# DCPI 2419/2017

[2022] HKDC 574

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2419 OF 2017

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

BETWEEN

MOHAMMAD WAJED Plaintiff

and

CHEUNG PIK CHU RUBY 1st Defendant

WAH FUNG DECORATION

MATERIAL LIMITED 2nd Defendant

LAW KAM LUN, FAN SIU ON

and LAI YUET MING

sued on behalf of themselves

and all other owners of ON ON BUILDING,

at Nos.14/18 Sam Pei Square, Tsuen Wan,

New Territories as on 23rd December 2014 3rd Defendant

THE INCORPORATED OWNERS OF

ON ON BUILDING, TSUEN WAN 4th Defendant

(Discontinued)

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

Before: His Honour Judge Andrew Li in Court

Dates of Hearing: 7 to 11 February 2022 & 20 April 2022

Date of Judgment: 13 June 2022

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

JUDGMENT

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

*A. INTRODUCTION*

1. This is a personal injury (“PI”) case involves a plaintiff who has a long but undisclosed history of involving with other PI litigation. In the present case, he alleges that he tripped and fell on the staircase of an old building in Tsuen Wan and thereby sustained injuries to his right index finger and shoulder.

*B. BACKGROUND*

1. On 23 December 2014, the plaintiff claims that he tripped and fell on the staircase of On On Building, Nos 14/18 Sam Pei Square, Tsuen Wan, New Territories, Hong Kong (“the Building”).
2. It is the plaintiff’s case that he tripped over some sandbags and renovation materials scattered at the top of the staircase next to Flat B, 5/F of the Building (“Flat 5B”). He claims that he fell down about 9 steps of the staircase to the landing between the 2 floors, thereby sustaining personal injuries (“the Accident”).

*B.1. The parties*

1. The 1st defendant is the registered owner of Flat 5B.
2. The 2nd defendant was the decoration/renovation company contracted by the 1st defendant to carry out renovation work at Flat 5B. No notice of intention to defend was filed by the 2nd defendant. By an interlocutory judgment dated 28 November 2018, default judgment on liability was entered against the 2nd defendant, leaving damages to be assessed.
3. The 3rd defendant are all registered owners of different flats in the Building at the time of the Accident, who are represented by, specifically:
4. Law Kam Lun, who was the registered owner of Flat E, 1/F of the Building and later on Chairman of the Management Committee of the Incorporated Owners;
5. Fan Siu On, who was the registered owner of Flat D, 2/F of the Building and later on Secretary of the Management Committee of the Incorporated Owners; and
6. Lai Yuet Ming, who was the registered owner of Flat C, 2/F of the Building and later on a member of the Management Committee of the Incorporated Owners.
7. By a Notice of Contribution and Indemnity filed on 4 June 2019, the 3rd defendant has launched contribution proceedings against the 1st and 2nd defendants, which was heard together with the main proceedings.
8. The 4th defendant is the Incorporated Owners, which was incorporated on 23 September 2015, 9 months after the Accident. By a Notice of Discontinuance dated 21 January 2019, the action was discontinued against the 4th defendant.

*C. LIABILITY*

*C.1. The plaintiff’s case*

1. The plaintiff’s case is that he was a lawful visitor to the Building and suffered injuries due to the negligence, breach of statutory and contractual duties owed by the defendants. Specifically, he is claiming against all the defendants for common law negligence and breach of occupiers’ duty to take care under the Occupiers Liability Ordinance (Cap 314) (“the OLO”). In addition, he is claiming against the 1st and 3rd defendants for breach of duty to maintain the common parts of the Building under the Deed of Mutual Covenant (“the DMC”).
2. The 1st and 3rd defendants have generally denied liability. They do not dispute that they are the registered owners of Flat 5B and the Building, respectively. However, they both claim to have no knowledge of the plaintiff’s visit to the Building on the day of the Accident and put the plaintiff to strict proof. If the Accident did occur, they blame it on the plaintiff’s own negligence.
3. Specifically for the 1st defendant, her case is that the collective owners of the Building bore the responsibility to maintain and control the staircase, whereas she, being an individual owner of Flat 5B, holds no responsibility in relation to the staircase and/or any common part of the Building.
4. She further avers that she did engage the 2nd defendant as an independent contractor to carry out renovation work at Flat 5B but the renovation work had been substantially completed before the happening of the Accident.
5. In respect of the 3rd defendant, they deny being an occupier of the staircase or any common part of the Building and do not admit having the responsibility for maintaining the common part of the Building under the DMC.

*C.2. The plaintiff’s allegations*

1. At first glance, the plaintiff’s allegations in relation to the Accident seem to be rather simple, straightforward and even plausible.
2. According to the amended statement of claim, the plaintiff claims that in the evening of the Accident, he went to meet with his friend Mr Zulfiqar Ali (“Ali”) who was the tenant of Room 1 of Flat 5 of the Building (“Flat 5A”). Thus, he claims that he was a visitor to the Building within the meaning of OLO.
3. The plaintiff’s pleaded case gives the distinct impression that his friend Ali was the tenant of Flat 5A and that he was merely a visitor who had been invited to the Building to visit his friend at the time of the Accident. Therefore, when he tripped over and fell down the staircase, the plaintiff claims that he was in the capacity of a visitor of the Building rather than as an occupier himself under the definition of the OLO.
4. However, as the plaintiff’s witness statement (“WS”) and the documentary evidence revealed, in fact the plaintiff was the tenant of Room 1 (which is a sub-divided unit) of Flat 5A under a Chinese tenancy agreement. The plaintiff however claims that it was Ali who had lived there and not himself.
5. The plaintiff’s explanation is that Ali was an asylum seeker and it was very difficult for him to rent a flat in Hong Kong as landlords would refuse to rent a flat to someone like him who did not hold a Hong Kong identity card. The plaintiff claims that Ali had previously obtained the help from another friend who had signed the tenancy agreement for the same Flat 5A on his behalf in 2011. In 2013, when the lease for Flat 5A came up for renewal, the friend was not in Hong Kong and Ali asked the plaintiff, who is a permanent resident in Hong Kong, to sign the tenancy agreement for him. Ali promised that he would pay the rent directly to the landlord each month. The plaintiff allegedly agreed to do so as a favour to his friend as he did not want to see him become homeless.
6. Ali allegedly had been living in Flat 5A from 2011 until he returned to Pakistan in 2019. Thus, on the day of the Accident, the plaintiff claims that he was merely visiting Ali and was not staying in Flat 5A as a tenant himself at all.
7. Regarding the Accident itself, the plaintiff says that the Accident happened at around 10:00 pm. Earlier on that day at about 6:00 to 6:15 pm, on the invitation of Ali, he went to the Building to visit him allegedly to celebrate Christmas together.
8. As there was no lift in the Building, the plaintiff and Ali made use of the only set of staircase (“the Staircase”) in order to reach to the 5th floor (“5/F”). The plaintiff claims that the Staircase was very dim and there was insufficient lighting when they went up to 5/F at around 6:00 to 6:15 pm. Some floors / areas of the Staircase were even pitch black.
9. In his WS, the contents of which have been adopted as part of the plaintiff’s evidence-in-chief at the trial, the plaintiff claims that while he was walking up to 5/F of the Building, he could barely see “some sacks of renovation materials”, which he named them as “sandbags”, stacked against the wall side of the Staircase. When he stepped on the stairs, he felt some “gravel (may be concrete debris) scattered along the Staircase, making the steps slippery.” When he reached the landing of 5/F, he also noticed “some sandbags and baskets, making the passageway there very narrow.”
10. The plaintiff left Flat 5A at around 10:00 pm when he intended to go home. He took the Staircase which was adjacent to Flat 5B. Flat 5B was situated next to Flat 5A, which was closer to the Staircase.
11. While trying to walk down from the top of the flight of stairs, he allegedly tripped over the aforementioned renovation materials, causing him to lose balance and fall down about 9 steps of the stairs to the landing in between the 2 floors. His right index finger allegedly hit against the edge of a step and the right side of his body landed on the landing. He believes that he was caught by the edge of a sandbag which was packed on top of the flight of stairs. He further claims that the Staircase was so dim that he could hardly notice the sandbag being left there.
12. What is rather interesting is that, about a week after the Accident, the exact date of which the plaintiff can no longer recall, the plaintiff, Ali and the plaintiff’s former solicitors’ staff, allegedly went to take photos of the Staircase. During the visit, they met a renovation worker who was carrying a sandbag on 5/F. They obtained the details of the 2nd defendant from the worker on that occasion.
13. The photographs taken by the solicitors’ staff on that occasion were attached to his WS. Although it is claimed that the locations of the sandbags and renovation materials were not exactly the same as that of the time of the Accident, it is said that the photos show the existence of those items still being left at the Staircase.

*C.3. The plaintiff’s evidence*

1. The inconsistencies and inherent improbabilities in the plaintiff’s case, coupled with the manner in which the plaintiff gave his evidence during the trial (he was far too over-confident and sometimes just too perfect in the details on the account of the Accident), raised some serious suspicions in the court’s mind about the plaintiff’s case.
2. The plaintiff was also an argumentative and hostile witness. When being challenged on the inconsistencies and problems of his case by the defence’s counsel, he resorted to saying that he could not remember or gave equivocal answers. At times, he became aggressive and antagonistic. He lost his temper at least twice when giving evidence and had to be reminded by the court to behave himself in the witness box. While claiming that he does not speak English fluently, he had on several occasions corrected the court interpreter in court during his evidence. Further, he has no difficulty in relating parts of his evidence in English to the court when he felt that the interpreter was not translating correctly from his native language (which was Urdu / Punjabi) for him. When being cornered in his evidence, he would resort to explain his bad memories or bad-temper were caused by his diabetes and the medication. However, when it comes to the details of the Accident, the plaintiff seems to have no difficulty in remembering them at all. In my opinion, those evidence just sounds too rehearsed and too perfect to be true. Overall, I find the plaintiff as an incredible and unreliable witness whose testimony in my opinion must be approached with extreme caution.
3. The above inconsistencies and poor behaviour of the plaintiff caused the court to look into the background of the plaintiff to see if he had been involved with other PI litigation in our jurisdiction.

