

HONG KONG / JUDGMENT

IMTIAZ PERVIZ v. SENIBO DEVELOPMENT LTD AND ANOTHER

COURT

Court of First Instance

DECIDED

21 August 2007

CASE / FILE NUMBER

HCPI437/2005

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

bjbj HCPI 437/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 437 OF 2005

BETWEEN IMTIAZ PERVIZ Plaintiff and SENIBO DEVELOPMENT LIMITED 1st Defendant
WINNER SHIPPING LIMITED 2nd Defendant

Before: Deputy High Court Judge Gill in Court Dates of Hearing: 18-19 July and 2 and 9 August
2007 Date of Judgment: 21 August 2007

J U D G M E N T

On 14 September 2002 the plaintiff, a young man of Pakistani parentage, was in a team engaged by the 1st defendant to load containers on a lighter at Kwai Chung Terminal. Between 10 and 11 p.m. in circumstances that are disputed he suffered a serious injury to his right leg. The plaintiff and the person in charge, a director of the 1st defendant, gave different accounts of how this had happened. What is significant to determine what did happen are the medical records of Princess Margaret Hospital to where he was taken. He was seen at Accident and Emergency, admitted to a ward in the Department of Orthopaedics and Traumatology, examined, and found to be suffering from acute traumatic closed fracture of the right tibia and compartment syndrome.

Compartment syndrome is where there is increased pressure within a confined space in the body which impairs blood supply. If left too long the result can be nerve damage and muscle death. He was operated on twice. The first was described as an emergency and major, and undertaken in the early hours of 15 September. The procedure, under general anaesthetic, was a fasciotomy and application of an external fixation device to stabilize the fractured tibia. Fasciotomy is a surgical

procedure where the fascia is cut to relieve the tension or pressure giving rise to compartment syndrome. The fascia is the soft tissue component of the connective tissue. Connective tissue is made up of fibres that form a framework and support structure for body tissue and organs. The second operation was undertaken three days later. It was described as elective and intermediate in magnitude. It lasted nearly 24 hours. The procedure included removal of the external fixator, debridement and skin grafting of an open wound at the site of the fracture and close reduction and internal fixation of the fractured tibia. The plaintiff was discharged on 25 September. A year later, on 26 September 2003, there was a third operation when the implants were removed. The plaintiff has significantly recovered from a serious injury. But there are residual disabilities which include lack of mobility in the knee and ankle of the right leg, and pain from time to time and particularly after extended periods of walking. These are ongoing and a specialist in orthopaedics suggests that with impaired agility he would have difficulty in returning to work as a container barge worker. He does not however exclude his being able to work in such a job as a container port worker on land, security guard, warehouse worker and machine operator in a construction site. By this action he is suing the 1st defendant as his employer for damages in negligence in breach of contract, in breach of the employer's duty of care under section 3 of the Occupiers Liability Ordinance and in breach of the Factories and Industrial Undertakings (Cargo and Container Handling) Regulations (Safety Regulations), made under the Factories and Industrial Undertakings Ordinance. The action against the 2nd defendant has been discontinued.

Background

The plaintiff born and called Perviz Imtiaz in June 1984 spent his early years with his mother in Pakistan. More than 30 years ago his father had emigrated to Hong Kong and is now a permanent resident. In 2001 the plaintiff followed his father, arriving here on a dependency visa. Apart from short trips to Pakistan for holidays he has remained in Hong Kong throughout, and should qualify for permanent residency in a year or so. That is his intention. His level of education is low, he having only got as far as primary 6. His native tongue is Punjabi. When he first arrived he spoke and understood only simple Cantonese and English, but since then he has gradually become more conversant in both languages. The plaintiff became good friends with another Pakistani in Hong Kong called Mohammad Shakeel who works here as a slinger. When the plaintiff turned 18 in June 2002 he qualified for work and it was Mr Shakeel who found him temporary work in July as a slinger. The function of a slinger in the loading of containers aboard a lighter is to stand aside as the crane driver manipulates a container into the hold, then to climb onto the top and release the slings for the next container. The containers are stacked up to six high. Those above the first level are held in place by cast iron pins which are slotted into brackets at the four corners of the container below. The slinger's function is to place the pins and the crane driver then lines up and drops the next container so that the brackets at its four corners fall onto the pins. When the crew are unloading containers the slinger's role is in reverse, thus to attach the slings and retrieve the pins. It is apparent that the job requires agility and mobility and aerobic fitness. Generally speaking a slinger may choose to function either on a wharf or on a lighter. The wharf employment is land-based. The hours are normal daylight hours for which a

