## DCPI 2856/2015

[2019] HKDC 929

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 2856 OF 2015

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BETWEEN

CHIU YUEN YUEN Plaintiff

and

BUCKINGHAM BANQUET LIMITED Defendant

trading as BUCKINGHAM RESTAURANT

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Before: Deputy District Judge Barbara Wong in Court

Dates of Hearing: 14, 15, 26 and 27 March 2019

Date of Judgment: 25 July 2019

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JUDGMENT

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1. *BACKGROUND*
2. Madam Chiu Yuen Yuen (“Madam Chiu”) was a frequent patron of the Buckingham Restaurant (“the Restaurant”). As a housewife, she would usually do housework in the mornings and three times a week, she would join her son and husband for afternoon tea at the Restaurant where she would help her husband with his taxi rental business. At about 2:30 pm, 8 January 2015, upon entering the Restaurant and while proceeding to a table in the dining area, she tripped on the metallic leg of a screen put up near the entrance. She fell to the floor and was, unfortunately, injured. This case is about Madam Chiu’s claim against the owner and operator of the Restaurant for compensation for the injuries she suffered.
3. The owner and operator of the Restaurant was originally named as “Come Profit Limited”, but later company searches showed that the owner and operator at the time was actually Buckingham Banquet Limited. On the first day appointed for the hearing, the plaintiff was represented by Mr B Lau, Solicitor of Liu, Chan & Lam, Solicitors, who had taken over the case from another Solicitor firm since April 2018, and the defendant appeared by one of its directors, Mr Fung Ka Lok (馮嘉樂) (“Mr Fung”). After hearing submissions, I gave leave to the plaintiff to amend the Writ to name the defendant as Buckingham Banquet Limited (“Buckingham”) instead of “Come Profit Limited”. I ordered service of the Amended Writ to be dispensed with, and there be no order as to Costs.
4. The trial was adjourned to the following day, namely 15 March 2019 for Mr Fung, who was acting for the defendant, to contact the defendant’s insurers to see if legal representation would be assigned to the defendant, with the amended identity (Buckingham). Mr Fung informed the Court that the defendant was still awaiting reply from the Insurer, while he also made enquiry with the Court as to whether he needed to get another authorization from the newly named Defendant Company, as previously he was only authorized by Come Profit Limited. Mr Fung’s attention was drawn to Order 5A of the Rules of the District Court, whereby he needed to make another duly deposed affirmation to evidence that he was duly authorised to act for the defendant if it appeared in person.
5. The plaintiff’s Solicitor Mr Lau fairly informed the Court that since the Basic Law guarantees legal representation, he did not object to adjourning the case for a short while to allow the defendant more time to liaise with its insurer to see if legal representation would be assigned and also to see if amicable settlement could be reached.
6. The trial began on 26 March 2019, on the basis of the amended Writ and also the defendant’s production of a duly prepared board resolution authorising Mr Fung to act for the defendant in these proceedings. The proceedings went on for another full day, the following day.
7. Madam Chiu continued to be represented by Solicitor, Mr Lau, while Buckingham, having failed to have legal representation assigned to it, continued to be represented by Mr Fung. Madam Chiu and Mr Yeung Yun Fat (楊潤發), Manager of the Restaurant (“Mr Yeung”), gave oral evidence at the hearing, with their respective witness statements admitted as evidence-in-chief.
8. Mr Fung’s Written Opening cited a number of cases to support the defendant’s intended contentions at the trial. He obviously had the help of a backroom lawyer. Despite the Court’s decision to allow the amendment (ie to amend the Writ to name the defendant as Buckingham Banquet Limited (“Buckingham”) instead of “Come Profit Limited”), the defendant in its opening argued on the back of the Court of Final Appeal’s decision in *Mak Kong Hoi v. Ho Yuk Wah* (2007) 10 HKCFAR 552 that since the plaintiff had agreed in her pleadings that “Come Profit Limited” was the defendant, she must be bound by it and therefore the case against Buckingham Banquet Limited should be dismissed. This submission was misguided and constituted a complete misunderstanding of the Court of Final Appeal’s decision cited. Among the many points canvassed in that case, it dealt with a pleading point unlike that in our case. That case dealt with a court’s ability to ensure a fair trial if the Court had dealt with an un-pleaded point and the other party did not have a fair opportunity to meet the case against him. The facts of the case before this Court are far from the circumstances canvassed in the Court of Final Appeal case. Mr Fung did not come back to the point in final submissions. Although not explicitly abandoned, I believe that Mr Fung did finally realise that the point was a thoroughly unarguable one. For the avoidance of doubt, I rule this submission irrelevant to the present case and without legal merit in any event.
9. As is usual in a trial of this nature, the defendant denies liability, and contends that if liability be found, there should be a finding of contributory negligence. The defendant also contends that the amount of loss quantified by Madam Chiu, was excessive.
10. At the conclusion of the trial, Madam Chiu, through her legal representative (Mr Lau, Solicitor), quantified her claim as follows:-

