IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 287

Suit No 973 of 1994

Between

Koh Chin Chye

… Plaintiff

And

Promix Concrete Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Koh Chin Chye v Promix Concrete Pte Ltd

[1997] SGHC 287

Suit No 973 of 1994
Judith Prakash J
04 November 1997

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 1. The defendants were at the material time the owners and operators of a concrete batching plant located at Lentor Loop off Yio Chu Kang Road. On 19 June 1991, the plaintiff was involved in an accident at the batching plant as a result of which his left upper arm had to be completely amputated. The plaintiff commenced this action for damages against the defendants in June 1994 and it was heard before me earlier this year. I dismissed the plaintiff's claim with costs and he has now appealed.

4 **The Pleadings**

5 2. In his statement of claim the plaintiff contended that at all material times he was employed by the defendants as a mechanic to maintain and service the defendants' fleet

6 of cement mixer trucks. He averred that the accident occurred when the defendants' plant supervisor, one Chee Hwee Jin, instructed the plaintiff to realign the roller and belt of the belt conveyor system located below the weighing hopper of the batching plant while the said conveyor system was switched on. In the course of attempting to do the realignment, the plaintiff's left arm was torn off by the roller and conveyor belt.

7 3. The plaintiff pleaded that the accident was caused by the negligence of the defendants or their servants in that they:

8 (a) failed to take any or any adequate measures to make the premises reasonably safe for him to work on;

9 (b) exposed him while he was engaged in his work to a risk of damage or injury from unusual dangers of which they knew or ought to have known;

10 (c) caused or permitted the conveyor belt to be switched on while the plaintiff was attempting to repair, align or service it;

11 (d) failed to securely fence the nip-point between the conveyor belt and the roller below the weighing hopper; and

12 (e) failed to provide any or any sufficient supervision to the plaintiff.

13 4. The defence was threefold. First the defendants denied that the plaintiff was employed by them at the time of the accident. They said that he was an independent contractor and that he had held himself out as a repairer of mechanical plants and machinery. Using his firm name style of "Protex Machinery Engineering" he had carried out the repair and maintenance of the trucks. Prior to the day of the accident, he had also carried out repairs to various

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parts of the plant. In requesting the plaintiff to take a look at the plant, the defendants had relied on the plaintiff's own expertise. The defendants denied the plaintiff's allegations of negligence.

14 5. The second defence was that the accident was caused wholly or in part by the plaintiff's own negligence. They pleaded that when Mr Chee requested the plaintiff to look at the conveyor belt, it was the plaintiff who instructed Mr Chee to switch on the belt. They said that he had failed to take any or any proper precaution to safeguard himself from accidental injury after instructing Mr Chee to switch on the conveyor belt system. He had also knowingly come into contact or had otherwise dealt with the moving parts of the belt when the same was in motion.

15 6. Finally, the defendants pleaded that the plaintiff with full knowledge and understanding of the danger arising from the risk referred to in the statement of claim, voluntarily accepted the risk of injury resulting from each and every one of the acts and omissions complained of in carrying out the said work. This third defence was not, however, pressed by the defendants' counsel in his closing submissions.

16 7. The main issues that I had to consider arising from the pleadings were as follows:

17 (a) Was the plaintiff an employee of the defendants such that they owed him a duty to provide a safe system of work and proper supervision?

18 (b) If the plaintiff was an employee, were the defendants in breach of such duty?

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19 (c) If the plaintiff was not an employee, what duties did the defendants owe him and were they in breach of the same? Did such breach cause or contribute to the accident?

20 (d) Was the plaintiff negligent and if so did his negligence cause or contribute to the accident?

