Ma HongFei v U-Hin Manufacturing Pte Ltd and Another
[2009] SGHC 172

Case Number : Suit 128/2008

Decision Date : 30 July 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : N Srinivasan (Hoh Law Corporation) for the plaintiff; Joethy Jeeva Arul (counsel instructed by S K Kumar & Associates) for the first defendant; Michael Eu Hai Meng (United Legal Alliance LLC) for the second defendant

Parties : Ma HongFei — U-Hin Manufacturing Pte Ltd; B.T. Engineering Pte Ltd

Tort – Negligence – Occupier's liability – Duty of care owed by main contractor to workman where workman was employed by subcontractor and not main contractor

30 July 2009 Judgment reserved

Lai Siu Chiu J:

1 This was a claim by Ma HongFei ("the plaintiff") for personal injuries which he sustained on 5 June 2007, while working on a project called FPSO Mondo for Keppel Corporation ("Keppel") at No. 49 Gul Road ("the premises"). The plaintiff was employed by U-Hin Manufacturing Pte Ltd ("the first defendant") who at the material time, supplied workers to BT Engineering Pte Ltd ("the second defendant") which company is in the business of fabricating offshore oil, gas and petrochemical equipment including pressure vessels. The second defendant was at the material time a subcontractor of Keppel for the construction of an oil rig.

The facts

2 The facts of the case are fairly straightforward. The 29 year old plaintiff arrived in Singapore from China on 29 May 2007. On the morning of 5 June 2007, the plaintiff (who is a skilled electrical engineering technician) was assigned by the first defendant to work for the second defendant at the premises. The plaintiff was directed by his superior to use a grinder to smoothen the rim of a metal cable conduit tray ("the tray"). While he was doing the grinding, the plaintiff would periodically use his hands to feel around the rim of the tray to check for unevenness and/or jaggedness. This was to ensure smoothness of the surface.

3 While the plaintiff was checking the rim of the tray with his left hand, a metal pipe measuring approximately 4m long with a diameter of 22cm ("the pipe") dropped from above and struck his left index, ring and little fingers which were then on the rim of the tray. The plaintiff was taken to National University Hospital ("NUH") where his injuries were found to be so severe that all three fingers of his left hand had to be amputated.

4 The first defendant notified the Ministry of Manpower ("MOM") of the accident on 11 July 2007 for purposes of claims under the Workmen's Compensation Act, Cap 354 1998 Rev Ed ("the WCA"). The claim based on workmen compensation rates was subsequently assessed at $88,200. However, the plaintiff felt that the sum was too low for the disability he had suffered. Hence, he rejected the same and commenced this suit in February 2008 against both defendants, seeking damages at common law for his injuries. The plaintiff returned to Jiangsu Province, China, after his discharge from

NUH and came back to Singapore for the trial. He is currently unemployed.

The pleadings

5 In his statement of claim, the plaintiff alleged that he was a "workman" under the WCA, that both defendants were negligent and had breached their statutory duty *inter alia* in not ensuring that the pipe spool was guarded or shored to prevent it from falling or collapsing due to work being carried out in the vicinity. The plaintiff contended that the defendants had breached Regulation 19 of the Factories (Building Operations and Works of Engineering Construction) Regulations 1999 ("the 1999 Regulations"). The plaintiff further alleged that the defendants had breached Regulations 4(7), 35(1)(b) and (c), 46(1)(a) and (c), and 46(2)(b) of the Factories (Shipbuilding and Ship-Repairing) Regulations 1995 ("the 1995 Regulations"). It was also alleged that the defendants had failed to provide a safe system and place of work as well as a safe plant or equipment for the plaintiff. The plaintiff claimed special damages he had incurred totalling $13,589.21 which included loss of earnings as of 22 February 2008 at $51.67 per day. He claimed general damages which included loss of pre-trial earnings from 23 February 2008 to the date of trial.