(i) Pain, Suffering, and Loss of Amenity $230,000

(ii) Damages for deprivation of

household services to family $39,690

(iii) Pre-trial medical, transportation

and out of pocket Expenses $6,000

1. *EVIDENCE*

*The Factual Evidence*

1. It is not in dispute that the accident was the result of Madam Chiu having had her right foot caught by the metal leg of a screen placed near the entrance of the Restaurant, and losing her balance, she fell to the floor, thereby sustaining injury. The screens were placed to screen off repair works being undertaken to the air-conditioning system of the Restaurant. Mr Yeung said in evidence that it was not possible for the Restaurant to have these works undertaken and completed, outside of business hours.
2. It was agreed that the photographs of the layout of the Restaurant admitted into evidence, though taken after the accident, showed that the dining area was made up of three rows of individual tables. Looking in from the entrance, the central row was separated from each of the left and right rows by a passageway on each side. The width of each passageway was agreed to be about 150 cm (5 feet). A patron coming into the Restaurant had the choice of walking to any table in the dining area, by using either left or right passage. The carpeted floor had a purple and beige coloured swirling pattern. The dining area was well lit by fluorescent lighting.
3. On the day of the accident, it was not disputed that a set of screens were placed at the position of the front table of the right row of tables. The photographs, though taken after the accident, depicted that at the time of accident, 3 screens were deployed, one facing the right passageway of the dining area, one perpendicular to this screen, and one perpendicular to the previous screen in turn, forming a horseshoe shape, serving to screen off the repair works in progress from the dining area.
4. Each screen was supported by two sets of metallic arches, enabling the screen to stand firmly on the floor. Each arch was made up of two metallic feet, each resting on a rubber wheel. It is not in dispute that the distance between the two rubber wheels holding up each metallic arch was 30 cm, measured horizontally. This meant that the feet of each metallic arch supporting one of the screens would protrude 15 cm (6 ins) horizontally onto the floor of the passageway on each side of the screen. The screen at the right hand passage way of the dining area, therefore, had 15 cm or 6 ins of metallic feet protruding onto the passageway, creating an obstruction, albeit small, to the traffic using this passageway.
5. Madam Chiu in her oral testimony stated that prior to the accident, she had been a regular visitor to the Restaurant, and she acknowledged that she knew the layout of the Restaurant. On the day of the accident, she wore trainers or sports shoes. It was usual for her to go there for afternoon tea with her husband, who used the restaurant for collecting taxi rent from taxi drivers and also the afternoon tea was reasonably priced.
6. She noticed that on the day of the accident, that the restaurant was quite crowded (都幾多人). She also noticed that there were screens screening off what she thought were repair works from the dining area of the Restaurant. She estimated the width of the passage to be about 80 cm, contrary to the evidence of Mr Yeung, but in the end, there was agreement that the width of the passage was about 150 cm, 5 feet.
7. Madam Chiu also testified that at the time of the accident, she entered the restaurant and walked in the direction of the right passageway. While using this passageway[[1]](#footnote-1), she saw that there was a trolley parked on the left side at a table in the middle row of tables[[2]](#footnote-2), and there were two customers making their way out in this passageway, thus making the passageway even more narrow for her to walk. While the plaintiff’s solicitor Mr Lau in cross examining the Defence Witness Mr Yeung said that Madam Chiu could not tell what kind of trolley was involved, Madam Chiu insisted that the trolley was the kind of trolley for collecting used plates and utensils (執嘢的車仔). Madam Chiu was asked whether the trolley was moved away quickly? She replied it should be so (應該係).
