## DCPI 2310/2013

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 2310 OF 2013

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BETWEEN

KANG CHI KEUNG Plaintiff

and

LAI YAU KAI, JUDY 1st Defendant

TSE KA MING, CLEMENT 2nd Defendant

OSIM (HK) CO LIMITED 3rd Defendant

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Before: Deputy District Judge Elaine Liu in Court

Date of Hearing: 20 to 23 April 2015

Date of Decision: 13 October 2015

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JUDGMENT

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1. The plaintiff was a delivery worker employed by the 3rd defendant. He is claiming damages for personal injuries caused by an accident (“the Accident”) happened in the house owned by the 1st and 2nd defendants (“the House”) while he was delivering electric massage chairs at the instruction of his employer, the 3rd defendant.
2. The 1st defendant is the mother of the 2nd defendant. They lived in the House together with their family. The House has 3 storeys with an internal staircase. The ground floor of the House was fitted with wall-to-wall carpet. There was a rug (“Rug”) placed near the bottom of the internal staircase. The plaintiff said that the Rug was placed under a grand piano, but the 1st and 2nd defendants said that it was under a dining table.
3. On 23 July 2011, one of the delivery orders performed by the plaintiff together with a co-worker Mr Lo Ka Hing (“Mr Lo”) and a driver Mr So was to carrying out the following tasks in the House:-
4. move an old massage chair from ground floor of the House to its third floor, through the internal staircase;
5. move another old massage chair (“the Reclaimed Chair”) from the third floor to the ground floor, through the internal staircase, then to the company van;
6. move a new massage chair from the company van to the ground floor of the House.
7. The plaintiff’s case was that the Accident happened while Mr Lo and the plaintiff were moving the Reclaimed Chair (which is about 100 kg in weight) from the third floor to the ground floor of the House. The plaintiff was holding one end of the Reclaimed Chair, descending the internal staircase backward and could not see what was behind him. Mr Lo was holding another end of the Reclaimed Chair and was in the upper part of the staircase. When the plaintiff reached the bottom of the staircase, he was tripped over by the curled up edge of the Rug placed on the ground floor near the staircase, he then fell backward and his back hit against the grand piano. The plaintiff sustained injury to his lower back.
8. The 1st and 2nd defendants denied the Accident had ever happened. They said that even if the Accident had happened, the injuries were not flowed from the Accident. In any event, they said the 3rd defendant should be entirely liable.
9. The 3rd defendant’s primary position is that the plaintiff could not prove on balance of probabilities that the Accident did occur. If the plaintiff can prove his case on the Accident, the 1st and 2nd defendants should be wholly liable for negligence, breach of common law duty of care and breach of statutory duties. The 3rd defendant took out a contribution notice against the 1st and 2nd defendants seeking contribution or indemnity from them under section 25(1)(b) of the Employees’ Compensation Ordinance, Cap 282 and/or under the Civil Liability (Contribution) Ordinance, Cap 377 for (1) the amount of employees’ compensation paid to the plaintiff in the sum of $148,095.25; (2) the amount of the plaintiff’s costs in the employees’ compensation action in the sum of $48,695.00; and (3) the 3rd defendant’s own costs in defending the employees’ compensation action in the sum of $41,600.00.

*HAS THE ACCIDENT HAPPENED?*

1. Central to this dispute is the factual question of whether there was the Accident as described by the plaintiff.
2. The plaintiff and Mr Lo testified for the plaintiff while Madam Lai (the 1st defendant) and Mr Tse Wan Chung, Philip (“Mr Tse”) (the husband of Madam Lai and the father of the 2nd defendant) gave evidence for the 1st and 2nd defendants. Their evidence varied significantly. The plaintiff and Mr Lo said that the plaintiff fell and his back hit the piano near the staircase while they were moving the Reclaimed Chair. Madam Lai and Mr Tse said that the piano was not placed near the staircase and the plaintiff did not fall in the House.
3. To resolve this conflict of evidence, the principal matters to consider are the credibility of the witnesses and the reliability of their evidence. In this respect, I respectfully adopt the following approach:-
4. whether the party’s case is inherently plausible or implausible;
5. whether the party’s case is materially contradicted by other evidence (both documentary or otherwise) which is undisputed or indisputable;
6. where it is shown that a witness has been discredited over one or more matters to which he has testified using the above tests, this is relevant to the assessment of overall credibility of the witness;
7. regard may be given to a witness’s motive for deliberately not giving the truthful testimony; and
8. the demeanour of the witnesses.

