

HONG KONG / JUDGMENT

LEUNG KAM v. MAX WEALTH ENGINEERING LTD AND ANOTHER

[2024] HKCFI 3456**COURT**

Court of First Instance

DECIDED

27 November 2024

CASE / FILE NUMBER

HCPI90/2021

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bjbj HCPI 90/2021

[2024] HKCFI 3456 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO 90 OF 2021 BETWEEN LEUNG KAM Plaintiff and MAX WEALTH ENGINEERING LIMITED 1st Defendant SHUI ON BUILDING CONTRACTORS LIMITED 2nd Defendant Before: Hon Leung J in Court Dates of Hearing: 19-21 March 2024 and 12 April 2024 Date of Judgment: 27 November 2024

judgment

This action concerns an alleged injury to the plaintiff (Leung) at he girders of each grid. As the slab might not land properly on the girders, the workers would have to make adjustment manually after it had landed. The workers would use a steel rod , and insert one end of it into the gap between the slab edges and the girders. Using the rod as lever, the workers would prise the edge of the slab and/or the surrounding steel obstruction with a view to creating room enough to enable the slab to sink in place by its own weight. By the time when Leung worked at the location ch 2021 commenced the present action for common law damages. The former was settled soon after the commencement of the latter. THE CLAIM Leung attributes his injury to the negligence, breach of statutory duties and common duty as occupiers on the part of the defendants. In the case of Max Wealth, there is also alleged breach of its duties as Leung s employer contractually and in tort at the time. In particular, it is said that the defendants failed to arrange for the relevant work to be carried out by machine such as tower crane or other lifting devices instead of manually. Further, when assigning Leung to carry out the work manually, the defendants failed to provide sufficient manpower to assist him or any training or instruction to Leung in respect of how to properly and safely do so. Nor did the defendants provide suitable tools and safety equipment, including safety gloves, shoes and knee brace. The defendants are said to have failed to assess the risk of having Leung to perform the task manually in those circumstances, and

hence failing to provide or maintain a safe system of work. Leung contends that the accident caused serious injury to his left knee, specifically focal osteochondral defect, anterior cruciate ligament (ACL) rupture or near complete rupture, posterior cruciate ligament (PCL) sprain and medial meniscus suspected tear. He was thus incapacitated from resuming his pre-accident job. Since the expiry of his sick leave, Leung has been working as a security guard earning less income than he had day without complaint. He first reported the alleged accident on the following day. If the accident happened in the manner as alleged, the defendants deny breach of duties on their part. They say that the adjustment and levelling of the precast concrete slabs lowered into the grids could not be carried out by the tower crane or other device as alleged. Insofar as the manual task was concerned, Shui On had carried out job risk assessment as well as provided instruction and training on the safety and proper posture at work. It had also arranged staff to inspect and to monitor the works at the location at all material times, but no safety problem in such task had been identified before the accident. In any event, the defendants say Leung was experienced, and the task was simple and could reasonably be left to him to decide how to handle on the spot. The defendants also allege contributory negligence on the part of Leung in causing the accident. The defendants also dispute the alleged damage. They contend that the accident, if happened in the manner as alleged, caused at most soft tissue sprain to the left knee of Leung. Specifically, the ACL tear and osteoarthritis changes were pre-existing and not the result of the accident. 80% of Leung's post-injury condition was attributable to such pre-existing condition. THE WITNESSES Leung gave evidence. On behalf of the defendants, Mr Chan Chin Pang (Chan), safety officer of Shui On, and Madam Chan Yuk Ping (Madam Chan), who was in charge of administration in Max Wealth, gave evidence. The site agent of Max Wealth at the time, Mr Wong Kwok Kei (Wong), was not called and therefore his witness statement is disregarded. The principles governing the assessment of witnesses evidence are often cited. Essentially, such evidence will have to be tested against the undisputed and indisputable evidence as well as contemporaneous documents. Its plausibility must be tested both inherently and internally as well as relatively against all the other evidence. See for findings must correlate well with the objective clinical examination findings in order to come to an accurate diagnosis. This happens to be of particular relevance in the present case. WHETHER THE ALLEGED ACCIDENT HAPPENED AS ALLEGED There was admittedly no eye witness of the alleged accident. According to Leung, he was at the time handling the precast concrete slab already lowered flat onto the girders of a grid. As the closest co-worker was busy with his own chores some 10 m away slightly with his left leg in the front. Using the rod as lever, he prised back and forth with a view to enabling the slab to sink in place by its own weight. Much was said in the oral evidence about the posture of Leung at the time as well as the variations in its description recorded in the medical records and asserted in court. Strict terminology aside, his body posture at the time, I find, is better understood by making reference to the photographs depicting what he meant, which Leung also did in his statement. He added that he walked more slowly than usual afterwards that day. He headed home without mentioning his injury to any of his co-workers or Wong, his employer's agent on site. While at home, Leung felt increasingly disturbed by pain at his left knee despite relief ointment application. He therefore took a taxi for the Accident & Emergency Department (AED) of Yan Chai Hospital () in the small hours of the following day. By the time

