HONG KONG / JUDGMENT

LEE CHIU LAN v. VIATECH ENGINEERING LTD AND ANOTHER

COURT
District Court

DECIDED
20 March 2007

CASE / FILE NUMBER
DCEC154/2004

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bjbj DCEC 153-4 & 241-6/2004 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 153 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN LI YUEN YAU acting for herself Applicant and other members of the family, namely, TSO HON YING and TSO CHING YI, of TSO PAK KUEN, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 154 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN LEE CHIU LAN acting for herself Applicant and other members of the family, namely, CHAN LORRAINE, CHAN KING FAI CHAN WAI YING, of CHAN SHING TONG, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 241 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant IGNATOVA LYUDMILA MIKHALOVNA acting herself and other members of the family of IGNATOV ALEKSANDR GRIGOREVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 242 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant MIKHAYLISHINA OLESYA IGOREVNA acting herself and other members of the family of MIKHAYLISHIN ANATOLIY BOGDANOVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 243 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant SHERSTYUK IRINA SERGEEVNA acting herself and other members of the family of SHERSTYUK PAVEL YURIVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 244 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant STEPANOVA VALENTINA KONSTANTINOVNA acting herself and other members of the family of KUZNETSOV YURIY ANATOLEVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 245 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant POZDNYAK OLGA LVOVNA acting herself and other members of the family of POZDNYAK NIKOLAY IVANOVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION EMPLOYEES COMPENSATION CASE NO. 246 OF 2004

IN THE MATTER OF AN APPLICATION BETWEEN TING KAM YUEN, the lawful attorney of Applicant TROFIMOVA OKSANA VLADIMIROVNA acting herself and other members of the family of TROFIMOV GERMAN EVGENEVICH, deceased and VIATECH ENGINEERING LIMITED 1st Respondent ZEN PACIFIC CIVIL CONTRACTORS 2nd Respondent LIMITED

Coram: Deputy District Judge Anthony Kwok in Court Date of Hearing: 19 January 2007 Date of Delivery of Judgment: 20 March 2007 J U D G M E N T This is an assessment of compensation under the Employment Compensation Ordinance Cap.282. (the Ordinance) The applicants are the widows or the lawful attorneys of the widows and/or family members of 8 Deceased Persons who were members of the crew on board a Dredger which collided with an container ship in Hong Kong waters on 12 March, 2002. The Dredger eventually capsized and sank and all the 8 Deceased Persons were killed during the accident. (the Accident) According to the applicants cases, all the 8 Deceased Persons were crew members or employees employed by the 1st Respondent to work on board the Dredger. They were killed in the Accident which was arising out of and in the course of their employment. At all material times, the 1st Respondent was a sub-contractor within the meaning of the Ordinance to a principal contractor within the meaning of the Ordinance namely the 2nd Respondent. In its Answers to the Applications, the 1st Respondent denies or does not admit that it was the employer of the 1st to 8th Deceased. The relationship between the 1st Respondent (as sub-contractor) and the 2nd Respondent (as principal contractor) is also not admitted on pleadings by both Respondents. In view of the above, it was naturally anticipated that there would be serious and vigorous arguments proffered by both Respondents on the issue of liability in the hearing. It turned out however that both Respondents were only running no more than what could be described at best a negative defence. There was effectively no cross-examination at all of any of the witness called by the Applicants in the trial; there was not a shred of evidence adduced by either of the Respondent during the trial in order to seek to challenge, undermine or at least explain the evidence of the Applicants. In the face of the overwhelming evidence tendered by the Applicants, counsels for both Respondents simply did not make any submission or take issue on any of the matters which have been so carefully canvassed by the detailed submission made by Mr. Raymond Leung, counsel on behalf of all the Applicants, both on the issue of liability as well as quantum. My task

in determining this case which involves all the 8 Applicants has thus been rendered relatively straightforward as a result. In an effectively uncontested case such as the present, it is convenient to reproduce in this judgment, the carefully prepared submission of the Applicants which encapsulated the background of the Applications, the Accident, the relevant statutory provisions as well as the legal and factual issues on Liability whenever its appropriate. Mr. Leung prefaced his submission by introducing the background of the present claims:

Background

The 8 Deceased Persons were members of the crew on board a ship (A.M. Vella), which was a Trailer Suction Hopper Dredger (the Dredger). It was designed to suck up mud and/or sediments from seabed and to convey the same to a disposal site. The Dredger was licensed as a local vessel by the Director of Marine (Licence No. M21684Y) [CB/1]. All 8 Deceased Persons were employees of R1. They were deployed to work on the Dredger. Only Tso Pak Kun and Chan Shing Tong are local Chinese. The remaining 6 Deceased Persons were from Russia. They were working on the Dredger under work permits granted by the Immigration Department. The visa applications were supported by R1 as their employers. In the evening on 12.3.2002, a collision occurred at Ma Wan Channels (within Hong Kong waters) between the Dredger and an inbound container ship M.V. Kota Hadiah . As a result, the Dredger capsized and sank and the 8 Deceased Persons were killed. The evidence of the deaths of the 8 Deceased Persons during the accident were succinctly summarized and set out in Mr. Leung s submission. Each Deceased Person was described according to his post in the Dredger. The events of the discovery and retrieval of the dead bodies or human remains by the police and the subsequent identification by the Project Manager of the 1st Respondent or DNA analysis by the Government Chemist were established which clearly proved the deaths of the 8 Deceased Persons.

11. The deaths were fully investigated by police and the salient facts are contained in the Death Report submitted to the Coroner [CB/60]. The dead body of IGNATOV (Electrical Engineer, the 1st Deceased) was retrieved by SPC 16668 off northwest of Brothers Island at 8:35 a.m. on 13.3.2002 [Witness 20 CB/71]. It was identified by Leung Chi Chung (Project Manager of R1) on the same day (see Witness 32 at [CB/74]; Police Statement of Leung at [CB/3] and Death Certificate [Q1-DCEC241/76]). The dead body of KUZNETSOV (Master, the 2nd Deceased) was retrieved by PC 33442 at Northwest of Siu Mo To (one of the Brother Islands) at 9:45 a.m. on 17.3.2002 [Witness 24 at CB/72] and identified by Leung on the following day (see Witness 32 at [CB/74] and Police Statement of Leung [CB/8] and Death Certificate [Q2-DCEC244/68]. The dead body of SHERSTYUK (3rd Officer, the 3rd Deceased) was retrieved by SPC 14006 at 8:01 a.m. on 17.3.2002 in the vicinity of Siu Mo To [Witness 25 at [CB/72] and identified by Leung on the following day (see Witness 32 at [CB/74], Police Statement of Leung [CB/8] and Death Certificate [Q2-243/61A]. The dead body of MIKHALISHIN (2nd Engineer, the 4th Deceased) was retrieved from water under the Tsing Ma Bridge by SPC 13767 at 9:35 a.m. on 19.3.2002 [Witness 30 at CB/73] and was identified on the same day by Leung (see Police Statement of Leung [CB/9] and Death Certificate [Q1-242/79]). The badly decomposed and headless body of POZNYAK (2nd Officer, the 5th Deceased) was retrieved from the sea (at Marine Police

Operational Chart Box 1504A at Kau Yi Chau) by Station Sergeant Lui at 5;45 p.m. on [2]8.6.2002. i.e. 3 months after the accident (see Witness 34 at [CB/75] and Pol 155 compiled by DSPC 10637 [CB/40]). The dead body was beyond recognition but the identity was established subsequently by DNA evidence (see Summary at [CB/62] and Death Certificate at [Q2-DCEC245/67]).

12. In due course, the wreckage of the Dredger was salvaged from the seabed in or about February 2003. Some unidentifiable human remains and an unidentifiable and decomposed corpse were retrieved after inspection carried out in Hong Kong (see Witnesses 33 to 39 at [CB/74]).

13. The wreckage of the Dredger was then sent to Panyu (PRC) for ship breaking. The worker(s) discovered 2 skulls and some more human remains in the course of ship breaking work (Witness 40 40 at [C/76]).