6 The first defendant denied that the plaintiff was a "workman" within the definition of the WCA and put him to strict proof. It contended that the company had been engaged by the second defendant to supply workers to the second defendant and the plaintiff was assigned by the first defendant to work for the second defendant at the premises. The first defendant averred that the plaintiff was working at the premises under the directions, control and management of the second defendant. Consequently, the first defendant denied that it had been negligent or that it had breached its statutory duties and or occupier's duty.

7 The first defendant further denied it was the occupier of the premises. As such, it did not owe any duty of care at common law or under the WCA to the plaintiff.

8 The first defendant further alleged that the injury and loss sustained by the plaintiff from the accident was caused wholly or contributed to by the plaintiff's own negligence.

9 The defence of the second defendant similarly put the plaintiff to strict proof of his allegations. The second defendant added that it had engaged the first defendant as its independent subcontractor whose workers remained under the care, control and supervision of the first defendant.

10 The second defendant pleaded that by a letter of indemnity dated 2 January 2007 ("the letter of indemnity"), the first defendant had undertaken to indemnify the second defendant against all claims, costs, actions, suits, loss and other expenses whatsoever for any injury or loss of life or damage to property howsoever caused.

11 The second defendant denied that the provisions of the several regulations relied on by the plaintiff in [5] applied. Instead, it pleaded that s 60(1)(a) of the Workplace Safety and Health Act 2006, Cap 354A ("the Workplace Act") applied and the plaintiff had no right of civil action.

12 The second defendant further disagreed with the plaintiff's version of how the accident occurred and referred to and/or relied on the notification of accident made by the first defendant to MOM on 11 July 2007 ("the Notification") as being an accurate account of the accident.

13 The second defendant added that at the time of the accident, no work was being carried out on or above the pipe as the pipe was waiting for quality control inspection. The second defendant further denied that the plaintiff was entitled to rely on the doctrine of *res ipsa loquitur*.

14 In the alternative, the second defendant alleged that the plaintiff was negligent and he caused or contributed to the accident *inter alia* in the following manner by:-

(a) failing to take reasonable precautions for his own safety;

(b) failing to exercise care and attention;

(c) not carrying out his work in a safe and proper manner;

(d) causing the partially welded spool to crack and to give way while the plaintiff was tightening the pipe clamp support using a hammer and a spanner.

15 The second defendant relied on the letter of indemnity (see [25] below) to issue a notice under O 16 of the Rules of Court (2006 Rev Ed) (viz Third Party proceedings) to claim an indemnity and/or contribution against the first defendant for the plaintiff's claim.

The evidence

16 Like the first defendant, the plaintiff was the only witness for his case while the second defendant called two witnesses. The trial was only to determine liability with the issue of damages (should the plaintiff succeed) held over to a later date to be dealt with by the Registrar.

(i) The plaintiff's case

17 The plaintiff's evidence-in-chief was brief and has been set out earlier in [2] to [3]. In cross-examination by counsel for the first defendant, the plaintiff revealed that it was the first defendant's director Wong Shiu Hung ("Wong") who told him on 4 June 2007 to go to the premises to do work for the second defendant together with about ten other workers from the first defendant. At the premises on both days (4 and 5 June 2007), the plaintiff was given instructions by a foreman of the second defendant. The plaintiff was told to put a steel structure on top of a metal structure and to install an electrical wire box on top of the steel structure; the plaintiff was familiar with the work as he had previously done it in China.

18 Cross-examined by counsel for the second defendant, the plaintiff testified that it was a foreman of the first defendant who took him to the premises but that foreman did not give him any instructions or supervise his work. The plaintiff did not know who had installed the pipe that struck the fingers of his left hand. He was unaware that the first defendant was contracted by the second defendant to provide labour to carry out work for Keppel. However, the plaintiff denied he was working at the second defendant's factory on the two dates in question instead of at the premises of Keppel.

