took place at about 2:00 am on 27 April 2008 and thereafter with some short rest he was sent at about 5:00 am to the A&E Department of TMH. Following are the relevant aspects of the plaintiff’s injuries and treatment.
2. At TMH, the plaintiff was found to have left lower back pain and x-rays showed no abnormality and he was given 5 days of sick leave. He returned to TMH on 2 May 2008 with complaints of persistent low back pain and physical examination revealed that there was tenderness at lower back and mild swelling at the dorsum of the left foot. He was granted sick leave until 9 May 2008 where on follow up of the same day at TMH, physical examination revealed tenderness at the left buttock area and then granted sick leave until 15 May 2008.
3. The plaintiff was referred to physiotherapy at TMH on 9 May 2008 where he attended 30 sessions between 21 May 2008 to 28 August 2008. He attended TMH at 16 May 2008 and was treated for residual low back pain and granted sick leave until 19 May 2008.
4. Starting on 20 May 2008 until 18 May 2010, the plaintiff attended the Tin Shui Wai Health Centre for his low back pain and left hip pain where physical examination revealed mild tenderness over his lower back region and left hip with mild limitation in movement. He was also found that he could walk unaided, given some analgesic and his left hip and low back were in a static condition whilst having visited the said health centre some 155 times. From 20 May 2008 until 28 July 2008 he also attended the Department of Family Medicine of the Yuen Long Jockey Club Health Centre some 18 times.
5. The plaintiff attended the Department of Occupational Therapy and Traumatology of TMH on 1 August 2008 where it was noted that physical examination and Roentgenographic examination did not reveal any significant pathology to explain his pain symptoms.
6. On 13 August 2008 at the Physiotherapy Department of TMH, it was found that the plaintiff haddeveloped high blood pressure, and on 10 November 2008 he attended the A&E department of TMH for shortness of breath. The treating doctor opined this was not related to the low back injury.
7. The plaintiff attended 13 work assessments and hardening program at the Occupational Therapy Department of TMH starting on 20 August 2008 and ending on 14 October 2008 where it was found that he could walk unaided with walking tolerance and/or standing of 30 minutes but no apparent improvement was shown and was ranked as not matching with his pre-Accident job demand and discharged in view of his static progress.
8. On 15 December 2008 the plaintiff went to the Department of Family Medicine Clinic of Pok Oi Hospital complaining of shortness of breath and depressed mood since August 2008. On the same day, it was recorded that the plaintiff did not smoke or drink, had visited the General Outpatient Clinic regularly for, inter alia, diabetes, hypertension and obesity and where he complained of dyspnea since November 2008 and depressed mood since August 2008. As such, the plaintiff attended the Tuen Mun Mental Health Centre since 7 September 2009 with depressed mood.
9. Dr Cheung Hon Kee was the plaintiff’s psychiatrist since 5 October 2009 and Dr Cheung rendered his medical report on 25 May 2010. Dr Cheung found that the plaintiff was suffering from adjustment disorder with his low mood being a normal psychological response to pain over his low back and hip, but on the last occasion on 31 March 2010 the plaintiff was found to be calm and cooperative, his mood was “euythmic” without any suicidal idea(s), and Dr Cheung did not expect any permanent disability, impairment or vocational capacity caused by psychiatric reason.
10. On 24 December 2010, the Employees’ Compensation (Ordinary Assessment) Board assessed the plaintiff as having a 1% loss of earning capacity.

*H2. The 1st joint orthopaedic report*

1. For the plaintiff’s orthopaedic injuries, Dr Peter Ko (instructed by the plaintiff) and Dr Lam Yan Kit (instructed by the defendant) examined the plaintiff on 1 November 2011 and a joint report (“the 1st Joint Orthopaedic Report”) dated 14 December 2011 was prepared.
2. In the 1st Joint Orthopaedic Report, the experts agreed that the diagnosis for the Accident was soft tissue sprain / contusion injury to the low back, which was consistent with the injury described by the plaintiff. Examination revealed that there was mild tenderness at the midline of the whole spine, no definite muscle spasm, no wasting of thigh and calf muscles which is significant because of the multiple complaints for over 3 years, and Waddell’s simulation tests were positive, x-rays showed multiple levels of degenerative changes and worse at L3/L4 and L4/L5, no fractures or dislocation was noted.
3. Further in the 1st Joint Orthopaedic Report, the experts agreed that there was tenderness over the whole spine with more severity over the lumbar region, decreased sensation over the whole left lower limb and degenerative changes at multiple levels of the spine. The experts also agreed that the plaintiff’s complaints were more than one would normally expect from the injury. The simulation tests indicated a strong psychological component in the plaintiff’s complaints. The experts’ respective findings differed as to the plaintiff’s whole person impairment and loss of earning capacity. Dr Ko assessed those figures to be 2% for whole person impairment and 3-4% for loss of earning capacity whereas Dr Lam assessed the plaintiff of having 1% for whole person impairment and 2% for loss of earning capacity.
4. As per the 1st Joint Orthopaedic Report, Dr Ko found that regarding sick leave, if there had not been the “interplay” of hypertension, psychological problems, the plaintiff’s sprain / contusion to the lower back, the plaintiff’s sick leave was acceptable up to about one year. Dr Lam found that where there is soft tissue injury of the low back and given the plaintiff’s occupational therapy until October 2008, the plaintiff’s condition had achieved maximal medical improvement and therefore sick leave until October 2008 was assessed as being acceptable.

*H3. The psychiatric report*

1. Dr Yeung Yu Hang was managing the psychiatric condition of the plaintiff since 14 December 2011 and his report dated 14 February 2012 (“the 1st Psychiatric Report”) covered the period from 1 March 2011 until 1 February 2012 when the plaintiff was last seen with his wife. Dr Yeung found that on mental state examination, the plaintiff appeared calm with fair eye-contact, and his mood was a bit lowish, as explained by the plaintiff was due to his low back pain, but his speech was relevant and coherent, without any thought disorder or psychotic phenomenon. Dr Yeung found on the said last examination of 1 February 2012 that the plaintiff had a good prognosis, no impairment of his vocational capacity and Tuen Mun Mental Health Centre had not granted any sick leave.