1. On the third day of the trial and at the end of his evidence, the court managed to find the plaintiff has been involved with at least 7 other set of legal proceedings (“Other Proceedings”) since he returned from the UK to live in Hong Kong permanently in 2008. 6 of those cases was/is in his capacity as a claimant or plaintiff in an employees’ compensation or a personal injury case. They involved 4 different accidents at work, most of them happened on either the first day or the first few days after he had started working for a new employer. In each case, he was represented by a different firm of solicitors. The last one was a civil action in which the plaintiff was sued by an insurance company for fraudulent misrepresentation / non-disclosures of medical insurance claims made out of the medical insurance policies taken out by him. A judgment of over HK$1.16 million had been entered against him in September 2021. As of the date of the trial, that judgment has not been set aside nor the judgment sum been satisfied by him.
2. Significantly, the plaintiff has not disclosed the existence of any of the above cases / accidents to his present legal aid assigned lawyers and certainly not to the court or any of the other parties involved in the present proceedings. Hence, like everybody in this case, his legal aid assigned lawyers were completely kept in the dark in so far the Other Proceedings are concerned. They also did not know what injuries he allegedly had sustained in those accidents and whether there are any overlaps in the injuries or claims for loss of income as those he is calming under the present case. Hence, no discovery has been made in relation to the documents in regards to the injuries, treatments, jobs, income, sick leave and damages in the Other Proceedings. I shall go into the details of the Other Proceedings under a separate heading (ie Section D) after discussing the evidence he gave in relation to the Accident in this case.

*C.4. The “cracks” in the plaintiff’s case*

1. As said, at first glance, the above account of the plaintiff seems to be entirely plausible. In fact, it is such a perfect story that seems to leave very little room for doubts. However, a closer scrutiny of the evidence reveals some serious “cracks” in the plaintiff’s case. They included:
2. The lack of an independent witness’s account in support of the plaintiff’s case;
3. The alleged tenancy arrangements of Flat 5A does not make sense;
4. The reason and the duration of the alleged visit to Flat 5A does not hold any ring of truth;
5. The inconsistencies of the accounts the plaintiff gave to the medical staff when first admitted to Yan Chai Hospital (“YCH”); and
6. The condition shown on the photos provided by the plaintiff is more consistent with those related by the 1st defendant during her visit to the Building just 2 days prior to the Accident than those alleged by the plaintiff.

*C.4.1. The lack of an independent witness’s account in support of the plaintiff’s case*

1. According to the plaintiff, he was alone and there was no other witness present when he tripped and fell and met with the Accident. The Accident happened in an old 6-storey building (5/F being the highest floor before one can reach the common roof top), with no caretaker and no CCTV. Further, very conveniently, there is no independent witness who is able to give evidence in support of the plaintiff’s case at the trial. The only person who could have given evidence at the trial to support his account was Ali. However, the plaintiff claims that Ali had left Hong Kong and returned to Pakistan in 2019. Hence, the plaintiff was the only witness who gave evidence in relation to the Accident at the trial.
2. In my view, Ali was a very material witness due to the following reasons:-
3. According to the plaintiff’s oral evidence, at around 6:00 to 6:15 pm on the day of the Accident, both he and Ali ascended the Staircase together from the street level to 5/F. Thus, both of them should have been in the position to observe and notice the condition of the Staircase, particularly those on 5/F. Ali was therefore a material witness as to the condition of the Staircase prior to the Accident;
4. Further, according to the plaintiff, although he was alone when he tripped and fell at the time of the Accident, Ali left Flat 5A and went to the landing on 5/F in the immediate aftermath of the Accident to assist the plaintiff to descend the Staircase to the street level and walked to YCH to seek treatment with the plaintiff;
5. Ali was therefore a material witness as to: (i) the state of the Staircase in the immediate aftermath of the Accident; and (ii) the plaintiff’s condition in the immediate aftermath of the Accident;
6. As early as 19 July 2016, in the letter from the plaintiff’s then solicitors to the 1st defendant, it was stated that “Mr. Zulfigar [sic] Ali shall be an independent witness in this case”;
7. Ali subsequently made a witness statement dated 14 February 2019 which was exchanged together with the plaintiff’s witness statement;
8. In his evidence-in-chief, the plaintiff asserted that Ali has been in Pakistan “since 2019” and “cannot come” to Hong Kong as he “does not hold a valid Hong Kong visa” but with no documentary evidence to support such claims; and
9. However, no reasonable explanation has been given by the plaintiff as to why Ali could not have testified at this trial from Pakistan by way of video link or a deposition could be taken from him before he left Hong Kong. In cross-examination, although the plaintiff stated that Ali lives *“on a mountain”*, the plaintiff acknowledged that he could contact Ali through his brother who lives in Hong Kong at present and whom he sees *“every now and then”*.
10. As observed by Le Pichon JA in *Telings International Hong Kong Limited v John Ho 何約翰 & Ors* (unrep, CACV 10/2010, 22 October 2010) at §79:-

“The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so; and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party’s fear of exposure. But the propriety of such an inference in general is not doubted.”

1. In the present case, I find the only reasonable inference that can be drawn from Ali’s absence as a material witness at the trial and the plaintiff’s failure to make proper efforts to ask and arrange for Ali to give evidence remotely by video link or to have a deposition taken from him before he left Hong Kong is that the plaintiff is afraid Ali would give evidence that is inconsistent with his own evidence and unfavourable to his case. In particular, the evidence in relation to the state of the Staircase before and after the Accident, as well as the plaintiff’s medical condition in the immediate aftermath of the Accident. I therefore would draw an adverse inference in this respect against the plaintiff.
2. Without any independent witness account (and contemporaneous documents) in support of his case, I consider that the court should be very slow in accepting the plaintiff’s account of the Accident, which allegations are extremely easy for the plaintiff to make but difficult for the defendants to “disprove”.

*C.4.2. The tenancy arrangement of Flat 5A does not make sense*

1. The events surrounding the Accident of course are not the only matters which Ali can give evidence on in order to corroborate with the plaintiff’s case. The alleged circumstances leading to the signing of the tenancy agreements in the name of the plaintiff rather than Ali also does not in my view make sense and is highly questionable. It requires a lot of explanations from both the plaintiff and Ali. Yet Ali has very conveniently become not available at the trial to give evidence.
2. The plaintiff in his evidence asserted that Ali had resided in Room 1 of Flat 5A of the Building from 2011 until about mid-January 2019: (See P’s WS at §12). However, the recognizance issued by the Immigration Department to Ali dated 26 January 2016 records that his address was at “Back Flat, 5/F, No. 162 Apliu Street, Sham Shui Po, Kowloon”. This is in direct contradiction to the assertion made by the plaintiff that Ali in fact was living in Flat 5A on the day of the Accident until the date he left Hong Kong. Thus, apart from his own bare assertion, the plaintiff has not provided any documentary evidence showing that Ali actually resided at Flat 5A of the Building until around mid-January 2019. Although this document does not cover the date of the Accident (which allegedly happened on 23 December 2014), I find this would have a direct bearing on the credibility of the plaintiff. In my view, the recognizance being an official document issued by the Immigration Department, it is unlikely that Ali would lie to the authorities of where he was staying at the time. In addition, Mr Fan Siu On (DW2 who is also the 1st named 3rd defendant in this case) and Mr Law Kam Lun (DW3 who is also the 2nd named 3rd defendant in this case) who both live in the Building testified that they had never seen Ali in the Building during all those years the plaintiff claims he was living there. Ali who Mr Sadhwani says has a very prominent scar on his neck and side due to a childhood accident should not be difficult for the residents of the Building to identify. Yet none of the 3 witnesses for the defendants had seen him in the Building before.
3. Further, in my judgment, the tenancy agreement arrangement alleged by the plaintiff makes little sense for the following reasons.
4. First, the plaintiff had visited Ali only once at Flat 5A (in 2011 or 2012 according to his evidence) before he signed the first tenancy agreement with the Landlord of Flat 5A in 2013. Yet he did not visit it again before he signed the tenancy agreement in order to inspect the property while at the same time admitted that he would be responsible for any unpaid rent or damage to the property. I find that to be rather incredible for someone to sign a tenancy agreement in his own name without even first checking the condition of the premises.
5. Second, I find the plaintiff’s claim that he was merely helping Ali as he did not have a Hong Kong identity card and therefore could not rent a flat himself not credible. As is well known, the rent of any asylum seekers in Hong Kong are usually paid directly by the official agency appointed by the Social Welfare Department, an NGO called ‘International Social Service’ (“ISS”), directly to the landlords. There is in my view no convincing evidence to support the plaintiff’s allegation that Ali as an asylum seeker had to find another person to sign a tenancy agreement on his behalf just because he did not have a Hong Kong Identity Card.
6. Third, another tenancy agreement disclosed by the plaintiff in this case shows that he had rented a room at “Room C2, 1/F, Kwai Dao Building, No 139 Tai Loong St, Kwai Chung, NT” (“Kwai Dao Building”) between 1 March 2014 and 28 February 2016 at $3,000 per month. The plaintiff tries to rely on this document to say that in fact he had rented this other sub-divided flat in Kwai Dao Building as his residence and therefore he was not residing at Flat 5A on the day of the Accident. He claims that this was his real “home” address. However, very oddly, this was not the “home” address he gave to the nurse when he was first admitted to A&E of YCH on the night of the Accident.

*C.4.3. The visit and the duration of the Accident do not hold any ring of truth*

1. Without Ali’s evidence, the court is left only with the plaintiff’s own words in relation to what happened during the Accident. Given the above inherent improbabilities that he had rented the room in Flat 5A on behalf of Ali, I consider one must treat what the plaintiff says regarding the Accident with skepticism. This is not only because the contemporaneous documents (including the tenancy agreements and photographs taken about a week after the Accident) do not directly support his case, his claims of (a) the reason why he visited the premises on that day; (b) what he was likely able to see on the way up to Flat 5A at 6:00 to 6:15 pm; (c) the duration he stayed in Flat 5A; and (d) the events immediately happened after the occurrence of the Accident, all left a lot of room for doubts. In my judgment, when those matters are looked at individually, they would raise sufficient doubt as to the truthfulness of the plaintiff’s case. However, when they are added up together, it leads to the inevitable conclusion that it is highly improbable that the Accident could have happened in the way as described by the plaintiff.

*C.3.4.3.1. Reason why he visited the premises on the date of Accident*

1. I do not find the plaintiff’s alleged reason of visiting Flat 5A on the day of the Accident to be credible at all. He claims that he went up to the sub-divided flat in Flat 5A allegedly occupied by Ali to celebrate Christmas with him together. I have no hesitation to reject this ludicrous claim at all.