(ii) The first defendant's case

19 Wong's testimony on behalf of the first defendant was not helpful as he did not witness the accident but came to know of it later. However, he was the person who lodged the Notification with MOM on behalf of his company, based on information provided by his younger brother Wong Shiu Weng who was the first defendant's project manager. Wong revealed that his son Wong Peng Lam was the foreman for the Keppel job. He had another foreman called Yoong Chee Tak (whom the plaintiff knew as Ah Tak) who did not give the first defendant's workers (including the plaintiff) any instructions on 4 or 5 June 2007.

20 Wong said he did not give instructions to the first defendant's workers. He confirmed that the premises (contrary to what the plaintiff said) were those of the second defendant and not Keppel's whose shipyard (that of its subsidiary Singmarine) was at No. 55 Gul Road.

21 The first defendant's supply of labour to the second defendant was pursuant to a Purchase Order no. 31628 dated 15 May 2007 ("the PO") issued by the latter to the former which stated:

> To supply labour, tools & equipment to fabricate & install all the electrical & instrument works on the FPSO Mondo Turret.

Pursuant to the PO, Wong said the first defendant supplied 200 workers to the second defendant comprising of 13 foremen, two supervisors with the rest being ether general workers, fitters or welders.

22 The Notification filed by Wong with MOM (see AB24-25) stated as follows:

> A worker of Chinese national name Ma Hong Fei was injured inside the Turret's Chain Table during the accident. The injured worker was kneeling down doing cable tray works while using his left hand holding on the vertical frame as additional support to balance himself. Directly above him was an 8" welded flange of 2m length which weight approximately 1.5ton. A 1.5 ton chain block and pipe clamp support was used to hold the pipe spool in place. During the accident the worker was tightening the pipe clamp support using hammer and spanner resulting the partially welded spool to crack and gave way, the pipe spool tilted 0.5m downwards directly resting on the cable tray's vertical frame with the flange crashing onto the worker's left hand. At the time of the incident, his co-worker Su bin was next to him searching for some tools. He attended to Ma Hong Fei when he heard calls for help. Lifting gear was used to lift the spool to remove his injured left hand.

23 In cross-examination, Wong said that the pipe fell because its clamp was removed in anticipation of the quality control inspection. The pipe had been installed by workers of the two defendants under the supervision of the second defendant's supervisor. Questioned by counsel for the second defendant, Wong explained that there was no temporary shoring or working work platform at the time the pipe fell because such supports had to be removed for the intended inspection. Had the quality control inspector from the second defendant come immediately to inspect, the omission of shoring would not have been a problem. Unfortunately, the inspector failed to show up for two days during which period the area around the pipe was not cordoned off.

24 It was drawn to Wong's attention (who claimed he was unaware) that the PO contained certain terms and conditions including the following clause 2 headed Indemnity:

> Except for articles manufactured to BTE own specifications and plans Vendor [the first defendant] agrees to defend, protect, indemnify and hold harmless BTE and its customers from all costs, expenses or damages arising out of any actual or claimed patent infringement pertaining to the items covered by this order or any use contemplated by the parties at the time of delivery to BTE.
>
> Vendor shall take all necessary precautions to prevent injury to person or property during the progress of work and except where such is due solely and directly to Purchasers' [the second defendant's] negligence, shall indemnify Purchaser, its successors, assignees, agents, customers and user of its products against all loss which may result in any way from any act or omission of the Vendor, their agents, employees or subcontractors and Vendor shall maintain such Public Liability property damages and Employees liability and Compensation Insurance as will protect Purchaser from said risks and from any claims under any law relating to Workmen's Compensation.

Wong claimed the PO was given to the first defendant only after the accident but it was backdated to 15 May 2007 by the second defendant.