fixed rate is paid with overtime if available. The slinger on a lighter is paid more. That is because he remains on the lighter throughout and is thus effectively on call 24 hours, eating and resting between jobs or when the lighter is in transit between the shore and container ships in the stream. Mr Shakeel is employed on shore. But it was in this latter capacity that the plaintiff was introduced to and came to be employed by the 1st defendant. This was five days before the accident, and was the plaintiff's second stint as a slinger. The 1st defendant is a company owned and controlled by one Pang Po Wah and his wife. At the time the 1st defendant was contracted to a company called Mid-Stream Holdings (HK) Limited to load and unload containers between a wharf in Kwai Chung and container vessels in the harbour. For the purpose it rented year by year a lighter, called the Shing Fat, from its owner Winner Shipping Limited, the 2nd defendant. The make up of a lighter is that it comprises living quarters for the crew in the stern and a crane at the bow. In between is the hold where the containers are stacked. The living quarters are protected from damage from a swinging container by a heavy duty metal framework called a cage. At the time in question the stevedores comprised Mr Pang who was in charge, the crane driver and the plaintiff. For more than 24 hours before the accident the crew of the Shing Fat had been busy. From about 5 p.m. on 13 September they had taken on a load of containers at the wharf and then been towed out into the stream where the cargo was received by a container ship. By 5 p.m. the following day they were back at the wharf, taking on another load. It was during this session, between 10 and 11 p.m. that evening, that the plaintiff suffered his accident; details of this come next. The Accident The Eye Witness Accounts There are two versions; one from the plaintiff, the other from Mr Pang. The plaintiff said that of the containers being loaded some were empty, others were full. During the course of the afternoon the weather had changed for the worse. It began to rain heavily and the winds blew strongly, and although alongside the wharf the lighter rolled with the motion of the sea more than usual. But work continued. Mr Pang directed the crane driver as to where the containers came to be stacked as they came on board. This was not layer by layer because the containers were grouped according to destination, or perhaps for other reasons unknown to him. By the time shortly before the accident there were four stacks. The plaintiff for the purpose of reconstruction has named them columns A to D. Column B was hard up against the cage protecting the living quarters. Column A was alongside. They were stacked six high. There was a gap of about 3 to 6 inches between the two. Then there was column C and column D was the closest to the crane end. Columns C and D each were stacked three high. His job was to stand clear as each container came aboard, then when in place to climb up to or down to the roof and detach the slings and place the pins. Although there is always provision for four pins at each corner, Mr Pang had told him to use only two per container. At the given time the plaintiff was standing on the top of column A. The top container in column A had just arrived and he had disconnected the slings from this container. He calls this container AA and the one next to it, at the top of column B, BB. The next container due to arrive was directed by Mr Pang, standing on column D, to become the fourth container in column C, next door to column A. He calls this container CC. The plaintiff thus remained standing on container AA, so that upon the arrival of container CC he could clamber down to it and take off the slings. But this did not happen. The plaintiff said that as CC was manoeuvred into position it swung towards column A, a movement that was exaggerated above the norm because of the stormy conditions. Then it struck