1. First, the plaintiff claims that he is a Muslim. In fact, in his evidence, he has proudly emphasized his identity as a Muslim at least several times (as he should). As a Muslim, he does not drink any alcohol. However, we all know Christmas is a Christian festival which falls on 25 December each year. Generally speaking, Muslims do not celebrate Christmas. The plaintiff certainly has not provided any good explanation to the court as to why 2 Muslims (he and Ali) would choose to celebrate Christmas on a weekday and 2 days earlier than the actual day itself. According to the calendar, 23 December 2014 was a Tuesday.
2. Second, the plaintiff initially admitted under cross-examination that he and Ali did not bring any food or drinks to Flat 5A for the celebration. When he met up with Ali at the street level and went up to Flat 5A together, Ali was not carrying any food. He did not bring anything as part of the celebration. There was no music, no decorations. They did not sing any songs or carols. They did not exchange any gifts. The just sat and talked for 4 hours in a very small room. It simply does not sound like a celebration to me at all. Although the plaintiff tried to patch up this part of the evidence during re-examination by saying that Ali had food in his room. I do not accept this at all.

*C.3.4.3.2. What he was likely able to see when ascending the Staircase*

1. In his WS, the plaintiff states that he met Ali at the ground floor entrance of the Building. Together, at around 6:00 to 6:15 pm, they went up to Flat 5A by using the Staircase.
2. The plaintiff’s description of the lighting condition in the Staircase when he went up in the following manner. He says: “*I could see some light coming in from the window*”; “*When I entered the building, it was dim light outside*”; “*As I told you before, it was not pitch dark at that time, a little bit dark, and I could see a little bit. It was a time when the darkness was prevailing so I could see a little bit.*”
3. The plaintiff said that when he reached the landing on 5/F, he noticed some sandbags or renovation materials and there was a narrow passage in between.
4. In my view, the above account of what the plaintiff was able to see when he went up the stairs is extremely doubtful. The Accident took place on 23 December, just 2 days after the shortest day of the year. According to the public records kept by the Hong Kong Observatory, sunset took place at 5:45 pm on that day. The “civil twilight” ended at 6:09 pm on that day. Thus, objectively speaking, by the time the plaintiff and Ali went up to the Staircase, it should have been almost completely dark if not pitch dark outside. Yet the plaintiff claims that he was able to see the “sandbags and baskets” through the window without any artificial lightings. I find that difficult to believe.

*C.3.4.3.3. Duration of his stay in Flat 5A*

1. As the plaintiff has admitted in the early part of his evidence, he had only visited the flat once in 2011/12 before. It was “*a small room with nothing inside at all”*. How 2 persons would spend nearly 4 hours inside a very small room with nothing inside to celebrate a festival which has nothing to do with their own religion; with no food and drinks brought to the room for the occasion, is something just does not sound credible to me at all.

*C.3.4.3.4. Events happened immediately after the Accident*

1. The plaintiff’s account is that, at around 10:00 pm or a few minutes past 10:00 pm, the Plaintiff left Flat 5A. Ali closed the door of Flat 5A behind him and the corridor became pitch black. The Plaintiff allegedly walked slowly and carefully and tried to go down the stairs by feeling the wall. However, before he descended the first step, he was tripped over by something that he felt was a sandbag. He thus fell down the Staircase at the edge of the 5/F landing, before he could reach for the handrail. As a result of the trip and fall, the Plaintiff sustained injuries.
2. The plaintiff was asked during cross-examination whether the corridor and staircase landing on 5/F was lit, dimly lit or pitch black when he left Flat 5A at around 10:00 pm. He answered that it was pitch black. When asked if he tried to turn on any light, the plaintiff testified that he could not see any light switch at the entrance of Flat 5A as he left therefrom, nor did he ask Ali if there was any light, and walked through the corridor to the Staircase in complete darkness.
3. Mr Leung for the 1st defendant submits that there is something inherently odd about the plaintiff’s s factual account on this. I agree with him.
4. On the plaintiff’s own account, previously when he arrived with Ali at around 6:00 to 6:15 pm, he allegedly noticed the presence of sandbags and baskets on the landing of 5/F. With such knowledge, it is extremely odd, if not defiling common sense, that the plaintiff would leave Flat 5A and venture into and through the corridor to the Staircase and attempt to descend the Staircase in complete darkness without trying to ascertain himself and/or ask Ali if there was any light switch that could turn on a light to illuminate the area. As good friends, which is something the plaintiff has emphasized in his evidence repeatedly, it seems strange that Ali would say goodbye and mark the end of their “Christmas celebration” in such a way, ie closing the door of Flat 5A behind the plaintiff and leaving him in complete darkness outside. At the very least one would expect him to leave his door open in order to allow some light entitled from Flat 5A so as to enable the plaintiff to walk down the Staircase safely. In my view, the plaintiff’s account on this is simply unconvincing.
5. After the Accident, the plaintiff claims that he had yelled out to Ali, who came out from Flat 5A and accompanied him to go down the stairs and go to YCH for treatment.
6. According to the plaintiff, the corridor and the Staircase outside of Flat 5A were pitch black when he left, meaning zero lighting there. Thus, he could not notice the sandbag that caused him to trip. However, also in such complete darkness, Ali seemingly had no difficulty to look for the plaintiff immediately after the Accident and aided him to walk down the Staircase without making any attempt to illuminate the area despite the happening of the Accident. This, in my judgment, is inherently improbable and against common sense.
7. Another minor yet important discrepancy in his evidence in relation to his mode of communication with Ali immediately after the Accident. In cross-examination, the plaintiff was asked to clarify what he meant when he said in his witness statement that he “yelled out in pain and *called* Mr. ALI for help”[[1]](#footnote-1) after falling. The plaintiff testified that he shouted out and did not telephone Ali. However, this contradicts the version of events set out in the letter dated 19 July 2016 sent by the plaintiff’s then solicitors to the 1st defendant, where it was stated that Ali had received a telephone call from the plaintiff.[[2]](#footnote-2)

*C.3.5.* *The inconsistencies in the accounts the plaintiff gave to the medical staff when first admitted at the A&E of YCH*

1. The above accounts of the Accident given by the plaintiff further contradict the contemporaneous records made by the doctor/nurses when the plaintiff was first admitted to the A&E of YCH. On that occasion, first, he gave a completely different address. That address was a unit in “Hover Court, 33-57 Tai Pak Tin Street, Kwai Chung, NT” (“Hover Court”). He further told the doctor at the A&E that he had sustained *a “S/F at staircase”* and *“c/o S/F at home”*.
2. There is no dispute that “S/F” stands for “slip and fall”. Thus, according to the “home” address he reported to the admission nurse at the A&E at YCH, it was the Hover Court address. Hence, the documentary evidence reveals that there were at least 3 addresses which the plaintiff could have been living in on the day of the Accident. Although the plaintiff tried to explain in his evidence that Hover Court was his brother’s address of which he would use as a correspondence address as he often could not receive mails at the Kwai Dao Building address, I do not accept this at all. In my view, there is simply no convincing reason why he should give a different address to the hospital when admitted to the A&E when no “correspondence” was likely to be sent to him. Further, in my view, he would not have told the treating doctor at the A&E that the “*S/F at staircase*” happened *“at home”* when Flat 5A of the Building was not his “home” at all as he now claims he was merely a “visitor” to Ali’s flat at the time.
3. The fact that the plaintiff has subsequent given the Kwai Dao Building address to YCH as his “correspondence” address further undermines his explanation as to why he had told the doctors at the A&E that Hover Court was his “home” address when first admitted to YCH immediately after the Accident: (See bundles of medical notes/records of YCH under item 71 of Bundle of Medical Records where the Kwai Dao Building address was recorded).
4. Overall, I do not find the plaintiff’s explanations that he was renting Flat 5A on behalf of Ali convincing at all. I find that he was actually the tenant of the unit himself as was clearly stated in the 2 tenancy agreements. I further find that this so called arrangement of signing the tenancy agreements on behalf of Ali was highly improbable and was used as a smoke screen to create an illusion that he was a “visitor” to the Building instead of being a “tenant” himself. Perhaps he was advised by his “translator” friend from the lawyer’s office who went to visit the site with him after the Accident that he would be better off to sue in his capacity as a visitor rather a tenant of the Building. That is something that we will never know. However, as a tenant, I find that he must be very familiar with the layout of the Building and the lack of lighting around the Staircase at the time of the Accident.

*C.3.6.* *The evidence given by the 1st defendant on the condition of the Staircase 2 days prior to the Accident*

1. According to the 1st defendant Madam Cheung Pik Chu Ruby (who was DW1 in this case), whom I find as a very impressive and honest witness and whose evidence I accept without any reservation, when she went to Flat 5B on 21 December 2014, ie 2 days before the Accident, the renovation works inside Flat 5B had already been substantially completed: (See 1st defendant’s WS at §4)[[3]](#footnote-3). As the 1st defendant explained when giving evidence, there were only some minor flaws (「小瑕疵」) and minor tasks (such as adding wooden edges (「包木邊」) which remained to be rectified or done by the 2nd defendant inside Flat 5B.
2. Significantly, the 1st defendant observed that on that day, outside Flat 5B, there were sandbags stacked in an orderly manner on the left hand side of the Staircase from 5/F leading to the roof. However, she did not see any buckets or renovation materials piled up at or near the Staircase between 4/F and 5/F. The 1st defendant asked Mr Chu of the 2nd defendant to remove the sandbags from the Staircase between 5/F and the roof. Mr Chu told her that the sandbags were to be used for the renovation of another flat in the Building.
3. In my judgment, the 1st defendant’s description of the Staircase is entirely consistent with the photos allegedly taken by the plaintiff and/or his former solicitors’ staff allegedly around a week after the Accident.
4. I further find the 1st defendant’s description of the Staircase as at 21 December 2014 (ie that there were only sandbags stacked against the wall on the Staircase between 5/F and the roof and no sandbags/renovation materials were left in and near the Staircase between 4/F and 5/F), entirely credible as it was towards the end of the project and she had paid Mr Chu of the defendant a substantial part (the third instalment) of the contract sum on that day. I also believe her when she said that the renovation work had been substantially completed with only a few “touch-up” jobs remaining for the contractor to finish. Hence, in my judgment, it is difficult to imagine that only 2 days later, ie on 23 December 2014, the condition of the Staircase would turn from an orderly manner to a completely chaotic state as the plaintiff would like the court to believe. One would expect the sandbags in the Staircase between 5/F and the roof either to remain there in the same location (if D2’s workers had not yet removed them) or for them to be removed to the other flat in the Building where Mr Chu said the 2nd defendant would be conducting renovation works. I find as a fact that it would be inherently improbable for some of the sandbags to be moved from the Staircase between 5/F and the roof to the Staircase between 4/F and 5/F and/or open and strewn on the landing (as alleged by the plaintiff) in those circumstances. I therefore would reject the plaintiff’s claim that there were sandbags and building materials / debris scattered all around the top of the Staircase on 5/F of the Building in the evening of the Accident.
5. Another important matter which was mentioned by the 1st defendant in her evidence is that there would be a light bulb above the main door of each of the unit on 5/F. The occupants of the units could switch on the light to illuminate the common area and the Staircase. This part of her evidence is confirmed by DW2 and DW3. Thus, I find that even if there were no general lighting / light tubes provided in the common area or in the Staircase as alleged by the plaintiff, Ali could have switched on the light bulb located outside Flat 5A to provide some lighting for the plaintiff to walk safely down the Staircase. It defiles common sense that Ali as a good friend of the plaintiff would shut the door behind him without putting on the light bulb above the door of his own unit.

