###### DCPI 964/2004

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

**PERSONAL INJURIES ACTION NO. 964 OF 2004**

**--------------------**

##### BETWEEN

## CHOW WAI HUNG（周偉雄） Plaintiff

### and

#### KING RISE ENGINEERING LIMITED

#### （興威工程有限公司） 1st Defendant

LAK HUN CONSTRUCTION &

DECORATION COMPANY LIMITED

（力恆裝飾設計工程有限公司） 2nd Defendant

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

Coram: H.H. Judge Wong in Court

Dates of Hearing : 13th & 14th June 2005

Date of Handing down Judgment : 20th June 2005

Judgment

Plaintiff’s Claim

1. The Plaintiff is a master carpenter. He injured his right eye when he used a hammer to hit on left and right side of a 3-4 mm diameter nail attached to a wooden board and stucked into the concrete wall in order to pull out that nail. The nail broke and a fragment hit and injured his right eye. He now claims against the Defendants his employers for negligence, breach of duty of care, failure to provide a safe place of work, safe system of work and safety equipments.

Liability

1. It is the Plaintiff’s case that although he brought along hammer and plier to work but the plier he had was not large enough for the sort of nail that he intended to pull out. The Defendants did not provide goggles to protect his eyes and that they did not have large enough pliers for him to carry out his work.
2. The Plaintiff being a master carpenter I do not think it is necessary to supervise the Plaintiff as to how he should carry out his work. A master carpenter has sufficient experience to know how to carry out this sort of work. The function of a plier is to have a firm grip on the nail for the carpenter to pull the nail out. As the nail was stuck firmly into the concrete I doubt whether a plier would suit the purpose. He said there was a tool room but there were no pliers nor goggles there. However there was no evidence from the Plaintiff that he ever asked the Defendants for goggles nor pliers.
3. In any event the Plaintiff said that the method he used was the usual and generally accepted method used by most of the carpenters. He had used that method many times before. He even said that he would have proceeded with and used that hammering method even if bigger pliers were available. In other words it is irrelevant to the present case whether bigger pliers were available.
4. The cause of injury the Plaintiff suffered was that a fragment of the nail broke and injured his eyes. It is extremely remote that such injury could have occurred. Even according to the Plaintiff who had worked for over 15 years this sort of accident never happened. He also said that other carpenters also adopted the same method and nothing happened. I find that the occurrence of such accident is extremely remote and not reasonably foreseeable. No doubt on hind sight after such occurrence it is desirable to put on a pair of goggles.
5. In law there is no requirement for goggles to be worn for carpenters work involving removal of nails under the Protection of Eyes Regulations Cap 59S.
6. The duty of employers is to ensure that the place and the process of work are reasonably safe and not absolute safety.
7. In *Cheung Suk Wai v. AG* [1996] 4 HKC 288 per Leong J “…where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot”.
8. In *Ng Kong v. Golden Caterers Ltd* HCPI 206 of 2004 Mr. Recorder Edward Chan stated that the law does not require perfection and the employer is not an insurer of his employee’s personal injury.
9. For reasons above I find the Defendants not liable for the Plaintiff’s injury. In the event the Defendant was found to be liable to the Plaintiff I make the following assessment:-
   * 1. PSLA

The Plaintiff suffered right corneal abrasion which was healed after 2 days. There was no permanent visual disability as a result of the injury though the Plaintiff now still complained of pain in his left eye every week and that he could not take accurate measurements. He was given 15 days sick leave and thereafter 1 to 2 days sick leave every now and then for depression and subjective eye problem.

Dr. Liang examined the Plaintiff on 8 September 2004 and found both eye visual field with no abnormality with no injury scar on right eye. There was no observable explanation for his complaint of discomfort and that he did not require psychiatric assessment or treatment.

Dr. Tsui reported that there was no visual impairment of the right eye. There was no clinical signs of previous injury or recurrence. The cornea was normal which indicated absence of cornea abrasion or epithelial defects.

From the reports this is a minor injury with no objective disability. The complaints by the Plaintiff is only subjective. I agree with Miss Tsang for the Defendants that $50,000 would be a generous award.

* + 1. Pre-trial loss of earnings

Both doctors are of the opinion that the Plaintiff is able to return to his pre-accident job. 15 days’ sick leave was given. He was paid $700 a day working with the Defendants. His pre-trial loss of earning is therefore

$700 x 1.05 x 15 = $11,025.00

* + 1. Future loss of earnings

In view of the medical reports the Plaintiff has fully recovered and that there is no visual impairment the Plaintiff is able to return to his accident job. There is no clinical evidence to support the Plaintiff’s claim that he could not measure fine objects. I find that the Plaintiff has not suffered any future loss of earnings.

* + 1. Special damages

Tonic Food

The Plaintiff claims for $6,000 as tonic food. He said he spent a lot on fish maw. There is no evidence that fish maw is good for eye injury nor was there receipts for such purchase. I would only allow $500 for soup as sort of pampering which may make him feel good.

Medical and traveling expenses

This is agreed at $3,250.00.

* + 1. Future Medical expenses

Surgery was recommended by both doctors but the Plaintiff declined to go for surgery. This may reflect the fact that the Plaintiff’s complaint was not genuine. His claim for $15,500 is therefore not necessary.

1. For reasons above I assess the Plaintiff’s damages to be :-

1) PSLA $50,000.00

2) Pre-trial loss of earnings 11,025.00

3) Future loss of earnings 0.00

4) Special damages $3,750.00

5) Future Medical 0.00

\_\_\_\_\_\_\_\_\_\_\_

Total $64,775.00

1. As I rule that the Defendants are not liable to the Plaintiff I dismiss the Plaintiff’s claim.
2. Costs to the Defendant. Certificate for Counsel.
3. This case involves both law and fact, I also give leave to the Plaintiff to appeal should be choose to do so.

Wesley Wong

District Judge

Representation :

Miss Phillis Loh instructed by Messrs. Alan Wong & Co. Assigned by D.L.A. for the Plaintiff.

Miss Alice Tsang instructed by Messrs. Day & Chan for the 1st and 2nd Defendants.