#### DCPI 1389 / 2007

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1389 OF 2007

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| BETWEEN | LAU CHU WING | Plaintiff |
|  | and |  |
|  | LAW WAI SHING | 1st Defendant |
|  | UNDERWRITER SECURITY LIMITED | 2nd Defendant |
|  | ATL LOGISTICS CENTRE HONG KONG LIMITED | 3rd Defendant |
|  | LAU CHU WING | 4th Defendant |
|  | LAW WAI SHING | 1st Third Party |
|  | UNDERWRITER SECURITY LIMITED | 2nd Third Party |

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##### Coram: His Honour Judge Thomas Au in Court

##### (open to public)

Date of Hearing: 7,8,9, & 10 April 2008

Date of Handing Down Judgment: 5 May 2008

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### JUDGMENT

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I. Introduction

1. On 18 September 2003, the side mirror of a lorry hit Mr Lau when he was carrying out his duty as a traffic controller at the ATL Logistics Centre’s service roads area.
2. Mr Lau says, by reason of this accident, he is suffering from neck and back pain, and change of temper. He has also ended up with an employment which, unlike the previous job, has no promotion prospect.
3. By this action, Mr Lau claims against Mr Law (the driver of the lorry), Underwriter Security Ltd (his then employer), and ATL Logistics Centre Hong Kong Ltd (the owner of ATL Centre) for damages in the sum of $467,060.00[[1]](#footnote-1) for negligence and various breaches of duties.
4. The defendants all deny liability and dispute the quantum claimed. They also say the accident was caused by Mr Lau’s own negligence. Further, ATL has issued Third Party claims against Mr Law and Underwriter respectively for contribution or indemnity. At trial, by consent, ATL and Mr Law served on each other contribution notice.
5. The core issues that need to be decided at trial are:
6. How did the accident occur?
7. In the way it occurred, was it caused by the negligence or breach of duties respectively of Mr Law, Underwriter, and ATL?
8. If so:
   1. whether there is any contributory negligence on the part of Mr Lau himself.
   2. Whether there is any contribution of liability between Mr Law and Underwriter Security.
   3. Whether Underwriter Security should indemnify against, and Mr Law should contribute to, ATL’s liability, if any.
9. The quantum of damages under various heads of claim.

II. Background facts

General

1. Unless otherwise stated, the uncontroversial relevant background facts are as follows.
2. By an agreement dated 1 December 2002, ATL engaged Underwriter Security to provide security and traffic control services to the ATL Centre at Kwai Chung Container Terminals.
3. Mr Lau started working for Underwriter Security in December 2002 as a security guard. Under the employment contract, he was to be posted to various workplaces as from time to time designated by Underwriter Security.
4. Before starting his work, Mr Lau had undergone a 2-day in-house training course. At the end of the course, he took a written multiple-choice examination consisting of four papers. Mr Lau passed the written test.
5. After having gone through the initial training course, Mr Lau was assigned by Underwriter Security to work as a traffic controller at the ATL Centre. When posted there, he had also received for about a month on the job and on the site training from his supervisor, on how to carry out the duties as a traffic controller there.
6. By September 2003, when the accident occurred, Mr Lau was the inspector traffic controller at ATL Centre, supervising five other traffic controllers. As the supervisor, he had a walkie-talkie with him to enable him to communicate with the control office situated at the office building, while the other subordinates did not.
7. The service roads area of the ATL Centre, at which Mr Lau and his colleagues worked, can be generally described as follows.
8. The area was the junction of traffic where vehicles entered into the ATL Centre from two directions. In the middle of the area was marked by a large yellow blocks painted on the ground, which covered the width of three vehicle lanes running through it. There were signages posted up around the area warning the drivers that vehicles were not allowed to stop or to let passengers alight inside the yellow blocks area.
9. At the material time, on the south[[2]](#footnote-2) of and just outside the yellow blocks area was a taxi stand. The taxi stand was a receded area marked off by three plastic cones placed on the ground, leaving sufficient space for taxis to go in, and to come out respectively at the end and front of the taxi stand. The receded area had a space sufficient to accommodate about three taxis stopping or waiting there at any one time.
10. For vehicles going to the ATL Centre to conduct business (for example to upload or offload goods), after entering the site and obtaining the entrance card from the entrance booth, they should first proceed through the yellow blocks area (without any stopping) from the east and then go straight ahead to the west direction, up a ramp on the far right to the first floor where the office building was situated. It was when they arrived at the office building that the passengers should and could get off from the vehicles and go to the office to have the necessary paper works processed, before collecting or offloading the goods. However, apparently, the office building could also be accessed at the ground floor level.

The accident

1. On 18 September 2003, Mr Lau was working at the ATL Centre service roads area as the supervisor traffic controller, with his five other colleagues.
2. At around 8:25 in the morning, Mr Law drove his lorry to the ATL Centre with one Mr Lam. After obtaining his entrance card and his lorry arriving at the area of the yellow blocks, Mr Law stopped the lorry on and within the left side of the yellow blocks area near the taxi stand. He then allowed Mr Lam to get off from the lorry to take the papers to the office for processing.
3. After stopping temporarily and after Mr Lam had alighted, Mr Law started to drive the lorry off, by turning it towards the right with the intention to go up to the first floor office building via the ramp, so as to pick up Mr Lam again after the paper works.
4. Just as he started to drive the lorry off, the left fish-eye mirror anchored to the larger left side mirror of the lorry hit onto Mr Lau, probably at Mr Lau’s back of the neck and shoulder. Mr Lau then fell onto the ground. Mr Law stopped the lorry. Mr Lau’s colleagues (i.e., the other traffic controllers) then came to help. An ambulance was called, and the police also later arrived. Mr Lau was taken to the A&E unit of Princess Margaret Hospital (PHM).
5. Mr Lau was altogether given a total of 16 days of sick leave.

*Mr Lau’s employment after the injury*

1. Mr Lau in fact resumed his previous job with Underwriter Security after his sick leave period. He worked at the ATL Centre again as a traffic controller at the same grade and with the same pay at an average monthly salary of about $6,000.00[[3]](#footnote-3).
2. By a letter dated 15 May 2004, Mr Lau gave one-month notice to Underwriter Security to resign from his job. Underwriter Security approved it by a letter dated 17 May 2004.
3. However, by another letter dated 7 June 2004, Mr Lau wrote to Underwriter Security and asked to be allowed to withdraw his earlier resignation notice. Underwriter approved the withdrawal by a letter dated 9 June 2004. As such, Mr Lau continued to work for Underwriter Security at the ATL Centre as a traffic controller supervisor.
4. In about July 2004, Mr Lau was transferred by Underwriter Security to work as a security officer at an inspector grade at Chun Fat Garden, a residential estate. By reason of the nature of his job after the transfer, Mr Lau’s monthly salary was increased to an average monthly salary of $7,000.00[[4]](#footnote-4). He also had to supervise seven colleagues.
5. In October 2004, his employment with Underwriter Security came to an end. Mr Lau says Underwriter Security in fact terminated the employment due to an incident involving his heated argument with another colleague. Underwriter Security however says Mr Lau resigned on his own accord.
6. One month later in November 2004, Mr Lau found a job as a security guard with Group 4 Falck (HK) Ltd. He has since been so working for Group 4.

