

HONG KONG / JUDGMENT

CHAN MAN v. MANTAL LTD

COURT

District Court

DECIDED

16 July 2007

CASE / FILE NUMBER

DCEC542/2005

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj

DCEC 542/2005

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

EMPLOYEES COMPENSATION CASE NO. 542 OF 2005

BETWEEN

CHAN MAN Applicant

and

MANTAL LIMITED Respondent

Coram : Her Honour Judge Mimmie Chan

Date of hearing : 21, 22, 25 June, 2007

Date of handing down Judgment : 16 July, 2007

JUDGMENT

Background

This is an application for employees' compensation made by be Applicant in respect of personal injuries suffered by her as a result of an accident which she said took place on or about 20th April 2004 and which arose out of and in the course of her employment with the Respondent.

The Respondent was at the material time working as a waitress at Chun Chun Sauna, a club operated by the Respondent which provides sauna and massage service in Shatin. The Applicant worked the night shift from 9 p.m. to 6 a.m., with one rest day on Thursday each week. Her duties included serving tea and drinks to clients, helping at the drinks bar, and tidying up before the club closes. Massage ladies work at the club, and are designated by numbers assigned to them by the Respondent. The Respondent's evidence is that these massage ladies come and go and are identified by numbers and not by names. The witnesses have referred to these massage ladies in their evidence by their numbers only.

By order of Her Honor Judge Ng made on 30 March 2007, there are to be split trials on liability and on quantum. The hearing before me was the trial on liability.

The facts

The Applicant's version of events is that in the early hours of 20 April 2004, at about 2 a.m., she was at work at Chun Chun Sauna when she had to use the washroom. She went to the ladies toilet, which had two cubicles, each with a toilet of the squatting type. The cubicles had to be reached by two steps up. The flush in the cubicle near the entrance of the washroom had been out of order for about a week and had yet to be fixed, so it did not have any flush water supply. There was a water tap inside the cubicle and a bucket had been placed there so that water can be put into the bucket and be used for flushing. Because of this state of affairs, the floor in the cubicle was very wet. As there was limited space inside the cubicle, there were no hand rails or other means of support for use.

The Applicant went into the first cubicle, facing the flush cistern. Before she could even turn to squat down, she slipped because the floor was so wet. Her evidence was that she slipped on her left foot, and fell backwards. She landed with her waist and her buttocks on one of the two steps, with her head on the floor. She felt great pain and could not move, and shouted out for help. Massage lady number 18 and massage lady number 22 came to her assistance, and helped her to the laundry room next door to take a seat. The laundry room at Chun Chun Sauna is adjacent to the ladies

washroom and is where the washing machines and dryers are placed for washing the towels and clothes at the sauna.

The Applicant sat in the laundry room to rest. She said that her foot had become green and swollen. Because she was the only person on night duty at the bar, the Applicant was concerned about her absence and she asked massage lady number 18 and massage lady number 22 to call the manager, Mr. Wong, to inform him of her fall. Mr. Wong

usual post was at his station just outside the bar counter. Massage lady number 22 did so, and according to the Applicant, Mr. Chow Kam Wai who worked at the bar then brought in some ice and massage lady number 22 helped to put the ice on her swollen foot.

The Applicant said in evidence that she sat in the laundry room to rest for about 30 minutes, then as she was concerned about her absence at her usual work post, she returned to the bar with the assistance of massage lady number 22. The manager, Mr. Wong, told her to sit at the bar if her foot was still hurting. The Applicant sat inside the pantry behind the bar counter where clients would not be able to see her, and continued to put ice on her foot for about another 30 minutes. According to the Applicant, Mr. Wong was sitting just outside the bar counter.