25 Any ambiguities or doubts in the above badly drafted clause on the extent of the first defendant's liability/responsibility to the second defendant were removed by the letter of indemnity (see 1DB2) which stated:

> In consideration for your consent for our sub-contracting work in BT Engineering Pte Ltd, we the undersigned hereby undertake to indemnify and shall keep indemnified BT Engineering Pte Ltd against all claims, costs, actions, suits, loss and other expenses whatsoever for any injury, loss of life or damage to property howsoever caused.
>
> We warrant and confirm that we have taken out and maintain the insurances following which shall include but not be limited to Workmen's Compensation. Common Law and Public Liability. We undertake to indemnify BT Engineering Pte Ltd against any and all claims, costs loss, damage and expense which arise from any breach by us or the Sub-Contractor of the warranties herein contained.
>
> We hereby further undertake that in the event of any claims, actions, proceedings or threatened claims, or proceedings against BT Engineering Pte Ltd or any costs, loss or expense suffered or incurred by BT Engineering Pte Ltd as a result of or in connection with the Sub-Contract as aforementioned, we shall promptly lodge and make such claims in respect of such Workmen's Compensation, Common Law and Public Liability Insurance policies as the case may be, or at your option, allow our name to be used in any action or proceeding to lodge, make and pursue such claims under the said policies and shall hold such sums as may be received there from wholly for the benefit of BT Engineering Pte Ltd.

26 The first defendant produced a copy of the cover note for the policy it had taken out for Workmen's Compensation (with NTUC Income Cooperative Limited) for its machinists and welders (which would include the plaintiff). Unfortunately, it did not assist the first defendant in this case as the plaintiff had opted to make a claim under common law.

27 In re-examination, Wong revealed that there was a crack in the welding of the pipe at the time which the defendants' workers intended to repair after the pipe had been inspected.

(iii) The second defendant's case

28 The second defendant's witnesses were Robert Chan ("Robert") its then safety officer (who had lodged with MOM an incident report on the day of the accident ["the Incident Report"]) and the second defendant's manager for Quality, Health, Safety and Environment Chan Fook Yue ("Chan"). Robert (who is no longer in the second defendant's employment) testified that at the material time the second defendant had about 800 workers at the premises including about three supervisors and 20 foremen.

29 The Incident Report (see 1DB5) of Robert stated the following:

> The injured was kneeling down on the deck to bolt up cable tray. A 8" diameter pipe of 2m length which weight approximately 1.5 ton was partially welded, cracked at the welded joint. The pipe tilted 0.5m downwards and the flange crushed the injurer's [sic] left hand. The injure left hand was rested on top of a vertical cable tray at the time of accident. His co-worker (Su Bin – 05753270) was next to him at the time of the accident was searching for some tools. When he heard the injured calling of help, he immediately attended to him. The pipe was lifted with the aid of lifting gears to free his hand.
>
> Piping foreman Mr Loke Kuang Nyon – 3 68629847 was leading a team of pipe fitter adjusting the vertical pipe clamp/support as part of the pipe line vertical alignment. A chain block was rigged to provide additional support to the pipe line during the adjustment process. The work completed at approximately 0930 hrs, Mr Loke Kuang Nyon then request for QC inspection before welding can be carried out. His team move out and continue work at other location. At approximately 1020 hrs, a team of electrical worker was assigned to work on the cable tray at deck beneath the pipelines. There was nobody working above on the pipeline. Soon after, there was a loud crack and workers saw a pipe tilted downwards and injured the worker.
>
> The investigation showed that during the pipe alignment, the weld had been stressed upon and cracked at the uncompleted weld joint. The weld joint was only tacked welded and upon QC inspector pass the inspection, the welder then will be called to complete welding the joint. However, temporary pipe positional clamp was removed to facilitate the weld joint inspection leaving a chain block supporting the pipe. The pipe was tiled [sic] and pivoting on the chain block at the time of accident. A pipe clamp was removed as part of the inspection for quality control in pipe fit up/installation. Hence, the missing pipe clamp promoted [sic] the pipe to be tilted when the weld failed.

30 Robert's testimony was not particularly helpful as he was unable to provide any information on how the first defendant's workers carried out work for the second defendant and who had given the former instructions. Indeed, Robert did not know what work the plaintiff was doing on 5 June 2007 as he was not even in Singapore that day. Consequently, the Incident Report he had lodged with MOM was based on hearsay evidence. Neither was Robert aware of the contractual conditions governing the relationship of the two defendants nor that of the work involved. Robert also could not explain how or why the pipe fell. He speculated that the welding may not have been done properly resulting in the crack in and subsequent fall of, the pipe. Robert in fact agreed with counsel for the plaintiff (at N/E 56) that the collapse of the pipe raised a strong inference that reasonable care had not been exercised in the welding of the pipe.