III. Liability

1. Mr Lau and Mr Law give evidence at trial as to how the accident occurred. Mr Michael Li of Underwriter Security also gives evidence at trial on the training and supervision given to Mr Lau as its employee. Mr Li also gives evidence on the arrangements between Underwriter Security and ATL in providing traffic controls at the ATL Centre. ATL calls no live evidence as, by consent, the respective witness statements of Mr Sherman Wong and Mr Lawrence Cheung are admitted as evidence as read.

How did the accident occur

1. Amongst the witnesses, only Mr Lau and Mr Law give direct evidence on how the accident occurred, as they were involved in it.

*Mr Lau’s evidence*

1. Mr Lau’s evidence (in accordance with his witness statements and as supplemented by his oral evidence under examination in chief and cross-examinations) is in substance as follows.
2. At the material time, he was standing at about 6 to 7 feet behind Mr Law’s lorry when it stopped at the left side of the yellow blocks area. His five other colleagues were standing around the different margins of the yellow blocks.
3. He wanted to go and warn the driver of the lorry (i.e., Mr Law) that the lorry should not have stopped there to allow the passenger to get off.
4. He thus ran from behind the lorry, and past it on its left, intending to go to the driver’s side of the lorry to give the verbal warning. While running up, he was at about 2 feet away from the side of the lorry. When he reached almost at the level of the front of the lorry, it was still stationery and not moving. He noticed that the left window of the lorry was up and closed. He therefore could not shout to Mr Law, the driver, to signal to Mr Law his coming. He also did not tap on the side of the lorry while he was running along its left to warn Mr Law of his coming. He says he did not do that because his right hand was holding a walkie-talkie.
5. Wanting to avoid any risk that the lorry might hit him when it moved, he intended to run to about 8 to 10 feet ahead of the lorry, before he would turn to the right and go to the lorry’s driver’s side to give the driver a verbal warning.
6. However, while he was running ahead, he noticed that suddenly there was a taxi coming out from the head of the taxi queue within the taxi stand. He therefore had to abruptly and promptly steer to his right. It is Mr Lau’s evidence, while he was steering to his right, he still had his back facing the lorry, because he was focusing on the traffic in front of him. At this point, he felt that he was suddenly hit from behind. He fell down and lost consciousness for a few minutes or so

*Mr Law’s evidence*

1. Mr Law’s evidence is in essence as follows.
2. Before the accident, he had been driving vehicles and lorries to the ATL Central regularly over the past 3 to 4 years. Through this past experience, he knew that he should not stop the lorry and allow passenger to alight from it in the yellow blocks area. He also appreciated that the traffic controllers might walk around in the area to try to give verbal warnings to drivers who were in breach of the traffic regulations there.
3. On the date of the accident, when he reached the yellow blocks area, there was a taxi queue waiting to move into the taxi stand. The waiting taxi thus blocked his traffic path. He therefore had no alternative but to stop the lorry within the yellow blocks area. Taking advantage of the moment, he asked his colleague, Mr Lam to alight from the lorry so that Mr Lam could go to the office building at the ground level first, and he himself would then go up to the first floor later to pick Mr Lam up. This would save him some time.
4. After Mr Lam had got off the lorry, Mr Law then looked at his left side mirror first, and then the right, to ensure that there were no cars or people around before he started to drive off his lorry to the right for the ramp. He was sure that when he checked the side mirrors on both side, there was no one or car around the lorry.
5. However, just as he started the lorry, and when it had moved for about one wheel-space (meaning, the wheel had turned for one round) to the front right direction, he noticed that someone (turned out to be Mr Lau) suddenly appeared at the left front of the lorry with his back facing him. Mr Lau was then about 1 to 2 feet in front of the lorry. Seeing this, Mr Law tried to stop the lorry immediately, but the fish-eye mirror anchored to the left side mirror of the lorry still hit the back of Mr Lau when the lorry stopped. Mr Lau then fell on to the ground.
6. Mr Law says the lorry was moving rather slowly before the accident, as he had only just started driving it off. Moreover, the lorry suffered no damage other than that the fish-eye mirror was broken and fell off from the anchorage to the left side mirror. He says the fish-eye mirror’s anchorage was simple and loose, and it could break off very easily with a not very serious impact.