*C.3.7. Conclusion on the findings on the plaintiff’s case*

1. In the aforestated premises, I find the plaintiff has failed to prove, on a balance of probabilities, that he actually sustained injuries as a result of falling down the Staircase on 5/F of the Building. In my view, he might have a “slip and fall” accident somewhere that evening (as the medical evidence shows that he had sustained some form of bodily injuries), whether it was at his “home” in Kwai Dao Building or Hover Court or somewhere else. This is something that we do not know and will never able to find out. It is even possible that he might have sustained the injuries in the Building itself. However, I find any injuries he had sustained that evening was certainly not as a result of the alleged condition of the Staircase as claimed by the plaintiff in this case. Hence, based on the above analysis of the evidence, I have no hesitation to reject the plaintiff’s evidence and in dismissing his claim. This is without taking into account of the deliberate concealments by the plaintiff in other PI proceedings which I shall now discuss below.

*D.* *Deliberate concealments by the plaintiff in the Other Proceedings*

*D.1. Details of the deliberate concealments*

1. On Day 3 of the trial, this court managed to locate some court records and files (“Court Files”) which revealed that the plaintiff was/is involved in the Other Proceedings. Mr Leung for the 1st defendant has very helpfully summed up those cases in the following table which set out the history and particulars of those cases (in chronological order by the date of writ/application) and of which I would like to respectfully adopt[[4]](#footnote-4):-

|  | **Case number** | **Date of writ** | **Other parties**  **to the**  **proceedings** | **Summary of**  **P’s case** | **Current**  **status** |
| --- | --- | --- | --- | --- | --- |
| 1 | DCEC 188/2009 | 2009 | R1: Himali Engineering Construction Ltd  R2: Chong Kee Construction Co Ltd | Accident date: 20 May 2008 (other details about the accident unknown from the Court file) | Settled at HK$100,000 by consent order dated 11 May 2009 [**TB/616**] |
| 2 | DCEC 192/2012 | 2012 | R1: Winner Construction Engineering Ltd (t/a Wo Kee Construction & Engineering Co)  R2: Maeda – CREC – Seli JV | Appears to be related to the accident as HCPI 789/2012 (see below) | Settled at HK$238,300 by consent order dated 30 August 2013 [**TB/619**] |
| 3 | HCPI 789/2012 | 18 October 2012 | D1: Winner Construction Engineering Ltd (t/a Wo Kee Construction & Engineering Co)  D2: Maeda – CREC – Seli JV | On 4 October 2011, in the course of employment at Greenview Terrace, No 6 Castle Peak Road, Tsuen Wan, when standing with one foot on the edge of a water tank, P’s foot slipped and he fell into the water tank, resulting in a crush injury of the right middle finger causing a fracture of the 2nd phalange thereof and laceration. | Settled at HK$550,000 by consent order dated 28 August 2013 (with credit given for HK$238,000 received in DCEC 192/2012)  [**TB/712**] |
| 4 | DCEC 2876/2016 | 23 December 2016 | R1: Fu Pui Construction Engineering Ltd  R2: Aggressive Construction Co Ltd | On 28 August 2016 at around 11:15 am (on P’s fourth day of work), in the course of employment at a public housing construction site at Hing Wa Street, Cheung Sha Wan, P was instructed to separate wood and metal bar of 1.5 feet weighing over 30 kg. Whilst pulling a metal bar from the water, P’s right thumb suddenly got trapped between 2 metal bars, resulting in a crush injury. | Settled at HK$75,000  [**TB/873**] |
| 5 | DCPI 2578/2017 | 23 November 2017 | D1: Fu Pui Construction Engineering Ltd  D2: Aggressive Construction Co Ltd | Related to the same accident as DCEC 2876/2016 (see above) | Settled at HK$275,000 by consent order dated 19 July 2018 (with credit given for HK$75,000 received in DCEC 2876/2016) [**TB/872**] |
| 6 | DCEC 1662/2019 | 11 July 2019 | R: Ming Hin Pier Trading Ltd | On 2 May 2019 at around 11:15 am (on P’s first day of work), in the course of employment on a vessel at Tuen Mun Public Cargo Working Area, as P was climbing up a container, his hands and feet slipped. P fell from a height of 3.54 m to the ground, injuring his right ring finger, neck, back, right shoulders and bilateral hips. | Ongoing |
| 7 | DCCJ 930/2021 | 3 March 2021 | P therein: AXA China Region Insurance Co (Bermuda) Ltd  P was D therein | AXA claimed HK$1,164,394.37 in respect of P’s breach of his duty of utmost good faith/misrepresentation/breach of warranties/breach of contract under 4 insurance policies entered into in 2011-2012 in view of his undisclosed medical history. | Default judgment entered on 1 Sep 2021  [**TB/986**] |

1. The plaintiff does not dispute that he was the claimant or the plaintiff in the first 6 set of the Other Proceedings listed above. This can hardly be disputed as both his name and his date of birth (ie 15 January 1976) have been stated in the statement of claim/statement of damages/application. As for DCCJ 930/2021, the plaintiff accepts that he was the defendant in that case and had been served with the documents including the default judgment which was entered against him in that action. Hence, there is no dispute that the plaintiff has been involved with at least 7 other cases of which in 6 of them he was the claimant/plaintiff and the last one as the defendant.
2. The writ of summons in this action was issued on 1 November 2017. Subsequently, the statement of claim and statement of damages in this action were filed and served on 19 October 2018. At that date, the plaintiff had already filed and served the documents commencing the proceedings in respect of the alleged accident on 28 August 2016 (ie post-dating the Accident), namely:-
3. The application dated 23 December 2016 in DCEC 2876/2016, which was verified by a statement of truth signed by the plaintiff on the same day;
4. The writ of summons, statement of claim and statement of damages all dated 23 November 2017 in DCPI 2578/2017. The statement of truth verifying the statement of claim and statement of damages in DCPI 2578/2017 was a document signed by the plaintiff on the same day, ie 23 November 2017.
5. In relation to the Court Files of the Other Proceedings, the parties’ counsel were given an opportunity to peruse the available Court Files of the Other Proceedings and ask the plaintiff questions on matters arising therefrom. In respect of those matters, the plaintiff testified that:-
6. He was unable to remember what the Other Proceedings were about as he is taking (unspecified) medicine which affects his memory;
7. As to why he retained different law firms in the various proceedings,[[5]](#footnote-5) he sought to explain that *“when someone introduced me to a law firm, I just went there”*. He stated that he could not recall the names of the lawyers, except that there was a *“Ms Winnie”* and *“Ms Joyce Wong”* (though he could not remember the names of their firms). He asserted that he had been introduced to *“Ms Winnie” “through other [unidentified] people”*. He also stated that he had the telephone number of a “translator” through whom he contacted his lawyers. He said that he knew and was “friends” with more than one translator;
8. The plaintiff accepted that he had received the documents (including the statement of claim and notice of intention to enter judgment) in DCCJ 930/2021; and
9. When the plaintiff was employed by Ming Hin Pier Trading Co Ltd as a hooker/slinger (the subject matter of DCEC 1662/2019 being the alleged accident he suffered during the said employment), his job involved attaching hooks weighing around 1 to 1.5 kg to containers.
10. On Day 4 of the trial, the legal representatives of the plaintiff, the 1st defendant and the 3rd defendant made a joint application for an order by consent that there be leave for copies of documents (including originating process/application, pleadings, affidavits, witness statements and judgments/orders disposing of the proceedings, including any statements of truth to the aforesaid documents) from the Court Files of the Other Proceedings to be provided to the parties in the present action and inserted into the trial bundle; and, save with the leave of the court, such documents shall not be used for purposes other than the action herein. An order was accordingly made by the court.