The Applicant said that because of the pain she still felt in her foot and in her back, her colleagues had to help her finish tidying up the workplace before she left work. On returning home, she put Chinese medicine on her lower back and her foot, and took some painkillers. The Applicant said that the next night, although she still felt pain in her waist and her foot, she went to work because she did not want to lose her job. It was not disputed that the Respondent's business had been affected during the SARS period, which led to many employees having been dismissed or numbers of employees being reduced, and the Applicant was concerned about taking any period of rest for fear that her job might be affected. For the next few days, the pain persisted, and the Applicant continued to take painkillers.

The Applicant said that her pain continued thereafter, but as she had not known that it was such a serious matter, she continued to bear with it as best as she could without seeking medical help. When she could not tolerate her pain anymore, she first sought treatment at a Chinese bonesetter's on 10 May 2004. She continued this treatment for five days, but the pain in her back did not subside. On 29 May 2004, she sought further Chinese medical treatment at the Wo Tai Chinese Medicine Center Ltd (

Wo Tai

) which was introduced to her by a friend. It was not until 3 June 2004 that she felt such excruciating pain in her lower back that she had no alternative but to seek treatment at the accident and emergency department of Tseung Kwan O Hospital (

TKO Hospital

). She was admitted into the Orthopedics and Traumatology Department of the hospital, stayed there for two nights, and was discharged on 5 June 2004. After discharge, the Applicant was given out-patient physiotherapy treatment at TKO Hospital from 11 June 2004.

The Applicant was granted sick leave from 5 June 2004 until 12 June 2004 by the doctor at the Orthopedics and Traumatology Department of TKO Hospital. The Applicant said that although the back pains persisted after her discharge from hospital, she only rested two days before returning to work because Mr. Wong had told her that he could no longer find anyone to stand in for the Applicant. Moreover, Mr. Wong had said to the Applicant that if the doctor had discharged her from the hospital, it meant that she was fit to work.

Upon resuming work, the Applicant's evidence is that her back continued to cause her pain, and it was difficult for her to discharge her duties. After long hours of work, her back would be very straining and the Applicant would have difficulty standing straight. She continued to work because she did not want to lose her job. She said she was used to hardship and had a heavy financial burden at home. She needed to support her family and help with mortgage payments. It was only when a client at work who knew about her injury asked whether her job was more important than her health, and warned that she could be paralyzed, that she realized the seriousness of her back problem. In July 2004, because she could bear the pain no longer, she resigned from her work.

The Applicant continued physiotherapy treatment at TKO Hospital, but her back pain persisted. She wanted to try magnetic resonance treatment, but there was a long queue for this type of treatment in Hong Kong and she would have to wait for about a year before she could undertake such treatment. The Applicant therefore went to Shanghai by train in June 2005 to undertake magnetic resonance treatment there. A scan was taken but the Applicant was told that the whole treatment would take three months. It was cheaper to have magnetic resonance treatment in China, but the Applicant could not afford the time and therefore abandoned further treatment in Shanghai.

The Applicant stopped physiotherapy treatment at the end of 2005, and returned to Chinese medical treatment including acupuncture. She ceased taking such treatment because of the side effects.

The issue

Against the background of the above circumstances, the Respondent does not dispute that if there was indeed a slip and fall, the accident would have been in the course of and arising from the Applicant's employment. The Respondent denies that there was a slip and fall, as alleged by the Applicant. This Court has to decide if the Applicant had slipped, fell and suffered injury as a result, as alleged.

The Respondent cast doubt in various ways on the Applicant's claim that she had suffered the fall. The Respondent queried why the Applicant would have rushed back to the bar after the alleged fall if she had indeed been so seriously injured, as claimed. The Respondent further queried why the Applicant was able to work for so long after the injury, without seeking medical help and without going to the hospital until June 2004. The Respondent also queried why no one else working at Chun Chun Sauna knew of the Applicant's injury, and why the Applicant did not make any claim immediately after the injury, but waited until November 2004. The Respondent highlighted the fact that the Applicant had given different dates on different occasions as to the alleged date of her fall and injury.