*H4. The follow-up joint orthopaedic report*

1. The orthopaedic experts, namely, Dr Ko and Dr Lam, further examined the plaintiff and prepared a supplemental joint report (“the 2nd Joint Orthopaedic Report”) dated 3 March 2012.As per the 2nd Joint Report, both experts agreed that the plaintiff was found to have degenerative changes in multiple levels in his lumbar spine that was not uncommon to his age group, and that persistent lifting of heavy objects, his subject injury due to the Accident, and poor posture, could have aggravated the degeneration, but there was no radiologically identifiable lesions that could be identified amongst the degenerative changes caused by the Accident.

*H5. Surveillance of the plaintiff*

1. Between November and December 2012, investigators were engaged by the defendant to conduct surveillance on the plaintiff which led to a report dated 21 December 2012 (“the Surveillance Report”) of which there was examination of the plaintiff regarding the results of the said surveillance at trial. The Surveillance Report and matters arising thereof is considered later in this judgment.

*H6. The follow-up psychiatric report*

1. Dr Yeung Yu Hang then followed up his previous report and provided an updated report dated 31 January 2013 (“the 2nd Psychiatric Report”) when he last assessed the plaintiff on 16 January 2013 who attended with his wife. The plaintiff’s wife stated that his mood fluctuated at times with some crying spells and irritability, was disturbed by hip and shoulder pain, poor sleep and appetite with the plaintiff’s speech being relevant, coherent without any thought disorder or psychotic phenomenon.
2. Dr Yeung found on the said last examination of 16 January 2013 that the plaintiff was suffering from moderate depressive episode which was precipitated from the accident and the plaintiff was found to have a fair prognosis.

*H7. Further psychiatric management of the plaintiff*

1. Dr Yeung Yi Ling at the Castle Peak Hospital was managing the psychiatric condition of the plaintiff since 3 July 2013 and her report dated 22 April 2015 covered the period from 3 July 2013 until 11 March 2015 when the plaintiff was last examined. Dr Yeung Yi Ling found that the plaintiff’s mood was neutral, was not psychotic or suicidal and although the plaintiff was found to have “depression”, his mental condition was stable and maintained with medication.

*H8. The parties’ respective positions*

1. In relation to the plaintiff’s condition and the medical reports, both Ms Tsui and Mr Sakhrani raised various points in their submissions and those directly relevant to the issues in this case are referred to below. Where relevant, submissions in relation to the plaintiff’s condition and the medical reports are also to be viewed in the context of matters arising from the Surveillance Report and at trial.
2. As pertaining to the orthopaedic injuries suffered by the plaintiff, Ms Tsui submitted that the court should prefer Dr Ko’s view in the 1st Joint Orthopaedic Report that the sick leave granted to the plaintiff should be adopted, namely, from 27 April 2008 to 13 December 2010, due to the “interplay of the complex factor involving the hypertension and also his psychological problems with depressive episodes and adjustment disorder”. Ms Tsui submitted I should accept Dr Ko’s recommendation that the plaintiff should consider early retirement or he should be more suitable for light duty and jobs not requiring lifting of heavy weights.
3. With regards to the 2nd Joint Orthopaedic Report, both experts agreed that they were unable to identify the cause of the plaintiff’s hypertension and that lifting heavy objects, the subject injury and poor posture could have aggravated the degeneration but they did not identify any lesion which would suggest the degenerative changes were caused by the accident, as already identified earlier in this judgment. Despite neither Dr Ko or Dr Lam being experts in the area of psychiatry (or psychology), both said it was not necessary to conduct further psychiatric assessment.
4. Ms Tsui urged upon me that the sick leave certificates were issued by government doctors and that the application of common sense is to be used when looking at medical evidence as a whole: *Lee Kin Kai v Ocean Tramping Co Ltd* [1991] 2 HKLR 233. I specifically note that in *Lee Kin Kai* that Hunter J stated at p.236 that:-

“Thirdly, a judge when considering causation is not only entitled, he is bound, to use his common sense, to approach the question in the same way as a juror.”

1. Ms Tsui also submitted that the Surveillance Report was potentially unfair and incomplete, and the photos and video recorded segments did in fact show the plaintiff’s symptoms and condition as explained by the plaintiff. Matters relating to the Surveillance Report are further discussed later in this judgment.
2. Mr Sakhrani referred to the Department of Occupational Therapy and Traumatology of TMH on 1 August 2008 where after examination there was not any significant pathology to explain the plaintiff’s pain symptoms, the complaint was made that the sick leave granted for 20 May 2008 until 18 May 2010 by the Tin Shui Wai Health Centre for the plaintiff’s low back pain and left hip pain and the plaintiff’s attendance from 20 May 2008 until 28 July 2008 of the Department of Family Medicine of the Yuen Long Jockey Club Health Centre were all exaggerated.
3. In relation to the 1st Joint Orthopaedic Report, Mr Sakhrani emphasized that both experts’ findings was that the plaintiff suffered a soft tissue sprain / contusion injury to low back, the back symptom was more than one would normally expect since objective physical findings did not suggest focal organic pathology and that overall the complaints about a mild limping gait were not seen as per the Surveillance Report, again a matter to be further discussed later in this judgment.
4. Mr Sakhrani also submitted in closing that the nature of the injury suffered by the plaintiff was not structural damage and was a contusion injury without any remarkable findings, hence no swelling, muscle spasm, or limitation of movement of the lower back. There is no actual evidence to show why the plaintiff in 2008 developed high blood pressure, shortness of breath, these conditions found by the treating doctor opined they were not related to the lower back injury.
5. As pertaining to the psychiatric condition of the plaintiff, it will be noted that an application to adduce such expert evidence was refused prior to the first trial of this action, and the matter was never appealed against or revisited.
6. Regarding the psychiatric condition of the plaintiff, Ms Tsui submitted that the court should note that the plaintiff’s wife would always attend medical visits with the plaintiff and that the doctors encouraged her to accompany him to go out to improve his depressed mood. The plaintiff’s wife confirmed in evidence that they would go out for 1 to 2 hours unless he was in great pain and the plaintiff would take some rest if they would find the right spot.
7. More importantly, the plaintiff’s wife evidence was that the plaintiff became more depressed after his dismissal by the defendant and not due to the 1% loss of earning capacity assessment. The plaintiff’s wife also indicated that his absent-mindedness became more noticeable after the dismissal by the defendant and the plaintiff was very often was unable to communicate with doctors as he would burst into tears.
8. As regards my concern that there was no expert in psychiatric evidence called for the purposes of this case nor indeed any psychiatric evidence on a joint or single expert basis per se, Ms Tsui reminded me that the plaintiff did make applications at the Checklist Review hearing in January 2012 and before the first trial Judge in February 2013 for preparation of expert psychiatric evidence where the defendant resisted the application which was dismissed. Ms Tsui relies on the various psychiatric reports discussed earlier in this judgment which were contemporaneous and entitles the parties to rely on the same.
9. As an example, Ms Tsui submitted to this court that in *Chow Wai Hung v King Rise Engineering Ltd and Lak Hun Construction & Decoration Company Ltd*,CACV 213/2005 (unreported, 14 October 2005), it was held that the court did consider the depressive mood of the plaintiff and the evidence from the treating psychiatrist. The comparison which is made was that in the present case there was an absence of expert psychiatric assessment per se but in *Chow Wai Hung* nonetheless the Court of Appeal considered the assessment made by that expert psychiatrist and they upheld a finding that the plaintiff suffered from mild residual symptoms of post-traumatic disorder.
10. I do not ignore the psychiatric evidence tendered in the present case even though there is an absence of an expert psychiatrist specifically providing an expert report relating to the psychiatric complaints of the plaintiff for the purposes of this case. Nonetheless, it will be noted in *Chow Wai Hung* at [29] that the plaintiff in that case appears to have had his own expert and the Court of Appeal found that the psychiatric problem experienced by the plaintiff was a real one which is obviously a finding of fact specific to that case.
11. Ms Tsui submitted to this court that *Yu Wai Kan v Law Cho Tai*, HCPI 62/2010 (unreported, 11 May 2011) provides a summary of the law on the principles on the issue of causation and the quantification of loss suffered by a plaintiff. I bear in mind the observations made by Master Marlene Ng (as she then was) at [71] of her decision.
12. More importantly are the cases cited by Ms Tsui, namely *Cheung Yuen Fan Sally v The Hong Kong University of Science & Technology,* HCPI 106/2003 and 107/2003 (unreported, 12 March 2009) and *Wong Wai Man v Yi Wo Yuen Aged Sanatorium Centre Ltd,* HCPI 77/2007 (unreported, 15 August 2008).
13. The plaintiff in *Cheung Yuen Fan Sally* suffered injuries to her right wrist and the expert orthopaedic report could not explain the deterioration in her physical condition orthopaedically, thus leading to referral to a psychiatric or psychological basis for her deterioration. Despite an absence of expert psychiatric evidence except reports from a clinical psychologist from Queen Mary Hospital (a clinical psychologist, Wong Ting) who treated the plaintiff, Suffiad J held that:-