*D.2. Factual Discrepancies with the Other Proceedings*

1. I am indebted to Mr Leung for the 1st defendant who has very helpfully summarized the discrepancies between the plaintiff’s factual case herein and what he has stated in the Other Proceedings (verified by statements of truth) as revealed by the Court Files in the following table including the commentaries made by him:-

|  |  |
| --- | --- |
| **P’s factual account**  **in this action** | **P’s factual account**  **in the Other Proceedings** |
| **Pre-Accident (pre-23 December 2014) medical history** | |
| * **P’s witness statement dated 22 May 2019:** * “Before the accident, my health condition was generally good” (§30) [TB/138] * “On about 21st May 2013, I encountered a work accident and injured my neck, back, left thumb and left index finger” (§33) [TB/139]   **Joint Orthopaedic Report by Drs Tio and Lam dated 21 December 2020:**   * “On enquiry, Mr. Mohammad said he had attended Psychiatric clinic of Caritas Medical Centre (CMC) for 1-2 times in 2009 for depression, and had an accident in construction site in 2013.” (§10) [TB/204] * “According to available documents and Mr. Mohammad, he had an injury while working on 21/5/13 in construction site. * He was admitted into YCH on 22/5/13, and noted to have * left hand injury, with minimally displaced fracture middle phalanx of left index finger and fracture distal phalanx of thumb. * back and neck pain with no neurological deficits/ left sciatica * headache and voice in head, which was diagnosed by neurosurgeon in 3/3014 to have post-concussion syndrome * Sick leave was given to 20/10/14. * He returned to work in 12/2014. * he had defaulted a psychiatric appointment on 27/1/15” (§53) [TB/213] * “According to YCH AED record on 2/10/13, he had: * LIF [left index finger] injury by volleyball yesterday” (§15) [TB/205] | **HCPI 789/2012:**   * “No previous serious accident, save in 2008 when had low back injury” and “No previous serious illnesses” (SoD, §§2.2.2–2.2.3) [TB/662] * “Crush injury of right middle finger causing fracture of 2nd phalange of right middle finger; and laceration” (sustained in an accident at work on 4 October 2011) (SoD, §2.1) [TB/662] * “The present problems [as at date of SoD, ie 14 December 2012] include (1) Pain (2) Restricted movement (3) Reduced strength (4) Unable to make full grip” (SoD, §2.8.2) [TB/664]   **DCCJ 930/2021:**   * P notified his insurer that “In 2008, the insured fell at his workplace. His back and legs was hurt. He stayed in Tuen Mun Hospital for one day. Then he was recommended to physical therapy in Caritas Hospital for a few months. He twisted the muscle of his back and legs only. No facture. After recovery, the movement of his legs and back is normal and the current condition is fine.” (SoC, §11(a) [TB/957]) * P notified his insurer that “On 2011-10-4, the insured’s right middle finger was hurt due to accident. He was recommended to physical therapy in Caritas Medical Centre. He took the sick leave until 2012-9-7” (SoC, §20(d)(i) [TB/963]) * P “submitted a Disability/ Accident Claim Form I to [his insurer] under the Policies as a result of a slip and fall accident at work happened on 22 May 2013” (SoC, §§26–27 [TB/966]) |
| Commentary on P’s pre-Accident (pre-23 December 2014) medical history:  In this action, P only disclosed his previous episode of depression in 2009, his previous accident at work (left thumb, left index finger, neck and back injury) on 21 May 2013 and his left index finger injury when playing volleyball on 1 October 2013. P concealed his low back injury in 2008 and accident at work (right middle finger crush injury) on 4 October 2011. | |

|  |  |
| --- | --- |
| **Post-Accident (post-23 December 2014) medical history** | |
| **Joint Orthopaedic Report:**   * “He said during a visit to Pakistan in 2017, he had right thumb injury and had operation done.” (§64) [TB/215] (see also §42 [TB/209]) * Dr Lam also observed that “Furthermore, the index finger was noted to have scars along the radial side and tenderness over the middle phalanx. These were different from the site of injury, which was at the distal phalanx only. It raised the doubt that whether these were due to other injuries.” (§68) [TB/216] However, P did not provide any information to the joint experts about these other injuries and when/in what circumstances they were sustained. | **DCEC 2876/2016 (and the related common law action in DCPI 2578/2017):**   * Right thumb crush injury (sustained in an accident at work on 28 August 2016 at around 11:15 am) (App, §4(b)-(c) [TB/718–719])   **DCEC 1662/2019:**   * “Fracture right ring finger, neck, back, right shoulder and bilateral hip injuries” (sustained in an accident at work on 2 May 2019 at around 11:15 am) (App, §4(b)-(c) [TB/877–878])   **DCCJ 930/2021:**   * P notified his insurer that “In 2018, [his] second finger of left hand had been scratched by some sharp object”. The diagnosis was “skin trauma”. “Up to now, the movement of his finger and hand is normal and the current condition is fine.” (SoC, §6(b) [TB/953]; §10(d)(i) [TB/956]; §15(d)(i) [TB/960]) |
| Commentary on P’s post-Accident (post-23 December 2014) medical history:  In this action, P only disclosed his subsequent injury to his right thumb during a visit to Pakistan in 2017. P concealed his right thumb injury at work on 28 August 2016, his left index finger skin trauma injury in 2018, and his right ring finger, neck, back, right shoulders and bilateral hips injury at work on 2 May 2019. | |
| **Pre-Accident (pre-23 December 2014) employment history (occupation/salary)** | |
| **P’s witness statement:**   * “I was born in Pakistan on 15th January 1976, received education up to Primary level there. I came to Hong Kong in about 1990. I immigrated to United Kingdom in about 1997. Later in about 2008, I returned to Hong Kong.” (§3) [TB/131] * “When I immigrated to Hong Kong, I worked in various industries like factory worker, security guard, construction site worker, slinger for container company.” (§32) [TB/139] * “From about early 2013, I worked as slinger for Bestcast Limited. My daily rate was HK$900, working for about 26 days per month. My average salary was about HK$23,400 (ie HK$900 x 26 days). My employer paid me part of the salary in cash, part in cheque.” (§33) [TB/139] * “in about December 2014, I started working in a tailor shop (HQ Tailor). My responsibilities were to deliver goods to China and Macau and shop keeping. My daily wages was HK$1,000. I needed to work about 26 days per month. My monthly earning should be about HK$26,000 (HK$1,000 x 26 days).” (§34) [TB/139] * **Joint Orthopaedic Report:** * “He said he worked in United Kingdom as a chef since 1996, and returned to Hong Kong 2008.” (§3) [TB/203] * “He had then worked as a construction site worker and security guard.” (§4) [TB/203] * “He had worked as a salesman in tailor shop since 12/2014. He said he worked from 8 am to 6 pm, mainly in canvassing clients and delivery of suits.” (§5) [TB/203] * **P’s oral testimony:** * When P lived in the UK from 1997 to 2008, P worked as a tandoori chef cooking bread and meat in Derby. * After returning to HK in 2008, he worked during daytime as a general labourer at construction sites and as a security guard at night until 2012. * He started working as a slinger for a container company in around 2012/2013 (until he met with accident at work on 21 May 2013). His daily salary was HK$900 and he worked around 23, 24, 26 days on average. * When P was employed by HQ Tailor in December 2014, he did not work as a tailor making custom-made suits; rather, he was a salesman (who had to look after the shop in Tsim Sha Tsui when the boss was away) and a deliveryman. | **HCPI 789/2012:**   * “Work in UK – food factory” (SoD, §4.2.4(9)) [TB/668] * When P met with accident at work on 4 October 2011, he was employed by Winner Construction Engineering Ltd (trading as Wo Kee Construction & Engineering Ltd) as a general labour worker, with a daily wage of HK$550 and working 26 days per month, ie a monthly salary of HK$14,300. Taking into account overtime and MPF payments, his average monthly wage would be not less than HK$15,500 (SoC, §§2(9) & 3 [TB/653–654]; SoD, §§3.1.1–3.1.3 [TB/665–666]) * From the date of the accident (4 October 2011) until the date of the SoD (14 December 2012), P was on sick leave and did not work (SoD, §3.5) [TB/666] * P “has not been able to find any work, but hopes to get a job as a watchman/caretaker by January 2013, earning not more than $8,000 per month” (SoD, §3.7) [TB/667] |

|  |  |
| --- | --- |
| **Post-Accident (post-23 December 2014) employment history (occupation/salary)** | |
| **P’s witness statement:**   * “in about November 2015, I resumed working as security guard, earning about HK$13,000 per month” (§37) [TB/140]   **Joint Orthopaedic Report:**   * “Mr. Mohammad said he did not have further treatment at YCH after 31/8/15 and resumed work in 2016.” (§64) [TB/215] (see also §40 [TB/209]) * “He said during a visit to Pakistan in 2017, he had right thumb injury and had operation done. He said he resumed work as a security guard in construction site in 5/2019 and continued until now [i.e. 30 September 2020 being the date of the joint examination]. He worked from 7 p.m. to 7 a.m., for 6 days a week.” (§§42–43) [TB/209–210]   **Revised Statement of Damages dated 19 February 2021:**   * “The Plaintiff is now working as a security guard, earning around HK$13,000.00 per month. His current job does not require him to lift or carry heavy objects.” (§3(2)) [TB/98]   **P’s oral testimony:**   * P’s witness statement, §37 [TB/140] (“After expiry of sick leave, in about November 2015, I resumed working as security guard, earning about HK$13,000 per month.”) is incorrect. * In around June 2016, P started working as a security guard for a company called ‘City Pro’ at a monthly salary of HK$13,000. * At present, P continues to work as a security guard at a monthly salary of HK$15,000 (HK$14,200 after deducting MPF). | **DCEC 2876/2016:**   * When P met with accident on 28 August 2016, he was employed as a carpenter by Fu Pui Construction Engineering Ltd (“**Fu Pui** **Construction**”) and was assigned the task of “separating wood and metal bar of 1.5 feet weighing over 30 kg which were part of the scaffolding removed after concreting with two other co-workers” (App, §4(b)) [TB/718] * “He earned around HK$20,800 per month before the accident” (App, §4(d) [TB/719]; WS, §(8) [TB/769]) * P was employed by Fu Pui Construction as a casual construction site worker since 25 August 2016 at a daily wage of HK$600 and met with accident on the **fourth day** of work [TB/760] (see also P’s witness statement, §(6) [TB/769])   **DCPI 2578/2017 (the related common law action to DCEC 2876/2016):**   * As a result of the accident on 28 August 2016, P was granted sick leave and did not work from 28 August 2016 to 24 August 2017 (SoC, §4(b) [TB/833–834]).   **DCEC 1662/2019:**   * When P met with accident on 2 May 2019 on the **first day** that he was employed as a hooker by Ming Hin Pier Trading Ltd (App, §3(b)-(c),(e) [TB/877–878]; FBP, Answer (1) [TB/920]) * In the 12 months prior to the accident on 2 May 2019, P's average monthly income was HK$23,400 (FBP, Answer (12) [TB/923]) * As a result of the accident on 2 May 2019, P was granted sick leave from 2 May 2019 to 27 June 2019 (App, §3(c) [TB/877] and thereafter intermittently until 6 April 2020 [TB/940] |
| Commentary on P’s post-Accident (post-23 December 2014) employment history (occupation / salary):  In this action, the only post-Accident occupation mentioned by P was being a security guard earning a monthly salary of HK$13,000, which job he commenced in November 2015 (corrected to June 2016 in his oral evidence) and which he says remains his present job (allegedly earning HK$15,000/HK$14,200 after deducting MPF per month at present). P has concealed his employment as a carpenter by Fu Pui Construction in August 2016 (with an average monthly income of HK$20,800 at that time) and as a hooker by Ming Hin Pier Trading Ltd in May 2019 (with an average monthly income of HK$23,400 at that time). | |

1. I agree with Mr Leung that when the documents from the Court Files of the Other Proceedings are pieced together with the evidence in this action, the picture that emerges is that the plaintiff has alleged that he met with at least 9 accidents resulting in personal injuries over a span of 11 years.