AA, with a force that dislodged the nearside from its position in column A. AA then struck its neighbour BB which also was dislodged on its nearside, hitting the cage. The plaintiff lost his footing. The interaction between AA and BB had momentarily caused the gap between columns A and B to widen, and his right leg slipped into this gap. Then BB bounced back off the cage. The gap closed, trapping the plaintiff's leg, with a force that caused him great pain. The crane had to be utilized on container BB to free the leg. Mr Pang came forward to help. He was then ferried by means of BB to the wharf; from there he was taken to hospital. In cross-examination he held firm to the truth and accuracy of this account, in the face of Mr Pang's version which was put to him; I come to that next. Mr Pang began by adopting his witness statement as his evidence. He agreed that at the time of and before the accident it was windy and raining, but the conditions were not so severe as to destabilize the lighter, or render dangerous the loading operation. In more severe weather those in the control room of the Terminal will call a halt; in addition he as the person in charge can exercise his own judgment and do the same. He was satisfied that work could proceed safely. As the person in charge it was he who directed the crane driver where to place each container as it came aboard, and to look out for the safety of his slinger, the plaintiff, and in particular make sure he was clear of danger until the container had been set in place. He communicated with him by signalling with his arms and in simple Cantonese. By this means he could be understood. In fact he professed to have been satisfied with the plaintiff's work performance during the five days that preceded the accident. The loading had proceeded without incident. Prior to the arrival of what the plaintiff has referred to as container CC there were only about 10 containers left to load. Some of the containers were full, others were empty. He confirmed the plaintiff's assertion that he had directed two pins per container, but this only when the container was empty. Otherwise four pins had to be used. He took material issue with the plaintiff's version of how the stacking was undertaken. He said the hold was filled layer by layer so that there was no more than the height of one container between the layers, as each layer was filled. So, the plaintiff was wrong to say that before the placement of container CC, column C was lower than columns A and B by the combined height of three containers. Furthermore, each stack was placed hard up against its neighbour, so that there was no more than a gap of 5 mm, less than inch between them. This is standard practice, and contrasts with the plaintiff's estimate of 3 to 6 inches. When the container identified as CC was being loaded, it was craned to a point above the position it was to occupy. He noted that the plaintiff was standing well clear, motioned for him to stay back, and then signalled to the crane driver to lower away. This signalling put him with his back to the plaintiff. As the container came to rest he heard the plaintiff cry out in pain and saw him sitting on top of the next door container holding on to his leg. But it was not trapped between two containers. The crane was not used to free his leg. He surmised that the plaintiff had disobeyed his instruction to stand clear and had been hit by the container as it was being lowered. From the witness box he conceded that he did not see how the accident happened. But he said it could not have been as the plaintiff described. The container being loaded did not strike and displace the column alongside which in turn did not displace the next column. The containers described as AA and BB did not separate to cause a gap in which the plaintiff's leg was trapped. This could not have happened because the pins prevented sideways displacement and that there was virtually no gap between the columns would have provided further resistance. Still

in chief, Mr Pang was taken to the exhibit known as the Form 2. This is a notice which by law has to be completed by the employer and submitted to the Commissioner of Labour following an accident to an employee during the course of his employment which results in death or incapacity. Mr Pang conceded it was signed by him below the printed words (in Chinese) I declare that the information given in this form is to the best of my knowledge, true and accurate . In a box headed D. Description of Accident , was written in Chinese the following: The injured person was standing on one of the container onboard Shing Fat Barge at about the height of 5th Floor. A container was being lifted from another vessel and was on its way to the hatchway of the Shing Fat Barge. Because of the waves, the container being lifted hit the container where the injured person was standing. The injured person lost his balance and fell onto the surface of the container where he was standing. The right knee of the injured was bruised and there was bleeding. This of course supports the proposition that there was a clash of two containers put up by the plaintiff which Mr Pang said did not happen. Mr Pang said he had reported the accident shortly afterwards by telephone to the office staff of Mid-Stream who then prepared the Form 2 sometime later (in fact it is dated 28 September, two weeks after the accident). He went in and signed. He said he did not during the telephone conversation or at any time later say how the accident happened. The words in box D were not his words, dictated or written. Moreover when he signed, he was in a hurry and said I did not really read it before I signed it . In cross-examination he was taken back to the Form 2 and questioned on it in detail. In other parts of the form where these were recorded he agreed that he had supplied details of place, date and time, and that the injured person was taken to PMH. He agreed he had supplied information that it happened on a barge, that it was in the course of loading and unloading of containers, that the injury was to a knee. He agreed with the accuracy of the first two sentences of box D, but not of the third. Then it was put to him: Is that information you gave to Mid-Stream? He paused, then gave no reply. Then he was asked: Did you tell Mid-Stream how the accident occurred? And he responded, after another pause, Whether I told or not I don t recall . Further on during the cross-examination, Mr Pang was taken to the weather conditions at the time. He agreed that it was windy, could not recall if there was a heavy swell and conceded that it was dangerous to continue working. He also admitted he was under pressure from Mid-Stream to get the job done, they having lost time during adverse weather, indeed because of the arrival in Hong Kong of a typhoon a few days prior, which had interrupted work for a few hours. He also accepted that because of prevailing conditions; that is the wind, the rain and swells of the sea, it was more difficult than in calm conditions to load the containers flush with each other. He agreed that it was not uncommon in the loading procedure for a container to knock into another as it is put in position. Then it was that Mr Pang was asked about the sequence of signalling undertaken by him to the crane driver and plaintiff, and when he responded, it was put to him that his answers were at variance with his witness statement which he had adopted. He was asked which version was correct. His response: Really, I don t recall . Then there was this exchange: Q: You do recall pretty bad weather. The container was swinging around. Do you now recall whether it knocked into another? A: No recollection. Q: That could have happened but with the passage of time you just can t remember? A: I agree. And then a little later: Q: You confirmed you did not see what happened and so you have no real explanation of the cause of the accident? A: I agree. He