The rush back to work

The Applicant's evidence is that she came to Hong Kong from China in 1992, is married to a construction worker, and helps to support and look after her family which includes two sons in Hong Kong. She described her financial pressure as heavy, having to pay for a mortgage on her home, and thus having to work the night shift for a monthly basic salary of HK\$ 3500. She said she was used to hardship, and would generally try to avoid going to the doctor if she could manage without it. She gave the example of the time when she had hepatitis in 2003 when working for the Respondent, and she had continued to work until a very late stage before she sought help from a doctor. She emphasized the fact that as a result of SARS in 2003, the Respondent had dismissed many people at work and the Applicant was very concerned that the security of her job might be affected if she were to take time off. Hence, very shortly after the fall, when she had to sit down in the laundry room to rest, she was anxious that Mr. Wong, the manager, should be told of the incident and of her whereabouts immediately. She was also anxious to return to her usual work post at the bar, but could not do so immediately after the fall because it was too painful for her to move at first. After spending about 30 minutes in the laundry room putting ice on her injured foot, the Applicant did return to the bar. She explained that due to the cuts in staff, she was the only waitress serving there, and she did not want Mr. Wong to stand in for her at the bar for too long.

According to the Applicant, massage lady number 22 assisted her to return to the bar from the laundry room, and Mr. Wong on seeing her told her to sit for a further while behind the bar in the service/pantry area if her foot was still hurting her.

Mr. Chow Kam Wai, who was employed by the Respondent at the material time in April 2004, gave evidence on behalf of the Applicant. He has since left the Respondent's service. His evidence was that one night in April 2004, he received a telephone call when he was working at the bar, and was informed that a colleague had been injured and some ice was required for nursing. According to Mr. Chow's evidence, he took some ice from the pantry and took them to the laundry room where the Applicant was. The Applicant informed Mr. Chow that she had injured her foot, and that her foot and her lower back were hurting. After Mr. Chow had given the ice to the Applicant, he returned to the bar since he was the only person on duty there. According to Mr. Chow's statement which was signed on 3 October 2006, he said that Mr. Wong knew at the time that the Applicant had been injured, and Mr. Chow recalled that the Applicant had sat down at the bar later and had continued to put ice on her foot. In the witness box, Mr. Chow could no longer remember how Mr. Wong had known of the Applicant's injury. He did recall that because of the Applicant's injury, he had to help the Applicant clear up the work place before they left that morning. This included clearing the rubbish in the laundry room, clearing away the towels, and putting away the cushions in the bar/TV area. The following evening, when Mr. Chow saw the Applicant at work, he asked if she was all right and the Applicant told him that she had injured her lower back and her foot.

Mr. Chow was a forthright witness. He has left the Respondent's employment since the date of the Applicant's accident. He has no motive to lie, and I consider him to be honest and truthful. Counsel for the Responded criticized Mr. Chow's evidence as being "blindly in support of the Applicant's case". I do not think this is fair criticism. Mr. Chow frankly admitted in the witness box that he could no longer recall the exact details of the events in 2004 in view of the long lapse of time. However, the important details which he did remember are consistent with the Applicant's version of events. He had taken ice to the Applicant in the laundry room on 20 April 2004, and although he had not witnessed the accident in question, his evidence corroborates the Applicant's in so far as he had seen the Applicant sitting down in the laundry room, having been told that she had hurt her foot, seeing the Applicant nurse her foot with ice behind the bar counter, and helping the Applicant to clear up at the end of their shift on 20 April 2004.

The delay in seeking medical help

I do not find it incredible that the Applicant should continue to work after her injury, without immediately seeking medical help. On hearing the Applicant's evidence, and on watching her demeanor when giving evidence in court, I accept her explanation that she the kind of person who would avoid going to a doctor if it could be helped, and she had not initially appreciated that her injury was so serious as to warrant immediate attention. She was concerned about not losing her job and, being used to hard work, she bore with her pain and continued work as long as she could. In view of the nature of her injuries, it was also not unreasonable for the Applicant to turn to bonesetting and herbal Chinese treatment first. She was also conscious about costs, and it was only when the injury deteriorated in the interim of her delay and the pain became intolerable that she sought help at the TKO Hospital.