when he was seen by the doctor there, it uracy. Insofar as how the accident happened, the AED of YCH recorded that Leung had a sprained left knee while squatting the day before. There was no fall or contusion. Nor was there fracture. The discharge summary recorded Leung s report of injury at work when he heard a sound at his left medial side. However he could not recall the injury mechanism. The consultation summary during his follow-up on 18 nsurer to examine Leung in December 2018. Form 2 in respect of Leung s injury at work was filed by Shui On in June 2018. Stated in the form was the report by Leung of pain at his knee (cap) in the course of adjusting the levelling of the concrete slab, which was yet to be verified. That was the state of information available to them at the time from Max Wealth. The defendants were eventually prepared to make sanctioned payments with a view to settling the related employees compensation proceedings commenced by Leung, which were settled upon his acceptance of such payments. That said, insofar as the present action is concerned, the issue of whether Leung suffered injury to his left knee as a result of the motion of prising the concrete slab back and forth as alleged is expressly kept alive. Hence the attention to the apparent discrepancy between the hospital s record and his case now in respect of the mechanism of injury. In court, Leung disputed the accuracy of the AED record in that he said he did tell the doctor and nurse that he was prising the concrete slab when he was injured. In other words, not only did the medical officers fail to record the mechanism of injury which Leung told them but they also recorded an incorrect account. That the contemporaneous medical records failed to assist on the mechanism of injury was further picked up when the orthopaedic experts gave their opinion. That included their disagreement in respect of whether and, if yes, what extent of injury to Leung s left knee could have resulted from the motion of prising the concrete slab back and forth now alleged as the mechanism of injury. This will be discussed in detail below. However, it should be mentioned that Leung suggested in court that the motion was not merely prising back and forth but also sideway to the left and right. His attempt to demonstrate such motion in the course of his evidence was nothing short of surprising when this was both newly raised and contradicted the record of his denial of any twisting motion of t some length into explaining the alleged inherent and dictionary meaning of what the reference to sprain in the medical records could or should mean. He also attempts to explain as if it is a matter of pure common sense whether twisting of the left leg was involved in Leung s task at the very time. Neither is helpful, if not beyond reasonable acceptance, in this court s deliberation. Counsel for the defendants refer to a number of cases whereby the court resolved on the facts to dismiss the claims respectively on the ground of significant material inconsistency between the assertion and the evidence . However, that each case must be decided in accordance with its own fact needs no introduction, and those cases must be so understood as instances of that. At the end, complaint about injury must be objectively tested. Upon overall assessment of the evidence of Leung against all the evidence, including the medical evidence discussed below, I am prepared to accept his evidence and find that he felt pain in his left knee at the time when he adopted his alleged body posture as depicted in the photographs prising a precast concrete slab back and forth at the material time. However, I reject his assertion that his prising motion then involved multiple directions, twisting or rotation of his lower limb specifically his left knee. Consideration of the medical evidence further discussed below does not change that. WHETHER AND, IF YES, WHAT INJURY RESULTED FROM