*D.3. Details of injuries and sick leave in other accidents*

1. The following table prepared by Mr Leung illustrates how strikingly “accident-prone” he is upon returning to work after the expiration of sick leave from the previous accident:-

(\*: accident not disclosed by the plaintiff in this action)

|  | **Date of accident** | **Injury** | **Sick leave** | **Date of return to work** |
| --- | --- | --- | --- | --- |
| 1 | 2008\* | Low back | Unknown | Unknown |
| 2 | 4 October 2011\* | Right middle finger | 4 October 2011–at least 14 December 2012  [TB/666/§3.5] | Unknown |
| 3 | 21 May 2013 | Neck, back, left thumb, left index finger | 21 May 2013–  20 October 2014  [TB/213/§53] | December 2014  [TB/139/§34] |
| 4 | 1 October 2013 | Left index finger | N/A | N/A |
| 5 | 23 December 2014  (having worked for 18 days)  (subject matter of this action) | Right index finger | 24 December 2014–  30 November 2015  [TB/218/§76] | June 2016 (according to P’s oral evidence) |
| 6 | 28 August 2016\* (on the fourth day of work) | Right thumb | 28 August 2016–  at least 9 March 2018 [TB/858/item 2] | Unknown |
| 7 | 2017 | Right thumb (injured again, in Pakistan) | Unknown | Unknown |
| 8 | 2018\* | Left index finger (scratched by sharp object) | Unknown | Unknown |
| 9 | 2 May 2019\*  (on the first day of work) | right ring finger, neck, back, right shoulders and bilateral hips | 2 May 2019–  6 April 2020  [TB/940] | Unknown |

1. I do not consider the plaintiff is merely “accident prone”. I find he is a “habitual claimant” who mainly lives off sick leave payments and damages he recovers from the various industrial accident claims he made over the years. Whether those claims were genuine or not is not within the scope of our enquiry here. However, if one were to add all the sick leave payments and damages he has received over the past 12 years plus the insurance claims he has obtained through dishonest means (the subject matter of DCCJ 930/2021 of which the judgment still stands), he has received a staggering sum of over HK$2.64 million. For a general labourer, that is almost as much as he could make if he were to work full time over the same period of time.
2. While I accept the well-established principle that one cannot impeach a witness’ credibility by adducing evidence to discreditable acts *unconnected* with his testimony: (See *Mohammad Amjad v John M Pickavant & Co*, HCPI 100/2009, unreported (7 May 2012; Master Marlene Ng (as she then was) at §§173-182, the matters as set out in the tables above in my view are closely connected with his testimony. In my view, they are not only relevant to the credibility of the plaintiff, they have direct bearing on some of the issues fall for determination by the court in the present action. These included (1) whether the alleged injures claimed by the plaintiff were sustained in the Accident or were sustained in other accidents claimed by him in the Other Proceedings; and (2) his pre-accident jobs and income stated in the present case compared with the claims he made under the Other Proceedings.
3. Further, there is little doubt that the court has inherent jurisdiction to control access to the documents placed in its custody in relation to legal proceedings, whether they are filed in accordance with the rules or produced as exhibits during the course of proceedings or simply lodged with the court or handed up to a judge by the parties for the purpose of the proceedings. It has been said that such power would include the power to restrict as well as power to grant access: See *Secretary for Justice v FTCW* [2014] 1 HKLRD 849 at §§16-19 per Lam VP (as he then was).
4. Hence, I am of the view that the court is entitled to look at the Court Files in the Other Proceedings, provided that the parties are given opportunities to study them and to ask questions arising out of them.

*D.4. Inconsistencies claimed by the plaintiff in relation to his ability to return to work and his injuries*

1. In relation to the plaintiff’s ability to return to work after the alleged Accident on 23 December 2014, I accept the following submissions made by Mr Leung on behalf of the 1st defendant:
2. Contrary to the false impression given by the plaintiff in this action that he resumed work as a “security guard” after the expiration of sick leave following the Accident (and is at present still allegedly working as a security guard), according to the plaintiff’s own pleaded case in the Other Proceedings, he worked as a “carpenter” in August 2016 (which job required the plaintiff to separate heavy wood/metal bars weighing over 30 kg) and as a “hooker” /slinger at a pier in May 2019 (which job required the plaintiff to attach hooks weighing around 1 to 1.5 kg to containers. In other words, the plaintiff is trying to give the false impression that following the Accident, he has only been able to work in a less physically demanding job;
3. In re-examination, when the plaintiff was asked *“right now, as a security guard, does your injury to your right index finger affect you in any way?”*, he answered, “*It didn’t because most of the time I just had to sit there. But if I work in a factory or construction company, this hand also makes trouble because I feel pain and when I walk, I also feel pain in my back and hip”*; and
4. By concealing his alleged subsequent accidents on 28 August 2016 (as a result of which he was granted sick leave and did not work from 28 August 2016 to 9 March 2018) and on 2 May 2019 (as a result of which he was granted sick leave and did not work from 2 May 2019 to 6 April 2020), the plaintiff is attempting to artificially inflate and exaggerate his claims in the present case for loss of earnings and loss of earning capacity, by seeking to contend that such losses are solely attributable to the Accident.
5. In relation to the residual effect and disability caused by the injury to the plaintiff’s right index finger allegedly sustained in the Accident on 23 December 2014, I accept the following submissions of Mr Leung:-
6. At the joint examination conducted by Dr Tio Man Kwun, Peter (“Dr Tio”) and Dr Lam Kwok Chin (“Dr Chin”) on 30 September 2020, the plaintiff “still complained of residual right index finger pain, numbness and stiffness” and “He also had a weaker right hand grip”[[6]](#footnote-6);
7. The plaintiff’s expert, Dr Tio, opined that “with right thumb injury which took place in 2017, his *right hand grip power* could be affected by both with estimated apportionment of *70% to his right thumb injury* and *30% to his right index finger injury*” [emphasis added] (whereas the defendants’ expert, Dr Lam, opined that “the residual hand weakness, if genuine, should be due to the thumb injury rather than the index finger injury” and also observed the presence of scars along the radial side and tenderness over the middle phalanx which did not appear to be related to the injury to the distal phalanx of the right index finger allegedly sustained in the Accident)[[7]](#footnote-7);
8. By only mentioning to Drs Tio and Lam his right thumb injury sustained in Pakistan in 2017, and by concealing from them his right thumb injury on 28 August 2016; his left index finger injury in 2018 and his right ring finger, neck, back, right shoulders and bilateral hips injury on 2 May 2019, the plaintiff withheld relevant information from the joint experts to assess and apportion the true continued effect of the right index finger injury allegedly caused by the Accident on the plaintiff’s residual weaker right hand grip power;
9. In other words, the plaintiff was attempting to exaggerate the effect of the injury allegedly arising from the Accident on his residual right hand grip power weakness. The consequence is to artificially exaggerate the plaintiff’s claim herein for PSLA and loss of earning capacity, by seeking to inflate the extent to which his present disability (ie persistent right hand weakness) is attributable to the Accident;
10. In this regard, it is further worth noting that:-
11. In the statement of damages in DCPI 2578/2017, the plaintiff alleged that “[p]rior to the accident on 26/8/2016, he used to be physically fit and healthy”[[8]](#footnote-8), without mention of the Accident or the effects thereof;
12. In his witness statement dated 18 May 2017 and filed under DCEC 2876/2016, the plaintiff further alleged that “as a result of the accident [on 26 August 2016], [he] has persistent pain and permanent physical impairment. In particular:-
13. [he] cannot lift objects of more than about 1 or 2 kg; (b) [he] cannot make full fist with [his] right hand; (c) [he] can no longer play volleyball which [he] used to play regularly before the Accident; and (d) [he] cannot keep my right hand down for long time.”;[[9]](#footnote-9) and
14. These plainly contradict any suggestion that the plaintiff’s present disability (even if proven) is in any way attributable to the Accident;
15. The plaintiff agreed in cross-examination when it was put to him that any pain weakness which he feels in his right hand at present is because of his right thumb injury, and not the injury to the tip of his right index finger injury. However, in re-examination, the plaintiff demonstrated a closed fist with his right hand and asserted that he *“cannot hold and grip anything with power”* and *“If I buy some groceries, it’s difficult to hold in my right hand”.*
16. In my judgment, the above matters clearly show up that the plaintiff is a thoroughly dishonest witness who has been exploiting our litigation system for years for his own financial gain.

1. Lastly, I have no hesitation to reject his pathetic claim that he did not provide details of his previous injuries to the experts during their joint examination on 30 September 2020 because the experts did not ask him. His exact answer was: *“they didn’t ask me so I didn’t tell”.* I find that is untrue as the experts have clearly recorded in the Joint Medical Report that the “past health” history was volunteered by the plaintiff “on enquiry”.

*D.5. The inconsistent cases advanced by the plaintiff in different legal proceedings constitute an abuse of the court’s process*

1. Mr Sadhwani for the plaintiff in his closing submission states that while there is no denying the fact that there are inconsistencies between the plaintiff’s evidence in these proceedings and the Other Proceedings, he says that the inconsistencies are confined to 2 areas only, namely, (1) injuries that the plaintiff suffered both before and after the accident in the present action; and (2) the plaintiff’s employment history before and after the Accident. He says it has nothing to do with the issue of liability. He submits that as far as the plaintiff’s evidence on liability is concerned, it is consistent, reliable and believable.
2. With respect, I do not agree with such artificial separation in considering a witness’s credibility at all. I have already analyzed the plaintiff’s evidence on the issue of liability above and provided the reasons of why I consider they are unreliable and should be rejected on their own without taking into consideration of the deliberate concealments found in the Other Proceedings. There is however more to that. In my judgment, if a claimant has been caught out deliberately tried to conceal relevant information to his own lawyers and the court and such information contains clear inconsistencies relevant to the issues in dispute in the case which, if they have been disclosed properly as part of the discovery process in the proceedings, would have exposed the person’s lies and deceits on his claim, this will obviously affect the overall credibility of that person. In my view, the court cannot artificially isolate certain parts of his evidence in which he was caught out being deceitful and dishonest and reject those evidence only and at the same time accept his evidence on another part of his case without questioning his overall integrity and credibility as Mr Sadhwani has suggested.