(See: *Sai Kung PLB (Maxicab) (No 1 & 2) Co Ltd v Hiew Moo Siew & Anor,* unreported, HCA 2554 of 2006, 6 July 2011; *Lee Fu Wing v Yan Po Ting Paul* [2009] 5 HKLRD 513)

1. Generally, more weight would be given to the first two questions. The court shall take into account all matters and consider them as a whole in the factual matrix.
2. Adopting the above approach and for the following reasons, I accept the evidence of the plaintiff and Mr Lo and find that the Accident has happened in the House:-
3. The plaintiff’s testimony on the occurrence of the Accident is straight forward and clear;
4. it was supported by the evidence of Mr Lo, who is an independent witness and has no motive not to give a truthful testimony;
5. it was also supported by the handwritten reports of the plaintiff and Mr Lo prepared shortly after the Accident, which reports were submitted to their employer on about 25 July 2011 (the next working day after the Accident);
6. if the plaintiff was fabricating the Accident as the 1st and 2nd defendants has suggested, there is no need for him to fabricate the location of the piano. There would not be much difference on his part if he has hit the piano or the corner of a dining table;
7. the defendants suggested that the plaintiff’s account of the Accident was contradicted by the medical report issued by the doctor of the Accident and Emergency Department of Tseung Kwan O Hospital who has treated the plaintiff at the night of the Accident. It was recorded in the medical report that the plaintiff complained of low back pain after lifting heavy weight at work. The plaintiff admitted that he did not mention the fall or the hit against the piano since he was focus on the treatment at that time and did not tell the doctor in details of what had happened. As shown in the medical report, the entire consultation lasted for less than 2 minutes. It is understandable that the priority at that time was the treatment for the pain and the plaintiff might not have the opportunity to describe the Accident in details;
8. the defendants suggested that it is inherently implausible that despite the Accident and despite that the plaintiff was in great pain, he did not complain it to either Mr Tse or Madam Lai or call an ambulance. The plaintiff explained that he was not aware of the severity of the injuries at that time. He has taken a rest. He was mindful of the unfinished works. He thus finished them in pain. I accept the plaintiff’s explanation.
9. I find that the evidence given by Mr Tse and Madam Lai (the 1st defendant) are not truthful:-
10. On the whole, Mr Tse and Madam Lai were evasive and not credible. In particular, Madam Lai admitted in cross examination that she did not read the contents of the witness statement signed by her and confirmed by her at examination in chief. She said she was very angry when she read the document. When she was confronted at cross examination, she was dismissive and said that she has hypertension and did not want to answer.
11. One of the main defences of the 1st and 2nd defendants was that the piano had never been placed near the staircase. Mr Tse said in his witness statement that “由入伙至今，室內所有裝修及傢俬擺設大致一樣。全屋3層地面舖上杏色地毯。地下層有一張八人長方形餐枱連八張椅放於大廳正中，餐枱下有一張長方形彩色地毯 … 近露台角位放置一部三角琴。”[[1]](#footnote-1) In short, Mr Tse’s evidence in the witness statement was that since they moved into the House, they have been using a rectangular dining table placed in the middle of the living room on the ground floor and the piano was placed near the balcony. In other words, the piano has never been placed near the internal staircase since they moved into the House. Madam Lai adopted Mr Tse’s evidence.
12. Mr Tse changed his evidence in court after the plaintiff presented an article published in a magazine on 5 May 2005 reporting an interview with Mr Tse and Madam Lai about the House, and in the article, there was a photograph of the House showing that a round table was placed near the balcony. Mr Tse explained that he has mixed up with the date. The description of the position of the furniture in the witness statement should relate to the period since 2007, but not since he moved in. He explained that he was too focus on the point that there was no change in the position of the furniture and therefore he has mixed up with the date when he prepared the witness statement. He further said that he has placed the same round table outside the kitchen (which is near the balcony) in about 2004 to 2006. He purchased the piano in 2007 and at that time they changed to use a rectangular dining table. He maintained that the piano has never been placed near the staircase since it was purchased.
13. Mr Tse’s evidence was however contradicted by Madam Lai who said in court that the piano has been put in different positions of the House, including the middle of the sitting room, off the staircase and in the dining room.
14. I have carefully considered all the evidence and I am satisfied, that on balance, the Accident has happened in the House.