Discussion

1. After hearing the evidence and taking into account of the demeanour of the witnesses, I reject Mr Law’s evidence on why he had to stop in the yellow blocks area and that he had looked at his left side mirror before driving off the lorry. I find the material parts of his evidence not believable because of the following reasons:
2. It is inherently incredible that Mr Law had to stop the lorry because of a blocking taxi as alleged. If he had always intended to go the first floor to let Mr Lam to go to the office to process the paper works (as he ought to have), he should have taken the right lane instead of the left after passing the entrance booth, since the ramp going to the first floor was on the right side of the yellow blocks area. As such, there would be no question of his lorry being blocked by a waiting taxi (even if there were one) on the left side of the yellow blocks area. As such, in my view, in keeping the lorry on the leftist lane, Mr Law intended to stop there to allow Mr Lam to get off first so as to save some time.
3. Further, when asked by the Court, Mr Law fairly accepts that if someone had in fact been running up along the lorry on its left, at about 1 to 2 feet away from it, he ought to have been able to see the person via the left side mirror if he had looked at it. In the circumstances, given that it is never challenged (and I also accept as established) that Mr Lau did run from behind and along the left side of the lorry, it is difficult to accept Mr Law’s evidence that, before driving off the lorry, he had in fact looked at the left side mirror but did not see anyone coming up. The more likelihood is that he had not looked at the mirror.
4. However, I do accept Mr Law’s evidence that before the lorry hit Mr Lau, it was moving slowly. I so accept it because this is consistent with (a) the common ground that Mr Lau was hit almost immediately after the lorry had started to move, (b) the damage caused to fish-eye mirror was a minor one which suggests that the impact was not severe, and (c) Mr Lau fell down at a location near the lorry, which also supports that the impact caused by the lorry hitting him was not a severe one.
5. On the other hand, I generally accept Mr Lau’s evidence on how the accident occurred, save on two matters, which I would elaborate below.
6. I accept Mr Lau’s evidence generally on how the accident occurred, as it is largely consistent with the objective circumstances of the case as recorded on the police’s sketch plans.[[5]](#footnote-5)  These sketches are made in accordance with Mr Lau’s and Mr Law’s contemporaneous and on the scene accounts of the events, and are thus inherently more reliable.
7. However, as I mentioned above, I do not accept two aspects of Mr Lau’s evidence.
8. First, I reject his evidence on the reason as to why he had to suddenly steer to right whilst running ahead. This evidence is questionable since:
9. This specific reason that a suddenly coming out taxi had forced Mr Lau to steer right was never covered in his witness statements and the police statements. It is difficult to believe that if there were in fact such an event causing him to steer right, he would not have told the police or his solicitors about the same in providing the respective statements.
10. Further, according to Mr Lau’s version of events, the taxi which came out suddenly was at about 20 feet (three taxis’ length) away from where he was. With such a long distance, it is inherently incredible that the taxi would and could have the effect of forcing him to steer to his right so suddenly.
11. In my view, this evidence, which only comes out only for the first time during his evidence in chief, is more likely to be Mr Lau’s attempt to embellish his case on his innocence in running across the front of the lorry without looking at it (it is common ground that he had his back to the lorry while he moved to the right and across the lorry), and without giving any warning to the driver.
12. For the above reasons, I do not accept that Mr Lau had to move suddenly to the right and across the front of the lorry because of a taxi coming out of the taxi stand. I find it more likely than not that he moved to the right and in front of the lorry as he intended to go to the lorry right to talk to the driver. I however accept the evidence that the moved with his back still facing the lorry because he was focusing on the traffic in front of him.
13. Secondly, I also reject his evidence that he did not tap on the side of the lorry while he was running up to alert Mr Law, because he was holding a walkie-talkie in his right hand. I reject this because the explanation is unbelievable as it does not accord with common sense. I cannot see why logically one cannot tap on side of the lorry even if one’s hand is holding a walkie-talkie. Further, even if he did not think it was right to use the hand holding the walkie-talkie to tap on the lorry, there was no reason why Mr Lau could not have changed the walkie-talkie to his left hand, and then used his right one to knock on the lorry to signal to Mr Law of his coming, if he had wanted to do so.
14. For the above reasons, I find that it is more likely than not that Mr Lau had simply failed to give any warning to Mr Law about his running up to Mr Law.
15. Taking into account of the background facts above, and coupled with my acceptance of the parts of the evidence as set out above, I make the following findings which I believe are relevant to how the accident occurred:
16. At about 8:30 am on 18 September 2003, Mr Law intentionally stopped his lorry at the left side of the yellow blocks area on the ground floor of the ATL Centre to allow his colleague, Mr Lam to get off from it.
17. Mr Law knew by his past experience and the signages posted there that, it was part of the traffic rules of the ATL Centre that he should not have stopped the lorry at the yellow blocks to let Mr Law to alight. He knew that he ought to have driven through the yellow blocks area, and to have gone straight to the first floor via the ramp on the far right before he could let Mr Lam get off the lorry.
18. Mr Law also knew by his past experience that traffic controllers at the area might walk within and across the yellow blocks area, to try to give a verbal warning to him if he violated the traffic rules at the ATL Centre.
19. When Mr Law’s lorry stopped in the yellow blocks area, Mr Lau was standing at about 6 to 7 feet behind it and on its left. Noticing that Mr Law’s lorry was in breach of the traffic regulation by stopping there, Mr Lau started running up to the lorry on its left side from behind, intending to give Mr Law a verbal warning.
20. While running up along the left side of the lorry, Mr Lau was at about 1 to 2 feet away from its side. He did not attempt to alert Mr Law of his coming by any or any reasonable means.
21. Between the time when he started to run up to the lorry and when Mr Lau came to about at the level of the front of the lorry, the lorry had been stationery.
22. Once Mr Lau reached the front of the lorry, with a clear enough space, he started to move to the right and across the front of lorry, intending to go to the right side of the lorry to give a verbal warning to Mr Law. Mr Lau did so with his back still facing the lorry, as he was paying attention to the traffic in front of him and the lorry.
23. Also at about that point of time, Mr Law started to drive off the lorry to the right, with the intention to go to the first floor of the ATL Centre via the ramp. However, before he drove off, he had not looked at his left mirror and did not notice that Mr Lau was coming up on the left side of the lorry.
24. After driving for the distance of about one wheel space (which is about 6-7 feet) to the front and right, Mr Law then noticed Mr Lau, with his back facing the lorry at about 1 to 2 feet away. Mr Law tried to stop the lorry immediately. But the left side mirror through the fish-eye mirror still hit Mr Lau’s back of neck and shoulders area when the lorry stopped, which caused Mr Lau to fall onto the ground.

Was Mr Law negligent in causing the accident

1. Given my factual findings above on how the accident occurred, I find that Mr Law was negligent in causing the accident in failing to pay sufficient attention to the presence of Mr Lau and the traffic condition in the area at the material times:
2. Mr Law should not have stopped the lorry in the yellow blocks area for Mr Lam to get off.
3. Having stopped there, Mr Law had failed to look at his left mirror before driving off the lorry.
4. Had he looked, he ought to have noted that Mr Lau was running up along the left side of, and close to his lorry. As such, he ought to have waited for Mr Lau to run clear and away of the lorry before starting to drive away his lorry. This is particularly so given that he was aware that the traffic controllers might walk within the yellow blocks area in an attempt to give verbal warnings to those drivers who were in breach of the traffic regulations.
5. Other than the above negligence on the part of Mr Law, I however reject Mr Lau’s case against Mr Law on the other pleaded grounds of negligence[[6]](#footnote-6), as the evidence simply does not support the same.
6. Notwithstanding this finding and conclusion, I am also of the view that Mr Lau was contributorily negligent in causing the accident. I will explain further below.