8. In cross examination of Defence Witness Mr Yeung, the plaintiff’s solicitor Mr Lau asked him (Mr Yeung) whether he agreed with Madam Chiu that there was a trolley in the passageway, Mr Yeung replied that normally speaking there should not be one (一般來說，唔會有車仔係通道), because usually waiters or waitresses would use round trays (圓托盤) in collecting used cups and plates, staff would not use a trolley as it was unsightly (不雅觀) and also disturbed customers and obstructed the passageway (阻路).
9. In final submissions, Madam Chiu’s Solicitor pointed out that the patron sitting at the table facing the screen would also take up some part of the passage, perhaps about 40 cm (16 inches). Adding this to the trolley and two persons on their way out using perhaps another 80 cm, Madam Chiu would barely have the width of one person to pass through the passageway.
10. Madam Chiu confirmed that she gave way to two on-coming customers and then tripping (“先讓路給 2 名客人，之後仆親”). She elaborated during examination-in-chief that when she entered, she saw two customers making their way out, she gave way to them by stepping backwards to her right and this took her close to the middle of the screen (“我退後，去到屏風位置的中間，在屏風腳與腳之間停留。”). When the two customers had passed, she then walked forward in the direction of her son’s table and then tripped and fell, falling forward and veering slightly and felt a pain as if she had a bone fracture (“之後，向前行，我向仔方向行，跟著就仆親，向前仆，打斜仆親，骨折好痛”). Also, in examination-in-chief, she agreed that the screen had feet (屏風腳), but she did not pay attention to it, or she was not sure there were screen feet (屏風腳) at the time of the accident. She also said, the trolley also narrowed the width of the route.
11. Under cross examination, Madam Chiu acknowledged that she knew there was a screen (一直知道有屏風)，and there was nothing that blocked her vision, but she said because she was giving way to the two on-coming customers, she did not notice the feet of the screen (“因為讓兩人，所以睇唔到屏風腳”). She also further confirmed in cross-examination that before the accident, she did not see or notice the leg of the screen as she was making way for the outgoing customers (“屏風腳，我無留意，我只是讓人”). She was asked again whether she had made sure there was no obstruction at her feet before she proceeded (“有沒有看清楚有什麼東西才行?”). She replied: “No, I stepped back and then I fell” (“無呀！我退一退後，之後，慣低！”).
12. Madam Chiu was also asked in cross-examination if she agreed that the route or floor at the material time was not wet or slippery. She accepted this but she also pointed out that there was no yellow warning sign that warned people to be careful of slippery floor (as depicted in the photo taken after the accident) or any warning sign put up by the Restaurant management of the existence of the metallic legs and added that that if there had been one, she would have taken care to avoid the metallic legs on the Restaurant floor (“屏風腳綑到我，應該放小心地滑的牌”).
13. In cross-examination, Madam Chiu was also asked whether there was a better route in the restaurant to go her son’s table (“有沒其它通道去到你仔位置？”). But she replied there was only one route. During cross exam, she said her son sat on the position near the wall pillar at Photo 6 and the way she followed was the most direct way.
14. Mr Yeung, defence witness, testified that he had been in the restaurant business for 30 years. He said the Restaurant was about 10,000 sq feet. The area that can accommodate customers for dining or business occupied about 6,000 to 7,000 sq feet, which are large enough to allow 37-38, maximum 40 tables (each table consists of 12 persons). The afternoon tea time started from 2 pm to a bit beyond 4 pm where there were promotion items, for example, a bowl of steamed rice would cost only $10.8!
15. Mr Yeung said under cross examination that he did not agree that there were many customers during the afternoon tea session. His answer is that the number of customers was “so so, not too many!” (“一般，不是相當多顧客”). However, he admitted that at the material time, he was working in another section (堂面) of the restaurant and did not witness the accident, which was only brought to his attention by his staff after it happened. He then went to the scene, where he could see the screen.