21 **The evidence**

22 8. In his affidavit of evidence in chief, the plaintiff changed his position regarding his situation vis a vis the defendants at the time of the accident. He stated that at that time he was the sole proprietor of a firm called "Protex Machinery Engineering" which he had registered on 12 April 1990. At about the end of March 1990, he had been approached by Mr Eric Lim, then the defendants' General Manager. Mr Lim offered to engage the plaintiff to service the defendants' fleet of concrete mixer trucks. The plaintiff was interested and the defendants agreed to pay him the sum of $310 per month for each truck that he serviced and extra for spare parts and greasing. The plaintiff commenced business with the defendants on 1 May 1990.

23 9. The defendants' batching plant consisted of two cement silos and a conveyor belt system. The plant was managed by Mr Eric Lim and his deputy, Mr Chee, the factory supervisor. Working under Mr Chee were mechanics, fitters, wheel roller operators, batchers and general operators.

24 10. The plaintiff asserted that he was not qualified to maintain or repair any of the parts of the plant. Since he was present in the premises most of the time, however, he was asked to help out from time to time by driving the trucks and or repairing the plant and machinery. As regards the repairs, the plaintiff

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said that he would attend to minor repairs but would always do so under the supervision and direction of Mr Chee.

25 11. According to the plaintiff, the conveyor belt went out of alignment fairly frequently and each time Mr Chee's workers under his supervision would attempt to realign the belt. Mr Chee would tell his workers what to do. The realignment would always be carried out while the conveyor belt system was switched on and moving.

26 12. On the day in question, the conveyor belt system was faulty in that it went out of alignment at about 12.30 pm. Mr Chee asked the plaintiff to rectify the problem. The plaintiff stated that he had previously been asked to change the bearing of the conveyor belt. In order to do this he had had to realign the conveyor belt. The request made on 19 June 1991 for him to realign the conveyor belt was therefore the second occasion on which he had been involved in this task.

27 13. On 19 June 1991, Mr Chee asked the plaintiff to follow the usual system of work in realigning the conveyor belt. He got the plaintiff ready with a spanner next to the machine and then went to switch on the belt. Once it was on, the plaintiff started to adjust the nut and bolt assembly at the edge of the conveyor system. While he was doing this, his shirt sleeve was caught between what is known as an in-running nip between the rotating roller and the belt as a result of which his left arm was torn off by the roller and conveyor belt. Under cross-examination when he was asked how the accident had happened, he replied that he had used the spanner with force and it slipped and his sleeve was caught by the conveyor in-running nip-point. He was also asked how the sleeve had been caught since it was buttoned. His answer was as he slipped, he lost his

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balance and his body moved forward to the roller. Because he was using his left hand and the roller was nearby, as he slipped his left sleeve was caught.

28 14. In his affidavit, the plaintiff maintained that an examination of the invoices issued by Protex Machinery Engineering to the defendants would show that he was an independent contractor as far as the mechanical maintenance of the trucks was concerned. When he serviced and maintained these trucks he did so without supervision as he was qualified and experienced in such work. Whenever he worked from the plant however, and this was usually when Mr Chee's own workers were unavailable, he was always supervised by Mr Chee. He asserted that he had informed Mr Lim and Mr Chee that if they required him to help out in the plant, he could only do so under their supervision. He agreed that when he had helped out at the plant by way of doing minor repairs, he had been paid on a piecemeal basis as the invoices showed. But he maintained that whenever he worked on the plant itself he was working not as an independent contractor but under close supervision.

29 15. Mr Eric Lim also gave evidence. In his affidavit, he stated that although the defendants had previously owned concrete mixer trucks they decided subsequently to sell the trucks to the drivers so that the latter would own the trucks and become responsible for their repair and maintenance. The defendants and the drivers needed a mechanic to service the trucks. Therefore, before the plaintiff was engaged there was a meeting attended by the plaintiff, Mr Lim himself and the drivers/owners of the trucks. It was agreed at this meeting that the defendants would provide a space at their premises at Lentor Loop for the plaintiff to set up a workshop to service and repair the trucks. This space was provided free of charge on the understanding that priority would be given for the maintenance, service and repairs of these trucks. The charges for these services were agreed to between the plaintiff and the drivers. The plaintiff

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would issue an invoice to the defendants who would then get payment from the drivers and pay the plaintiff in turn.