THE ACCIDENT This is the major dispute. After the injury As mentioned, it is Leung s own case that upon feeling his left knee pain at about 5 pm, he stopped for a few minutes before resuming working on other precast concrete slabs on the site. He managed that until calling the day off at 6 pm. If according to what the orthopaedic experts recorded in their first joint report, namely that the accident, according to Leung, happened at about 4 eged early cessation of actual work that day. However, the documents showed that he clocked out and left the Site slightly after 7pm on that day. All those disputed timings aside, it remained the fact that he resumed his work and managed that for at least a non-negligible part of an hour after the pain. It also remained the fact that he saw no need to make any mention of his injury to his co-workers or to report the same to his employer s site agent. According to Leung, it was due to disturbance by the le H medical reports documented Leung s complaint about pain and decreased range of motion. That the accident involved no fall or contusion could only be information from Leung. Clinical examination revealed left knee tenderness at the medial joint line and minimal to mild effusion without edema, bruise or fracture. Conservative treatment was administered during his hospitalisation. He was discharged 3 d at the anterior aspect of lateral femoral condyle. No other bony lesion or abnormal marrow signal was seen. Left knee effusion was noted. The ACL appeared disrupted with loss of fibrillar pattern and increased signal, which was worrisome of complete rupture or at least a very high grade tear. The PCL showed increased signal, suggesting the result of prior sprain injury. The radiologist recommended correlating the imaging findings with the mechanism of injury and physical findings. Suspicious defect was also noted at the lateral aspect of posterior horn of medial meniscus, rendering focal tear difficult to exclude. The follow-up record in May 2018 recorded minimal effusion and mild tenderness with no instability and much improved pain, which continued to be the case since. Leung had attended about 22 20, and sick leave until the end of September 2020. He was then referred to assessment by the Medical Assessment Board for the employees compensation purpose. The assessment upon review was 2.5% loss of earning capacity. Orthopaedic expert evidence Dr Miu Yin Shun Andrew (Dr Miu) and Dr Ko Put Shui Peter (Dr Ko) were instructed by Leung and the defendants respectively to provide their expert opinion on causation and quantum. They examined Leung in September 2020 and produced their joint expert report previous surveillance recordings, about his use of walking stick with a slight limp. Other than that, he could ambulate independently. Examination of the left knee revealed no gross muscle wasting, which was verified by comparison of circumferences of both lower limbs. No effusion was detected. Tenderness was noted. Range of motion of both lower limbs was similar. Anterior drawer test and Lachman s Test (for ACL integrity) were grade nee cap). They also noted the impression formed by the radiologist from the MRI imaging mentioned above. Dr Miu opined that except for osteoarthritis, all the features shown by the MRI were most likely the direct result of the accident. As there was no evidence that Leung had suffered previous major injury to his left knee and, for that, medical treatment, what the MRI showed about the ACL condition could not be pre-existing. The mild osteoarthritis was the result of chronic wear and tear, which had been asymptomatic and would have certainly remained so for another 15 years but for the injury on this occasion (ie the first scenario explained in *Chan Kam Hoi v Dragages et Travaux Publics* [1998] 2 HKLRD 958). Dr Ko held a crucially different view. He noted the ACL tear condition of the left knee shown by the

MRI. However, he opined that such condition of the left knee and the osteoarthritis of both knees were both pre-existing. Specifically, he opined that the ACL tear condition seen in the MRI could not p ctive clinical findings from the moment of the injury had been inconsistent with what an acute tear of an otherwise healthy ACL should have entailed. The ACL tear condition could only be chronic and old. Dr Ko explained that a fresh acute ACL tear would prevent the person from continuing his pre-injury work or sports activity. In the case of Leung (again putting aside the discrepancy in respect of the exact hour on 2 auses significant effusion with haemarthrosis due to disrupted blood supply and internal bleeding. Hence increasing swelling. As mentioned, the medical records and reports since Leung s admission until after his discharge invariably stated that there was minimal to mild effusion as well as no haemarthrosis, which Dr Ko considered to be medically and practically almost impossible if the ACL tear was fresh and acute. The MRI within a week of the injury confirmed no haemarthrosis but only effusion which, Dr Ko observed, was fully accountable by the acute exacerbation and/or flaring of the pre-existing osteoarthritis by the sprain injury. If the focal defect in the lateral femoral condyle had been a fresh condition, it should have been brought about by direct contusion or significant trauma, which did not happen in the present case. Dr Ko observed that the corresponding bone changes to an acute tear of a previously healthy ACL were all lacking in the MRI. The only abnormality related to the injury on 2 May 20 ness over the left medial knee (which was not the location of the focal chondral defect shown in the MRI). Even the acute exacerbation or flaring up of the arthritis was found to have improved much by the end of June 2018 so that there were near normal range of motion and non-tender joint lines. Considering the MRI findings together with the objective features, including clinical findings, the signs of ACL tear shown by the MRI, Dr Ko opined, could not possibly be a fresh acute injury on 2 2024. Dr Ko first rehearsed the medical literature with attention to the approach in diagnosing a suspected case of acute ACL injury. The generally accepted approach is to perform clinical examination immediately or soon after the injury, including observation, palpation, clinical diagnostic test and neurological examination as well as specific tests such as Lachman test, anterior drawer test and pivot-shift test. In most cases, they should provide enough information for definitive diagnosis, which are of equal, and in some cases superior, weight as compared with MRI for diagnosing acute ACL tear. However, where there are further investigative imaging results, they should still correlate with the injury mechanism and the clinical findings. That actually aligns with the approach referred to by this court in Gurung Romi (above). That was also in fact the suggestion made by the radiologist in the MRI report in the present case after setting out his impression. Referring to some of the medical literature, Dr M t injury has occurred, though some may have little or no pain. Immediate swelling of the knee develops at the time of injury, within the first several hours, but the extent of swelling can be limited if the knee is immediately iced or splinted. About half of all injuries to the ACL occur along with damage to other structures in the knee, such as articular cartilage, meniscus, or other ligaments. When one injures his ACL, he might hear a popping noise and may feel that the knee gives out from under him. O ioning cartilage (meniscus) of the knee. Essentially, Dr Miu sought to explain that the features identified in the case of Leung were compatible with the clinical presentation of an acute ACL tear, though some of those features questioned by Dr Ko might vary from case to case. Whilst Dr Miu s belief that Leung had been