16. As to the scene, Mr Yeung marked at page 7 on Bundle E, the position of table no 218 (the front table at the third row of tables on the right from the point of view of a patron entering the Restaurant), which was removed and screened off by the screens placed there. He said that the diameter of Table 218 was about 5 ft wide (it was a round shaped table). He also said that chairs from the middle row of the tables opposite Table 218 would take up part of the passageway. He thought that would take up about 2 feet of the passageway.
17. Mr Yeung said the passageway was wide enough to allow at least 2 trolleys to pass through, whether the trolleys are dim sum trolleys or cleaning trolleys, and whether the two trolleys were passing in opposite direction or in the same direction, and still have space ample enough to allow customers to walk through. He said the distance or width of the passage was about 160-170 cm (later agreed to be 150 cm). Yeung pointed out that at page 4 at Bundle E, confirming that the dining area consisted of 3 rows of tables (he pointed out tables 217, 239, 229, 248, 258 in the sketch shown to him during cross examination).
18. Mr Yeung also confirmed that there was more than one route for entry and exit into different sections of the dining area (多過一條路行) as they needed also to be used by dim sim trolleys to reach customers. Mr Yeung said there was another route for Madam Chiu to use such as she could use the route via Tables 303 & 312. It was not necessary for Madam Chiu to pass through the route between tables 218 & 331 to reach her son’s table.
19. Mr Yeung was also asked in cross examination as to whether the color of the carpet could be said to be gold. He said the tone color is light purple. As to the color of the screen legs, Mr Yeung was asked whether it was gold in colour (to suggest that it was similar to the carpet color of gold thereby presumably, difficult for a patron to spot). Mr Yeung disagreed and said the screen leg was stainless steel in colour (不鏽鋼). On hearing this answer, Mr Lau, Solicitor, put to Yeung that in any event, it was not easy for customers to notice screen legs of stainless steel (不鏽鋼) color. Mr Yeung disagreed with this proposition.
20. Mr Yeung initially accepted that there was no warning sign on the day of the accident but further into the cross-examination, he said that he could not be sure whether there was such a warning sign but he agreed that it would be strengthen the awareness of safety if such sign was placed at the fenced area.
21. During cross examination, Mr Yeung accepted that his testimony was based on his memory and he had never watched any CCTV. He recalled that he and another manager did ask Madam Chiu to come back if she had any issues. As the accident happened over 2 years ago, he could only try his best to answer questions. As whether there was a utensils collection trolley allegedly on the passageway, Mr Yeung said trolleys would usually be Dim Sum trolleys because they tended to move quickly and did not stay long at each table. He said that waiters would use large round trays (圓托盤去收拾) to collect used cup, plates, etc, because the use of such trolleys to collect cups and plates was not only unsightly (不雅觀), but they also disturbed other customers and obstruct the passageway in the dining area. Mr Yeung also said there were less than 10 dim sum trolleys in the restaurant.
22. In cross-examination it was also put to Mr Yeung that it would be better if the cleaning of air-conditioning could take place after 6 pm. In reply, Mr Yeung said air-conditioning workers did not come often to do the cleaning, also the costs of cleaning would be higher if it was done after 6 pm, and it would increase the operation costs of the restaurant. He said that Cleaners of AC will come around 2:30 pm, as by 2:30 pm, most customers for afternoon tea were already seated. Thus, Mr Yeung said 2:30 to 6 pm are the best time for AC cleaning. Mr Yeung also said that after 6 pm, that was the starting time for dinner session.
23. As can be seen, there were only narrow differences in the evidence presented at the trial. Now, we must go to the medical evidence regarding the injuries sustained by Madam Chiu and their consequences to her life.