disagreed with the proposition that one container knocked into another and that this was how the plaintiff suffered a crush injury. Then: Q: Conditions were appalling. You knew the container had just come aboard and banged against another. A: I agree. Q: You helped him after he got his leg trapped. A: I don't recall. These summaries indicate that of the two eye-witnesses the plaintiff gave an account and stuck to it when tested and challenged. Mr Pang however gave a preliminary and different account not of what he saw but on what he surmised. Then he allowed himself a change of heart on the severity of the conditions and on the important feature that there was or may have been a collision between containers as a result of that. And having initially denied that he helped the plaintiff free his trapped leg, then he said he could not recall having done so. There is independent evidence to consider as well; I come to that next. Hong Kong Observatory Mr Clough representing the plaintiff googled the website for September 2002 and revealed that a tropical depression called Hagupit made its presence felt on 10 September, coming closest to Hong Kong in the afternoon of 11 September, when the nos. 3 and then 8 signals were hoisted. As the eye of the storm passed the signals were dropped on 12 September, but the low pressure drifted back, and brought several days of heavy rain and thunderstorms to Hong Kong. The Observatory issued an amber warning at 9:10 p.m. on 14 September upgrading that to red on 15 September at 3:30 a.m. for three hours. Then there followed three days when for various periods the amber warning was hoisted. On 14 September there were two thunderstorm warnings; the second ran from 7:20 p.m. to 6:30 p.m. on the following day. Thus the crew of the Shing Fat under Mr Pang's command were operating in conditions when the amber then red rainstorm warnings were up and it was during a thunderstorm warning that the accident occurred. Mr Pang had conceded time had been lost and had to be made up; this must have been when Hagupit had caused the nos. 3 and 8 signals to be hoisted on 11-12 September. Mind the Gap Significant to the stability of the stacks of containers on the lighter was the issue of how snug they were with their neighbours. Mr Pang's inch was in marked contrast with the plaintiff's 3 to 6 inches. In support of his evidence the plaintiff when fit to do so returned to the container terminal one night and, using his mobile telephone, made a short video of containers being loaded on a lighter. The video was adduced in evidence and I watched it. It was apparent that in respect of the operation he filmed, the stacks were indeed a few inches apart. Mr Clough contended that as the weather was bad the stability of the lighter would have made it difficult to be exact in the placement of the bottom layers which would dictate how far apart the stacks would be. And he made the point; why the need to be exact in a voyage lasting the distance between container terminal and a ship in the stream? The Medical Notes and Reports The plaintiff's account is that his leg was trapped between containers. The defence relies on Mr Pang's supposition that he must have been standing too close and was struck by a single container as it was being loaded. The medical notes made contemporaneously provide a clue. In a document marked Provisional Diagnosis dated 14 September 2002, is recorded as a clinical finding: Right knee hit by two containers. 10-30 p.m. tonight. Not trapped inside. No other leg injury. In another marked History and Physical Examination dated 15 September is recorded: Proximal tibia caught between two cargoes (the words hit by container had been crossed out) On 15 September in a record of the first operation was written: cause: crushed injury Thereafter on various dates between 25 September and 29 September 2002 the expression: right leg caught between two containers is reported and cause:

crushed injury. In a report that issued on 3 August 2004 from A and E, PMH, there was recorded: His right knee was hit by two containers. And another the following day that emerged from the DOT contained the sentence: On admission [Mr Imtiaz] reported that his right leg was caught between two containers on the day of admission. At the checklist hearing it was directed that expert evidence be limited to that of a single orthopaedic expert called Dr Lee Po Chin whose report was to be adduced without oral evidence. He saw the plaintiff on 4 January 2005 and reported on 1 March 2005. I shall come to his report more fully in due course. Suffice for the moment to note that he stated: According to Mr Imtiaz his right leg was crushed between two containers in the course of his work; and Review of the medical notes showed that Mr Imtiaz was admitted on 15 September 2002 into the DOT of PMH with a crushed right leg; and then, significantly: Mr Imtiaz described his right leg being crushed by two containers. The mechanism of injury he described was consistent with the musculo-skeletal injuries he had sustained. Two features emerge from this evidence; the first, that throughout, from the time when the plaintiff was first examined and spoken to on the night of the accident, when he was likely in considerable pain and in shock, to his day in court, he spoke of the leg being caught by two containers, and he has held firm to that account throughout; the second, that the orthopaedic surgeon appointed by both sides to assist the court was satisfied that the injury suffered is consistent with that description. The Operations I have already dealt with the diagnoses made shortly after the plaintiff's arrival at PMH which necessitated the two operations, the first undertaken in emergency circumstances. These reveal that this was no ordinary fracture. One does not, I think, need to be a specialist in orthopaedics to work out that the compartment syndrome may well have been the result of pressure exerted by two opposing forces, rendering credible the plaintiff's account that his leg was trapped between two containers. The alternative scenario of being struck by a single container could well have had a serious consequence, but perhaps without the sudden increase in pressure and the onset of compartment syndrome. The Defence Case Mr Lim for the defence highlighted what he submitted were flaws in the plaintiff's case in his closing submissions. First, Mr Pang's evidence that the containers were stacked layer by layer was backed by logic and commonsense and if true would militate against the clash of the container being loaded with one in another stack, several feet above. And there was Mr Pang's direct denial about that. Secondly, the weight of the containers empty as well as full, coupled with the pins holding them in place, would seriously restrict any lateral movement of the sort the plaintiff described following the clash. Thirdly, given the weight of the lighter, made the heavier as its cargo of containers came aboard, and that the loading was being undertaken in the inner harbour, rendered improbable the plaintiff's version that there were swells which caused the lighter to roll. Fourthly, if the plaintiff's leg had really been trapped as two containers of three tonnes each came back together, the injury would have been very much more serious, even resulting in an amputation.