“128. Not only was there nothing in those three reports from Wong Ting which suggested that the plaintiff’s stress and her problems were not genuine from a psychological point of view, but rather the plaintiff’s pain and deterioration, even if they arose psychologically, were shown by the reports of Wong Ting to have been caused or to have arisen from the mild injury suffered by her in the two accidents in January and February 2000.

129. Therefore given this evidence from Wong Ting, and the lack of any expert psychiatric evidence to the effect that the plaintiff’s pain and deterioration could not have been psychologically or psychiatrically induced, I am not disposed to find malingering on the part of the plaintiff as suggested by the defendant.”

1. Further in relation to *Cheung Yuen Fan Sally*, Suffiad J commented that the sick leave given to the plaintiff was only on her orthopaedic injuries but failed to take account of her psychological treatment which started after the sick leave period had expired, but this finding was also based on Suffiad J accepting the plaintiff’s factual evidence that she was not malingering although exaggeration on the part of the plaintiff. Suffiad J allowed the plaintiff’s pre-trial loss to be beyond the amount only allowed for orthopaedic injury.
2. Suffiad J in *Wong Wai Man* faced a somewhat similar scenario where there was an expert orthopaedic report specifically prepared for the case but accepted general psychiatric reports from West Kowloon Psychiatric Centre which were not specifically prepared for the case. Suffiad J held that:-

“70. I accept what was stated in those two reports, namely, that the plaintiff did suffer from adjustment disorder with depressive mood some time around February 2006 when she first attended the West Kowloon Psychiatric Centre ...

71. In so far as causation is concerned, I take note of the fact that it was stated in the first report from Dr C.C. Lee that the plaintiff’s emotional problems started after the accident.”

1. Ms Tsui sought to draw my attention on the “principles” in *Cheung Yuen Fan Sally* and *Wong Wai Man* that there “is a causal link between the plaintiff’s orthopaedic injuries and his depressive symptoms”. She submits that I should accept into evidence the contemporaneous notes made by the psychiatrists in this case.
2. Whilst I am aware that there can be a causal link between an injured person’s orthopaedic injury with those of either psychological or psychiatric injury, this is a highly factual finding for each case. As such, both *Cheung Yuen Fan Sally* and *Wong Wai Man* provide illustrations but cannot be said to be “principles” per se.
3. Given Ms Tsui’s position on the psychiatric condition of the plaintiff, it was drawn to my attention that the plaintiff began complaining on 15 December 2008 of having a depressed mood since August 2008 as well as loss of interest, lack of energy excessive guilt and suicidal ideals with distress from hip and back pain, diagnosis was this was the first episode of major depressive disorder.
4. Ms Tsui emphasized Dr Cheung’s medical report of 25 May 2010 where the plaintiff complained about mood deterioration, irritability, deteriorated family relationship, sleep affected by pain and having a sense of worthlessness and hopelessness as pain persisted and was seen since 7 September 2009 where prior the plaintiff’s consultation then showed that the plaintiff did not have a history of past psychiatric complaint prior to the Accident.
5. Ms Tsui also drew my attention to Dr Yeung’s Yu Hang’s 1st and 2nd Psychiatric Reports noting that the plaintiff initially complained of lowish mood as triggered by his low back pain and then on a progress report made similar complaints with the plaintiff also stating his mood fluctuated with some crying spells and irritability.
6. Ms Tsui submitted that the plaintiff was throughout consistent and never had any psychiatric history prior to the Accident with complaints beginning in August 2008 which was due to the Accident. The plaintiff’s mood fluctuated in most of the reports and his psychiatric condition has now since stabilized with medication. As such, since the defendant must take the plaintiff as they find him, the plaintiff’s psychiatric complaints and not just his orthopaedic injuries, are valid and therefore sick leave should be until at least up to December 2010. This is in contrast to the defendant’s position which is being said to be unfair that the plaintiff feigned his symptoms and consistently complained to his doctors.
7. Mr Sakhrani in closing submitted that the plaintiff did complain about a depressed mood in December 2008, but Mr Sakhrani also notes that both the high blood pressure and the shortness of breath also arose at roughly the same time.
8. Mr Sakhrani also submitted that the medical reports explained the plaintiff’s condition for his limited orthopaedic injury whereas the paucity of evidence relating to the plaintiff’s psychiatric condition must be scrutinized with distinct care. Mr Sakhrani made the point that when considering the plaintiff’s condition after the Accident, it should be especially noted that over half a year prior to the Assessment Board’s assessment in December 2010 the plaintiff’s mood was “euthymic”, and some nearly 2 years later, the plaintiff’s condition in February 2012 was lowish.
9. Mr Sakhrani cited *Hung Sau Fung v Lai Ping Wai* [2012] 1 HKLRD 1 at [65] where on the issue of a plaintiff’s own nature and on remoteness, Bharwaney J cited dicta from Ashworth J in *Bowen v Mills & Knight Ltd* [1973] 1 Lloyd’s Rep 580 where at p 586 Ashworth J held:-