31 Chan's evidence was equally unhelpful. His written testimony focussed on the letter of indemnity in [25] pursuant to which he deposed that the second defendant should be indemnified by

the first defendant against the plaintiff's claim. Chan asserted that the first defendant was an independent contractor and the first defendant's workers including the plaintiff, were under the sole control and supervision of the first defendant.

32 Chan was not involved in the negotiations or signing of the PO in [21] above and he had no knowledge of the nature, the scope or the terms and conditions of the contract between the defendants. He was the quality assurance and quality control manager at the material time and he had a team of quality control inspectors under his charge who would check (in coordination with Keppel), the fabrication works carried out by the workers. Chan did not know who was the supervisor or foreman of the plaintiff, on the day of the accident. Neither could he tell the court who gave or could have given, instructions to the plaintiff that fateful day. Above all, Chan had no knowledge of how the accident occurred.

The issue

33 The only issue for the court's determination is who was negligent? I should point out at this stage that it was absurd of the first defendant (in its defence) to deny that the plaintiff was a "workman" within the definition of the WCA and to put him to strict proof when the plaintiff had been awarded (albeit it was rejected) a sum of $88,200 as compensation under the WCA (see [4]). Any plea denying his status as a "workman" was a non-starter. In any case, under s 2 of the WCA "workman" means:

> any person who has entered into or works under a contract of service or of apprenticeship with an employer, whether by way of manual labour or otherwise and whether the contract is express or implied or is oral or in writing, and whether the remuneration is calculated by time or by work done except —
>
> (a) a person employed otherwise than by way of manual labour whose earnings, calculated in accordance with section 8, exceed —
>
> (i) $1,250 a month where no other maximum amount of the earnings is specified under sub-paragraph (ii); or
>
> (ii) where the maximum amount of the earnings is specified under this sub-paragraph by the Minister from time to time by notification in the **Gazette*, such amount as may for the time being be so specified;
>
> *For the purposes of the definition of "workman" the maximum amount of earnings shall be $1,600 (N 5, 1996 Ed.).

34 The plaintiff had deposed in his AEIC that he was paid a daily wage of $46.67 by the first defendant although in his statement of claim (at [5]) he claimed to be earning $51.67 per day. Based on $46.67, the plaintiff's monthly wage would approximate $1,213.42 ($46.67 x 26 days) and if it was based on $51.67, it would approximate $1,343.42 ($51.67 x 26 days); either sum is below the statutory limit of $1,600.

Statutory provisions

35 Before determining the issue at hand, I need to refer to the statutory provisions relied on by the plaintiff and the second defendant in their pleadings.

36 The plaintiff had alleged that one or both defendants had breached Reg 19 of the 1999 Regulations as well as Regs 4(7), 35(1)(b) and (c), 46(1)(a) and (c), and 46(2)(b) of the 1995 Regulations (see [5] above).

The Regulations

37 Regulation 19 of the 1999 Regulations reads:

> No, wall, chimney or other structure or part of a structure shall be left unguarded or unshored in such condition that it may fall, collapse or weaken due to wind pressure, vibration or any work being carried out in the vicinity.

The 1999 Regulations were revoked in 2007 and were replaced by the Workplace Safety & Health (Construction) Regulations 2007 with effect from 1 January 2008.

38 The provisions under the 1995 Regulations that the plaintiff relied on read as follows:

> 4(7) No occupier, contractor or employer, or owner, agent or master of a ship, shall permit an employee to do anything not in accordance with the generally accepted principles of sound and safe practice.
>
> 35(1)(b) prevent any incompatible work from being carried out at the same time in the shipyard or at any location on board the ship.
>
> 35(1)(c) ensure that the necessary safety precautions are taken and enforced when such work is being carried out.
>
> 46(1) The ship repair manager or the master, owner or agent of the ship on which any hot-work is being carried out shall ensure that –
>
> …
>
> (b) there are no hazardous substances present at the areas in which the hot-work is being carried out; and
>
> (c) the hot-work is carried out in a safe and proper manner.
>
> 46(2) The ship repair manager or trade foreman shall order all hot-work to cease immediately –
>
> …
>
> (b) if the hot-work is being carried out in an improper or unsafe manner.