*WERE THE INJURIES CAUSED BY THE ACCIDENT?*

1. The defendants submitted that the injuries suffered by the plaintiff, if any, could not have been caused by the Accident. They pointed out that the plaintiff could finish the tasks performed in the House and two other subsequent delivery orders on that date. These involved the carrying and moving of heavy chairs and climbing staircases. They suggested that the plaintiff would not be able to finish these works if he was in fact injured in the House.
2. Whether the plaintiff was able to continue with his works after the Accident is a question of the severity of the injuries sustained and the state of physical and health condition of the plaintiff. The plaintiff is a man at the age of 35 at the time of the Accident and is of heavy built. He felt painful after the Accident but he thought the injury was not as serious as it turned out to be. He has taken a rest. He continued with the delivery works in pain as he was minded to finish the works assigned to him. The fact that the plaintiff has continued his works after the Accident is not, by itself, sufficient to draw the conclusion that the Accident was fabricated or that the Accident did not cause any injuries to the plaintiff.
3. There is no medical evidence to support the defendants’ suggestion that the plaintiff would not be able to complete the delivery works if he was injured by the Accident.
4. I find that causation is established, and I will deal with the extent of the plaintiff’s injuries that were attributable to the Accident in determining the quantum.

*Liability of the 1st and 2nd defendants*

1. There is no dispute that the 1st and 2nd defendants, as the owners and occupiers of the House, owe a duty of care under common law and the Occupiers Liability Ordinance to take reasonable care to see that their visitor will be reasonably safe in using the House.
2. It is reasonably foreseeable that a curled up rug placed on the floor is hazardous to the plaintiff while moving the Reclaimed Chair in the House. No warning was given by the defendants.
3. I am satisfied that the 1st and 2nd defendants are in breach of their common law and statutory duty of care.

*Liability of the 3rd defendant*

1. The plaintiff’s case against the 3rd defendant is essentially boiled down to the 3rd defendant’s failure to provide: (1) sufficient instructions and trainings to the plaintiff; and (2) sufficient manpower for the moving of the massage chairs on the site.
2. The 1st and 2nd defendants submitted that the 3rd defendant should be wholly liable for failing to provide formal training to the plaintiff for the lifting of heavy and bulky items such as the massage chairs.
3. There is no dispute that an employer has a duty to devise a safe system of work and to provide sufficient instructions and training to the plaintiff to enable him to know the risks of danger of working in the House.
4. It is a question of fact whether or not there is a need to prescribe a system of work. The nature of work is a factor that has to be considered in deciding whether a careful organization and supervision is required in the interests of safety of all those persons carrying it out, or it can be left to the employee on the spot to do it reasonably safely (See: *Charlesworth & Percy on Negligence*, 13th ed, para 11-68).
5. Counsel for the plaintiff referred to *Cathay Pacific Airways Ltd v Wong Sau Lai* (2006) 9 HKCFAR 371 and submitted that the an employer has a duty to provide a safe place of work, a safe system of work, proper instructions and supervision and adequate training, and the standard of care demanded is a high one because personal safety is at stake.
6. Counsel for the 3rd defendant referred to the following passage of Lord Oaksey in *Winter v Cardiff Rural District Council* [1950] All ER 819:-

“In my opinion, the common law duty of an employer of labour is to act reasonably in all the circumstances. One of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that the employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs. It is not easy to define these spheres, but where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, 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 foremen or workmen on the spot.”

1. *Winter* *v Cardiff Rural District Council* was applied in a number of cases in Hong Kong, for example, *Cheung Suk Wai v Attorney General* [1966] 4 HKC 288 and *Fong Yuet Ha v Success Employment Services Limited*, unreported, CACV 100/2012, 28 December 2012.
2. Counsel for the 3rd defendant also relied on *Wilson v Tyneside Window Cleaning & Co* [1958] 2 QB 110 at 121, *per* Pearce LJ:-

“Whether the servant is working on the premises of the master or those of a stranger, that duty is still, as it seem to be the same; but as a matter of common sense its performance and discharge will probably be vastly different in the two cases. The master’s own premises are under his control: if they are dangerously in need of repair he can and must rectify the fault at once if he is to escape the censure of negligence. But if a master sends his plumber to mend a leak in a respectable private house, no one could hold him negligent for not visiting the house himself to see if the carpet in the hall creates a trap.”

