# DCPI856/2005

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 856 OF 2005

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BETWEEN

## TSE SO KAM Plaintiff

### and

GUARDIAN PROPERTY MANAGEMENT

LIMITED Defendant

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Coram : Her Honour Judge C.B. Chan in Court

Dates of Trial : 14th & 15th March 2006

Date of Handing down Judgment : 25th May 2006

**JUDGMENT**

1. This is a claim for damages by the Plaintiff for personal injuries suffered arising from a slip on the 27 July 2002, against the Defendant who was a property manager who undertook management of the commercial building known as Hunghom Commercial Centre at Nos. 37-39, Ma Tau Wai Road, Kowloon (“the Premises”). The personal injuries suffered by the Plaintiff arose from an accident when she took the access at the entrance to Block B on the Ground Floor of the Premises. She slipped upon walking up the steps to the platform at the entrance and alleged that the entrance was covered by water, and was wet or was covered by slippery substances. As a result of that she lost her footing and fell forward in the course of which her left knee landed on the platform of the entrance sustaining personal injury.
2. It is not disputed that the Plaintiff was a general worker employed by “Ever Success Garments Limited” and was deployed to work at Room 508, Block B of the Office Tower at the Premises.
3. The Defendant was contractually vested with the power and the responsibility to maintain the Premises including all the common areas and facilities thereon so as to ensure the same was maintained in a good, clean and safe condition at all times and for this purpose to employ reputable and competent contractors and workmen.
4. The Defendant had control and management of the Premises as the “Occupier” thereof within the meaning of the Occupiers’ Liability Ordinance, Cap. 314.
5. The Defendant who had an obligation to maintain the Premises, the means of access to or egress from the Premises where the Plaintiff’s workplace was situated, was and is the “Occupier” of the Premises within the meaning of the Occupational Safety and Health Ordinance, Cap. 509.
6. The Plaintiff was engaged at the material time in work at the Premises, and was a lawful visitor thereto.
7. It is the Plaintiff’s case that the Plaintiff said accident was caused by the negligence and/or breach of statutory duty and/or breach of common duty of care on the part of the Defendant, its servants or agents.
8. The particulars of negligence, breach of statutory duty and breach of common duty of care are pleaded at paragraph 3 A, B and C of the Statement of Claim.
9. The Defendant has no evidence to dispute the manner in which the accident happened as stated by the Plaintiff in paragraph 6 of her witness statement at page 002 of Section B of the Bundle of Documents (“BD”). The liability of the Defendant was not disputed. The only issue in liability is the percentage of contributory negligence to be borne by the Plaintiff for the accident.

The Plaintiff’s Account of the Accident

1. In paragraph 6 of her witness statement aforesaid, the Plaintiff stated that at about 11 a.m. on the day in question, she walked along Ma Tau Wai Road towards Hunghom Commercial Centre. It took her about 10 minutes to walk there. At the time it was raining but the rain was not heavy. When he reached Block B of Hunghom Commercial Centre, she walked towards the front door preparing to walk into the lobby. Walking along the pedestrian walkway into the lobby were two steps, at the top of which was the platform. The photographs of the steps and the platform as well as the entrance is shown at pages 3 and 4 of a bundle entitled Photographs of the Scene of The Accident. Her left foot stepped on the first step. Then her right foot stepped on the second step onto the platform. Because the platform surface was wet, her right foot slid forward causing her to lose her centre of gravity and her left knee fell and hit the platform. She felt great pain and could not move. She looked and saw that on the brown tiles on the platform there was a pool of water which had not been wiped dry. There was no warning sign placed there warning people of the slippery surface, nor was there any non slip mat or cardboard carton placed on the platform. There was no warning placed on the glass door of the entrance nor on the wall at the side of the entrance.
2. Under cross-examination, the Plaintiff admitted that it was raining lightly when she walked on the pavement and as she walked up the steps and onto the platform, the soles of her shoes was wet. The shoes she wore were canvas shoes with square grid rubber soles. She walked normally and did not slow down when she stepped onto the steps leading up the entrance to the Premises. She did not look to see whether the platform had wet spots. She expected there would not be wet patches because the entrance was under a canopy.