14. The human remains and the unidentifiable corpses referred to in Paragraphs 12 and 13 were submitted to Government Chemist for DNA analysis. The unidentified human remains were confirmed to come from TROFIMOV (cook) and Tso Pak Kuen (fitter). The decomposed body referred to in Paragraph 14 above was confirmed to be that of Chan Shing Tong (Extra Master (local)). Death Certificates have been issued (see Tso Pak Kuen [Q1-153/61]; Chan Shing Tong [Q1-154/36] and TROFIMOV [Q2-246/78]). The contractual relationship between the 1st Respondent as the subcontractor and the 2nd Respondent as the principal contractor were analysed by Mr. Leung in his submission. Based on the internal as well as the external admissions made by both the Respondents in their contemporaneous correspondences with the Labour Department and between themselves and in the absence of any clarification or explanation by any of the Respondent, I accept Mr. Leung s submission and find that their contractual relationship was clearly established. (see Applicants submission, para. 16-19)

16. In about November 2001, R2 (as principal contractor) was engaged by Hong Kong International Terminal Limited to dredge the seabed at or near the container terminal 4 and 6 in Kwai Chung and deposit the dredged spoil at a marine deposit site off the Hong Kong International Airport in Lantau Island (the Dredging Work).

17. Neither R1 nor R2 has produced the principal contract and sub-contract(s) for the Dredging Work.

18. However, it appears that R2 sub-contracted the Dredging Work to one Leader Marine Contractors Ltd (Leader), which in turn sub-contracted the same work to R1

19. The relationship between R1 (as sub-contractor) and R2 (as principal contractor) is not admitted on pleadings. However, such relationship between them is beyond dispute and in fact has previously and repeatedly been admitted by R1 and R2.

(a) Admission made on the draft Form 2 under cover of R2 s letter to R1 dated 18.3.2002 [CB/102].

(b) R1 informed Labour Department on 19.3.2002 that R2 was principal contractor [CB/111];

(c) R2 wrote to Commissioner of Labour on 19.3.2002 admitting to be principal contractor appointed by Hong Kong International Terminal Limited [CB/113];

(d) R2 wrote to Labour Department on 25.3.2002 and referred to R1 as its sub-contractor [CB/116];

(e) Admissions made by R2 on Forms 2 (dated 22.4.2002) actually filed with Labour Department in respect of the 1st to 4th Deceased [CB/197-231].

(f) R1 wrote to R2 on 16.10.2002 enclosing Forms 2 (in draft) for all 8 Deceased Persons referring to R2 as the principal contractor [CB/137-185]

(g) The P&I Policy referred to R2 as main contractor [CB/191]. R1 informed Labour Department on 1.11.2002 that The position of Zen Pacific as the principal contractor is beyond any reasonable doubt and so are their obligations and responsibilities [CB/196] As rightly pointed out in the submission, under s.24 of the Ordinance, the 2nd Respondent (as principal contractor) is also liable to pay the same compensation to the Deceased Persons as employees or their family members as in fatal cases as if the 2nd Respondent were the direct employer of 8 Deceased Persons. Despite the denials by the 1st Respondent as Employer of the 8 Deceased Persons in this trial, there were however contradictory evidence both in the forms of direct admissions by the 1st Respondent in its dealings with the Labour Department after the Accident as well as its applications for work permit for the Russian Crew as their employer before the Accident. As said, the 1st Respondent did not even attempt to deal with any of these evidence. Suffice it for me to reproduce below the documentary evidence which have been relied upon and highlighted by Mr. Leung in his submission:

21. R1 denies or does not admit that it was the employer of the 1st to 8th Deceased. However, it is beyond any doubt that R1 was their employer. There is no written contract between R1 and Tso Pak Kuen (8th Deceased). However, R1 paid his salary and filed Tax Return as employer of Tso Pak Kuen in 2001 [Q1-DCEC153/47] and 2002 [Q1- DCEC153/48]. In the letter dated 16.10.2002, R1 sent R2 draft Form 2 in respect of Tso Pak Kuen (then reported missing) admitting to be D1 s employer therein [CB/137 & 180] There was no written contract between R1 and Chan Shing Tong (7th Deceased). However, R1 paid salary to Chan Sing Tong and filed Tax Return as employer of Chan Shing Tong [Q1-DCEC154/37]; In the letter dated 16.10.2002, R1 sent R2 draft Form 2 in respect of Tso Pak Kuen (then reported missing) admitting to be D1 s employer therein [CB/137 & 180]. In respect of the Russian Crew (1st to 6th Deceased), it is also beyond dispute that R1 was their employer. R1 (through its agent in Russian (Primtanco) signed contract with each Russian crew. IGNATOV (Electrical Engineer, 1st Deceasd) [CB/204] KNZNETSOV (2nd Deceased, Master) [Q2-DCEC244/27] SHERSTYUK (3rd Deceased, 3rd Engineer) [CB/222] MIKHAYLISHIN (4th Deceased, 2nd Engineer) [CB/213] POZDNYAK (2nd Officer, 5th Deceased) [Q2-DCEC245/47] TROFIMOV (Cook, 6th Deceased) [Q2-DCEC 246/39]. In a letter from R1 to R2 dated 16.4.2002, R1 admitted the

employment relationship with each of the Russian crew and provided R2 with copies of their work permit. More importantly R1 also said therein that We [R1] have managed to obtain the employment contracts signed between the four deceased [i.e. 1st to 4th Deceased] and Primtanco (acting for and on our behalf) and forward herein as further and better particulars [CB/129-130] . R1 (as employer) obtained work permit for the Russian Crew and represented to the Immigration Department that it would be the employer of the Russian Crew [CB/95-100]. On the Application Form for work permits R1 signed as employer [Q1-DCEC241/35-41]; Q1-DCEC242/39-45; Q2-DCEC243/44; Q2-DCEC244/32-38; Q2-DCEC245/36-42; Q2-DCEC246/48-54]. R1 paid salary to the Russian Crew and remitted money direct to the family of each crew [CB/123-128]. R2 informed Labour Department on 25.3.2002 that R1 was the employees of all 15 crew members on board the Dredger [CB/116]. R2 again referred to R1 as the direct employer of the crew in a letter to Labour Department dated 7.5.2002 [CB/132]. R2 s solicitor (Dibb Lupton Alsop) repeated to Labour Department on 15.10.2002 that R1 was the direct employer of the missing seafarers (5th to 8th Deceased) [CB/135]. R1 prepared and sent R2 draft Forms 2 under cover of R1 s letter dated 16.10.2002. In the draft Forms 2, R1 admitted to be the employer of all 8 Deceased Persons. [CB/136-185]. R1 also provided R2 with the List of Earnings of each Deceased. [CB/196].

12. Despite the position maintained by the 1st Respondent all along before the present applications, there has been a significant change of the stance adopted by both Respondents after the commencement of the pleadings as shown by the documents. Mr. Leung had endeavoured, in his submission, to provide an insight, if not a clear answer, to this paradox by drawing my attention to their correspondence over the matter.

25. It is instructive to note that R1 only started to raise issue that it was the employer after a dispute had arisen as to the alleged failure of R2 (principal contractor) to procure insurance cover for Employees Compensation (see R1 s letter dated 23.10.2002 [CB/187] and dated 1.11.2002 [CB/196] to Labour Department).

26. It is also ironical that R1 wrote to R2 on 16.4.2002 [CB/130] in the following terms: We could indeed appreciate your carefulness in preparation for this claim case and would most certainly contribute as much as we can to assist you as far as this matter is concerned. Nonetheless, it is explicitly stated in the Seventh Schedule, Part II in the sub-contract for the dredging and disposal of sediment at Kwai Chung Container Port terminal 4/6, that the responsibility to provide Employees Compensation insurance rests with the Contractor, we fail to see any reason for your delay in initiating such a straight forward employees compensation claim

13. Based on the above analysis, there is no doubt in my judgment that the 1st Respondent was clearly the employer of all 8 Deceased Persons. I totally agree with Mr. Leung that the allegation in the Answers that the Russian Crew were employed by The Maritime Agency Primtanco (in Russian) is nothing but a bare assertion and was contradicted by the evidence.

14. As to the question of whether the Accident arose out of and in the course of employment, under s.5(4)(a) of the Ordinance, an accident arising in the course of an employee s employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment.