*Failure to provide sufficient instruction and training*

1. The plaintiff was awarded a training certificate issued by the Occupational Safety and Health Council, certifying that he has completed a training course on manual lifting and handling on 12 August 2006. The plaintiff said that the course was elementary and it only covered the lifting of smaller objects, but not involved the moving of heavy objects like the 100kg massage chair which is quite different. The 3rd defendant has not disputed this.
2. It is also not disputed that the 3rd defendant has not provided any formal training on safety measures and procedures to be adopted in moving heavy chairs.
3. The provision of training and adequate direction on the system of work and mode of operation in moving the heavy chairs are particularly important when the 3rd defendant has relied on the plaintiff’s judgment and discretion in determining the way of work on the spot and whether or not additional assistance would be required. I find that the 3rd defendant has, in breach of its duty, failed to provide proper, sufficient instructions and trainings to the plaintiff.

*Failure to provide sufficient manpower*

1. On the provision of manpower, although the plaintiff has pleaded in the Amended Statement of Claim that the 3rd defendant has failed to provide sufficient workers to handle heavy manual duty, the plaintiff’s own evidence in court was that no additional assistance was required in the present case.
2. The 3rd defendant allocated three workers to carry out the works in the House. The plaintiff and Mr Lo were responsible for moving the massage chairs. Mr So was the driver. Although Mr So might offer some assistance to the plaintiff and Mr Lo out of his good gesture, he has to stay near the company van, therefore the assistance he could offer is limited.
3. The plaintiff accepted in cross examination that he has assessed the environment in the House and considered that his team could carry out the tasks without extra help. If they were not able to carry out the task, they could ask for assistance. The plaintiff considered that additional assistance was not necessary in the present case, therefore he did not ask for it.
4. He further accepted that the 3rd defendant would provide an additional van with additional workers in special circumstances, for example if they are required to move the chairs in a place with very narrow passageway or where there are lots of obstacles blocking the passageway. According to the plaintiff, the environment in the House is not one of the special circumstances.
5. The plaintiff’s own testimony contradicted his allegation that the 3rd defendant has failed to provide sufficient manpower. There is no breach on the part of the 3rd defendant in this relation.

*Contributory negligence*

1. Contributory negligence of the plaintiff was raised and pleaded by all defendants. The 1st and 2nd defendants have made written submission on this point at closing. I do not agree with the plaintiff’s suggestion that the court does not have to consider this issue.
2. The defendants claimed that the Accident was contributed to by the plaintiff’s negligence, the gist of which are his failure to adequately determine whether the task could be handled by himself and his co-worker, his failure to pay adequate attention to the Rug when he stepped down backward, the improper posture adopted by him in the moving, and the failure to report the Accident to the 1st and 2nd defendants immediately so that proper arrangement for assistance could be made for the unfinished delivery works.
3. The plaintiff has at least 6 years experience in working for the 3rd defendant delivering heavy massage chair. He knew the weight of the chairs. He knew the tasks performed in the House involved moving the massage chairs up and down the staircase. He himself made assessment on the environment of the House and came to a conclusion that no additional assistance was necessary. He has checked the Rug before he moved the Reclaimed Chair from the third floor to ground floor. Even if he did not notice that the Rug was curled up before he moved the Reclaimed Chair down, he should have properly assessed the danger and paid more attention when he reached the bottom of the staircase or asked the Rug to be removed or asked someone to ensure that the Rug was not curled up. He has not done so. I am of the view that he should be responsible for his contributory negligence by a deduction of 20% of the damages to be awarded.