Was Mr Lau contributorily negligent

1. Again, given my above findings on how the accident occurred, I also find that Mr Lau was contributorily negligent in causing the accident in the following aspects:
2. He had failed to alert Mr Law of his coming up to the lorry front. Given that it is Mr Lau’s own evidence that he was conscious of the risk that the lorry might be driven off at any time after stopping at the yellow blocks area, Mr Lau ought reasonably to have at least tapped on the lorry’s body or side window, so as to signal Mr Law of his coming. This would have alerted Mr Law not to drive off the lorry while Mr Lau was approaching it.
3. Mr Lau had also failed to have a proper lookout of the traffic condition when he moved across in front of the lorry, which he knew it might move at any time. Despite the risk, he still moved to his right and across the lorry with his back facing the lorry, as a result of which he was not aware of the fact that the lorry had started to move. Had he made a proper lookout, he ought reasonably to have appreciated the moving lorry.
4. The need for Mr Lau to pay special attention and to have a proper lookout of the traffic condition is underlined by the fact that he was hit by a car at a different location about half a year before this accident. He accepts under cross-examination that, because of this earlier accident, he ought to have been more careful in crossing the open roads area.
5. Mr Gary Chung, counsel for Mr Law, has cited to me a number of cases on the apportionment of contributory negligence, which concern with crossing injured pedestrians who had failed to pay a proper lookout of the traffic conditions. I consider the following authorities more relevant to the present case:
6. *Cheng Wai Chuen v Tsang Kwai Yan* (unrep., HCPI 1409/2003, Sakhrani J, 7 November 2005): The trial judge in this case found that the deceased walked hurriedly across the crossing when the traffic lights were against that. It was also found that he was holding an umbrella which blocked his view of the coming traffic. He emerged from the safety island without seeing whether it was safe to do so and when the lights were against him. The judge found 70% contributory negligence against the deceased in these circumstances.
7. *Wong Kin Fan v Fok Yue Ming* (unrep., DCPI 1207/2006, H H Judge S Leung, 23 October 2007): It was found by the trial judge that the plaintiff suddenly turned and stepped out of the pavement onto the road with his back towards the traffic, without heeding to the defendant’s vehicle approaching. The plaintiff was held to be 2/3 to blame for causing the accident.
8. *Williams v Needham* [1972] RTR 387: the plaintiff was standing by a parked car intending to cross the road. Without looking in the direction from which the defendant’s car was approaching, the plaintiff started to cross the road. He was hit by the defendant’s car, as the distance between them was so close that the defendant was unable to avoid colliding the plaintiff by braking. Contributory negligence was assessed to be at 2/3.
9. Given my above finding at paragraph 54 above on Mr Lau’s negligence, and having considered these authorities and taking into account of the circumstances in the present case including Mr Law’s acts of negligence as found, in my judgment, Mr Lau’s contributory negligence in causing the accident should be assessed at 50%.

Was Underwriter Security negligent in causing the accident

*The allegations*

1. As against Underwriter Security, Mr Lau only relies on common law negligence.
2. Underwriter Security accepts that as Mr Lau’s employer, it owes him a duty to take reasonable case for his safety at work.
3. At trial, and through his counsel, Mr Lau confines his complaints of Underwriter Security’s negligence to the followings:
4. Underwriter Security had failed to provide any or any adequate training to Mr Lau on how to properly conduct traffic. It is suggested that:
   1. It ought to have taught Mr Lau that in case of breaches of traffic regulations, instead of approaching the vehicles to give verbal warnings, he should report such beaches to the control room stationed in the office building, which overlooked the area by way of CCTVs.
   2. It ought to have taught Mr Lau how to signal the vehicles stopping in the yellow blocks area to move on.
5. Underwriter Security had failed to provide a safe system of work as well as sufficient and appropriate equipment to Mr Lau to direct traffic at site. It is suggested that Underwriter Security:
   1. Ought to have provided all the traffic controllers on site with walk-talkies, so that each of them could communicate with each other to foster a more efficient and safe traffic control system. It is said that had Mr Lau’s other colleagues also had a walk-talkie, he would have been able to communicate with the colleague standing in the far corner of the yellow blocks who was facing the lorry, so that that colleague could approach the lorry from the front to give verbal warning to Mr Law. The accident could then have been avoided.
   2. Ought to have provided all the traffic controllers fluorescent batons to facilitate traffic control.
   3. Ought not to have positioned the temporary taxi stand near the yellow blocks or to have positioned the cones encroaching onto the yellow blocks. If without these, it is said that the accident could have been avoided.
6. It is noted that most of the above alleged particulars of negligence are not pleaded by Mr Lau, which he ought to have done. As said by *Lord Simon* in *Colfar v Goggins & Griffith* [1945] AC 197 at 203:

“Where the claim was based on an unsafe system of work, it has been said that the statement of claim must show clearly what is said to have been wrong with the system and indicate what would have been a proper system.”

1. However, given that Underwriter Security had not asked for particulars in the past, I still allow Mr Lau’s counsel to canvass in the oral evidence to supplement the original general pleas of the lack of proper training and a safe system of works. However, practitioners in the future should be reminded of the important function of pleadings in defining issues, and the *need* to plead the necessary particulars as observed by Lord Simon cited above.

*The evidence*

1. Mr Lau gives evidence that he had not received any training on how to control traffic at the yellow blocks area. He had not been told specifically that he should not give any verbal warning to the drivers if they were in breach of the regulations. He also says he was the only one (being the supervisor) who had a walkie-talkie on site, while his colleagues all did not have it. Further, fluorescent batons were only provided to the traffic controllers some time after this accident.
2. Mr Michael Li gives evidence for Underwriter Security. He is and was its executive director. However, he has no personal knowledge or involvement in the training of Mr Lau, or in the accident. He only obtains his information for the purpose of his evidence from the relevant records, and from his personal knowledge of the training course *generally*. His relevant evidence can be summarized as follows:
3. He accepts that it is foreseeable by Underwriter Security that its traffic controllers might have to walk within the yellow blocks area to effect proper traffic control, and that might give rise to the risk of accidents, especially in light of busy traffic hours.
4. He does not dispute that other than the supervisor at site, no walkie-talkies were provided to the other traffic controllers there. He also fairly accepts that if all these were provided, it *might* have the effect of reducing the chance of the controllers needing to walk across the yellow blocks area from behind vehicles to carry out control works, as differently positioned colleagues could communicate with each other to carry out the necessary control.
5. He also accepts that fluorescent batons were only distributed to the traffic controllers after the accident.
6. Although he has no personal knowledge as what Mr Lau was actually taught at the training course, and on the job training by his supervisor, he believes Mr Lau ought to have been told how to properly conduct traffic and to look out for his own safety when carrying out the works.
7. He however believes that the traffic controllers, including Mr Lau, could have used whistles (which were provided by Underwriter Security) and hand signals to minimize the risk of accident and to avoid the need or frequency of having to walk across the yellow blocks.
8. He confirms that the location of the taxi stand was the decision of ATL, and Underwriter Security had no control over it.