“It is a truism in the law that the defendants who have injured a plaintiff must take him as they find him, and if defendants injured a man of unusual personality, and that personality is adversely affected by the incident, then the defendants must pay compensation therefor where they would not have expected to do so with a man of normal personality. But equally, it is a true statement of principle that a plaintiff must take himself as he is and not seek to obtain compensation from the defendants for the results which are not from their wrongdoing, but from his own personality.”

1. Mr Sakhrani also submitted that in *Hung Sau Fung* at [66], Bharwaney J referred to *Jefferies v Home Office* [1999] CLY 1414, QBD, 26 March 1999 where Kennedy J held:-

“Now, while a tortfeasor must indeed compensate the victim for the consequences of the incident, whether those consequences are the inevitable consequences or are enlarged by the psychological characteristics of the plaintiff, he does not have to compensate the plaintiff for the plaintiff’s personality itself.

It is clear that the work in the prison service was of central importance to the plaintiff and when it was first lost to him the underlying uncertainties and securities of his make-up reasserted themselves and led to the position in which he is today. In my judgment, that state of affairs was not a consequence of the accident; it is too remote. It is truly a consequence of the reaction of others to his position. It follows from his loss of security and his working out of his own personality, and not something which is attributable to the defendant at all.”

1. In *Hung Sau Fung* at [63] Bharwaney J also referred to Salmon LJ’s dicta when considering the question of causation in these terms in *James v Woodall Duckham Construction Co Ltd* [1969] 1 WLR 903 at 906C-E:-

“… If a man pretends that he is suffering from great disability when he knows very well that he is not, and he tells his doctor he is suffering from pains all over when he feels no pain at all, he may well talk himself into believing that he is suffering from pain. He will suffer from pain in the future, and then he will not be malingering because the pain will be real. But that will not be a pain which has been caused by the accident: the accident will merely be the occasion out of which or after which the pain occurred, and the pain will have been caused by the man malingering – it will be self-induced.”

1. Mr Sakhrani did draw attention to the fact that *Hung Sau Fung* was successfully appealed by the plaintiff in CACV 240/2011 (reported in [2016] 1 HKLRD 106) on the point of the computation of earnings.
2. It is not seriously disputed by Ms Tsui or Mr Sakhrani that the basis for the assessing the plaintiff’s psychiatric complaints is based upon the psychiatric reports filed, the witness statements filed and the witnesses evidence at trial.

*H9. The Surveillance Report*

1. The Surveillance Report produced various photographs and video recorded segments on 10 and 12 December 2012 whereas planned surveillance on 24 and 29 November 2012, and 19 December 2012 were aborted since the plaintiff did not appear on those occasions. No useful reference to the 11 December 2012 footage was made when the plaintiff was seen returning to his home with his wife. Despite the Surveillance Report did provide commentary on the plaintiff’s activities on 10 and 12 December 2012, it is for me to form my own conclusions on observing the activities of the plaintiff from the Surveillance Report from the various photographs and video recorded segments played during trial, as well as the plaintiff’s evidence at trial when examined on the same.
2. Ms Tsui’s submissions on the Surveillance Report were that it did not discredit the plaintiff’s evidence since it was both the plaintiff and his wife’s evidence that it was upon doctors’ advice that the plaintiff should go out more for his own good and should do so even if he would feel some pain. The plaintiff’s wife stated that she would ask the plaintiff to go when his condition was not too bad and he would go out for 1 or 2 hours in the afternoon. The plaintiff also said that he would bring along painkillers with him whenever he went out.
3. Ms Tsui’s submissions on the Surveillance Report was that the results of the Surveillance Report were in fact in support of what the plaintiff and his wife have said since they were seen for 3 consecutive days (10, 11 and 12 December 2012) to leave home in the afternoon for about 1 or 2 hours to walk around in the vicinity of their home, shopping and strolls in parks all on foot and without any transportation. Ms Tsui highlighted that the plaintiff was walking with a mild limp all the time.
4. It will be noted there was no video surveillance of how long the plaintiff and his wife had been away from home on 11 December 2012 where the investigators only captured their return to home.
5. Regarding the plaintiff’s mobility and physical strength and endurance, there was some dispute over what the plaintiff was carrying when considering the Surveillance Report but it is not in serious dispute that those items had some weight but were limited in number with items such as apples, instant noodles and a type of cooking powder.
6. Ms Tsui’s position was also that Surveillance Report’s photos and video recorded segments were disjointed and therefore it is not certain whether the plaintiff indeed took more rest, or did anything which might be more consistent with his complaint in the parts which might have been edited away.
7. Mr Sakhrani submitted that the Surveillance Report’s photos and video recorded segments were a fair and accurate representation of the plaintiff’s condition which did not show any limping gait or any signs of the condition that the plaintiff complains about.
8. I am mindful that Ms Tsui’s comments on the Surveillance Report are not an impossibility. I had the benefit of careful consideration of the Surveillance Report’s photos, video recorded segments and the opportunity to see the plaintiff give his responses to the said photos and video recorded segments at trial, and am confident that my findings in this judgment are an accurate and objective reflection of the same.