The 1995 Regulations were revoked in 2008 and were replaced by the Workplace Safety and Health (Shipbuilding and Ship-Repairing) Regulations 2008 with effect from 1 August 2008.

The Workplace Act

39 Section 60 of the Workplace Act states:

(1) Nothing in this Act shall be construed —

(a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Act.

40 It is unlikely that Reg 19 of the 1999 Regulations set out in [37] above is relevant. Although the word "structure" is not defined in the 1999 Regulations or in the Act, it should be read *ejusdem generis* with the preceding words "wall" and "chimney". A structure must mean part of a building and would not include a loose pipe that was fabricated at the workplace.

41 The provisions in the 1995 Regulations set out in [38] certainly do not apply to this case as the evidence before this court was that the premises were not a shipyard of Keppel but those of the second defendant. Further, there was no evidence that the plaintiff was working on a ship at the material time.

42 The second defendant's defence in [11] that s 60(1)(a) of the Workplace Act precludes the plaintiff from suing is a misreading of the provision. What the subsection means is, a contravention of the Act does not automatically confer a right of action on a workman *per se*. A breach of the statutory provision must be the cause of his injury before a plaintiff can rely on the breach to found his cause of action (see *Mohd bin Sapri v Soil-Build (Pte) Ltd and another appeal* [1996] 2 SLR 505). Hence, s 60 of the Workplace Act goes on to say:-

(2) Subsection (1) shall not affect the extent (if any) to which a breach of duty imposed under any written law is actionable.

43 In this case, there is no doubt that the failure to provide a temporary guard or shoring around the pipe caused the plaintiff's injury. The question to ask is who was responsible?

The law

44 In Singapore the common law on occupier's liability applies and the duty of care owed by an occupier (the second defendant) to the invitee (the plaintiff) is set out in *Industrial Commercial Bank v Tan Swa Eng and another appeal* [1995] 2 SLR 716 which in turn is derived from the English position spelt out by Willes J in *Indermaur v Dames* (1866) LR 1 CP 274 and which is as follows:

And with respect to such a visitor [invitee] at least, we consider it is settled law, that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding or otherwise, and whether there was contributory negligence in the sufferer, must be determined by a jury as a matter of fact.

English cases after 1 January 1958 are no longer applicable due to the enactment of the UK Occupiers' Liability Act 1957. The statute's provisions replaced the common law duty of care which an occupier of premises owes to his visitors.

45 At common law, the duty to an invitee is confined to the physical condition of the premises while the duty to take reasonable care to prevent damage from unusual danger applies not only to

the structural condition of the premises but also "to the use which the occupier (or whoever has control so far as material) of the premises permits a third party to make of the premises" (per L Wright in *Glasgow Corp v Muir* [1943] AC 448 at 462). It was held by the Court of Appeal at [20] in *Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd* [1997] 3 SLR 677 that a main contractor owed a duty of care to a workman as if he was the workman's "employer", notwithstanding that the workman was not employed by him but by a subcontractor if he (the main contractor) exercised or had the right of control over the workman in respect of the work which the workman was engaged to perform.

The findings

46 Based on the Notification at [22], there was little doubt as to how the plaintiff came to sustain his injury and ultimate disability, in the accident on 5 June 2007. Equally, it was clear from the evidence that the plaintiff's conduct was not negligent in any manner that could have contributed to or resulted in, the accident.

47 The pipe fell from above where the plaintiff was working due to the fact that its temporary shoring had been removed pending inspection by the quality controller(s) of the second defendant and/or of Keppel. It was also in evidence (from Robert) that the pipe had tilted just before the mishap and either due to that fact or the fact that the pipe itself was cracked because of faulty welding, the pipe fell and hit/injured the fingers on the plaintiff's left hand.