*Quantum*

1. The plaintiff was 35 years old at the time of the Accident and is now 39 years old. He worked for the 3rd defendant as delivery worker for 6 years.
2. According to the Joint Medical Report, the plaintiff suffered from soft tissue injuries to right shoulder and back. He had a back contusion. There was no bony damage nor neurological deficit. Dr KC Lam opined that the injury is likely to be mild and the pain should not be severe. Dr Johnson Lam opined that it is likely that the plaintiff has suffered at least moderate degree of soft tissue injury to the low back.
3. The plaintiff has pre-existing degenerative condition on his back. Prior to the Accident, he has had complained of back pain and has had 8 to 9 visits to general practitioners or bonesetters in the 5 years before the Accident. The two orthopaedic experts are of the view that the MRI findings of the plaintiff showed pre-existing degeneration due to ageing and wear and tear. Dr KC Lam further said that even if the plaintiff did not have the Accident, he would develop similar back pain before the age of 40. Both experts concluded that an apportionment is necessary. Dr KC Lam opined that the Accident had contributed to at most 50% of the present impairment suffered by the plaintiff. Dr Johnson Lam opined that the Accident should account for 70%. Having considered the evidence, I prefer the view of Dr KC Lam on this point.
4. The documents showed that since 22 May 2012, the plaintiff has not received further treatment.
5. The plaintiff was given sick leave until 21 June 2012. He resumed work with the 3rd defendant after the expiry of the sick leave period and was allocated some simple clerical duties. He was dismissed on 12 November 2012 with salary paid up to 12 December 2012. He was unemployed since then until mid-March 2013, when he worked firstly for PCCW and then for Minsheng, earning a monthly salary of $8,000 in both jobs.
6. Both experts opined that the plaintiff was suitable to return to his pre-injury work.
7. Counsel for the defendants submitted that the plaintiff has exaggerated the pain suffered. It appeared to me that the plaintiff has exaggerated the pain he suffered at his consultation with Dr Johnson Lam and at court. Dr Johnson Lam, the plaintiff’s own expert, was of the view that the plaintiff’s subjective complaint on the residual pain at the time of the assessment before him (which is 3 years after the Accident) is not substantiated by the objective medical evidence and the plaintiff’s pain and impairment should not be as severe as he described. Further, as it was observed in the court, the plaintiff could sit properly in court for over 2 hours without any sign of pain or uneasiness. He could also bend his back and picked up a water bottle from the bag on the floor. He confirmed that he has not taken any medication on that day.
8. In light of the aforesaid, I have the following rulings on quantum.

*PSLA*

1. In light of the extent of the injuries suffered by the plaintiff and taking into account of the plaintiff’s pre-existing degeneration, I consider that a sum of $100,000 for PSLA is appropriate (See: *Tam* *Fu Yip Fip v Sincere Engineering Trading Co Ltd*, unreported, HCPI 473 of 2006, 6 June 2007; *Tamang Udas v Global Sunny Engineering Ltd & Another*, unreported, HCPI 732 of 2011, 7 January 2013).

*Pre-trial loss of earning and MPF*

1. The average monthly income of the plaintiff at the time of the Accident is $12,364.00.
2. The plaintiff claimed a period of sick leave from 24 July 2011 to 21 June 2012. Dr Johnson Lam’s opinion was that the sick leave certificates were issued by the treating doctors who assessed the plaintiff from time to time and should be endorsed. Dr KC Lam assessed that sick leave until 9 December 2011 should be adequate.
3. Sick leave certificates are not by themselves determinative. In *Tam Fu Yip Fip v Sincere Engineering & Trading Co* Ltd [2008] 5 HKLRD 210, the Court of Appeal has held that:-

“First, it is the patient who makes the request for a certificate from the doctor. Second, a doctor treating his patient may, consistently with code of practice, issue the certificate without carrying out any detailed examination since such an examination is not always practicable or necessary. What is quite clear in the present case is that the plaintiff has been found to have grossly exaggerated his complaints. Although the exaggeration took place during the joint examination, plainly it would be open to the Judge not to disregard the possibility of the plaintiff also having exaggerated his symptoms when he saw the treating doctors responsible for issuing the sick leave certificates.

Since the plaintiff’s pre-trial loss of earnings is ascertained by reference to the period during which the plaintiff was prevented by the injuries sustained from returning to work, what has to be ascertained and identified is the length of that period. In my view, that is an exercise that would not require evidence to suggest or imply that those who had granted sick leave to the plaintiff did so improperly. Logically, if the finding is that the plaintiff could have gone back to work after three months, that is the period that is relevant to the assessment and award of pre-trial loss of earnings and no other. Sick leave certificates are no more than a piece of evidence that has to be evaluated in the light of all the available evidence including medical evidence before the court. As Rogers V-P observed in *Choy Wai Chung v Chun Wo Construction and Engineering Co Ltd* (unrep, CACV 172/2004, [2005] HKEC 1077) at para 9, the judge cannot be bound by the mere issue of sick leave certificates: the issuance of such certificates would be primarily because of the subjective symptoms reported to the doctors by the plaintiff.”