*H10. Witness at trial on quantum*

1. The factual witnesses which are relevant to quantification of damages of the plaintiff’s injuries were the plaintiff and the plaintiff’s wife. They have filed detailed witness statements which dealt with both the overarching issues of liability and quantum and they have appeared at the trial of this case where I have had the benefit of hearing their viva voce evidence under examination. For the avoidance of doubt, I have confirmed my recollection and understanding of their testimony at trial by having called for the official recording of the trial when I deliberated on the case and prepared this judgment.
2. Overall, on the evidence relating to quantum, I am confident that both the plaintiff and the plaintiff’s wife were honest and truthful witnesses when describing the immediate aftermath of the plaintiff’s condition shortly after the accident. There is no doubt they were and are a loving and caring couple to one another.
3. However, I am simply not confident when the plaintiff and the plaintiff’s wife were describing the plaintiff’s condition in relation to his condition and complaints which went beyond his orthopaedic injuries as I found them both to be exaggerating about those matters.

*H11. Finding on the plaintiff’s condition and injuries*

1. There is no dispute that the Accident took place at the defendant’s premises while he was working at the material time. What is in dispute is the nature and extent of injury suffered by the plaintiff and the consequences of such injury.
2. I have considered the various experts reports from TMH, from the Tin Shui Wai Health Centre and the Department of Family Medicine of the Yuen Long Jockey Club Health Centre. From these reports it can be seen that the plaintiff suffered low back pain and low hip pain with mild tenderness over the lower back region and low hip. It is also notable that the Department of Occupational Therapy and Traumatology of TMH noted there was no significant pathology for the plaintiff’s pain symptoms. After the plaintiff attended work assessments and hardening program at the Occupational Therapy Department of TMH, the plaintiff could walk unaided with walking tolerance and/or standing of 30 minutes and he was discharged as being static in his condition. The said reports related to the plaintiff’s condition from May to October 2008.
3. Given the medical expert reports up to this stage, the plaintiff and the plaintiff’s wife’s evidence at trial when comparing the same with his witness statements, I find that his condition was accurately reflected up to this point in time.
4. Complaints from the plaintiff in December 2008 to the Department of Family Medicine Clinic of Pok Oi Hospital complaining of shortness of breath and depressed mood beginning in August 2008, it was also recorded that the plaintiff did not smoke or drink, had visited the General Outpatient Clinic regularly for, inter alia, diabetes, hypertension and obesity with complaints of dyspnea since November 2008. It was in September 2009 that the plaintiff attended the Tuen Mun Mental Health Centre where he was found to have depressed mood.
5. Again, up to this stage, the evidence as a whole was consistent with these findings and I accept them to be correctly reflecting the plaintiff’s condition up to this stage.
6. However, from Dr Cheung’s last examination of the plaintiff on 31 March 2010, the plaintiff’s condition had altered to the extent that although the plaintiff was found to have adjustment disorder with low mood due to his low back and hip pain, nonetheless this was inconsistent with the finding that the plaintiff’s mood was “euythmic” and Dr Cheung did not expect any permanent disability, impairment or vocational capacity caused by psychiatric reason. As such, the extent of the plaintiff’s psychiatric condition was seen as being at best limited to being an adjustment disorder with low mood and no further in its severity.
7. The 1st and 2nd Joint Orthopaedic Reports came to the conclusion that the Accident resulted in soft tissue sprain / contusion injury to the low back but the findings were also that there was mild tenderness at the midline of the whole spine but no definite muscle spasm nor wasting of thigh and calf muscles, nor fractures or dislocation found.
8. As such, I am persuaded that Dr Lam’s assessment of the plaintiff having 1% for whole person impairment and 2% for loss of earning capacity are to be adopted as a reference point in assessing the plaintiff’s disability given also that his assessment noted there was a strong psychological component to the plaintiff’s complaints despite the back symptom was more than normally expected from the injury and maximal medical improvement was reached.
9. It is also noted that the Employees’ Compensation (Ordinary Assessment) Board assessed the plaintiff as having a 1% loss of earning capacity in December 2010 are also fairly consistent with Dr Lam’s assessment albeit it is noted the Board’s assessment was based solely on orthopaedic considerations.
10. When considering the plaintiff’s orthopaedic condition, what was revealed in the Surveillance Report in December 2012 was inconsistent with his complaints in his witness statement. I have heard the parties’ submissions on the Surveillance Report which were of assistance. I have also personally observed from the same photos and video recorded segments of the Surveillance Report that there cannot be seen any indications of persistent hip and shoulder pain as recorded in the Tin Shui Wai Health Centre reports covering May 2008 to May 2010, Dr Cheung’s report covering October 2009 to March 2010 or the 2nd Psychiatric Report covering up to January 2013.
11. From further observing the Surveillance Report and its photographs and video recorded segments, the plaintiff can be seen walking unaided at a normal speed for nearly an hour without rest, walking without any sign of discomfort of distress, going up and down stairs with little or no difficulty without holding any railings despite the plaintiff’s explanation at trial that he did not hold the railings since they were dirty.
12. It was seen of the plaintiff in the Surveillance Report that at certain sequences that he was carrying a bag by his left hand or over his left shoulder and there was no indication of any unease towards the left side of his body although at times there was a very mild inclination towards the right.
13. As such, despite Ms Tsui’s submissions on the issue of the plaintiff’s mobility and pain which relate to his orthopaedic condition, when considering the entirety of the photographs and video recorded segments, the Surveillance Report does in fact show the plaintiff walking without difficulty and that if he had a mild limp it was virtually undetectable. The plaintiff’s orthopaedic condition is not found to be nearly as serious as he has alleged beyond a soft tissue sprain / contusion injury to the low back and before December 2012 reached a static state with maximal improvement.
14. When considering the plaintiff’s psychiatric condition, it was the Accident that caused the plaintiff’s orthopaedic injury and the genesis for the plaintiff’s psychiatric condition, a matter which is not in serious dispute. However, I remind myself that factual findings contrary to the plaintiff’s case on his orthopaedic injury might not affect my factual findings on the plaintiff’s psychiatric condition.
15. I accept that the plaintiff has made complaints about depressed mood since August 2008 with complaints about depressed mood continuing since September 2009 at the Tuen Mun Mental Health Centre. I also accept that Dr Cheung’s psychiatric care for the plaintiff from October 2009 until March 2010 showed that he was suffering from adjustment disorder with low mood but he was found to be calm, cooperative, “euythmic” but without any permanent disability.
16. The 1st Psychiatric Report covering the period from March 2011 to February 2012, Dr Yeung Yu Hang found that the plaintiff appeared calm and his mood was a bit lowish due to his low back pain but speech being relevant and without thought disorder or psychotic phenomenon, the plaintiff had a good prognosis. The 2nd Psychiatric Report updating the plaintiff’s prognosis to January 2013, Dr Yeung Yu Hang found that the plaintiff was suffering from moderate depressive episode precipitated from the accident and still the plaintiff was found to have a fair prognosis. Dr Yeung Yi Ling’s psychiatric report covered from July 2013 until March 2015 found the plaintiff’s mood neutral without any psychosis or suicidal tendencies although the plaintiff was found to have “depression” with a stable mental condition maintained with medication.
17. I noted that during trial the plaintiff appeared to be having mood swings and was emotional.
18. At trial, the plaintiff explained his depressive mood as arising from his wife not having a job, there was still great pain in his left hip, his condition had been fluctuating all along which required him to bring painkilling medication whenever he went out. At trial, the plaintiff also explained he became further depressed when after he was released from employment by the defendant.
19. Based on the totality of the evidence, I come to the finding that the plaintiff suffers from low mood but not yet reaching adjustment disorder with low mood at its highest due to the Accident but I am not convinced that it is beyond that. The 1st and 2nd Psychiatric Reports find that that plaintiff’s condition is static and that he had a good or at least fair prognosis. Dr Yeung Yi Ling also found that the plaintiff did not have any psychosis or suicidal tendencies, his mental condition was stable with medication. Despite the 2nd Psychiatric Report or Dr Yeung Yi Ling’s report, I do not find that the plaintiff suffers from moderate depressive episode or from “depression”. It is also noted that the 2nd Psychiatric Report also reported that the plaintiff’s psychiatric condition deteriorated due to hip and shoulder pain but none can be seen after consideration of the Surveillance Report.
20. On the whole, I am aware and accept that a defendant must find his victim as he finds him, but the extent of such injury and further related injury to the plaintiff is fact driven. In terms of the plaintiff’s orthopaedic injury, it caused the onset of low mood and at most adjustment disorder with low mood but the origin and extent of such a psychiatric condition was linked to that of his orthopaedic condition. On the factual findings of the plaintiff and the plaintiff’s wife I am not persuaded the plaintiff’s condition is beyond that as alleged. I am also not persuaded that the plaintiff’s orthopaedic injury nor his psychiatric condition was as extreme as alleged, and the plaintiff exhibited symptom magnification at best but there was likely exaggeration on the part of the plaintiff and the plaintiff’s wife.
21. I find that the interplay between the plaintiff’s orthopaedic injuries and adjustment disorder with low mood (at most) renders the plaintiff having 1% for whole person impairment and 2% for loss of earning capacity, again as a reference point in assessing the plaintiff’s disability caused by the accident.