The vague details of the fall

The Respondent criticized the Applicant for her vague recollection of the details of the accident, and for the delay in her making a claim against the Respondent. The Applicant's evidence in relation to the key aspects of the accident and her fall appears to be consistent: she slipped on her left foot, fell backwards, with her waist and buttocks resting on one of the two steps and her head towards the floor. It cannot reasonably be expected that a truthful witness would be able to recall every minute detail of an accident, such as where one

s right foot was, particularly when the accident happened suddenly and quickly and the victim was experiencing great pain as was the case of the Applicant. One would reasonably expect the victim to only recall the pain.

The delay in the claim being made

As for the delay in the making of the Applicant's claim, the Applicant had received limited education in China (having come to Hong Kong in 1992), and the job with the Respondent was her first permanent job. I accept her evidence that she tried to avoid trouble, and was apprehensive about the security of her job, which explained her reluctance in taking sick leave

and in making a claim. From her evidence, she was not sophisticated enough to know about making a claim for employee compensation or even reporting to the Labor Department in time after the accident. The advice and messages she had received upon making inquiries were not encouraging. When she was hospitalized in June 2004, a former colleague advised her to call the Labor Department for help. The advice she obtained when she telephoned the Labor Department was that it would be difficult to proceed with her claim without a report to the Labor Department having been made within 10 days or so of the accident. She was advised to submit her medical certificates to the manager of her employer and see how he would proceed with the matter. According to the Applicant, she did bring the matter up with Mr. Wong when she returned to work, and there was a discussion which the Applicant had with Mr. Wong and Bonnie (Madam Lau Sau Kam), at the reception area of Chun Chun Sauna. Bonnie had worked at Chun Chun Sauna since it started operations and was an experienced colleague. According to the Applicant, she told Mr. Wong that the Labor Department had advised her to submit the medical certificates to her employer. Mr. Wong then asked Bonnie if the Respondent had had similar claims in the past. Bonnie said that these claims took a long time and only a small sum of HK\$ 2000 had been recovered in the past. The Applicant commented that it was too much trouble, and Mr. Wong left the reception area without taking the matter further. The Applicant's evidence is that she asked Bonnie if she could be dismissed for making a claim, and Bonnie's response was that she did not know. After her resignation in July 2004, the Applicant thought that the chances of her making a claim for employee compensation were even more remote. She was only persuaded finally to make a claim in late October 2004 when the doctor at TKO Hospital issued to her an appointment slip to attend assessment by the Ordinary Assessment Board.

The different dates

The Respondent pointed out that different dates had been given by the Applicant for the date of her accident. In the medical report of the TKO Hospital, the date of the Applicant's accident is stated to be 26 April 2004. The Applicant claimed that she never gave this date, and that the doctor in question could have misheard her. When asked about the date of the accident, the Applicant said that her response to the doctor was mid April, without specifying a precise date. She could not give a reason as to why the date of 26 April 2004 appeared. The date in the Notification of Accident submitted by the Applicant is 29 April 2004. The Applicant explained that she had made this mistake as she was in such a hurry, having just taken the doctor's advice to lodge a claim. She had earlier given erroneously 19 April 2004 as the dates of the accident, as she went to work at 9 p.m. on 19 April and the accident took place after midnight, on 20 April 2004. 29 April 2004 could have been a genuine slip made by the Applicant in a hurry, an error for 19 April 2004. A letter from Dr. Richard Lau, the Applicant's medical expert, dated 13 March 2007 also refers to 26 April 2004. It is possible that Dr. Lau had simply relied on the earlier TKO Hospital medical report.