Discussion

1. Other than whether Mr Lau had been taught on how to control traffic, I do not see any conflict of the evidence between Mr Lau and Mr Li. I therefore accept both of their evidence on this issue. Insofar as the conflict is concerned, I prefer Mr Lau’s evidence to that of Mr Li on the basis that Mr Li simply does not have personal knowledge on the matter. As such, his evidence is purely a matter of speculation and inference.
2. However, even in light of the evidence as accepted, I do not find that Mr Lau has established the alleged negligence on the part of Underwriter Security *in causing this accident*. My reasons are as follows:
3. I do not think it is reasonable to impose a duty on Underwriter Security that the traffic controllers should have been taught and told that they should only report traffic breaches to the control room but not to give verbal warnings to the drivers. This is so because it would not have been practicable and would have defeated the purpose of having traffic controllers there on site: As it is common ground that the traffic moves quickly and continuously at the site, it is impracticable to have any effective control over on-the-spot traffic problems and flows, especially for the vehicles which are in breach of the rules, by reporting the breaches to the control room. As admitted by Mr Lau himself in evidence, it is necessary for him as a traffic controller to sometimes approach the drivers to effect proper control.
4. It is also unreasonable to have expected Underwriter Security as an employer to have to teach Mr Lau, as an adult, as to how to take care of himself when crossing an open road where there is traffic, or to pay proper lookout of the traffic conditions before moving in front of a car which may move. These are things which are obvious to an adult on how to look after his own safety on the use of a road. As observed by Rogers VP in *Ho Hing Yuen by his father and next friend Ho Hon Kaim v Lee Wai Kai* (unrep., CACV 258/2004, 10 May 2005 Rogers VP, Le Pichon JA and Stone J) at para 5: “… *if pedestrians choose to run across the road, they take, literally, their life in their own hands; worse still if they do so without looking.*”
5. It is neither here nor there as to whether Mr Lau was taught to signal stopping vehicles to move on in the yellow blocks area. In the present case, the lorry already stopped in the yellow blocks area, and Mr Lau was standing *behind* it. Mr Law, the driver, knew that he should not have stopped. It is also Mr Lau’s evidence that he wanted to give the driver a verbal warning. In the circumstances, even if Mr Lau had been taught how to signal as suggested, this would not have prevented the accident from happening.
6. As to the provision of walkie-talkie to every traffic controllers, despite Mr Li’s acceptance this should in principle reduce the risk of the controllers having to walk across the yellow blocks area, it is *not* Mr Lau’s evidence that had the other colleagues been provided the walkie-talkies, he would have informed one of them to approach Mr Law’s lorry from the front, and that he himself would not have tried to run up to and across the lorry. Without this evidence, Mr Lau has failed to establish that even if walkie-talkies were provided as suggested, it would have avoided this very accident.
7. The same could be said as to the suggestion of the provision of fluorescent batons. I cannot see how the provision of the batons could have avoided the accident in the present case. It is *not* part of Mr Lau’s evidence that had he been provided with one, he could have used it to alert Mr Law of his coming. It is telling to note that it is Mr Lau’s evidence that he had not thought of alerting Mr Law of his coming at the material time and that he was standing *behind* the lorry when he decided to run up to it.
8. Insofar as the location and design of the taxi stand is concerned, Mr Lau has also failed to show any negligence on the part of Underwriter Security:
   1. Mr Li says in evidence (which I accept) that they were the decisions of ATL. As such there is no question on Underwriter Security being negligent in these decisions.
   2. In any event, given my ruling above on how the accident occurred, the location of the taxi stand and the cones are simply irrelevant. They did not in any way contribute to the occurrence of the accident.
9. For the above reasons, I come to the conclusion that Mr Lau has failed to establish negligence on the part of Underwriter Security in causing *this* accident.

Contribution as between Mr Law and Underwriter Security

1. If I were wrong above, and that Underwriter Security should have been also held liable to Mr Lau’s injury, I would have further held that, as between Underwriter Security and Mr Law, their liability should be split in the proportion of 75:25. This is a proportion suggested by Mr Chung for Mr Law, I also find this as a fair apportionment in light of the circumstances leading to the occurrence of the accident.
2. To avoid any doubt, this apportionment of liability between Mr Law and Underwriter Security is still subject to Mr Lau’s 50% contributory negligence as found above.

Was ATL negligent in causing the accident

1. At trial, Mr Lau through his counsel confines[[7]](#footnote-7) the allegation of negligence and breach of Occupier’s duty against ATL to the following pleaded case[[8]](#footnote-8):
2. Allowing Mr Lau to use the service roads at the ATL Centre when it was unsafe to do so.
3. Causing the service road area of the ground level within the ATL Centre to be or to become or to remain in danger and a trap to persons, including Mr Lau, lawfully using the road.
4. Mr Lau relies on the following evidence to support his claim:
5. At the material times, ATL allowed the cones enclosing the taxi stand to be positioned in such a way to encroach onto the margin of the yellow blocks area, as shown by the photos taken right after the accident.
6. ATL designed the location and position of the taxi stand, which resulted in merging traffic leading to the yellow blocks area.
7. ATL had allowed “walk-in” registration for vehicles entering the ATL Centre.
8. As far as I understand, Mr Lawrence Cheung, counsel for Mr Lau, submits that the above supports ATL’s pleaded negligence or breach of duty as an occupier for the following reasons:
9. By reason of the evidence set out in paragraphs 70(1) and (2) above, it had created a risk to the pedestrians using the roads, including Mr Lau, as it made them more likely to walk into the yellow blocks area where the traffic was.
10. The “walk-in” registration procedure gave an incentive to the drivers to stop and unload passengers at the yellow blocks area. As such, ATL had failed to take reasonable care to ensure that the yellow blocks area was reasonably safe for visitors, including Mr Lau, to use.
11. Although there is evidence (which I accept) of the matters set out at paragraph 70 above, I reject Mr Cheung’s submissions that these amount to the alleged negligence or breach of duties for the present purpose:
12. As I have found above, the occurrence of the accident has nothing to do with the position of the taxi stand or the position of the cones. Therefore, such positioning even if changed as suggested by counsel could not have avoided the accident[[9]](#footnote-9). As such, Mr Lau has failed to show that ATL was negligent or in breach of its occupier’s duty *in causing* the accident.
13. As a matter of logic, I cannot see how the “walk-in” registration could have allegedly given an incentive to Mr Law to drop off a passenger by stopping at the yellow blocks area. I also cannot understand how this would have been a reasonably foreseeable consequence of having a “walk-in” registration system. Moreover, and importantly, this is never explored in the evidence and is not put to Mr Law under cross-examination. There is simply no evidence to support the suggestion. In the circumstances, Mr Lau has failed to show how the “walk-in” registration system could have caused *this* accident.
14. For the above reasons, in my judgment, Mr Lau has failed to establish any negligence or breach of the occupier’s duty on the part of ATL in causing the accident.
15. ATL is therefore not liable to Mr Lau for his injury suffered as a result of the accident.