*The Medical Evidence*

1. The doctors and paramedical practitioners who wrote reports on Madam Chiu’s injuries were not called to give evidence. Their reports were therefore admitted into evidence by agreement.
2. Madam Chiu was examined by Dr Wong See Hoi and Dr Fu Wai Kee, both Specialists in Orthopaedics and Traumatology on 17 February 2017. Their Joint Report dated 25 February 2017 showed that Madam Chiu was born in Hong Kong on 4 October 1951. She was going on to 64 years of age at the time of the accident. She is now going on to 68. She was educated up to Primary School level, and was married with a grown-up son. Despite being as a housewife, she worked part-time for her husband as a cashier. In fact, in her oral evidence, she said that she came to the Restaurant to assist her husband in cash collection for his taxi business.
3. When she arrived at Princess Margaret Hospital on 8 January 2015, there was swelling over her right ankle, and X-ray showed that her right ankle was fractured. She was hospitalised until 12 January 2015, during which a cast on her ankle was applied and she was discharged with two crutches to assist her to walk. Her cast was removed on 10 March 2015, following which she had to receive physiotherapy from 8 April to 15 September 2015, a span of 5 months.
4. On 29 September 2015, she complained of lower back pain and was examined again at the Department of Physiotherapy of Princess Margaret Hospital. She received treatment for this complaint and reported subjective improvement of 80% and treatment was stopped after the last session on 23 October 2015.
5. After these treatments, Madam Chiu complained that she would feel pain in her right ankle after walking and standing for 30 minutes or more, although the pain was relieved by about 50% by taking analgesic twice a week. She needed a stick to assist her for long journeys and she required assistance for heavy household chores.
6. Final medical examination showed that there was some loss of flexibility of her right ankle in relation to its range of movement but her right ankle was normal in other respects. Her back suffered no deformity or range of movement. Her lower limbs showed no neurological deficiency. Simulation tests for vertex compression, shoulder compression and pelvic rotation were all negative.
7. Both doctors concluded that the injuries to Madam Chiu’s right ankle were the direct result of the accident. The ankle has however recovered. X-ray taken at the examination in February 2017 showed that the fracture had healed with good alignment with no arthritic changes and no other body abnormality. Madam Chiu, however, says that she could no longer swim, which was something she enjoyed doing with her grandchildren. On raining or bad weather days, she would feel pain in her ankle, obliging her to take medication or apply ointment to alleviate her pain.
8. Both doctors also did not ascribe Madam Chiu’s back pain to the accident. Dr Wong ascribed the back pain to the secondary effect of using crutches after the ankle was plastered. Dr Fu ascribed the backpain to a pre-existing condition.
9. Both doctors concluded that Madam Chiu has reached maximal medical improvement although she may feel intermittent pain on exertion such as prolonged walking or standing. She should be able to resume her pre-accident occupation, although there might be slight loss of efficiency due to intermittent pain. Dr Wong estimated her loss of earning capacity to be 3%, while Dr Fu opines that should be 1% only. Sick leave for 8 January to 5 October 2015 was considered by both doctors to be reasonable.
10. One consequence of her injuries was that during the time of her prolonged treatment, which was 10 months, she was unable to do household work. Her husband was not a good cook and so, he was deprived of her services for this period.
11. *LEGAL PRINCIPLES*
12. Madam Chiu in her pleadings based her claim on the Occupier’s Liability Ordinance and the Common Law Duty of Care.
13. Section of the Occupier’s Liability Ordinance, Cap 314, Laws of Hong Kong, the relevant part of which provides as follows:-

“(1) An occupier of premises owes the same duty, the ***common duty of care***, to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

1. an occupier must be prepared for children to be less careful than adults; and
2. an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