carrying out the levering motion involving repeated physical strength and exertions which would cause strain and stress to his limbs on the day in question immediately prior to the injury may sound fair, there are indeed features in the case of Leung pointing away from a fresh and acute tear of a previously healthy ACL on that day, and such features are difficult to neutralise as simply possible variations due to personal circumstances. First, the mechanism of injury. That acute ACL injury and tear could be caused by work injury could hardly be disputed. That such injury could happen in different manners could not be disputed either. However, the body of medical literature and diagnostic studies clearly tell us that it in any event requires a strong compression force or forceful twisting or rotational motion of the knee joint at the very point of time to cause an ACL tear. Dr Miu did not actually suggest otherwise, though he seemed to be prepared to believe what Leung was doing at the material time could involve such requisite motion or force. That was apparent in his evidence, when he referred to how Leung might have had to apply his body weight to jerk in the prising motion and thus involving possible forceful twisting or rotational motion of the left knee joint or compression within the left knee joint to produce the ACL tear. To that extent, counsel's cross examination of Dr Ko with a view to obtaining his acceptance of such view of Dr Miu is neither here nor there. As Dr Ko explained in court, it would nevertheless need a dynamic force to cause the ACL injury and/or the osteochondral injury, and static force would not suffice. Dr Ko noted that there was no corresponding kissing lesion on the other side of the joint surface to signify compressions force or lesion, which would have typically come about upon contusion or hit injury. As found, in handling the precast concrete slab in question, what Leung did was slightly bending his body with his left foot on the front, and prising the edge of the slab back and forth. One does not rule out that force and exertion were involved. After all, there is no real dispute that he suffered injury as a result. However, there was equally his denial of twisting or rotational motion. Nor is there evidence of the kind of sudden pivoting or manoeuvre referred to in the medical literature and explained by Dr Ko affecting his left knee joint at the time. As to whether or not Leung might have experienced any multi-directional motion of the left knee during his work on the day prior to handling the slab in question, that was never a specific factual contention for exploration and could not be a matter of assumption. It is not Leung's case that his injury was arising from acute ACL tear might feel on the spot. Some might have little or no pain. Dr Ko did not necessarily disagree. However, both experts agreed that the major problem would be instability, and the injured person might feel as if his injured knee would give way. Hence typically he would become unable to continue the pre-injury sports or activity. One would imagine that would probably be the case particularly where the activity involves manual labour like what Leung was doing at the time. As found, sible at the very moment of an acute ACL tear. Third, and not unrelated to the above, swelling of and effusion within the injured part. What Dr Miu highlighted as possible various degree of swelling of the acute ACL tear site is neither here nor there, when all, also according to him, would depend on whether the swelling was in fact limited by immediate icing or splinting. Other than that, Dr Miu agreed in court that significant swelling was expected within the following hours after such acute injury. That was not the clinical finding recorded by the medical officers attending to Leung. Effusion within the injured site, Dr Ko considered, is the most sensitive marker and hallmark of an acute ACL injury. According to the medical literature, MRI is a very sensitive tool in detecting