15. Mr. Leung have identified the followings in support of his submission that all the Deceased Persons died in the course of employment:

12. R1 provided lodging to all 8 Deceased Persons on the Dredger [CB/95].

13. The Deceased Persons were obliged to stay on board the Dredger, which operated round the clock. In the premises, the 1st to 8th Deceased died in the course of employment whether or not each of them was actually on watch or on duty (see London and North Eastern Rly Co. v-Brentnall [1933] AC 489).

16. According to the undisputed evidence, it is clear that the 1st to the 8th Deceased died in the course of employment. By operation of the presumption in s.5(4)(a) of the Ordinance, the Accident arose out of the employment.

17. In this trial, the local Deceased Persons TSO Pak-kuen and CHAN Shing-tong were respectively acting by his widow, LI Yuen-yau (AW1) and LEE Chiu-lan (AW2) representing herself and the members of the family. In the case of the Russian Crew, their members of the families are acting by Mr. TING Kam-yuen (AW3), the Secretary of the Hong Kong Seaman Union. Mr. Ting has been authorized by Powers of Attorney and their claims are funded by Legal Aid. The three witnesses were called upon to testify and each adopted his/her statement(s) filed with the court. As said, none of them was subject to any cross-examination by the Respondents.

18. Mr. Leung has also relied on the following provisions and legal definitions in the Ordinance which are relevant for the purpose of the present claims: (para. 10) In a fatal case, the definition of employee is extended to include a reference his legal person representative, or to members of his family or any of them (s.2 of Cap. 282); members of the family is defined to include, inter alia, a spouse and cohabitee, a child, a parent or and grandparent of the deceased (s.2 of Cap. 282). The relevant parts of Section 5 of Cap. 232 provides that : . Section 29(1) of Cap. 282 provides that: This Ordinance shall apply to masters, and seafarers who are employees within the meaning of this Ordinance and are members of the crew of a Hong Kong ship. . Hong Kong ship includes any ship or vessel registered or licensed in Hong Kong .

19. The application of the Ordinance to the present cases which concern the family members of the crew members of a Dredger registered in Hong Kong is never an issue. Based on the above, I find that the liability of the 1st Respondent as the employer and the 2nd Resopnedent as the principal contractor to the 1st Respondent has been firmly established.

20. Concerning the assessment of the quantum of the compensation, in fatal cases, under s.6 of the Ordinance where death results from injury, then, subject to section 6A regarding apportionment, the amount of compensation payable to the members of the family of the employee shall be as follows:

(i) In the case of an employee under 40 years of age at the time of accident 86 months earnings ; In the case of an employee over 40 years of age but under 56 at the time of the accident 60 months earnings; In the case of an employee over 56 years of age at the time of the accident 36 months earning.

21. Under s.11 of the Ordinance, the earning for computing the compensation is based on the earning of the previous month prior to the accident or the average earning of the previous 12 months (or shorter periods) during which the employee is employed by the employer, whichever is more favourable to the employee.

22. In all 8 cases, the claim is based on the earnings of the respective Deceased in February 2002. Accordingly, the award under s.6 (1) is as follows:

(a) TSO Pak- kuen (DCEC 153/2004) Fitter (aged 36) HK$14,000 x 36 months = HK$504,000.

(b) CHAN Shing-tong (DCEC 154/2004) Extra Master (aged 60) HK$21,000 (statutory maximum) x 36 months = HK$756,000. IGNATOV (DCEC 241/2004) Electrical Engineer (aged 49) US$1,330.38 x 60 months = US$79,822.80 MIKHAYLISHIN (DCEC 242/2004) 2nd Engineer (aged 37) US$1,848.71 x 84 months = US$155,291.64 SHERSTYUK (DCEC 243/2004) 3rd Officer (aged 25) US$1,848.71 x 84 months = US$155,291.64 KNZNETSOV (DCEC 244/2004) Master (aged 62) US$2,302.93 x 36 months = US$82,905.48 POZDNYAK (DCEC 245/2004) 2nd Officer (aged 30) US$1,599.30 x 84 months = US$134,341.20 TROFIMOV (DCEC 246/2004) Cook (aged 36) US$1,087.38 x 84 months = $91,339.92