Contributory Negligence

1. The Defendant’s Counsel submitted in final submission that in cross-examination, the Plaintiff admitted that when she walked up the steps to the platform, she did not slow down but walked normally. If she thought about it she would have known that the soles of her shoes were wet. She should have walked slowly and should have taken care that she did not slip. She should have given thought to the possibility of slipping.
2. However, the Plaintiff stated that she did not expect that the platform which was under the canopy could be wet and it was obvious that she did not pay attention as to whether the platform was wet.
3. On the basis of the aforesaid, the Defendant’s Counsel submits that even if there were no warning signs, the Plaintiff should exercise reasonable care for her own safety by slowing down, paying attention to the ground surface, taking smaller steps. For failing to do so the Court should assess that she is 15% to 20% to blame for the accident for contributory negligence.
4. Having considered the fact that the Plaintiff had walked on the wet road and she would have been aware that the soles of her shoes were wet, and she was stepping onto the tiled steps and platform of the entrance of the Premises, in my view, she had the duty to take care against slipping on the surface of the platform by walking slowly or taking smaller steps and pay attention to the surface of the platform so as to walk carefully where there is wet on the surface. On the evidence that she failed to do so I find she is liable for contributory negligence to the extent of 15%.

The Injuries Arising From the Accident

1. Arising from the accident, the left knee of the Plaintiff suffered a displaced fracture of the distal pole of left patella. Emergency operation, which involved a partial patellectomy was done Madam Tse recovered from the surgery and completed a course of rehabilitation in Kowloon Hospital. Subsequently, she was referred to outpatient physiotherapy for residual stiffness of her left knee. On 8 April 2004, she was admitted to Queen Elizabeth Hospital for removal of broken wires on 8 April 2004. Removal of implant was performed on 13 April 2004 under spinal anaesthesia. She was then referred to outpatient physiotherapy and occupational therapy again.
2. Occupational Therapy assessment done on 23 August 2004 showed that walking on level ground she walked with mild limping and needed to walk with umbrella outdoors for support. She was able to walk up and downstairs slowly without holding to the handrail. There was still marked left quadriceps weakness. In squatting tasks, she was only able to perform single side squat with the left leg placed in front but was functional for picking up objects from the ground. She was able to carry a load of 10 lbs travelling on level ground for 15 minutes unaided without difficulties. She was able to push with 40 lbs loading for 15 minutes with some increase in left knee soreness. She had some difficulty for the left leg to descend stairs carrying 10 lbs weight as pain increased with the weight bearing. She needed handrail for support for this. In relation to degree of match between the Plaintiff’s work capacity and the previous job demands, it was stated that the match was marginal with some limitation. She was ready to return to previous job with limitations namely as she could only squat in an adapted position.