Indemnity of or contribution to ATL’s liability by Underwriter Security and Mr Law

1. Subject to Mr Lau’s 50% contributory negligence, if I were wrong above on ATL’s primary liability, and if ATL were also to be held liable to Mr Lau’s injury, I would have further concluded (as claimed by ATL under the Third Party Claims) that:
2. ATL is to be fully indemnified by Underwriter Security for ATL’s liability to Mr Lau.
3. Mr Law is to contribute to the extent of 75% of ATL’s liability towards Mr Lau.
4. I have come to this conclusion since:
5. As fairly conceded by Mr Lai, counsel for Underwriter Security as the 2nd Third Party[[10]](#footnote-10), (and I so hold) clause 9 of the service agreement between ATL and Underwriter Security, covers the present case in relation to the claim of Mr Lau. The clause provides that Underwriter Security shall fully indemnify ATL of, *inter alia*, for “personal injury, property damage and/or death suffered by its employees or any third party”,
6. As fairly accepted by Mr Chung, counsel for Mr Law, in relation to Mr Lau’s injury, Mr Law should be liable for say 75% of the liability as between Mr Law and the other defendants (i.e., Underwriter Security and ATL).

IV. Quantum

The evidence in general

1. At the time of the accident, Mr Lau was 48 years old, and married with two sons.
2. After the accident on 18 September 2003, Mr Lau was taken to the A&E department of PMH. It was recorded that he complained of neck and back pain. There was no fracture of the spine and no external would over his back and skull. He was admitted to the orthopaedic ward for management. After various medical examinations, it was found that there was mild tenderness over the paraspinal muscles over his back, but there was no neurological deficit, nor was it found any abnormalities of the brain and skull. He was discharged on 23 September 2003 with residual back pain, neck pain and stiffness.
3. The PMH medical report dated 16 March 2004 states that Mr Lau attended the A&E department on 1 and 5 October 2003 for dizziness, headache and neck pain. Examination shows that there was no focal neurological deficit, and Mr Lau was discharged with oral analgesics, and anti-dizziness medications, with 6 days of sick leave.
4. In relation to the complaint of dizziness, the report from the Department of neurosurgery of PMH dated 21 March 2006 records that there was no demonstrable neurological deficit found on Mr Lau and CT scan was effectively normal. It is also stated that Mr Lau’s intermittent dizziness could be relieved by simple medicines.
5. In the medical reports of Dr Tsoi (Mr Lau’s orthopaedic expert) and of Dr Henry Ho (Underwriter Security’s orthopaedic expert), both experts are of the opinion that Mr Lau is suffering from simple musculo-tendinous strain to his neck and back because of the accident. Both experts are of the view that (a) Mr Lau’s recovery has been satisfactory and no further treatment is required, (b) his prognosis is good, and (c) he could resume his pre-injury job with minimal reduction in capacity, albeit (as opined by Dr Tsoi) he needs to take short breaks in performing long hours of patrolling work.
6. Mr Lau under cross-examination accepts that his conditions could be relieved by taking simple analgesics or medicines. He also says effectively he has no more headache now.
7. I accept all the above evidence for the purpose of determining the quantum in general.
8. Further, it is common ground that Mr Lau has received $21,840.00 EC payment for his injury.

PSLA

1. Mr Lau claims $250,000.00 under this head. Under the Revised Statement of Damages, he relies on the following disabilities or injuries in support of his claim for PSLA:
2. Residual neck and back pain, and stiffness.
3. Intermittent dizziness.
4. General weakness over his body.
5. Inability to do his favourite sports including basketball.
6. At trial under cross-examination by Mr Law’s counsel, he also appears to suggest that he has suffered poor memory by reason of the accident.
7. It is Mr Lau’s oral evidence that the back pain affects his daily activities such as hair washing and sitting for a long time. He also says because of the injury, he has not been able to carry on with his favourite sports, which are basketball and horse betting.
8. In light of the medical evidence set out in the above section, in my judgment, Mr Lau has established (and I so find) that he has suffered a mild soft tissue injury to his neck and back as a result of the accident, and is still suffering from the following problems:
9. Mild neck and back pain, which occasionally affects his daily activities such as (a) hair washing activity, in that he needs to take rests after bending forward from a stooping position in washing his hair, and (b) prolonged sitting. The pain however could be relived by simple analgesics.
10. He has occasional mild dizziness with apparently no organic neurological origin, which could be relieved by simple medications.
11. I however do not accept that there is general weakness of Mr Lau’s body caused by the injury. This has not been supported by any of the medical evidence. In fact, in Dr Tsoi and Dr Ho’s reports, they record that Mr Lau has good ranges of motion and muscle powers over his spinal joints and limbs.
12. Moreover, Mr Lau has also failed to prove that, (a) basketball had in fact been one of Mr Lau’s favourite sports, and (b) because of the injury, Mr Lau has been no longer been able to pursue basketball and horse betting as much as before:
13. In relation to the allegation that basketball had been Mr Lau’s favourite sport, this is not referred to at all in his witness statements. This is also not referred to at all in Dr Tsoi’s report. In Dr Tsoi’s report, it was only stated that Mr Lau’s hobbies were horse betting and computer game. All the evidence concerning his alleged great and lifelong interest in playing basketball, in particular in playing it with his elder son, only comes out for the first time in his examination in chief. In my view it is incredible that, if it were true that this had always been his favourite sport, he would not have included it in his witness statements or that he would not have told Dr Tsoi (his own expert) about the same. The fact that he subsequently mentioned this to Dr Ho (Underwriter Security’s expert) in February 2007 does not in any way outweigh my above observations. In my view, it is more likely than not that basketball has not been one of Mr Lau’s favourite sports. For the same reasons, I also do not accept that he is now no longer able to pursue it.
14. The bank passbooks of Mr Lau’s bank account show clearly that he had been maintaining the same or similar betting habit (both in terms of frequency and monetary amount of the bets) since the accident in September 2003 until at least February 2006 (this is the extent of the discovery of the passbook records). Under such objective evidence, I reject Mr Lau’s oral evidence that he has because of the injury lost his interest in horse betting as one of his hobbies.
15. For the above reasons, Mr Lau has failed to prove that because of his injury, he has not been able to pursue his hobbies and favourite sports as alleged.
16. I also reject that Mr Lau has suffered from poor memory as a result of the injury. This is not referred to in the medical reports or in his witness statements. This is not pleaded in the Revised Statement of Damages. It is incredible that if he were suffering from this problem, he would not have told the medical experts or his solicitors about this.
17. In light of my above findings, and having considered the extent and nature of the injuries he had suffered and is still suffering, I have come to conclusion that the appropriate quantum for PSAL for Mr Lau is $120,000.00.
18. In reaching this conclusion, I have taken into account of the authorities cited to me by the parties. I am of the view that Mr Lau’s conditions as found are more serious than that in the case of *Chan Siu Youn v Ng Kam Man* (unrep, HCPI 533/1999, Recorder Ronny Wong SC, 28 July 2000) (where $100,000 PSAL was awarded to the plaintiff for a mild sprain neck injury) but less serious than *Chiu Wing Size Karby v Chan Ying Wai* (unrep, HCPI 616/1999, Deputy High Court Judge Muttrie, 2 April 2001) (where the plaintiff was awarded a total of $150,000.00 under PSLA for her neck whiplash injury and lumbar injury).