*H12. Pain, suffering and loss of amenities (PSLA)*

1. I have detailed my findings on the plaintiff’s condition but re-emphasize that the plaintiff suffers from tenderness over the entire spine with more severity over the lumbar region, decreased sensation over the whole left lower limb with degenerative changes found at multiple levels of his spine with no focal neurological deficit.
2. The authorities cited by the parties on PSLA included *Tsang Chiu Yip v Ho Kwok Leung*, HCPI 305/2013 (unreported, 29 February 2016), *Ansar Mohammad v Global Legend Transportation Ltd* [2011] 2 HKLRD 985, *Wong Yan Lam v Lam Wing Kei*, HCPI 438/2009 (unreported, 10 June 2011) and *Fong Yuet Ha v Success Employment Services Ltd*, HCPI 345/2009 (unreported, 18 April 2012).
3. The plaintiff in *Wong Yan Lam* suffered injuries in two vehicular accidents when she was thrown to the floor of a bus where she lost consciousness and suffered dizziness and a back muscle injury while thereafter developing headaches and multiple pains. Two months later she was again injured in a bus and was again thrown to the floor where a private doctor noted limited neck and shoulder movements and tenderness in the back muscles. The plaintiff developed a fear of travelling, insomnia, emotional disturbance and flashbacks of the accident where she was then diagnosed with PTSD. The experts opined the plaintiff suffered multiple contusions in the first injury and then a sprained neck and right shoulder pain in the second injury due to soft tissue contusions. They opined the residual neck and shoulder pain and stiffness should be more of a discomfort and that she was fit to resume work as a clerk. One psychiatrist diagnosed adjustment disorder with mixed anxiety and depressed mood which improved after treatment. It was held that the plaintiff had exaggerated her condition and that her residual physical disability was only moderate and a discomfort, and the mental disability was relatively minor. In June 2011, Master Woolley awarded $200,000 for PSLA.
4. The plaintiff in *Fong Yuet Ha* suffered soft tissue injuries to multiple sites, including left forearm, right heel, right buttock and back. The soft issue injuries to the left forearm and right heel had recovered by the time of trial. The MRI scan showed disc bulging at L4/5 and L5/S1 levels on the left side of the plaintiff. There was complaint of right-sided symptoms which Deputy High Court Judge L Wong SC (now L Wong J) thought was unlikely to be an aggravation of the more severe pathology on the left side. The doctors agreed the plaintiff could return to her pre-accident job. After the accident the plaintiff developed insomnia, palpitation, easy irritability and headache for which she received psychological counselling. The psychiatric experts expressed the view she suffered from adjustment disorder with depressive mood. The learned judge said there was insufficient evidence to justify an affirmative finding of malingering or symptom magnification. In April 2012, the plaintiff was awarded $250,000 for PSLA.
5. I have found that the plaintiff has exhibited symptom magnification at best but was likely exaggeration on the part of the plaintiff. The plaintiff’s condition was not as serious as those injured in the cases of *Wong Yan Lam* or *Fong Yuet Ha*. Given inflation since those judgments, an award of $275,000 is made.