1. where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
2. where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.”
3. The defendant accepts that a common duty of care under the Occupier’s Liability Ordinance is owed to Madam Chiu but contends that the duty had been discharged.
4. The Principles of the Common Law of Negligence are too trite for re-statement and are not therefore repeated here. The defendant accepts that a Common Law Duty of Care was owed to Madam Chiu but that duty had been discharged.
5. As contributory negligence is alleged, I shall have to have regard to s. 21 of the Law Reform Amendment and Reform (Consolidation) Ordinance, the relevant part of which provides as follows:-

“(1) Where any person suffers [damage](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#damage) as the result partly of his own [fault](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#fault) and partly of the [fault](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#fault) of any other person or persons, a claim in respect of that [damage](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#damage) shall not be defeated by reason of the [fault](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#fault) of the person suffering the [damage](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#damage), but the [damages](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#damage) recoverable in respect thereof shall be reduced to such extent as the [court](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#court) thinks just and equitable having regard to the claimant’s share in the responsibility for the [damage](http://www.hklii.org/eng/hk/legis/ord/23/s21.html#damage)”

1. *DETERMINATION*

*Liability*

1. The defendant contends that it is not liable to compensate Madam Chiu on the basis that given the narrowness of the right passageway, she could have easily chosen to use the left passageway. The Defendant cited case of *廖繼宗 v 律政司司長（代表康樂及文化事務署）*DCPI1961/2011, a case where the plaintiff decided to take a short cut through a football pitch in Victoria Park and tripped on an obstruction in the pitch. In particular, the defendant relied on the following passage in the Judgment of His Honour Judge Li:-

“ 本席認為，意外之造成，與被告人的責任是完全無關。首先，被告人以「起乾式」懸掛之龍門球網放置放置在足球場上龍門架的後方並無不妥善或疏忽的地方。足球場原本是讓球員或觀看足球的人使用，行人並沒有須要行徑此處。正如原告人承認，他大可以繞過擋波網後的行人徑通往中央圖書館：當天只因為他趕時間而不想繞路，所以明知地上有球網仍然急步走過球場，他不顧自己的安全，急步走過時踏上球網而令自己跘倒，與被告人完全無關”. (§34)

1. The instant case is however distinguishable, as the Solicitor for Madam Chiu was quick to point out. He is clearly right. The passageway that Madam Chiu decided to use was a usual passage designed for Restaurant patrons to use, unlike the football pitch which His Honour Judge Li pointed out, rightly, was dedicated for the use of football players and audiences and not for pedestrians.
2. As owner and operator of the Restaurant, and therefore occupier of the premises, the defendant has in the terms of the statute governing an occupier’s liability the duty to take such care as is reasonable to ensure that a passageway dedicated for traffic by patrons of the Restaurant is reasonably safe to use. The protruding feet of the screen placed at one side of the passageway, clearly constitutes an obstruction. It is therefore foreseeable that a patron, unless warned of the existence of the feet, might fail to notice it. There was no warning sign. The defendant chose to have the works undertaken during operating hours of the Restaurant and therefore chose to undertake this risk. It is also foreseeable that the passageway could be busy with patrons walking in and out of the Restaurant and dim sum carts would occasionally use the passageway. I do not accept the defendant’s argument that Madam Chiu could have chosen to go to her table using the left passageway. The Restaurant had two passageways and she had the right to use any passageway of her choice.
3. In these circumstances, it behoves the occupier to place a warning sign at the entrance of the restaurant that works were being undertaken and patrons should exercise care. Accordingly, I find that the defendant has failed to discharge its duty towards Madam Chiu.
4. Next I shall consider whether Madam Chiu had contributed to the accident.
5. Whilst the football pitch case is distinguishable from the present case for primary liability, it is, I believe, useful to point out that a pedestrian is also under a duty to use reasonable care. This is also illustrated by the decision of Bharwaney, J in *Chiu Man Chi v. Motorola Asia Pacific Limited formerly trading as Symbol Technologies Hong Kong Limited* HCPI 150/2011. That case concerned a stage performer who fell on steps going down to the audience area from the stage, at the end of a catwalk. There he held that the plaintiff (the performer) should have spotted the steps and the accident was not the fault of the defendant (the employer). However, he opined that at the least there was contribution by the plaintiff to the accident, stating as follows:-