The Applicant did not strike me as a meticulous person who paid attention to small details. She did not pay due attention to the importance of details in the documents and that might have explained the inconsistencies in the dates. I would not take these against her if I am satisfied with all the other aspects of the evidence.

The Respondent

s version of events

The Respondent's manager at the material time, Mr. Wong, maintained that he had no knowledge of the Applicant's fall, or of her hospitalization, or of her sick leave. He denied having any conversation or discussion with the Applicant in relation to her accident. According to his witness statement made on 26 September 2006, Mr. Wong claimed that he did not know anything about the Applicant's accident until the Applicant made a claim for compensation through the Labor Department in about November 2004. Mr. Wong claimed in his statement that he had not noticed anything unusual in the Applicant's work performance up to the time of her resignation, and knew nothing about her application for sick leave. He tried to discredit the Applicant and Mr. Chow in relation to their account of the events in the laundry room. In his supplemental statement made on 10 February 2007, Mr. Wong claimed that no one had telephoned him on 20 April 2004 about the Applicant's fall, and he had not asked Mr. Chow to take ice to the laundry room for the Applicant. Mr. Wong further claimed in his supplemental statement that Mr. Chow could not have been working at the bar on 20 April 2004, since there were only two male employees on duty that night and Mr. Chow should have been on duty at the clients

locker area or at the pool area. Mr. Wong also queried whether the Applicant could have sat at the bar for 30 minutes putting ice to her foot, since she would have been seen by clients at such a location and it would have been an eyesore.

However, the Respondent's own documents do not support Mr. Wong's case, and I do not consider Mr. Wong to be an honest witness. On cross examination, Mr. Wong had to admit, when confronted with the Respondent's employees' attendance record for 19/20 April 2004, that there were in fact three male employees on duty, and accepted that Mr. Chow was on duty at the bar, and not at the clients

locker area or at the pool area as he alleged in his statement. Mr. Wong also had to concede when he was shown photographs taken by the Respondent that if the Applicant had sat behind the bar counter in the service/pantry area, she would not have been visible to clients in the bar outside.

The Applicant's evidence was that on the first day of her hospitalization, she had telephoned Mr. Wong to inform him that she was in hospital and did not know how long she would have to stay there. According to the Applicant, Mr. Wong's answer was that he would find someone to take her place. On the second day, when the Applicant called again, Mr. Wong told her that he would discuss with Ah Ping, who was the day shift waitress, and see if she could stand in for the Applicant. When the Applicant was discharged, she only took two days off from work although she was given sick leave until 12 June 2004. She explained in her statement that this was because

Mr. Wong had told her that Ah Ping could no longer stand in for the Applicant and that the Applicant would have to return to work. Dr. Lau also referred in his letter and report of 15 May 2006 to the Applicant's employer not honoring her sick leave certificates as the main reason for the Applicant not asking for further sick leave from the doctors.

With regard to the Applicant

s hospitalization, Mr. Wong initially said that he knew nothing about it. When he was shown the Applicant's daily attendance record for June 2004, this shows that the Applicant had six days of absence from work, and Mr. Wong was evasive when questioned about it. He accepted that the Applicant would have given prior notice to him in respect of such a period of absence, but his recollection was that the Applicant had only asked to take a few days off, and that "generally, an employer would agree to this". When questioned further, Mr. Wong's evidence was that the Applicant only told him she had something to do, and he had agreed to her taking leave because she had accrued leave. This again contradicts the Respondent's record of the Applicant's work attendance, which shows 3 June 2004 as her usual day off for May; 4 June 2004 and 5 June 2004 as public holidays; and 6 to 8 June 2004 as three "off" days in a row. On cross-examination, Mr. Wong conceded that the three "off" days were taken as the Applicant's days off in advance for the month of June, such that she would have to (and did) work for three consecutive weeks without her usual day off when she returned to work from her hospitalization. Accordingly, it was not a case of the Applicant taking accrued leave as he had claimed.