30 16. Mr Lim maintained that the plaintiff was an independent contractor. His father and brother assisted him and carried out repairs and other work at the site of the workshop. He also had other customers for whom he did work. Further, the plaintiff from time to time, carried out repairs to the batching plant for the defendants and would bill them for labour and materials. In actual fact, Mr Lim stated, the defendants were the plaintiff's customers, not his employers.

31 17. The final witness was Alan Chee Hwee Jin. He stated that on 19 June 1991, he requested the plaintiff to repair the hopper of the plant as there were holes/cracks in it which required welding. The plaintiff did this. Subsequently Mr Chee also asked the plaintiff to take a look at the plant's conveyor belt as it was not running smoothly. Mr Chee and the plaintiff inspected the plant together. The plaintiff then told him to go and switch on the conveyor belt system. So Mr Chee went to the control room which was situated next to the plant and switched it on. About five minutes later he heard a cry coming from the direction of the plant. He switched off the conveyor belt immediately, went out of the control room to investigate and saw the plaintiff next to the nip-point of the conveyor belt system. He was injured.

32 18. Under cross-examination, Mr Chee denied that he had taught the plaintiff how to realign the misaligned belt. He said that the first time the plaintiff had done this had been on a Sunday as shown by the plaintiff's bill and Mr Chee had not been present at the plant that day. He asserted that it was the defendants' usual system when adjusting the alignment of the conveyor belt to turn on the system and do the adjustment of the nut with the belt running. It was

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a procedure that was consistently adopted both before and after the plaintiff had his accident. The nut was not adjusted when the belt was off because that was a tedious procedure which would take a few hours whereas when the belt was running it would, at most, take 10 to 15 minutes.

33 **Findings**

34 19. The first issue was what the plaintiff's status was in relation to the defendants. Although he had changed his initial posture and admitted that in relation to the trucks he was an independent contractor, he continued to maintain throughout the trial that he was an employee everytime he was asked to carry out repairs to the plant and he did so. The plaintiff relied on *Ferguson v John Dawson & Partners (Contractors) Ltd* [1976] 3 All ER 817 where the defendants orally engaged the plaintiff through their site agent to work as a general labourer. In that case, the plaintiff was held to be an employee and not an independent contractor although the defendants did not make any deductions in respect of income tax from his weekly earnings nor any payments in respect of national insurance contributions which under a contract of service they would have been liable to do. The facts of the case were, however, far removed from ours and in my view it did not assist the plaintiff. The point of the case, which I accepted, was that you do not decide whether a contract is for services or a contract of service purely on the basis of the parties' expressed intention but must look at all the relevant circumstances to determine the rights and obligations of the parties interse.

35 20. The issue of what constitutes an employer/employee relationship was thoroughly discussed in *Market Investigations, Ltd* v *Minister of Social Security* [1968] 3 All ER 732. After conducting an extensive review of the recent cases Cooke J came to the following conclusion (at p 737):

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36 'The observations of Lord Wright, of Denning, L.J., and the judges of the Supreme Court in the U.S.A suggest that the fundamental test to be applied is this: "Is this the person who has engaged himself to perform these services performing them as a person in business on his own account?". If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no", then the contract is a contract of services. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his trade. The application of the general test may be easier in a case where the person who engages himself to perform the services does so in the course of an already established business of his own; but this factor is not decisive, and the person who engages himself to perform services for another may well be an independent contractor even though he has not entered into the contract in the course of an existing business carried on by him.'

37 That formulation of the law was approved by the Privy Council in *Lee Ting Sang* v *Chung Chi-Keung & Anor* [1990] 2 WLR 1173.