“23. On the basis that the employer was at fault in leaving the plaintiff to choose to throw the second doll as she neared the end of the catwalk, I would hold the plaintiff to have 50% to blame for failing to have sufficient regard for her own safety, by failing to pay attention to the steps at the end of the catwalk that she was approaching”

1. In our case, Madam Chiu upon entering the Restaurant would have seen the screened off area and would have been warned by this sight that a part of the Restaurant was not being used and the usual configuration of the dining area was thus changed. Whilst the occupier of the Restaurant had a duty to ensure that all passageways would be reasonably safe, he has also the right to expect a patron to exercise reasonable caution in the circumstances.
2. Despite seeing the screened off area and the changed configuration of the right passageway, a situation which to a reasonable person would amount to an invitation to exercise caution, Madam Chiu decided to use it, notwithstanding the fact (which she attested to in her evidence) that it was obstructed by a trolley (most probably a dim sum trolley according to the evidence of Mr Yeung, which in this respect, I accept) and the presence of on-coming customers, thereby further narrowing the passage.
3. Her Solicitor in final submissions made the point that given the presence of the trolley and on-coming customers, Madam Chiu barely had the width of one person to proceed along this passage way. She was thus walking very close to the screen. Given this situation, she should reasonably have exercised caution that the screen might have feet protruding into her path. Her evidence was that she was making a beeline for her son and that she gave way to on-coming patrons and she did not notice the protruding feet of the screens. In these circumstances, she had undoubtedly contributed to the occurrence of the accident. I hold that she has contributed by 50% to the occurrence of the accident and the damages which I shall presently proceed to assess shall be reduced by this amount.

*Quantum*

*Pain, suffering and loss of Amenity (PLSA)*

1. Madam Chiu had claimed $300,000 for PLSA in her particulars of damage but at the trial (final submissions), amended the claim to $230,000.
2. In final submissions, a number of relevant cases were brought to my attention, the one chosen to be most representative by Solicitor for the plaintiff was the case of *Sattar K.A. v Goodrich Transportation (HK) Limited & “K” Line Logistics (Hong Kong) Limited* DCPI 2105/2016 [2018] HKDC 1510 (“the *Sattar Case*”).
3. In the *Sattar Case*, the plaintiff’s right ankle was injured. X-ray of his angle showed a fracture of the right lower fibula, and was admitted to the Orthopaedic Ward in Queen Elizabeth Hospital. He was hospitalised for 3 days and a cast was put onto his ankle on discharge. After follow-up in the ensuing two months, his cast was removed and x-ray at that point showed that the fracture had united. The plaintiff was given sick leave from the time of the accident (19 October 2013) to 17 February 2014, the following year. There was some residual pain with stiffness of the ankle, particularly if the plaintiff went for long walks and was standing for long periods. It was not expected that the social activities of the plaintiff would be affected. The Court assessed PLSA to be $200,000.
4. The *Suttar Case* is similar to that of *Yeung Siu Fong Mabel v Lam Siu Ha Trading as The Beauty* DCPI 1400/2006, where the plaintiff also suffered an ankle injury upon slipping in a beauty treatment clinic. The plaintiff suffered swelling in her ankle but no fractures. She was hospitalised for 4 days, had to undergo physiotherapy sessions for 2 months and was given 2 months of sick leave. The PLSA assessed was $180,000.
5. Madam Chiu’s injuries were quite similar. She had to undergo physiotherapy and had to take medication during rainy or bad weather days. She also lost the ability to go swimming with her grandchildren, which was something she enjoyed and now misses. She was also assessed to have lost 1 to 3% of her future earning capacity. This loss of earning capacity can be subsumed under the head of loss of amenity. In the circumstances, I would consider her claim of PLSA for $230,000 to be slightly on the high side and I therefore assess PLSA to be $200,000.