To support his claim that he had no knowledge of the Applicant's injury, Mr. Wong obtained written statements from five other employees of the Respondent (including Bonnie) to say that they did not know that the Applicant had had an accident in the course of her employment by the Respondent, and that the Applicant had made no mention of such accident to them. They all signed their statements before their manager, Mr. Wong, who acted as a witness, and they were all at the material time of their statements current employees of the Respondent. At no time did Mr. Wong or the Respondent contact massage lady number 22 or massage lady number 18 who appear to be more material witnesses. According to the Applicant, massage lady number 18 in particular had volunteered to Mr. Wong and the Applicant that she could confirm that the Applicant was injured on 20 April 2004, as that was also the first day of her own return from leave. When he was questioned about this, Mr. Wong explained that he did not take any initiative to find out who massage lady number 18 was although he accepted that it would have been a simple thing for him to check the Respondent

s records at the material time to see which massage lady had been designated as number 18. He accepted, however, that he did take the initiative to spend as long as 10 minutes each with the five employees he identified, in order to procure their statements that they did not know of the Applicant's accident. The employees' statements appear to be entirely self-serving for the Respondent, and none of the employees were called to give evidence at trial, with the exception of Bonnie. In any event, the fact that they worked in different areas and at different times as the Applicant could very well have been a reason why they did not know of the Applicant's injury. I

give no weight to the employees' statements at all. I also reject Mr. Wong's evidence as unreliable and incredible.

As for Bonnie, she gave evidence at the trial to confirm that she had no knowledge of the Applicant's accident and that the Applicant had made no mention of this to her. She said that she had not noticed the Applicant's work, or her performance, or any abnormalities about the Applicant in 2004, and had no impression at all of her taking leave in 2004, or of her sitting at the bar. Neither did Bonnie have any recollection or impression of the Applicant having taken more than 10 days off in 2003 when the Applicant was sick with hepatitis (a fact which even Mr. Wong accepted). Since Bonnie's usual work post was at the reception area which was far from the bar area where the Applicant worked, and perhaps Bonnie was in a more senior position, it appears from Bonnie's evidence that she had no impression whatsoever of the Applicant at all. The fact that Bonnie did not have an impression of the Applicant's injury, therefore, cannot be taken per se to mean that there was in fact no such injury. For the same reason that Bonnie had no impression whatsoever of the Applicant, she might have honestly forgotten about the conversation which the Applicant claimed to have had with Bonnie at the reception area about a past incident involving an employee recovering an insubstantial sum of HK\$ 2000 from the Respondent.

Findings

In all, having heard the evidence of all the witnesses, I prefer the evidence of the Applicant and of Mr. Chow, and I am satisfied on a balance of probabilities that the Applicant's version of events is inherently more probable, and that she did have a slip and fall as she alleged on 20 April 2004. The contemporaneous documents evidencing the treatment which the Applicant had received, namely the receipts and documents issued by the Chinese bonesetter, Wo Tai and TKO Hospital are consistent with her evidence on the accident and the injuries she had sustained.

I therefore enter judgment in favor of the Applicant on liability with quantum to be assessed. I will make a costs order nisi that the costs of the trial on liability be to the Applicant, with certificate for counsel, and for the Applicant's own costs to be taxed in accordance with the legal aid regulations.

(Mimmie Chan)

District Judge

Mr. Lee Siu Ho, instructed by the Director of Legal Aid, for the Applicant

Mr. Martin Wong, instructed by Chong & Partners, for the

1udk

1udk

(#p#

(#p#

(#p#

&`#\$

:i#z

*\mT

zo/<

xC&1

{m8

B*-T

9JNV

P0}

W~7gb

W~7g

xC&1

{m8

& 6"

ABC.dot

setup

Microsoft Word 9.0

Judiciary

Title

Microsoft Word Document

MSWordDoc

Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=57955

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/chan-man-v-mantal-ltd-2007>

Prepared on 26 October 2026 · Esheria