Determination

I have already mentioned that of the two witnesses of fact only the plaintiff held firm to his account of what happened, and his description of how he came to be hurt has remained unaltered since his accounts to the doctors and medical staff at PMH. Mr Pang on the other hand became ambivalent and forgetful of detail. And of course he did not see the actual accident. And then there is the Form 2. Mr Pang admitted providing all the details save and except the description in box D. Why would he have not done so? More particularly, if that did not come from him, then from whom? Further, I cannot ignore the medical notes, and reports, and Dr s opinion. I agree with Mr Lim that the plaintiff was extremely fortunate not to lose his leg. But his case was that the two containers came back to their former position trapping his leg. This was not to say they came together, given his account, bolstered by the video, that stacks are generally apart by 3-6 inches. And having been shown a pin, I could well imagine that an empty container, held in place by two pins and not four, struck with force on its side, could momentarily pivot on the far edge and rise and separate before returning to its original position. It seems to me and I so find that the weather was severe and the boat was in motion by the swells of the sea. The crane of course was on board and no amount of skill and experience could prevent a container from swinging in these conditions. Mr Pang should have called a halt in recognition of the potential hazards to his crew by continuing with the loading. But he was under pressure, given the interruption caused by Hagupit. That the plaintiff was injured was as a direct result of his decision to continue on. This was negligence, rendering the defendant liable in damages for his consequential loss, in breach of contract and the duty of care owed by an employer to an employee and in breach of the Safety Regulations. Contributory Negligence? None has been made out by the defence. As I find there is none. And so now to the extent of damages the plaintiff shall be entitled to recover. Damages The Plaintiff s Prospects There is no question but that Mr Pang employed the plaintiff on a casual basis, so that for the five days up to the accident he received \$500 per day; the then going rate for a slinger who was prepared to live and work full-time on a lighter. The question is however, how long that would have lasted. Mr Pang stated that he was due to let him go on 16 September, because a local person was scheduled to start on a full-time basis that day. On the other hand, when that day arrived the local person did not. And Mr Pang did profess to be satisfied with the plaintiff s performance. Mr Pang said he reverted to employing labour on a casual basis. But had the plaintiff remained fit, it is possible that he would have stayed on and become a permanent member of the crew. But that is speculative given the very limited history. Further, the plaintiff said that he enjoyed a social life and playing sport. For how long would he have been prepared to forego that for the sake of being on the boat and on call for 24 hours a day? A clue is that within a few months of the accident he attended a short course and was awarded a CITA card, qualifying him to work on a construction site. A safer bet, I think, is that he would likely have become a construction site worker, earning almost the same money but giving himself a life after work as well. Doing the best I can then, I shall take it as read that that would have become his long-term occupation, following a stint as an onboard slinger, but for the accident. Post-Accident I have already dealt with the nature of the injuries and the immediate treatment. The plaintiff was kept in hospital for 12 days and discharged on 26

September. He attended 30 sessions of physiotherapy at PMH, without any absenteeism it is noted, between 4 November 2002 and 18 August 2003. He returned to PMH on 25 September 2003 for removal of the implant and was discharged on 27 September. He was granted sick leave uninterrupted until 2 March 2004. He had to use crutches to get around for close to a year after the accident. The plaintiff says that he attempted to find work thereafter and in fact was engaged to work as a security guard in July 2004. But his leg was still giving him trouble and he had to quit after a week. Finally he secured a position that did suit working as a security guard without the need to patrol which began on 24 January 2005. Though he has since then been off work from time to time, he is prepared to proceed on the basis that this is the level of work for which, post-accident, he is suited, for which the pay is \$5,800 per month. Dr Lee's Report Dr Lee examined the plaintiff in January 2005 and reported that March. Having recited the circumstances of the injury and particulars of the operations and post-operative therapy, he noted that the plaintiff complained at that stage of residual pain in the leg, which became aggravated after he had been walking for a short while. He ran tests and noted a reduction in the range of movements in the right leg relative to the left. On the other hand, there was no reduction in muscle strength or in the girth of thigh and calf. This indicated the plaintiff had worked hard at physiotherapy to achieve these satisfactory results. Dr Lee concluded that the fracture had healed with some stiffness. He said overall it was a good recovery given that the fracture had been complicated by compartment syndrome. He said that with the accident having happened 2 years prior there would be no deterioration; indeed, a prospect of slight improvement. Of his work prospects he said:

10. However, Mr Imtiaz may have difficulty returning to work as a container barge worker because of some impaired agility due to his residual stiffness and possible weakness of his right leg. However, he should be able to work in such job as a container port worker on land, security guard, warehouse worker and machine operator in a construction site. He took no issue with the period of sick leave to March 2004. I come now to deal with the various heads of damages. PSLA Mr Clough submitted an award under this head should be \$350,000. Mr Lim submitted no more than \$230,000. Various cases were handed up to enable me to make the appropriate comparison. They were: Chan Kun v Tsuen Wan Cambridge Nuring Home, unreported DCPI 1025 of 2004 (an award of \$150,000 was provided for, for fracture of the femur), Chung Chi Ming v Li Chau Wan, HCPI 1028 of 2002 (a fractured tibia in the leg and knee \$250,000) and Lam Siu Ying v Shiu Yat Sang, HCPI 892 of 2002 (tibia fracture with head injury, \$250,000) I find that whilst the injury suffered by the plaintiff was aggravated by the onset of compartment syndrome, there has been good recovery. Under this head I award \$250,000. Pre-Trial Loss of Earnings On the basis that he was found to have been a satisfactory worker by Mr Pang and that in the event his prospective regular failed to show, I shall take it that the plaintiff would have worked for (say) three months uninterrupted on the lighter, earning thus \$45,000 for this period, thereafter after a short break as a general construction site worker at the then going rate of about \$580 per day for (say) 24 days per month which translates to \$14,000 per month. What have been his options post accident? Dr Lee does not discount the same sort of job as he undertook for Mr Pang, albeit on land. With

respect I think that his impaired agility would have put that sort of work beyond him, and the same goes for the sort of work on a construction site that I have found he would have likely aspired to. I believe he should post sick leave have been able to perform the sort of work he is now engaged in, earning \$5,800 per month. I believe the sick leave running to the beginning of March 2004 to have been about right and acceptable. The breakdown under this head now follows: 15.9.02 15.12.02 \$15,000 x 1.05 x 3 months \$47,250 1.1.03 28.2.04 \$14,000 x 1.05 x 14 months \$205,800 1.3.04 31.8.07 (\$14,000 x 1.05) (\$5,800 x 1.05) x 42 months (\$14,700 \$6,090) x 42 \$361,620 \$614,670 Future Loss of Earnings Mr Clough proposed for this period a target of \$7,000 per month. I agree with the prospect of further improvement he could start to earn more; I fix on \$8,000 as the appropriate level, with a multiplier of 18. This comes to the following: \$14,700 (\$8,000 x 1.05) x 12 x 18 (\$14,700 - \$8,400) x 12 x 18 \$1,360,800 Loss of Earning Capacity I make no order under this head. Special Damages: Agreed are sundry medical expenses \$3,359 and Transport \$3,500 Not agreed is the claim for tonic food for which \$5,000 is sought. Mr Lim is prepared to concede \$1,000. I am prepared to allow something under this head for it is a recognised expense in PI cases of this sort in Hong Kong. But claimants are expected to justify the quantum by production of receipts. The plaintiff has kept none. I suspect his estimate is a figure plucked out of the air. I award under this head \$3,500 Interest This shall be at 2% on the PSLA from the date of the writ to the date of this judgment, and at half the judgment rate on the special damages and pre-trial loss of earnings from the date of the accident to the date of this judgment. Employee s Compensation The plaintiff has been paid \$382,428 which will come off the grand total. Summary PSLA \$250,000 Pre-trial earnings \$614,670 Post-trial earnings \$1,360,800 Special Damages \$10,359 \$2,235,829 Plus interest as aforesaid Minus ECC payment \$382,428 Costs These are nisi. The plaintiff s costs shall be borne by the 1st defendant, with his own costs taxed under Legal Aid Regulations. In respect of the costs of Winner Shipping Limited (the 2nd defendant), joined by the plaintiff post writ, but against whom the claim was subsequently discontinued; its costs shall be borne by the plaintiff, and are not to be passed on to the 1st defendant. (D M B Gill) Deputy High Court Judge Mr N Clough, instructed by Messrs Lo, Wong & Tsui assigned by Director of Legal aid, for the Plaintiff Mr P Lim, instructed by Messrs Clyde & Co, for the 1st and 2nd Defendants PAGE - PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk &`#\$ &`#\$ &`#\$ i\$&`G 2^wn Gill-HCPI.dot setup Microsoft Word 9.0 Judiciary Hong Kong 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=58299

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/imtiaz-perviz-v-senibo-development-ltd-and-another-2007>

Prepared on 25 October 2026 · Esheria