23. The statutory maximum of $35,000 of funeral expenses under s. 6(5) is also claimed in the cases of the two local Deceased Persons. There shall be an additional award together with interest to their widows in the same amount under this head in those 2 cases. (DCEC 153-4/2004)

24. The apportionment of the amount of the compensation and interest shall be calculated in accordance with the relevant paragraph in the 7th Schedule in the Ordinance in relation to the relationship of the family members and their ages at the trial. Regarding to the compensation and interest of the award under section 6(1), the apportionment in each case shall be as follows: TSO Pak- kuen (DCEC 153/2004) LI Yuen-yau (wife aged 43) 50%; TSO Hon-ying (son aged 13) 50% x ; TSO Ching-yi(daughter aged 11) 50% x (para. 5, Sch. 7)

(b) CHAN Shing-tong (DCEC 154/2004) LEE Chiu-lan (wife aged 56) 50%; CHAN Lorraine (daughter aged 34) 50% x 1/3; CHAN King-fai (son aged 31) 50% x 1/3; CHAN Wai-ying (daughter aged 27) 50% x 1/3 (para. 5, Sch. 7)

(c) IGNATOV (DCEC 241/2004) IGNATOV Ludmila Mikhaylovna (wife aged 54) 50%; IGNATOV Olga Alexandrovna (daughter aged 25) 45%; KREKCHA Victoria Gennadyevna(stepdaughter aged 32) 5% (para. 10, Sch. 7)

(d) MIKHAYLISHIN (DCEC 242/2004) MIKHAYLISHINA Olesya Igorevna (wife aged 39) 50%; MIKHAYLISHIN Denis Anatolevich (son 15) 45%; PROPISNOV Roman Valerevich (stepson aged 20) 5% (para. 10, Sch. 7)

(e) SHERSTYUK (DCEC 243/2004) SHERSTYUK Irina Sergeevna (mother aged 51) 95% x ; SHERSTYUK Yury Pavlovich (father aged 52) 95% x ; SHERSTYUK Sergey Yurevich (brother aged 24) 5% (para. 14, Sch. 7)

(f) KNZNETSOV (DCEC 244/2004) STEPANOVA Valentina Konstantinovna (wife aged 58) 100% (para. 1, Sch. 7) POZDNYAK (DCEC 245/2004) POZDNYAK Olga Lvovna (wife aged 32) 50%; POZDNYAK Nina Nikolayevna (daughter aged 13) 50% x ; POZDNYAK Svetlana Nikolayevna (daughter aged 12) 50% x (para. 5, Sch. 7) TROFIMOV (DCEC 246/2004) TROFIMOV Oksana Vladimirovna (wife aged 36) 50%; TROFIMOV Dmitriy Germanovich (son aged 12) 50% x ; TROFIMOV Mikhail Germanovich (son aged 9) 50% x (para. 5, Sch. 7)

25. The award in each case shall be with interest thereon at half judgment rate from the date of accident until date of award, and judgment rate thereafter until payment.

26. Costs to be to each of the Applicant with certificate to counsel, to be taxed, if not agreed. Applicants own costs to be taxed in accordance with Legal Aid Regulations.

27. After the closing submission, counsel for the 2nd Respondent informed me that it was the intention of the 2nd Respondent to claim an indemnity against the 1st Respondent for the claims by the Applicants in this proceeding under s.24(2) of the Ordinance. Counsel for the 1st Respondent however sought to have the argument adjourned until the judgment on liability and quantum of the compensation was handed down. In the end, by consent of both parties, I allow the application and I made an order that the matter shall be heard after the judgment and I anticipate that the hearing shall be re-convened as soon as counsel can be heard. (Anthony Kwok) Deputy District Judge Representation: Mr. Raymond Leung instructed by Messrs. Simon Si & Co (assigned by Legal Aid) for the Applicants Mr. Tim Kwok and Mr. Matthew Tse instructed by Christine F. L. Ip & Young for the 1st Respondent Mr. Kenny Lin instructed by Messrs. Dibb Lupton Alsop for the 2nd Respondent 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 A B C D E F G H I J K L M N O P Q R S T U V $ a$ $ a$ $ a$ $ a$ $ a$ &`#$ .br/ />rg Y_6}& Y_6} />rg .br/ Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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