###### Pre-trial loss of earning

1. Mr Lau claims a total of $80,150.00 as his pre-trial loss of earning calculated as follows:
2. $16,000.00 as the loss of the alleged would have been salary of $8,000.00 per month for October and November 2004.
3. $63,550 [($8,000.00 - $6,450.00) x 41], being the loss of the difference between the alleged would have been salary of $8,000.00 and the salary he has been receiving from Group 4 for the period between December 2004 and April 2008 (the trial date).
4. $600 as the loss of sick leave.
5. The parties are not in dispute of the sick leave claim of $600. I therefore allow this item.
6. In relation to the rest of the claim for pre-trial loss, it is Mr Lau’s case and evidence that it arises as follows.
7. In his witness statement at paragraphs 4(f) and (i), Mr Lau said very briefly as follows:

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| --- | --- |
| “(f) | In August 2004, one Mr Raymond (whose last name I do not know), Manager of the 2nd Defendant, informed me that I would be due for another promotion very soon and that the monthly salary would be increased to $8,000.00. |
| (i) | However, due to my increasingly hot tempter [sic] arising from the accident, I engaged in a heated argument with a colleague in mid September 2004. As a consequence I was terminated by the 2nd Defendant in October 2004 abruptly and I was requested to sign a letter for self-termination without any compensation or notice.” |

1. This part of the evidence has been substantially expanded by way of examination in chief. The oral evidence can be summarized as follows:
2. He says he was told by a manager of Underwriter Security called “Raymond” (he could no longer recall Raymond’s last name) sometime in August 2004, that he would soon be promoted together with another colleague to the grade of senior inspector. Once promoted, according to Raymond, his salary would be increased to $8,000.00 from the $7,000.00 he was then receiving.
3. Then, sometime in mid September while he was on night duty, he had a quarrel with one of his subordinates loudly over the walkie-talkie, since he discovered that that subordinate had left a gate in the residential estate opened without locking it. The next day after this incident he was off duty. Then about the day after that, he was told by the “office” that he had to resign voluntarily but he was not told why. He had no alternative but to sign a letter prepared in English by the office.
4. He said the termination date should be in early October 2004, probably on 1st or 2nd of October. He says it is his guess that he was effectively “sacked” because of his quarrel with the colleague. Although he had had quarrels with other colleagues before, since he conducted this one over the walkie-talkie, which was likely to have been overheard by the staff of Housing Authority (which engaged Underwriter Security to provide security service at the housing estate), it was his guess that the Housing Authority staff must have been unhappy with the quarrel, and complained the same to Underwriter Security, which in turn led to the termination of his employment.
5. Mr Lau also says the quarrel was a result of his bad temper, which only came about after the injury. He says before the accident, he was not such a bad tempered person. However, after the injury, he has become easily agitated and has a bad temper. He did not realize it himself in the beginning, but his wife later told him about that, as she discovered that he had been scolding his younger son, whom he loved and still loves very much, frequently and usually without good reasons. Mr Lau says this change of temper is caused by the injury.
6. After he has left Underwriter Security, Mr Lau says he later learnt that the colleague mentioned by Raymond who would be promoted together with Mr Lau, was in fact promoted. He therefore believes that had he not left the employment with Underwriter Security, he would have been promoted. However, he accepts that he did not know exactly when this colleague was in fact promoted, although it should have been a few months after he had left the job.
7. I accept Mr Lau’s evidence that he was told by “Raymond” that there was a promotional prospect for him, and that he was asked by Underwriter Security to leave because of his quarrel with his subordinate:
8. I accept this part of the evidence because Underwriter Security has simply not provided *any* evidence to rebut Mr Lau’s allegations that he was told of the promotion and that he was sacked because of his argument with a colleague. These essential complaints have already been set out in Mr Lau’s witness statement. If they were incorrect, even if it were no longer possible locate the said “Raymond”[[11]](#footnote-11) now, Underwriter Security should at least be able to provide some evidence to show that according to its own personnel records, (a) whether Mr Lau had in fact been considered for promotion, (b) what was the reason for Mr Lau’s departure. The absence of such evidence lends weight in my judgment to Mr Lau’s evidence.
9. Although not having personal knowledge of the matter, Mr Michael Li says he believes Mr Lau left the employment on his own accord, since he signed a letter of resignation. I do not accept this: It is common ground that Mr Lau left his job with immediate effect. However, there appears to be no or no good reason why he had to leave the job with immediate effect. Even if he had wanted to do so, there was also no or no good reason why Underwriter Security would not have asked for the payment in lieu of the one-month notice requirement. It must be borne in mind that, when Mr Lau did in fact tender his resignation earlier in May 2004, he gave one-month notice to Underwriter Security. Looking at the way in which he left Underwriter Security, I find that it is more likely than not that Mr Lau’s employment was effectively and constructively terminated by Underwriter Security with immediate effect, by asking him to leave on his own accord.
10. However, notwithstanding my acceptance of Mr Lau’s above evidence, I am not satisfied that he has established the pre-trial loss as alleged. My reasons are as follows.
11. First, I reject as unreliable his evidence that he has become bad tempered because of the injury:
12. This is not referred to in any of the government reports. If he had in fact become bad tempered after the injury, he should have informed the doctors when he attended the consultation. It is pertinent to note that he did refer to these doctors the dizziness. The absence of such references suggests that this is unlikely to be true that he had in fact become bad tempered after the accident.
13. It is incredible that if what he says in the oral testimony as to what had happened and occurred concerning his conducts caused by the bad temper were true, he would not have told his solicitors and had it set out *in detail* in his witness statement. This evidence is obviously important to his case. The absence of these details in his witness statements points strongly to the conclusion that they are likely to be untrue, and Mr Lau only brings out them out *viva voce* for the first time, as he wants to embellish his case.
14. Given that Mr Lau cannot establish on the evidence that he has suffered a change for bad temper, he could not show that the alleged loss, if any, was caused by the accident.
15. Secondly, taking Mr Lau’s evidence to the highest, he was only told that he *would* be promoted. When asked under cross-examination, he accepts that he simply did not know when that might happen. As pointed out above, all he can say is that he understood that the other colleague was promoted a *few* months after his departure. As such, there is simply no evidence to show that, had he not left the employment with Underwriter Security, he would have already been promoted in October 2004 (the very month when he left Underwriter Security) and therefore he is entitled to claim the loss from October 2004 onwards.
16. For these reasons, I reject Mr Lau’s claim for $79,550.00 ($16,000.00 + $63,550.00) as part of his pre-trial loss.
17. Thus, under this head, the only recoverable item is $600.00.