48 Although the plaintiff was employed by the first defendant, it was clear from his evidence which I accept (and which was corroborated by Wong of the first defendant), that he was given instructions that fateful day by the second defendant's foreman or supervisor. The plaintiff's evidence was not/could not be refuted by the second defendant's witnesses as its first witness Robert was not present at the premises that day while its second witness Chan had testified that he had no knowledge who was the plaintiff's supervisor or foreman on 5 June 2007.

49 The second defendant's pleaded case was that the plaintiff and other workers were supplied by the first defendant and the plaintiff was not its employee. Even if I accept this submission, it was clear from the evidence that instructions to the plaintiff and his co-workers came not from the first defendant but from the supervisor of the second defendant. Consequently, although the second defendant was not the plaintiff's employer, as the occupier of the premises and the main contractor to whom the first defendant as its subcontractor supplied workers including the plaintiff, it was liable to the plaintiff for the pipe not having been shored or guarded, causing it to fall and injure the plaintiff (see *Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd* at [45] above).

The letter of indemnity

50 Having disposed of the issue of liability between the plaintiff and the defendants, I turn to look at the contents of the letter of indemnity in [25] to determine whether it absolves the second defendant (as it contended) from liability and that the first defendant should be the party that would be liable to the plaintiff.

51 As indemnities like exception clauses, allows the indemnified party to escape liability, such documents should be strictly construed. The wording of the letter of indemnity focussed on the issue of workmen's compensation. A reader of the document would note therefrom that the first defendant was obliged to indemnify the second defendant against liability for any claims for which the first defendant had taken out and maintained *insurance coverage*. This would apply to the compensation sum of $88,200 in [4] had the plaintiff accepted the amount assessed by MOM. However, the plaintiff

rejected the compensation and opted to make this claim at common law.

52 Accordingly, unless the first defendant had taken out insurance coverage for common law claims (for which there was no evidence), the second defendant cannot look to the first defendant under the letter of indemnity to escape liability for its own negligence.

53 It bears noting too, based on Wong's testimony in [24] which the second defendant's witnesses neither challenged nor refuted, that the PO containing a similar indemnity provision under cl 2 therein was issued and given to the first defendant *after* 5 June 2007 but backdated by the second defendant to 15 May 2007, in an obvious attempt to escape liability.

Conclusion

54 Consequently, the plaintiff's claim against the first defendant is dismissed with costs. The plaintiff is awarded interlocutory judgment against the second defendant with costs. The Registrar shall assess the plaintiff's claim for damages at a later date with the costs of such assessment to be reserved to the Registrar.

Costs

55 Where a plaintiff sues joint tortfeasors and he succeeds against one defendant but fails against the other defendant, he can be awarded costs either by way of a *Bullock* order or a *Sanderson* order. In a *Bullock* order, the plaintiff is liable to pay the costs of the successful defendant but is entitled to recover those costs as well as his own costs from the unsuccessful defendant (*Bullock v London General Omnibus Co* [1907] 1 KB 264. In a *Sanderson* order, the plaintiff will recover his own costs from the unsuccessful defendant who will also have to pay the plaintiff's costs payable to the successful defendant (*Sanderson v Blyth Theatre Co* [1903] 2 KB 533). The main consideration for the court to make either a *Bullock* or *Sanderson* order is whether costs had been reasonably incurred as between the plaintiff and the unsuccessful defendant (*Mohd bin Sapri v Soil-Build (Pte) Ltd and another appeal* (*supra* [42]). It was not unreasonable for the plaintiff to have sued both defendants in this case as the first defendant was his employer while the second defendant was the party that owned/occupied the premises and that gave him working instructions on the day he was injured.

56 I am of the view that a *Bullock* order would be the appropriate order for costs in this case. The plaintiff shall be entitled to recover from the second defendant the taxed costs payable to the first defendant.