effusion. Even a normal person's knee joint may be detected by MRI to be containing effusion. In other words, it is not the existence or not of effusion. Effusion was indeed detected by the MRI in the present case. However, that was beyond what Dr Ko expected to be possible. Dr Ko accepted that signal change was detected by the MRI, which suggested recent injury. As mentioned, effusion was detected. However, Dr Ko considered that in all the circumstances as known, those can well be explained by the possible exacerbation or flaring up of the pre-existing osteoarthritis in Leung's knee. Regarding the focal osteochondral defect with surrounding marrow edema detected by the MRI, Dr Ko opined that it was consistent and therefore also explainable by the degenerative changes with focal cartilage lesion. The medical records and reports suggested that Leung had made admittedly good improvement and recovery from his acute exacerbation and flaring up of his pre-existing arthritis with good range of motion, solid end-point on the drawer test and no instability. Such development by the end of June 2018, Dr Ko was impressed, would have been impossible, had this been an acute ACL tear with all the lesions freshly caused on account of such complaint by Leung in the setting of his work environment at the material time. Subjectively that could be more a matter of sensation felt than actual sound heard in such a setting. In that case, such complaint, as Dr Ko observed, was by nature fairly non-specific, which must be subject to verification by and correlating with the other clinical features. In a case of acute ACL tear, such pop sensation would be typical. However, a pop sensation does not necessarily prove acute ACL tear. Another major thread running through Dr Miu's assessment was the lack of evidence that Leung had encountered a prior accident causing ACL injury and its resultant disabilities. This must be a reasonable angle in the consideration, which this court also mentioned at the trial. However, once it is understood that the state of ACL tear does not necessarily occur as an acute condition but could be a chronic condition over time, it is not unreasonable to perceive such probability in the case of Leung in view of his work history by the time of the injury in the present case. On this basis, what Dr Ko explained in his evidence in this respect, which also applies to the pre-existing osteoarthritis of both knees of Leung, becomes understandable, namely that many individuals with chronic or old ACL injury could indeed continue sports and gainful employment because of adaptive measures and compensatory mechanism by other structures in the knee and the lower limb. As such, Leung's work as an aluminium form worker is considered that there was strong evidence of meniscus tear as the direct result of the accident. The fact was that the MRI findings showed a suspicious defect at the lateral aspect of posterior horn of medial meniscus, rendering focal tear difficult to exclude. Correlation of the findings with the findings from the clinical examination, as recommended by the radiologist, was necessary. In such exercise, Dr Ko found that there has so far been no definite features of Leung having any meniscus injury or tear. Finding The above discussion shows how the experts addressed the various relevant features of Leung's case and conditions apparently with variation in emphases. As in any case which may not appear to be an open and shut one, the experts may deduce and rationalise on basis and with reasons. What this court is most concerned about is the respective basis and reasons behind the experts' such exercise. The true state of affairs is a practical matter of fact to be found by this court on the balance of probabilities, which in the present case is based on the injury mechanism as found as well as the clinical findings and medical evidence to be understood with the assistance of the medical