*Loss of ability to perform household services*

1. Madam Chiu assesses her loss to be the cost of hiring a Filipino maid at minimum statutory wage for the duration of her sick leave. The defendant contends that this sum should not be allowed as no outlay was actually incurred. I cannot accept this contention, as the plaintiff did as a result of her injury deprived of her ability to do her usual housework for her family. The sum claimed is the most reasonable way by which she could have been put into the position as if no injury had occurred (see: *Daly v General Steam Navigation Co Ltd* [1981] WLR 120, p 125H to p 126G, *Lai Lin Chi v A.S Watson Group (HK) Limited* HCPI860/2013 §§63-67 and *Fung Wai Hin v Hui Chik Keung & Anor* [2006] 4 HKLRD 549 at §§154 – 157). I therefore assess Loss of Ability to Perform Household Services to be $39,690, as claimed.

*Pre-trial medical, transportation and out of pocket Expenses*

1. The claim under this head is $6,000, as to which there is no challenge. Given the long period of sick leave and the many treatments Madam Chiu received, I find this to be reason. I therefore assess damages under this head to be $6,000.

*Summary of Assessment*

1. In light of the foregoing, I assess damages on thebasis of full liability to be as follows:-
2. Pain, Suffering, and Loss of Amenity

(PLSA) $200,000

(ii) Damages for deprivation of

household services to family $39,690

(iii) Pre-trial medical, transportation

and out of pocket Expenses $6,000

1. *DISPOSITION*
2. I HEREBY ORDER THAT judgment be entered in favour of the plaintiff for 50% of each of the sums set out in paragraph 64 above plus interest to be calculated in accordance with the directions which follow. The amount for PLSA shall carry interest at 2% from the time of the accident to the date of Judgment and the other sums shall carry interest at half judgment rate from the time of the accident to the date of Judgment. The global sum (namely judgment principal amount and interest thereon as calculated by the foregoing rates) shall carry interest at judgment rate from date of Judgment to time of payment.
3. As to costs, this is a case where the defendant has prevailed as to part of its contentions, partly succeeding in liability and in the quantum claim. Accordingly, I will make an Order Nisi that the defendant pays 50% of the costs of the plaintiff, to be assessed at the District Court Scale, if not agreed. Since the Plaintiff was not represented by Counsel, I do not believe I need to give a Certificate for Counsel. If any party wishes the Court to make an alternative order as to costs, they may within 14 days of this Judgment submit their arguments in writing to this Court. If written arguments are submitted, the opposing party shall have 7 days thereafter to respond in writing and the originating party shall have 7 days thereafter to make a final submission in writing. If no written submission is received within 14 days of the Judgment herein, this Order Nisi shall become Absolute.
4. Solicitors for the plaintiff are requested to submit a Draft Order (with the interest calculations directed in paragraph 65 above, arriving at a global judgment sum) within the next 14 days to the Court, serving the same on the defendant. The defendant is requested to address the Court in writing within 7 days of service of the draft Order if there is anything in the draft Order which it takes objection to. The plaintiff’s solicitors are requested to file a Certificate of Service of the Draft Order on the defendant at the same time of filing the Draft Order. If the Court does not hear from the defendant within the time limited for written comment on the Draft Order, the Court shall proceed forthwith to settle the Order.
5. *NOTE OF THANKS*
6. Last but not least, the Court would like to thank Mr Lau, Solicitor for the plaintiff and Mr Fung for their assistance at the trial.

*G. INTERPRETATION*

69. I direct the Court Interpreter to attend the handing down of this judgment for interpreting it into *punti* to the representative of the Defendant, if so required.

( Barbara Wong )

Deputy District Judge

Mr B Lau, of Liu, Chan & Lam, for the plaintiff

The defendant, acting in person, represented by Director Mr. Fung Ka Lok.

1. Bundle E, photo 6, upper photo. [↑](#footnote-ref-1)
2. Bundle E, photo 6, the cart or trolley was at the position that passed beyond the man in blue at photo 6. [↑](#footnote-ref-2)