1. In this case, the plaintiff has positively advanced a case in this action which is inconsistent with the cases which he has put forward (verified by statements of truth) in the Other Proceedings. The irresistible inference must be that the plaintiff knowingly and deliberately did so.
2. It has been held that it is an abuse of process for a litigant, with full knowledge of the facts, to advance two cases in separate legal proceedings that are plainly inconsistent and incompatible with one another: *Chan Chun Chuen v Kao, Lee & Yip* (unrep, HCA 597/2015, 12 October 2017), *per* Deputy High Court Judge Anson Wong SC at §§21–29, 30(3) (cited with approval in *Chu Yue Bun v Lai Shiu Woon* [2021] HKCA 1929, per Kwan VP at §31(2)).
3. The abuse lies in its effect on the integrity of the administration of justice. Where a party with full knowledge of the facts advances a claim which is diametrically inconsistent with his allegations in previous proceedings, the integrity of the justice system would be no less compromised simply because his/her previous allegations through to

judgment: *Chan Chun Chuen* at §30(4); *Chu Yue Bun* at §31(2).

1. In this connection, a party who fraudulently or dishonestly invents or exaggerates a claim will have considerable difficulties in persuading the trial judge that any of his/her evidence should be accepted. This may affect either liability or quantum: *Summers v Fairclough Homes Ltd [2012]* 1WLR 2004at §52 (cited with approval by Bharwaney J in *Lai Sin Yan Elsie v Tata Communications (Hong Kong) Ltd*[2020] 4 HKLRD 363 at §6).
2. In *Lai Sin Yan Elsie*at §7, Bharwaney J referred to the observations by Moses LJ in *South Wales Fires and Rescue Service v Smith* [2011] EWHC 1749 (Admin):-

“[2] For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.

[3] They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable are required to discern those which are deserving and those which are not.

[4] Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability.”

1. I entirely agree with the learned judge’s comments in the above case and find that the plaintiff who clearly has advanced a false and lying claim in this case should expect no sympathy from the court at all. His dishonest acts not only have severely undermined the integrity of our system, but also create a burden on the tax payers who have funded his present claim through the legal aid fund. In doing so, the plaintiff not only has wasted the scarce judicial resources (the court had spent 6 days in hearing the trial), but he has also deprived other legitimate litigants’ rights and access to justice. Such dishonest acts not only should be exposed and condemned by the court, these claimants should be severely penalized on costs in order to reflect the court’s disapproval of such appalling conduct.

1. Incidentally, I would like to emphasize here that I do not think the plaintiff’s legal aid assigned solicitor or counsel in this case should in any way be blame for failing to bring the Other Proceedings to the attention of the court. It is obvious to me that they had been deliberately kept in the dark by the plaintiff about the existence of those cases. They had no idea about the existence of them until they were exposed by the court. The plaintiff has very cleverly, most likely assisted by unqualified people dressed up as “translators” working for different law firms (as the evidence in this case has revealed) and used a different law firm in almost each of the claim arising out of 4 separate industrial accidents, made a total of 6 different claims under the Other Proceedings. I am sure the main aim of this is to keep the solicitors, whether they were assigned by the Director of Legal Aid or not, in the dark so that they would not know what injuries or disabilities he has claimed in other cases. As can be seen from the tables prepared by Mr Leung above, the plaintiff has made repeated, inaccurate and exaggerated claims of injuries so as to gain the maximum amount of compensation from the unsuspected defendants in those cases. Had he disclosed the existence of those cases to his solicitors, they would be under an obligation to make discovery of them in subsequent proceedings.
2. Hence, given the above deliberate concealments by the plaintiff and the glaring inconsistencies in his claims on his injuries and working capacity in the Other Proceedings, I have no hesitation to reject his claims in the present case.

*D.6. Conclusion on liability*

1. Based on the above discussions, I find the plaintiff has failed to prove his case on liability and his claim will be dismissed with costs in favour of the 1st and 3rd defendants.
2. Given my above findings, the issues of contributory negligence and apportionment of liability between the defendants do not arise. There is therefore no need for me to discuss those issues here.

*E. QUANTUM*

1. In the unlikely event that I am wrong in my above findings, for the sake of completeness, I shall briefly discuss the amount of damages which I would have awarded in this case had the plaintiff been able to succeed on the issue of liability.

*E.1. Injuries and treatments after the Accident*

1. After the Accident, the plaintiff walked to the nearby YCH for treatment[[10]](#footnote-10). Medical examination showed that there was an open wound over his right index finger. X-ray revealed fracture of right distal phalanx, whilst no fracture was identified in X-ray of right shoulder and right hip. The plaintiff’s finger injury was treated non-operatively with wound dressing and a course of prophylactic oral antibiotics. He was discharged on the same day and attended 4 out-patient follow-up sessions afterwards.
2. Sick leave was granted to the plaintiff for the period from 23 December 2014 to 30 November 2015, totalling 343 days.

*E.2. The joint orthopaedic experts medical reports*

1. The Joint Medical Report dated 21 December 2020 was prepared by Dr Tio for the plaintiff and Dr Lam for the 1st and 3rd defendants. In the Joint Medical Report, Dr Tio and Dr Lam agree that the plaintiff sustained injuries of right index finger tuft fracture, right hip and right shoulder contusion as a result of the Accident.
2. However, I find that his alleged right hip and right shoulder injuries sustained in the Accident have left no permanent impairment on the plaintiff and should not be taken into account when assessing the PSLA award in this case.
3. Dr Tio and Dr Lam’s opinions have been summarized in the tables under the discussions of the issue of liability above, I do not intent to repeat them here.

*E.3. Pain, suffering and loss of amenities (PSLA)*

1. As can be seen from the assessment of permanent impairment of the whole person in the Joint Medical Report, the injury sustained by the plaintiff in the Accident was mainly confined to his right index finger.
2. In considering the appropriate award for PSLA, the court will take into account the percentage of permanent impairment of the whole person assessed by the medical experts: *Chan Yuet Keung v Harmony (International) Knitting Factory Ltd* [2010] 5 HKLRD 599, *per* Bharwaney J at §62. In the present case, as mentioned above, the assessment by Drs Lam and Tio of the plaintiff’s permanent impairment of the whole person attributable to the Accident was minimal.
3. Mr Sadhwani submits that an appropriate award for PSLA in view of the experts’ opinions as stated in the Joint Medical Report should be at HK$200,000. This is the same amount which has been pleaded in the revised statement of damages before the deliberate concealments of his injuries alleged in the other cases were discovered. With respect, this figure is wholly unrealistic given the similar thumb / finger injuries he had sustained in the other accidents.
4. The 1st defendant’s pleaded case is that the appropriate award for PSLA should not exceed the sum of HK$100,000. Mr Chan for the 3rd defendant submits that an appropriate amount should be in the region of HK$50,000 to $100,000.
5. I find the cases cited by the plaintiff’s counsel in his opening submissions are very much on the high side. I consider his injuries are more in line with the following case cited by Mr Leung in his submissions.
6. In *Rai Tej Kumar v Fulcrum Engineering & Construction Ltd* [2020] HKCFI 2097, the plaintiff suffered one un-displaced tuft fracture in his left ring finger. Having reviewed the awards for PSLA in 7 comparable cases, Deputy High Court Judge To awarded HK$85,000 for PSLA.
7. Had I find in favour of the plaintiff on liability, I would have awarded a sum of HK$80,000 for PSLA in this case.

*E.4. Pre-trial loss of earnings*

1. In the revised statement of damages, the plaintiff claims that his pre-accident income was approximately HK$26,000.00 per month working as a salesman in a tailor shop.
2. There is however no independent documentary evidence to support that income apart from the Standard Chartered Bank’s statement dated 7 February 2015 which shows a deposit of HK$18,000 from ‘HQ Tailor’ on 29 January 2015. The plaintiff has not adduced any documentary evidence like employment contract, payslip, MPF statement, tax return/demand note, substantiating his assertions as to: (i) the nature of his job; (ii) his monthly salary; and (iii) the number of working days per month. In other words, it is purely based on the plaintiff’s own assertion that the HK$18,000 received from ‘HQ Tailor’ on 29 January 2015 was remuneration in respect of 18 days of work as a salesman / deliveryman from the start of December 2014 until the date of the Accident at a daily rate of HK$1,000.[[11]](#footnote-11)
3. Given my findings on his credibility above, I have great reservation as to whether that was his actual earnings for the 18 days.
4. In any event, after the sick leave period ended, the plaintiff allegedly worked as a security guard, earning about HK$13,000.00 per month. However, the plaintiff accepts that he could have returned to his pre-accident employment, albeit with impairment in work efficiency and effectiveness. As Dr Tio points out in the Joint Medical Report, the plaintiff may experience reduction in overall dexterity and endurance of his right index finger and need intermittent breaks of 15 minutes after every 2 hours’ work. The plaintiff estimates that his monthly earning would have decreased to around HK$24,500.00 because he would not have been able to work at full capacity.
5. Mr Chan for the 3rd defendant in his closing submissions has helpfully summarized the sick leaves obtained by the plaintiff since 2011 under Other Proceedings he has been involved in[[12]](#footnote-12). They added up to 2,053 days over a period of 9.5 years from October 2011 to April 2020. In other words, he spent almost 60% of his entire time during that period on sick leave. A wholly unbelievable scenario. Hence, any sick leave claimed by the plaintiff allegedly resulting from the Accident in this case must be treated with extreme caution.
6. The plaintiff originally claims the following amount as his pre-trial loss of earnings in his counsel’s opening submissions:-
7. From 23 December 2014 to 30 November 2015 (sick leave period):

HK$26,000.00 X 11.4 months = HK$296,400.00

1. From 1st December 2015 to the trial date in February 2022:

(HK$26,000.00 – HK$24,500.00) X 75.4 months = HK$113,100.00

1. The Plaintiff further claims the conventional 5% for the loss of MPF, making his total claims under this head at HK$429,975.00 under this head.
2. However, in his closing submissions, Mr Sadhwani has confined his claim for pre-trial loss of earnings to the 11.4 month sick leave period only, ie at HK$296,400 as set out in (i) above.
3. Given the dire lack of documentary evidence in relation to employment adduced by the plaintiff in this action, and in view of the fuller picture which has subsequently emerged from the documents in the Court Files of the Other Proceedings (which picture differs from P’s factual account in this action), I consider that considerable caution should be exercised in evaluating the plaintiff assertions as to employment. Further, applying the approach outlined in *Telings International Hong Kong Ltd*, *supra* above, the court would be entitled to draw an adverse inference against the plaintiff in view of his failure to adduce documentary evidence to support his case as to earnings.
4. Although the plaintiff was granted sick leave by his treating doctors at the public hospitals from 23 December 2014 until 30 November 2015, it is well-established that the Court is not bound by the period of sick leave granted by medical professionals: *Choy Wai Chung v Chun Wo Construction and Engineering Co Ltd* (unreported, CACV 172/2004, 15 July 2005), per Rogers VP at §9. As opined by Dr Lam, in view of the nature of the relatively minor nature of the plaintiff’s injury, he was capable of returning to his pre-Accident job 1 month after the Accident. I accept Dr Lam’s opinion. I find there is no cogent basis for any further award for loss of earnings after 1 month from the date of the Accident.
5. I would have awarded a sum of HK$26,000 as loss of earnings in this case, assuming that it was his actual monthly earning at the time.