experts. This is consistent with the approach explained by the court in *Lee Kin Kai v Ocean Tramping Co Ltd* CACV 64/1989 (31 January 1990) (at pages 5-6, referring to *McGhee v National Coal Board* [1973] 1 WLR 1). On the whole, I find what Dr Ko explained in the exercise to be relatively more compelling than that of Dr Miu in this case. Preferring the evidence of Dr Miu and thus the probability of Leung's case being somehow exceptional to what one expects in a typical acute ACL injury case in so many material aspects, I find, is not fairly permitted by the evidence and the balance of probabilities. Insofar as the experts differed in their opinion on causation, this court prefers that of Dr Ko to Dr Miu. I find that Leung did sustain injury in the course of his work on 2 he general duty not to be negligent, and Max Wealth was also under the duty as the employer to take reasonable care to ensure the safety of Leung at work at the material time. The state of the site might account for what the workers, including Leung, had to do in the course of the placement of the precast concrete slabs into the grids. However, the alleged failure in the system of work was an activity tort which did not give rise or contribute to the unsafe state of the premises causing the accident. The p nance does not afford Leung with an actionable cause. The Ordinance assists in the measure of what duty of reasonable care entails in an industrial and factory setting. Counsel also accepted that when opening the case. What remains are section 6 of the Occupational Safety and Health Ordinance, Cap ons responsible for the workplace towards Leung in relation to risk of manual handling operation which he was required to undertake at the material time. Effectively, the two co-exist with the same reasonable duty of care under the common law towards the safety of Leung at work: see for instance *Lam Wai Chi v Project Concern Hong Kong*, HCPI stion, the defendants are adamant that the adjustment of the precast concrete slab upon its placement by the tower crane had to be adjusted manually. Considering all the evidence, I am convinced that that was realistically the case. Amongst others, the photographs depict not only how the work was carried out but also the state of the slabs and the grids where they landed. Not only did the slabs not come with neat edges, but they also had short bent steel bars protruding from all sides. Likewise, each grid slab could fit into the grid. The evidence, including what the photographs depict, impresses me that manual adjustment was unavoidable to enable the slab, after being lowered into the grid, to fall in place properly. One may not rule out the possibility of an entirely different construction and work design which could remove the need for manual adjustment in the process. However, the law regarding the duty of reasonable care and the facts known would not go so far as founding liability for failure to come up with such different construction or work design in the setting as that in the present case. Regarding the second question, Leung possessed his safety card at the material time. The evidence shows that he attended a 2-hour safety course organised by Shui On in March 2018. The course contents consisted of site safety, personal protective equipment and manual handling, which were also explained by way of the relevant brochures. His real complaint is that he had not been given any training or instruction in respect of how to safely carry out the job in question, namely adjusting the levelling of the precast concrete slabs for fitting the same into the grids on site. According to Leung, he essentially carried out such work in the manner as the other workers did. That included fetching a similar steel rod from the site for use as lever to prise the slab lowered by the tower crane into a grid. That, the defendants argue, was a simple task which could reasonably be left to be decided as to how to carry out by fety training brochures mentioned

above, the standard instruction for handling weight manually, generally speaking, was not only for the worker to proceed in a proper body posture with proper tools and equipment but also with assistance. Shui On actually conducted a risk assessment of, amongst others, the different stages of the installation of the precast concrete slabs on site in January 2018. For the final stage of the installation, namely manual adjustment of the levelling of the slabs lowered by the tower crane, the assessment report specifically recommended that the worker should adopt the proper body posture as well as proceeding with help. That aligned with the general understanding about safe handling of weight manually. That put on the defendants squarely the duty to ensure that the system of work would not fail in this safety respect. According to Leung, he was at the time working on his own because the closest worker whom he could have asked to help was some 10 m away. The defendants do not seek to argue otherwise. In the absence of evidence of what the defendants had done to ensure that a worker would not be left alone to proceed with the adjustment of the levelling of the slab at any time, the risk of injury to the worker in the course of work in such manner and alone, I find, was reasonably foreseeable. According to Chan, he conducted a safety patrol in the vicinity of the site of the accident at about 4 to 5 days before the accident. It had been done to ensure that that should not and would not happen. To that extent, the defendants failed in their reasonable duty of care in respect of that specific part of the system of work. In court, Leung added that before the accident, he had complained to Wong, Max Wealth's site agent, about the risk of carrying out such task by a worker alone. The parties entered into argument as to whether this court should draw adverse inference against Max Wealth from its failure to call Wong to testify, who would have testified at the trial, notwithstanding the inclusion of a specific section in his witness statement to particularise the alleged breach on the part of the defendants. Importantly, it is not unfair for counsel for the defendants to categorise such new assertion as casual and equivocal, when Leung himself qualified such so-called complaint as having been reference made only lightly, if not jokingly. As particulars of breach, Leung also refers to the failure of the defendants to provide proper tool and equipment. The alleged failure of the defendants to provide safety gloves and shoes, in my judgment, is immaterial. Neither is it shown that they had or would have had material bearing on his sustaining injury at work. Nor does it matter whether such were provided to him as, according to him, he was at the material time wearing them, albeit of his own. It is also alleged that knee brace should have been provided. Throughout the trial, it was unclear precisely what knee brace Leung could be referring to. His witness statement in this respect gives the impression that he was referring to knee pad. His counsel ventures to ask this court to take notice as a matter of common understanding that this is a soft protective device which wraps round the knee for protection against knee injury. I hesitate to agree. This court acknowledges the extent of initiative expected of an employer in discharge of his duty to devise a safe system of work including the provision of appropriate safety equipment: see the discussion in *Pak Sui* which had to depend on the circumstances of the case including the state of knowledge which the defendant did or ought to have possessed about the relevant risk of injury. In this case, it would be the risk of injury to the knee in the course of the prising motion. It would be the burden of Leung to establish such state of knowledge on the part of the defendants. Whilst I accept, as mentioned, that the task of adjusting the levelling of the precast concrete slab in the manner mentioned manually, particularly when doing so alone, would have entailed the risk of