*H13. Pre-trial loss of earnings*

1. Ms Tsui submitted that the plaintiff earned an average of $10,956.23 per month at the time of the Accident and he would have reached 65 in December 2013 which would be the notional date of retirement. Sick leave of around 31.5 months was given by various government hospitals between 27 April 2008 to 13 December 2010. These facts are undisputed.
2. The Answer to the Revised Statement of Damages accepts that the defendant is prepared to allow full loss of earnings for up to 12 months despite Dr Lam only endorsed sick leave for 6 months.
3. Ms Tsui submitted that the entire period of sick leave as given by various government hospitals should be the amount of 31.5 months taking his injuries and personal circumstances in account.
4. This judgment has already discussed the plaintiff’s injuries in detail. In relation to the plaintiff’s personal circumstances, Ms Tsui submits that this court should endorse Dr Ko’s recommendation and additionally factor in that the plaintiff was not able to return to the defendant’s employment due to his physical and psychiatric state and advanced age, which therefore means the plaintiff should be awarded damages until his notional retirement at age 65.
5. When the plaintiff was dismissed at age 61, Ms Tsui submitted that it was difficult for the plaintiff to find employment given his education background and working experience as a night shift washing worker for the defendant since 1992 and no other employable skills. The argument also went so far that even for a security guard the plaintiff would need to attend courses and obtain the requisite qualification.
6. It is noted that the witness statement of the plaintiff did not state that he sought to find employment after the Accident. At trial the plaintiff was asked why he was unable to work as a security guard and his response was that he did not know any English and he would be unable to move quickly, in particular if any situation arose where he needed run in order to “catch thieves”.
7. Mr Sakhrani on the other hand submitted that the case of *Choy Wai Chung v Chun Wo Construction & Engineering Company Limited*, CACV 172/2014 (unreported, 15 July 2005) is of assistance where it was held by Rogers VP that:-

“9. On this appeal Mr Chan SC, who appeared on behalf of the plaintiff, placed great reliance upon the fact that the plaintiff had been given sick leave certificates. In my view the judge was perfectly entitled to reject these as an indication of the plaintiff’s inability to work for the reasons which she gave. It was for the judge to decide whether on the evidence the plaintiff had been unable to work and, if he had been able to work, the extent to which he was able to work. Obviously in doing so the judge must have regard to the medical evidence. Nevertheless, the judge cannot be bound by the mere issue of sick leave certificates. As the judge pointed out the issuance of sick leave certificates would be primarily because of the subjective symptoms reported to the doctors by the plaintiff.”

1. In addition to the passage cited to me by Mr Sakhrani, *Choy Wai Chung* went on further to state:-

“10. It was a major part of Mr Chan’s argument that the burden of proof of the failure of the plaintiff to mitigate his damage was on the defendant.  No doubt the defendant must show a failure to mitigate.  Nevertheless it seems to me abundantly clear that if a plaintiff is perfectly capable of working and has taken no steps to try and secure work, he has failed to show any loss arising as a result of his injury.  The loss which has arisen arises from his failure to make any attempt to work.  In this case it might also be added that by reason of the fact that the plaintiff claims loss of future earnings on a multiplier of 15 the total damages claim by the plaintiff amounts to in excess of $12 million.  Had the plaintiff shown some inclination or an attempt to find remunerative employment then it might be said that the onus would lie upon the defendant to show that the plaintiff had failed to mitigate his loss.  But, in the present circumstances, it follows inexorably from the findings of fact that the plaintiff was perfectly capable of working and failed to make any attempt to work that that, in itself, demonstrates more clearly than any deduction that the court could otherwise make from hypothetical evidence which could be produced by the defendant, that the plaintiff has, indeed, failed to attempt to mitigate his loss.  In my view the plaintiff’s loss of earnings from the end of 2000 up until trial is a loss flowing from his own failure to seek work.”

1. Dr Lam in the 1st Joint Orthopaedic Report found that the plaintiff’s injury should not prevent him from returning to his pre-accident employment but due to his age and history of hypertension, the plaintiff is more suitable for light duty jobs that do not require heavy lifting. Both experts in the 2nd Joint Orthopaedic Report were unable to identify the cause of the plaintiff’s hypertension. Furthermore, both experts in the 2nd Joint Orthopaedic Report after considering Dr Cheung’s psychiatric report of 25 May 2010 and the 1st Psychiatric Report opined that there was no impairment of the plaintiff’s vocational capacity expected.
2. I have found that the plaintiff’s condition was not as serious as alleged, in particular when considering his mobility not being appreciably hindered as found in the Surveillance Report’s photos and video recorded segments. I prefer the opinion of Dr Lam over that of Dr Ko where Dr Lam has opined that the plaintiff could return to work but with light duty jobs not requiring heavy lifting. However I am not convinced on the evidence that the plaintiff is able to find alternative employment as a security guard due to his orthopeadic and psychiatric condition.
3. Ms Tsui accepted that if the plaintiff’s sick leave is to be 12 months from the date of the Accident, then the notional income of the plaintiff as at March 2009 would be $7,425 as shown in the government statistics, and therefore the loss each month until the plaintiff’s notional retirement at age 65 would be $3,531.23 ($10,956.23 - $7,425).
4. Ms Tsui explained that the figure of $7,425 is for a “general worker” since the plaintiff cannot work as a security guard. The said figure of $7,425 is information available from the online Census Department regarding March 2009 as found in Table 028: Average Monthly Salaries of Selected Occupations.
5. For the plaintiff’s sick leave period:-

$10,956.23 x 12 months x 1.05 = $138,048.50

1. Thereafter until notional retirement at age 65:-

$3,531.23 x 55.33 months x 1.05 = $205,152.10

1. The award for pre-trial loss of damages is $343,200.60.

*H14. Loss of earning capacity*

1. The purpose of damages awarded under the head of loss of earning capacity is (see *Chan Wai Tong v Li Ping Sum* [1985] HKLR 176 at 183B-D per Lord Fraser of Tullybelton):-

“… to cover the risk that, at some future date during the claimant's working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market. The Court has to evaluate the present value of that future risk - see Moeliker v A Reyrolle & Co Limited [1977] 1 WLR 132, 140, where Browne L.J. dealt fully with this matter. Evidence is therefore required in order to prove the extent, if any, of the risk that the claimant will at some future time during his working life lose his employment. If he is, and has been for many years, in secure employment with a public authority the risk may be negligible. In other cases the degree of risk may vary almost infinitely, depending on inter alia the claimant's age and the nature of his employment. Evidence will also be generally required in order to show how far the claimant's earning capacity would be adversely affected by his disability. This will depend largely on the nature of his employment. Loss of an arm or a leg will have a much more serious effect upon the earning capacity of a labourer than on that of an accountant.”