38 21. The fundamental test was whether the plaintiff was a person who was in business on his own account. I concluded that he was. The following factors contributed to my decision. First, the defendants did not treat the plaintiff

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as an employee in any way. This is clear because he was not paid a salary or wages nor was he given the benefit of contributions to the Central Provident Fund. Further the plaintiff was not entitled to leave or sick pay. Also, they allowed him to do work for other parties. Secondly, even before he started working in the defendants' premises in May 1990, the plaintiff had registered his own business, Protex Machinery Engineering. Thereafter he carried on business on his own account and did not integrate his business into the defendants' enterprise. He billed the defendants for each item of work which he did whether it related to the trucks or to the plant. He also decided what to bill. There was an agreed rate of maintenance for the trucks but this was the only item on which there had been prior agreement of a rate. An examination of the plaintiff's invoices showed that he charged different amounts for different items of work on the plant.

39 22. The plaintiff also produced his income tax return for 1991. There he declared that his previous employment had ceased on 30 March 1990 and that he had commenced business as the sole proprietor of Protex Machinery Engineering on 12 April 1990. He attached a trading and profit and loss account of his business for the period 12 April to 31 December 1990. This showed a gross income attributed to "sales and services" of $25,500 and a net profit of $6,089.47. The next year he filed an income tax return with a trading and profit and loss account for the period 1 January to 19 June 1991. Here the item "sales and services" showed a gross income of $23,851.50 and his net profit was shown as $17,561.70. It was clear that the plaintiff had not drawn any distinction between what he earned for servicing and repairing the trucks and what he earned for carrying out repairs to the defendants' plant.

40 23. The other facts were also against the inference of the existence of a contract of service between the plaintiff and the defendants. The plaintiff's work

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was fairly evenly divided between services rendered to the truck drivers and those rendered to the defendants. In about half of his invoices he referred to work on the plant and to work on the defendants' caterpillar wheel-loader. He also admitted that his father and brother helped at his workshop and that he had done work for others as well.

41 24. The plaintiff's main plank when it came to establishing the existence of a contract of service in relation to repairs to the plant was that he had been closely supervised in such work. Mr Chee, however, denied that the plaintiff was ever supervised by him and asserted that the first time the plaintiff aligned the belt he had done it himself. In court, the plaintiff did his utmost to give the impression that he was supervised by Mr Chee at every turn and that everything he did was under Mr Chee's direction. Yet his pleaded case was that the defendants had been negligent or in breach of duty in failing to supervise him properly. I considered that the plaintiff took the attitude he did in court because, having realised that the documentary evidence fully substantiated the defendants' assertion as to his independent status, in order to maintain his case that he was an employee he had no choice but to proclaim that he was always being supervised and given orders by Mr Chee. I did not accept the plaintiff's evidence in this respect.

42 25. In his affidavit of evidence in chief, Mr Chee said expressly that after the two of them had looked at the conveyor belt, the plaintiff had told him to go and switch on the system. This evidence was not challenged while Mr Chee was on the stand. Mr Chee was told during examination in chief that the plaintiff had asserted that whenever there were minor repairs he would attend to them but always under Mr Chee's supervision and direction. Mr Chee denied this had occurred. He explained that the usual practice followed had been for him or Mr Lim to ask the plaintiff to check a faulty machine and determine the problem.

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He would then report on the nature of the problem and what action needed to be taken and what parts needed to be replaced. After the discussion Mr Chee or Mr Lim would ask the plaintiff to go ahead with the work. It was significant that none of this evidence was challenged by the plaintiff's counsel during his cross-examination of Mr Chee. I accepted Mr Chee's evidence as reflecting the true position: that is that the plaintiff had at all times acted independently using his own knowledge and expertise.

43 26. I therefore came to the conclusion that the defendants did not owe the plaintiff any duty to provide a safe system of work or to supervise his work. They would, however, have been responsible for his injury had it arisen from the negligence of their employees. In this regard if Mr Chee was negligent in switching on the conveyor belt when the plaintiff was working on it, the defendants would be liable to him. The second duty that they had to the plaintiff was that which any occupier of premises owes a person who is invited onto those premises. They had to ensure that the plaintiff was not exposed to a risk of danger or injury from unusual dangers on the premises which they knew or ought to have known about.