injury, I do not accept that empirically such foreseeable risk must or would most likely have involved that of injury to the knee instead of other parts of the body. Chan testified to the same effect. There is no or insufficient evidence in support of such foresight so as to trigger reasonable consideration of the provision of knee protection device of a type suitable for the purpose. In any event, these other arguments become immaterial when I do find that the defendants did fail to ensure that the task of manually adjusting the levelling of the precast concrete slab in the manner as mentioned should not be left to be carried out by a worker single-handedly, and thus exposing him to reasonably foreseeable risk of injury in the course. I find that the defendants were in breach, and hence liable for causing Leung his knee injury as mentioned.

CONTRIBUTORY NEGLIGENCE The contention in respect of contributory negligence on the part of Leung in contributing to his injury at work essentially is premised on the alleged simple nature of the task and his prior similar work experience. It is said that he failed to take reasonable care of himself in carrying out the task. In view of the findings mentioned above and the fact that Leung was left to carry out the task by himself as well as the absence of allegation or evidence of extraordinary manoeuvre on his part in doing so at the time, I find insufficient factual basis to attribute blame on him for his injury in and to improve stability. Other than that, there were just orthopaedic follow up until July 2020 without specific treatment programme. Leung rated his improvement of up to 80% in November 2018, which was objectively reflected by the conclusion of his physiotherapy mentioned above. The examination by the orthopaedic specialist instructed by the defendants insurer recorded Leung's complaint about pain, limping and thigh muscle wasting. Occupational therapy was first given in August 2019, before assessment in September 2019 which suggested his overall work capacity did not match with his pre-injury job demand, and recommended change to job with lesser physical demand. Sick leave was given until September 2020. During the joint medical expert examination in the same month, Leung still complained about intermittent pain requiring painkillers. The pain would be exacerbated by squatting, climbing downstairs or downslopes, sudden brake during running or minor bump over his left knee by passers-by. Level walking resulting in exacerbation and/or acute flaring up of his pre-existing arthritis would be reasonably good and favourable. No further treatment was necessary. Leung should manage his activities of daily living and self-care activities without significant problem. He should be able to resume his pre-accident sports activities such as hiking. All things considered, the orthopaedic experts rated the extent of permanent impairment suffered by Leung to be in a range of 1-3% of the whole person. They differed in their opinion in respect of, amongst other things, Leung's capacity to resume his pre-injury job. Dr Miu opined that the pain in his knee would render prolonged working and strenuous work in construction sites difficult so that more sedentary job such as packaging, office cleaning or carpark attendant would be advisable instead. Dr Leung's sick leave expired at the end of the same month.

Notwithstanding his complaint about his residual disabilities, including intermittent left knee pain and the need to rely on walking stick outdoors, Leung started one month later to work as a security guard. The first of these positions put him in a 12-hour shift, and he worked for this employer for 9

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dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml \*0Sr <4a& qfEO-zQc` #H5|
uFXIP% drs/downrev.xmlL @dg b6NA [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK
drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/
e2oDoc.xml WPn \k GQDu L@cC} Rt_, drs/downrev.xmlL !kZO K(dFC [Content_Types].xmlPK
_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.;
_rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml lCpe 6k(w N'< V}>|%a (v.W "^*I,}B drs/
downrev.xmlL z+vB ?Ro&^ }%mo QIrk [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK
drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/
e2oDoc.xml 9/L)Z0* %=C %PUZ 5u9V ZdGAC _4fQ drs/downrev.xmlL @dg b6NA
[Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml
dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml :m9X#u N', _fgOG 5v"^JI< drs/
downrev.xmlL !kZO K(dFC [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/
downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/
e2oDoc.xml \$mXh ^%#`m iylC *r!q @#zV 'Ky~"? p>t# SJ(f o~sP [%w?~v drs/downrev.xmlL z+vB ?
Ro&^ }%mo QIrk [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK
kjX% 1K++ ;0N^] I<vb ;,EL O@0d 9^qSt 3MYr 1K++ ;,EL kjX% 3MY 9^qS N#" {4 14{> High Court
Normal.dotm Minnie Ko Microsoft Office Word Judiciary Title <?xml version="1.0"
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97-2003 Document MSWordDoc Word.Document.8

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