###### Post-trial loss

1. Mr Lau claims $74,440.00 under this head. This is premised on the basis of the difference between his alleged would have been salary of $8,000.00 (given the promotion) and $6,450.00 (the salary he is receiving from Group 4).
2. Again, to succeed in this claim, it is fundamental for Mr Lau to prove the loss of the alleged would have been promotion caused by the change of temper, which in turn was caused by the injury. I have already rejected this chain of causation for the reasons set out in paragraphs 102 to 104 above. I therefore also reject the claim under this head.

###### Loss of earning capacity

1. Mr Lau claims $72,000.00 under this head.
2. However, there is simply no evidence to show that Mr Lau suffers or will suffer from any disadvantage in the job market because of the injury:
3. Both Dr Tsoi (Mr Lau’s own expert) and Dr Ho are of the view that Mr Lau is able to resume his previous job without any significant or obvious problems.
4. It is common ground that, after the accident, Mr Lau did resume his previous job with Underwriter Security without any problem. It is even Mr Lau’s own evidence that he was told that he might be promoted later.
5. It is Mr Lau’s own evidence that he managed to almost promptly find a new job as a security guard with Group 4 Falck within a month or so after he left Underwriter Security. He further admits that Group 4 Falck was the first and only job application he had made, and he got the offer without any difficulty. It is also his evidence that, save from any unpredictable events, he does not expect Group 4 to terminate his employment in the foreseeable future. Albeit he says he only later found out that Group 4 offers no promotional prospect, but that is due to the company’s policy and structure but has nothing to do with his injury.
6. There is no evidence whatsoever from Mr Lau to suggest that he would have any difficulty in finding a similar job in the future, if needed, by reason of his injury.
7. In the premises, I will disallow Mr Lau’s claim under this head.

###### Loss of MPF

1. Given my ruling above, the only loss of MPF is $600.00 x 5% = $30.00.

###### Special damages

1. Mr Lau claims $980.00 under this head as his medical expenses incurred in seeing the government doctors. The defendants effectively do not challenge this. I will allow this claim in full.

###### Total damages

1. The total quantum of damages proved is thus as follows:

|  |  |
| --- | --- |
| PSLA | $120,000.00. |
| Pre-trial loss | $ 630.00 (MPF included) |
| Post-trial loss | Nil |
| Loss of earning capacity | Nil |
| Medical expenses | $ 980.00 |
|  | --------------------------------- |
|  | $121,610.00 |

1. Taking into account of the EC payment ($21,840.00) Mr Lau has already received, and 50% contributory negligence, Mr Lau is thus entitled to damages in the sum of $49,885.00 [($121,610.00 - $21,840,00) x 0.5].

V. Conclusion

1. For the reasons set out above, I hold that Mr Law shall be liable to Mr Lau damages in the total sum of $49,885.00. There would be interest on damages for PSLA at 2% p.a. from the date of writ, and interest on pre-trial loss of income and special damages at half judgment rate from the date of accident, to today. Interest thereafter is to accrue at judgment rate until full payment.
2. Given my above rulings under the claim and the contribution and third party claims, I further make an order *nisi* that:
3. Mr Law shall pay the costs of Mr Lau’s claim against him.
4. Mr Lau shall pay the costs of Underwriter Security and ATL in defending his claim made against them.
5. Mr Law and Underwriter Security shall pay ATL’s third party claims respectively against them.
6. Mr Law shall pay Underwriter Security the costs of its contribution notice.

This *nisi* order will become absolute 14 days after the date of this judgment unless any of the parties applies to vary it in writing.

1. Finally, I thank counsel for their assistance in this matter.

# (Thomas Au)

District Judge

Mr. Lawrence L.K. CHEUNG, instructed by Messrs. C.W. Yuen & Co. for the Plaintiff.

Mr. Gary CHUNG Ka Hong, instructed by Messrs. Lau, Chan & Ko

for the 1st Defendant and 1st Third Party.

Mr. Gidwani, Victor Tulsi, instructed by Messrs. Deacons

for the 2nd Defendant.

Mr. Daniel K.K.CHAN, instructed by Messrs. T.S. Tong & Co.

for the 3rd Defendant.

Mr. Kelvin K.W. LAI, instructed by Messrs. Andy Choi & Co.

for the 2nd Third Party.

1. These are the revised damages submitted by Mr Lau’s Counsel in his written supplemental opening on the first day of trial. The original damages set out in the Revised Statement of Damages were $800,000 odd. [↑](#footnote-ref-1)
2. The directional orientation of the area is provided in a police sketch of the area, made after the accident on site. [↑](#footnote-ref-2)
3. Mr Michael Li of Underwriter Security in his oral evidence effectively accepts this figure. [↑](#footnote-ref-3)
4. This is effectively accepted by Mr Michael Li of Underwriter Security under cross-examination. [↑](#footnote-ref-4)
5. Subject to some minor variations as to the detailed and exact locations of various players on site. I do not find these variations of any significance, as I not expect Mr Lau or Mr Law to be in a position to remember those precise locations, given that the accident occurred about four and half years ago. [↑](#footnote-ref-5)
6. These are: failing to apply the brake in time or at all to avoid the accident; failing to slow down, swerve or otherwise manoeuvre the lorry so as to avoid the accident; driving too close to Mr Lau; and driving at excessive speed. [↑](#footnote-ref-6)
7. Closing submissions, paragraph 36. [↑](#footnote-ref-7)
8. Paragraphs 12A(6) and 12B(2) of the Statement of Claim. [↑](#footnote-ref-8)
9. And it is pertinent to note that this is *not* part of Mr Lau’s evidence in any event that he would be able to avoid the accident if the cones were differently positioned. [↑](#footnote-ref-9)
10. For insurance coverage reasons, Underwriter Security is represented by a different counsel, Mr Lai, in the capacity as the 2nd Third Party. [↑](#footnote-ref-10)
11. Underwriter Security has never denied that it had at the material time a manager or assistant manager having the first name “Raymond” supervising Mr Lau. As such, I take it that this is not disputed. [↑](#footnote-ref-11)