1. Ms Tsui stated that if the court is only to allow a partial pre-trial loss of earnings, then the plaintiff is still entitled to loss under this head in the amount of 6 months’ salary as a compensation and the sum should not be less than $69,024.30 ($10,956.23 x 6 x 1.05).
2. The Court of Appeal has held that an award for loss of earning capacity can also be made in relation to the pre-trial period as per *Wong Tang Keung v Lee Wai Engineering Co Ltd* [2013] 4 HKLRD 150 where it was held at [25] per Chu JA:-

“Nevertheless, both doctors appointed by the plaintiff and the first defendant pointed out that although the plaintiff could continue to do the maintenance/repair work of a plumber/electrician, his work ability and efficiency were diminished and restricted (see paragraph 41 of Doctor Kong Kam Fu James’ report dated 3 December 2004 and paragraph 74 of Doctor Chun Siu Yeung’s report dated 30 July 2007). In paragraphs 41 to 43 of his witness statement, the plaintiff mentioned that he tried to seek employment in November 2006 but was not employed due to his inability to lift heavy objects. He had also registered with the Labour Department for job placement but was not given any interviews. The plaintiff also mentioned that he had no skills or work experience in other trades apart from those in plumbing and electricity repair and maintenance work. In our view, the above evidence indicates that the work ability of the plaintiff was impaired after the accident, and he had difficulties finding work after his employment was terminated. These go to support his claim that the injuries put him in an inferior position in the job market. The Deputy District Judge refused to grant the plaintiff damages for post-trial loss of earning capacity on the ground that at the age of 67, he was beyond retirement age at the time of the trial. He however failed to take into account the loss the plaintiff suffered before he had reached retirement age. On the basis of the aforesaid evidence, this Court feels that the plaintiff should be given a lump sum compensation to reflect the disadvantage he suffered for being in an inferior position in the job market as a result of the injuries sustained in accident. In view of the fact that the plaintiff was almost 63 years old when his employment was terminated, even if he was not injured in the accident, his competitiveness was very limited. Adopting 6 months as the basis for calculation, this Court awards $72,000 (that is $12,000 x 6 months) to the plaintiff as damages for pre-trial loss of earning capacity.”

1. Mr Sakhrani is of the position, as per the Answer to the Revised Statement of Damages, that the defendant is prepared to allow $10,000 but disputes the claim. Mr Sakhrani also indicated to this court that due to the plaintiff’s mature age and short residual working life, any amount awarded to the plaintiff under this head of damage should be limited.
2. *Moeliker v* A Reyrolle & *Co Ltd* (1977) 1 All ER 9 considered the principles to be applied in making an award of damages for loss of earning capacity where from that judgment reads:-

“… Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk that he will, at some time before the end of his working life, lose that job and be thrown on the labour market?  I think the question is whether this is a “substantial” risk or is it a “speculative” or “fanciful” risk (see *David v Taylor*, per Lord Reid and Lord Simon of Glaisdale). Scarman LJ in *Smith v Manchester Corpn* referred to a “real” risk, which I think is the same test. In deciding this question all sorts of factors will have to be taken into account, varying almost infinitely with the facts of particular cases. For example, the nature and prospects of the employers’ business; the plaintiff’s age, and qualifications; his length of service; his remaining length of working life; the nature of his disabilities; and any undertaking or statement of intention by his employers as to his future employment. If the court comes to the conclusion that there is no “substantial” or “real” risk of the plaintiff’s losing his present job in the rest of his working life, no damages will be recoverable under this head.”

1. I agree that the plaintiff suffers from disabilities which have already been detailed and he suffers a handicap in the labour market which is continuing. For the handicap which the plaintiff suffers in the labour market, I make an award of $30,000.

*H15. Special damages*

1. The plaintiff claims $14,565 as medical expenses incurred at government hospitals and clinics and this amount is allowed in full.
2. The plaintiff claims $6,500 as Chinese bonesetter fees and receipts were provided to supporting this amount. Given the plaintiff’s orthopaedic injury, this amount is allowed in full.
3. The plaintiff claims $1,367.40 as travelling expenses which is allowed in full given the frequent travel required for the plaintiff’s various treatments and consultations.
4. The plaintiff claims $5,000 for tonic food which is allowed in full given the plaintiff’s need to recuperate from his injuries.

*H16. Future medical expenses and travelling expenses*

1. The plaintiff claims he will need to be continually followed up at government hospitals, in particular for his psychiatric condition and that medical expenses and travelling expenses will have to be incurred. The plaintiff claims $5,000 to cover such needs which the defendant disputes. I have come to a finding that the plaintiff does not suffer from his injuries and condition in as serious a manner as alleged but the defendant does not deny that the plaintiff’s injuries and condition are nonetheless material. I make an award of $5,000.

*H17. Post-trial loss of earnings*

1. The Statement of Damages and the Revised Statement of Damages both claim a loss for post-trial loss of earnings. As per the Revised Statement of Damages, the plaintiff’s pleaded case is that the plaintiff would be expected to continue working as a factory worker with the defendant until age 65 but for the accident. Additionally, the plaintiff further pleaded that he could have thereafter sought gainful employment as a cleaning worker or security guard until about the age of 70 but due to the disabilities and impairments suffered by the plaintiff, both physical and mental, it would be difficult for him to find any gainful employment at all.
2. As the plaintiff’s opening has not pursued any claim for post-trial loss of earnings, and in any event the plaintiff has been awarded pre-trial loss of earnings up to his notional age of retirement of 65, no award is made under this head.

*H18. Summary on quantum*

1. In summary:-
2. PSLA: $275,000
3. Pre-trial loss of earnings: $343,200.60
4. Loss of earning capacity: $30,000
5. Special damages: $27,432.40
6. Future medical expenses and travelling expenses: $5,000

Less: Employees’ Compensation Award: $522,764.60

Total: $157,868.40

1. There will be interest on general damages at 2% per annum from date of writ to the date of this judgment and on special damages at half judgment rate from date of accident to the date of this judgment and thereafter at judgment rate until satisfaction.
2. There will be an order *nisi* that costs of the action shall be to the plaintiff, including any reserved costs, to be taxed if not agreed on a party and party basis, with certificate for counsel.
3. The costs order *nisi* will be made absolute within 14 days from the date of this judgment, in the absent of any application to vary by summons. The plaintiff’s own costs shall be taxed in accordance with the Legal Aid Regulations.
4. It remains for me to thank counsel for their comprehensive submissions and considerable assistance rendered to me in this case.

( Jonathan Chang )

Deputy District Judge

Ms Jennifer Tsui, instructed by Cheng, Yeung & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Ashok Sakhrani, instructed by Munros, for the defendant