44 27. I considered that the defendants were not in breach of either duty. As regards the physical condition of the plant, it was well known to all parties on the site including the plaintiff. It was obvious that the moving conveyor belt could pose a danger to workers and that care had to be taken in dealing with it. The danger which was present was not an unusual or latent danger which only the defendants could have known about.

45 28. Neither did there appear to be any negligence on the part of the defendants or their employees with regard to the method of aligning the belt which the plaintiff adopted. The evidence was that this manner of realigning the

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belt had been used frequently prior to the plaintiff's unfortunate accident and no previous accident had occurred. The defendants said, and the plaintiff agreed, that the belt went out of alignment very often. This occurred at least once or twice a month and more often during the rainy season. From the evidence, the realignment operation appeared to have been one which most people at the site were able to do including the plaintiff and Mr Chee. No particular skill was required. The danger of adjusting the belt in this way was not perceived. The plaintiff was a qualified mechanic. Counsel for the defendants submitted, and I agreed, that a mechanic in his position was in a better position than anyone else on the site to appreciate whether the conveyor belt system and the method of adjustment used was dangerous or not. In this connection, I accepted that it was the plaintiff who had instructed Mr Chee to put on the conveyor belt system because the plaintiff had chosen to follow the usual method of adjustment. He need not have done so. As an independent contractor he could have chosen another method.

46 29. I was also not satisfied with the plaintiff's version of how he was injured. His account was vague with not much detail on how the accident actually happened. In the statement of claim, he did not say how his arm got caught. He elaborated somewhat under cross-examination but his account then became rather difficult to accept.

47 30. The photographs of the conveyor belt that were produced showed a metal mesh frame at the side of the roller. This mesh was installed after the accident. Behind this frame was a rectangular frame-like structure and running through that was a metal shaft or rod. At the end of the rod there was a nut. That was the nut that had to be adjusted in order to realign the belt. The plaintiff testified that he squatted at the spot marked X in photograph P6 and that the nut was then sited at his extreme left. The rectangular frame prevented the nut from

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moving further towards the conveyor belt and roller. The plaintiff was adjusting the nut with the spanner held in his left hand. If he was in this position, his left hand would have been the part of his body that was furthest away from the nip-point. Thus, if the spanner had slipped from his hand, it would have dropped to the ground and if he had then moved forward, his left hand would have been protected by the rectangular frame from coming into contact with the nip-point. The frame would also have prevented his body contacting the nip-point. If at all any hand of his was to touch the nip-point, it would have been his right hand.

48 31. In the circumstances, the plaintiff's account of the accident lacked credibility. It must have occurred in some other fashion which he was anxious to conceal because the true facts would have shown him to have been negligent. Counsel for the defendants put forward a theory that the plaintiff was actually meddling with the drum, perhaps trying to remove some debris from it, and while doing this his left hand went close to the belt and his sleeve was caught. This theory certainly made more sense than the plaintiff's own story. It appeared to me that if he had simply followed the normal procedure in adjusting the nut so as to realign the conveyor belt, the accident would not have occurred. As no one else was in the vicinity at the time and as the plaintiff was acting entirely on his own initiative with regard to the manner in which he carried out his task, any negligence which resulted in the accident could only have been the plaintiff's. In the circumstances, I was unable to hold that the defendants had breached any duty to the plaintiff or that his accident had been caused or contributed to by their negligence or that of their employees.

49 JUDITH PRAKASH

50 JUDGE

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Judith Prakash J

Christopher Fam (Fam, Tay & Lee) for the plaintiff
Joseph Hoo Chun Hee (Joseph Hoo Morris & Kumar) for the defendants

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