*E.5. Loss of future earnings*

1. In light of the evidence, Mr Sadhwani has fairly conceded that he is no longer going to pursue the claim under this head in his closing submissions.

*E.6. Loss of Earning Capacity*

1. The plaintiff also does not pursue his claim for loss of earning capacity at the closing stage.
2. In any event, as the injury to the tip of P’s right index finger sustained in the Accident has recovered well, there is in my opinion insufficient basis for the plaintiff to contend that, because of that injury, he would be at a disadvantage in a labour market. It is trite that the plaintiff has to show that he faces a real or substantial risk of losing his present job: *Lai Jianxing v Sakoma (HK) Ltd* [2012] 5 HKLRD 589, per Kwan JA (as she then was) at §§41–44.
3. Therefore, no award should be made under this head.

*E.7. Other special damages*

1. The plaintiff claims a sum of $3,000 for medical expenses and $1,000 for travelling expenses as special damages in this case.
2. The plaintiff has only disclosed one single receipt of $100 for the visit to the A&E of YCH on the night of the Accident. He claims that the other receipts had been given to his former lawyers and does not know the whereabouts of those receipts now. I do not accept his explanation. Although the hospital records show that he did attend several follow up consultations, it is extremely doubtful whether those treatments were necessary or purely for the purpose to obtain the prolonged sick leave.

1. I consider a total sum of HK$1,000 would be sufficient to cover both items of expenses in this case.

*E.8. Conclusion on quantum*

1. In the aforestated premises, had I find liability in favour of the plaintiff, I would have awarded a total sum of HK$107,000 (HK$80,000 + HK$26,000 + HK$1,000) as damages in this case.

*F. CONCLUSION*

1. In conclusion, I would dismiss the plaintiff’s claim against the 1st and 3rd defendants in this case.
2. There are however 3 remaining matters for me to deal with. They are:
3. The vacation of registration of the writ of summons in the Land Registry;
4. The judgment entered against the 2nd defendant by default; and
5. Costs of the proceedings.

*F.1. The vacation of registration of the writ of summons in the Land Registry*

1. The sealed writ of summons in this case which was issued on 1 November 2017 had been delivered to the Land Registry on 9 July 2018 for registration in the land register in respect of Flat 5B of the Building. Registration was withheld and the instrument has been recorded under the ‘Deeds Pending Registration’ section of the land register.
2. As explained by this court in *Lau Shing Fai Rex v Lau Wing Ka* [2021] HKDC 36 (a case involving a personal injury claim arising out of an alleged slip and fall accident while walking on a common staircase situated at the defendant’s property), the writ therein by nature plainly does not affect land, is not registrable, and is liable to be vacated if it has been registered against the title of the defendant’s property in the Land Registry.
3. Mr Leung for the 1st defendant has rightly observed that even if the Land Registry Scrutineer has withheld registration of a document, the fact that the document is placed under the ‘Deeds Pending Registration’ section of the land register is an assertion to the public at large that the party seeking registration has a right over the property: see *Tai Yip Dyeing Factory Ltd v Kong Hoi Sang* [2007] 1 HKLRD 608, per Saunders J at §§32–36.
4. It has been well established that the court has the power to order the vacation of an instrument placed under the ‘Deeds Pending Registration’ section of the land register: see *Crowning Success Ltd v Brightland Corp Ltd* [2008] 4 HKC 305, per Master Jack Wong at §§7–8; *Jim Kiu trading as Sandwin Interior Contractor v Madam Lee Lee Chu*(unreported, DCCJ 8133/1992, 28 January 2010), per HH Judge Leung at §55.
5. The court has the power to make such an order by way of an *incidental order* at a party’s request when delivering substantive judgment: see *Tsang Woon Ming v Tsan Hing Tat Heidi* [2021] HKDC 482, per HH Judge Leung at §140.
6. In this action, the plaintiff’s claim against the 1st defendant is for damages arising from his alleged personal injury. By its very nature, it does not affect land.
7. The 1st defendant has asked for an incidental order from the Court that the registration in the Land Registry of the writ herein against Flat 5B of the Building be vacated.
8. I would have been prepared to grant such an order had it not been for the fact that the plaintiff and the 1st defendant’s counsel had, on the last day of the trial and at the closing submission stage, informed the court that the plaintiff was willing to vacate the registration.
9. I therefore had made an order to vacate the registration accordingly on that day.

*F.2. The default judgment entered against the 2nd defendant*

1. Although the 2nd defendant who was the contractor responsible did not appear at the trial and had allowed judgment entered against it by default, I wish to make a note here that as I find the plaintiff has failed to prove his case on liability and much of his claims on quantum have been grossly exaggerated, I consider that the 2nd defendant certainly will have a good case to apply to set aside the judgment on merits if it wishes to do so.

*F.3. Costs*

1. Costs should follow the event in both the main action and the contributory proceedings in this case.
2. As I find the plaintiff has failed to prove his case and his claims against both the 1st and 3rd defendant have been dismissed, the plaintiff should be liable for the costs for both the main action and the contributory proceedings between the 2 defendants.
3. Both the 1st and 3rd defendants’ counsel seek those costs on an indemnity basis.

*F.3.1. Costs on indemnity basis*

1. It has been held recently by Au-Yeung J that a dishonest plaintiff who made up a personal injuries claim should be penalized by costs on indemnity basis: *Thapa Hari Bahadur v Paramount Engineering & Manpower and Another* [2022] HKCFI 334*.*
2. In *Li Ming Tak v Hong Kong Airport Services Limited (unreported, HCPI 860/2009, 19 November 2014) at §122*, Zervos J (as he then was), citing *Summers v Fairclough Homes Ltd* [2012] 1 WLR 2004, said:-

“Exaggerating a personal injury claim is a serious matter.  It is in public interest that genuine personal injury claimants are given just and reasonable compensation for the injuries suffered as a result of someone else’s negligence.  A fraudulent or an exaggerated personal injury claim will not be tolerated and any attempt to deceive the court by falsely stating or overstating the suffering caused can have serious deleterious consequences to the claim and the claimant.  A claimant is obliged to make a true and honest claim and where someone is found to have acted dishonestly or knowingly made a false statement or claim, the court may not make an award to the plaintiff; or if an award is made, refuse costs and/or reduce interest to the plaintiff; or require the plaintiff to show cause why he or she should not be dealt with for contempt of court.”

1. In *Lai Sin Yan Elsie*, *supra* at §§3–11, Bharwaney J reviewed the relevant legal principles and case law on indemnity costs. His Lordship went on to hold at §§18–27 that the fact that the plaintiff is legally aided does not move the court to decline an award of costs on an indemnity basis.
2. In view of the legal principles set out in the above cases, since the plaintiff’s claim against the 1st and 3rd defendant is dismissed and I have come to the view that the plaintiff has deliberately exaggerated and inflated his claim, I order that that costs should be paid by the plaintiff on an indemnity basis. This will include the costs of the action and the contributory and indemnity proceedings between the 1st and 3rd defendants.
3. The plaintiff’s own costs will be taxed in accordance with the legal aid regulations.
4. I will make the above costs order on a *nisi* basis and the same will become absolute 14 days after the handing down of this judgment in the absence of any application from the parties to vary the same.

( Andrew SY Li )

District Judge

Mr Kamlesh A Sadhwani, instructed by Au & Vrijmoed, for the plaintiff, assigned by the Director of Legal Aid

Mr Dexter Leung, instructed by Sit, Fung, Kwong & Shum, for the 1st defendant

The 2nd defendant acting in person, being absent

Mr Chan Kai Ming, Daniel, instructed by Henry Chiu & Partners, for the 3rd defendant

1. §24 [TB/136] [↑](#footnote-ref-1)
2. English translation (“he [ie Ali] received a call from Mr Mohammad Wajed stating that he had tripped over a sandbag for renovation placed in the staircase of the 5th floor”) at [TB/542]. Original Chinese (“收到Mr. Mohammad Wajed 的電語表示因為他被放在5樓梯間的裝修用沙包絆倒而呼叫救命”) at [TB/498]. [↑](#footnote-ref-2)
3. [TB/144] [↑](#footnote-ref-3)
4. Except the names of his former solicitors which in my view have no direct bearing on his deliberate concealments. Hence, they have been removed from the table. [↑](#footnote-ref-4)
5. The court’s records show that he had used at least 3 different law firms for the 6 cases arising out of the 4 separate industrial accidents in the Other Proceedings. [↑](#footnote-ref-5)
6. Joint Medical Report, §§66–67 [TB/215–216] [↑](#footnote-ref-6)
7. Joint Medical Report, §§68–69 [TB/216] [↑](#footnote-ref-7)
8. §6 [TB/835] [↑](#footnote-ref-8)
9. §16 [TB/773] [↑](#footnote-ref-9)
10. The Google Maps image produced by one of the parties shows that it would take approximately 5 minutes for a person to walk from the Building to YCH. [↑](#footnote-ref-10)
11. The plaintiff’s witness statement, §35 [TB/139–140] [↑](#footnote-ref-11)
12. See §81 and Annex 1 of the 3rd defendant’s closing submissions [↑](#footnote-ref-12)