Quantum

1. The head of damages for PSLA was agreed between the parties at $350,000.00. The monthly salary earned by the Plaintiff before the accident was agreed at HK$4,895.31. The multiplier for post-trial loss of earnings was agreed at 2.
2. There is a contention between the Plaintiff and the Defendant as regards the period of pre-trial loss of earnings. The Plaintiff contended that the full period before trial of 44 months should be allowed. The Defendant contended that the period that should be allowed was from the date of the accident until August 2004 being 25 months. The Defendant Counsel sought to refer to the occupational therapist’s report and the medical report of Dr. Au Ka Kau and Dr. Patrick Wong.
3. Dr. Patrick Wong’s opinion in his Report dated 7 October 2005, at paragraph 4 of page 20 of Section C of the BD state that there is mild wasting of her left thigh muscles, tenderness at PF joint, reduced range of movement of left knee, update x-ray shows inferior displacement of the left patella with some degenerative change at the PF joint. Therefore, despite possibility of some exaggeration, she is still expected to have some permanent residual pain, weakness and stiffness of her left knee joint as a result of the accident. Dr. Patrick Wong was of the view that she should have attained Maximum Medical Improvement three months from the date of the operation to remove the broken wires and sick leave should not have been given once she attained that despite the fact that she was not able to return to her pre-accident work. Dr. Patrick Wong was of the view that the Plaintiff is unable to resume her pre-accident job as a ‘cleaning worker’. The job duties of her pre-accident job described by her included duties of a messenger, a cook as well as a cleaner. However, he felt that she should be able to perform most simple office cleaning tasks of an office-cleaning worker although some reduction of efficiency is inevitable.
4. It is on that basis that the Defendant’s Counsel stated that the pre-trial loss of earnings should only cover the period up to 25 August 2004.
5. The Plaintiff on the other hand stated that she was not able to return to work in her pre-accident work nor to work as a dish washer in a restaurant as it required pushing a trolley full of dishes and required for the washing to be done in a standing up position. She had formerly worked as a packer and she felt she was not able to return to that nature of work, nor work as a sewing worker which she had worked at before.
6. There is also a question as regards whether the Plaintiff is entitled to future loss of earnings for the full amount of her former salary per month or whether she should have been able to return to work for sedentary work earning less than what she earned formerly.
7. In my view, as the Plaintiff was already 61 years old on 25 August 2004, and it is common knowledge that the employment market was not so good in August 2004 as Hong Kong was still recovering from the depressed economic condition arising from the Sars epidemic, it is unrealistic to expect the Plaintiff to be able to find sedentary work as a receptionist or other work of which she has had no prior experience. As regards work as an office-cleaning worker, it is not clear as regards whether such work is readily available in the midst of a poor employment market. The Defendant’s Counsel stated that the Plaintiff merely stated that she could not do such work and did not make any attempt to look for such work.
8. As the Plaintiff has residual pain at her left knee joint from normal activities and exertion and she was not able to squat naturally and could not work at a fast pace, and she could not carry heavy loads for long periods as a normal person could, I am of the view that her employability as an office cleaning worker is doubtful. This is particularly the case when the period of time in question namely in about August 2004, was a time when jobs were hard to come by. Furthermore, it does not take much imagine to realize that the work of an office cleaning worker usually require hard work. It could be easily imagined that it is normally the case that such cleaners may have to use a vacuum cleaner to vacuum carpets or to use a mop for bathrooms and toilets as well as to bend over to clean toilets and wash basins. I therefore find that the Plaintiff’s ability to handle an office cleaning job in real life is highly in doubt. She is fully entitled to the pre-trial loss of earnings from the date of accident up to the date of trial as well as future loss of earnings as claimed, using a multiplier of 2 as agreed, for this head. The Plaintiff would be entitled to loss of MPF contributions from her employer for the loss of earnings both pre-trial and post-trial.
9. Loss of earning capacity at $20,000 has been agreed between the parties.
10. As regards special damages, the Defendant is prepared to agree a sum of $21,223 in respect of medical expenses, travelling expenses, tonic food (supported by receipts in the sum of $6,000).
11. I award damages as follows:-

PSLA (as agreed) $350,000.00

Pre-trial Loss of Earnings

$4,896.31 x 4318/30  months $213,478.78

Future Loss of Earnings

$4,896.31 x 24 months $117,511.44

Loss of MPF contribution $16,549.51

Loss of Earning Capacity $20,000.00

Special Damages agreed $21,223.00

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$738,762.73

1. Total damages come to the sum of $738,762.73. The Plaintiff is assessed to be liable for contributory negligence in the sum of 15%. I therefore deduct from this sum 15% thereof which comes to the sum of $627,148.32. From this sum should be deducted employees compensation paid by the employer in the sum of $118,369.00 which equals $509,579.32.
2. Interest on PSLA will be on half judgment rate. As the amount of PSLA of $350,000 would have been discounted by 15% and a proportionate sum of the Employees Compensation deducted there from, the amount representing PSLA that would attract the 2% interest is $350,000 – 15% - **($350,000/738,762.73** x$118,369) = $241,420.90. The pre-trial loss of earnings and special damages will attract interest at half judgment rate. The amount representing special damages after discount of 15% and a proportionate sum of the Employees Compensation has been deducted will be $21,223.00 – 15% – (**21,223.00/738,762.73** x $118,359) = $14,639.37. The amount of pre trial loss of earning attracting interest at half judgment rate is $213,478.78 – 15% - (**213,478.78/887,708.33** x $118,359) = $147,255.00.
3. Judgment for the Plaintiff against the Defendant in the sum of $509,579.32 together with interest thereon at judgment rate from the date of judgment until payment. I also grant interest on the amount of PSLA in the sum of $241,420.90 at 2% per annum from date of Writ to date of Judgment and on the special damages of $14,639.37 as well as the sum for pre-trial loss of earnings of $147,255.00 interest at half judgment rate from date of accident to date of Judgment. I grant an order nisi for costs of the action to the Plaintiff to be paid by the Defendant to be taxed if not agreed with Certificate for Counsel.

C.B. Chan

District Judge

Representation:

Mr. Samuel Chan instructed by Messrs. Liau, Ho & Chan for the Plaintiff.

Mr. K.C. Chan instructed by Messrs. Tsang, Chan & Wong for the Defendant.