1. I also bear in mind that there is no objective evidence suggesting that the sick leave certificates were not appropriately issued to the plaintiff. (See: *Li Wan Kei v Hyundai Engineering & Construction Company* Limited, unreported, HCPI 577 of 2004, 6 March 2006 and *Singh Satnam v Wong Chun Fung*, unreported, HCPI 786 of 2009, 27 April 2011) There is also no evidence suggesting that the plaintiff was suitable to go back to work earlier than the expiry of the sick leave period.
2. In the circumstances, having considered the evidence, I allow the full period of sick leave, but it shall be subject to a deduction of 50% for the pre-existing degenerative condition.
3. The pre-trial loss of earnings and MPF awarded to the plaintiff is ($12,364 x12)/365 x 333 x 1.05 x 50% = $71,064.20.

*Loss of earning capacity*

1. The plaintiff submitted that the plaintiff will not claim loss of earning capacity if the court allows the loss of earnings during the post-sick leave stage. If the court does not allow the plaintiff’s claim of loss of earning in the post-sick leave stage, the plaintiff said that the court should give an award under this head. The defendants submitted that the plaintiff should not be entitled to any award under this head.
2. The plaintiff is able to return to his pre-injury work. Dr KC Lam opined that the plaintiff should be able to return to his pre-injury work as a delivery worker in a manner comparable to other workers of his age and degenerative status. Dr Johnson Lam opined that with further self exercises/hydrotherapy to strengthen his back, and a gradual return to work program, the plaintiff may be able to gradually return to his pre-injury job with mild-to-moderate reduction in work capacity.
3. The plaintiff is currently working and is earning a monthly income of about $8,000. Both medical experts came to the view that the plaintiff could return to the pre-Accident work. It is a matter of his own choice for not doing so. I agree with the defendants that there shall be no award for loss of earning capacity.

*Other special damages*

1. The plaintiff claims medical expenses in the sum of $11,955, travelling expenses of $737.10 and tonic food expenses of $5,000. The total amount of special damages claimed is $17,692.10.
2. The amount of medical expenses claimed is supported by receipts disclosed to the defendants. I consider the amount claimed is reasonable and I so allow.

*Credit for the payment of employees’ compensation*

1. The plaintiff received a payment of employees’ compensation in the sum of $148,095.25. This amount should be deducted from the amount of damages awarded in this action.

*Summary on damages*

1. In summary, the damages awarded is as follows:-

Pain, suffering and loss of amenities $100,000.00

Pre-trial loss of earning and MPF $71,064.20

Special damages $17,692.10

Sub-total $188,756.30

Less: 20% for contributory negligence ($37,751.26)

Balance $151,005.04

Less: employees’ compensation ($148,095.25)

Balance $2,909.79

*Interest*

1. I also allow an interest on the amount of awarded PSLA at 2% from the date of the writ to the date of judgment; and on the amount of the awarded pre-trial loss of earnings and special damages at half judgment rate from the date of the Accident to the date of judgment.

*Contribution*

1. I have considered the evidence and the responsibility that each party shall bear in this matter. The 3rd defendant shall ensure that its employees have received proper, sufficient instructions and training while the 1st and 2nd defendants have the duty to ensure that the House was safe and free from hazardous objects. I came to the view that the liability to the plaintiff should be borne equally by the 1st and 2nd defendants on one part and the 3rd defendant on the other.
2. There is no dispute that the 3rd defendant has incurred a total sum of $238,390.25 including costs in the employees’ compensation action as set out in the Contribution Notice. The 3rd defendant is entitled to 50% of contribution from the 1st and 2nd defendants.

*Costs*

1. There will be an order *nisi* that the costs of this action be paid by the defendants to the plaintiff to be taxed if not agreed, with certificate for counsel. This cost order *nisi* shall become absolute if no application to vary the same is made within 14 days from the date of this decision. The plaintiff’s own costs be taxed pursuant to the Legal Aid Regulations.

( Elaine Liu )

Deputy District Judge

Mr Simon Wong, instructed by Yeong & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Min Ju Kim, instructed by Lam & Co, for the 1st and 2nd defendants

Mr Daniel KK Chan, instructed by Winnie Mak, Chan & Yeung, for the 3rd defendant

1. Paragraph 2 of the witness statement of 謝宏中 dated 13 May 2014. [↑](#footnote-ref-1)