

Sim Cheng Soon v BT Engineering Pte Ltd and Another
[2005] SGHC 223

Case Number : Suit 547/2004
Decision Date : 05 December 2005
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Wu Xiaowen (Lexton Law Corporation) for the plaintiff; Edwina Fan and Diana Ang (Kelvin Chia Partnership) for the defendants
Parties : Sim Cheng Soon — BT Engineering Pte Ltd; Keppel Shipyard Ltd

Tort – Breach of statutory duty – Employee injured while working on sea vessel at third party's premises – Employee alleging cause of accident due to employer's and third party's breaches of duty under Factories Act to construct soundly and to properly maintain means of access to work area – Section 33 Factories Act (Cap 104, 1998 Rev Ed)

Tort – Negligence – Breach of duty – Employee injured while working on sea vessel – Employee alleging cause of accident due to employer's breach of duty of care – Whether employee's injuries sustained in manner alleged – Whether employer breaching duty to provide safe system of work

Tort – Occupier's liability – Duty of care – Employee injured while working on sea vessel at third party's premises – Employee alleging cause of accident due to third party's breach of duty of care as occupier – Whether employee's injuries sustained in manner alleged – Whether third party breaching duty to provide safe system of work

5 December 2005

Judgment reserved.

Lai Siu Chiu J:

The facts

1 This claim by the plaintiff, Sim Cheng Soon, resulted from an industrial accident on 22 June 2002. The plaintiff was then employed by the first defendant, BT Engineering Pte Ltd, which business, *inter alia*, involved the repair and conversion of tankers and other ocean-going vessels.

2 Prior to the accident, the plaintiff was a general welder of some 30 years' experience (from 1971) and had been employed by the first defendant since 1988 or 1989. He had had some eight years' experience doing welding work in shipyards. In April 2002, he and other workers of the first defendant were deployed to carry out welding works on board a ship called the *Falcon* ("the vessel") which was then docked in the yard of the second defendant, Keppel Shipyard Limited. The first defendant was then constructing platforms on the vessel (in four modules) to convert it from a tanker to a floating, production, storage and offloading vessel. The plaintiff started work in module 12.

3 On 22 June 2002 at about 8.00am, the plaintiff commenced welding work on level 3 of module 10 in the vessel. At about 11.30am, in preparation for going to lunch, the plaintiff put away his pail and work tools, detached his welding torch and walked on the working platform towards the access ladder he normally used to descend to the vessel's deck on level 1. According to the plaintiff, while he was walking towards the ladder, he fell into and through an uncovered and unfenced opening in the platform and landed on the vessel's deck.

4 The plaintiff who was then 51 years of age suffered serious injuries which rendered him a quadriplegic; his lower body is paralysed. He can no longer work and requires two full-time caregivers to attend to his daily needs.

The pleadings

5 The plaintiff sued both defendants for the injuries he sustained. As against the first defendant, he alleged that the company breached its duty as his employer. As against the second defendant, the plaintiff's claim was based on occupier's liability. The plaintiff alleged that both defendants failed to take reasonable care for his safety including, failing to ensure that the opening in the working platform was and remained closed or was fenced, and failing by means of signage or notices, to give warning of the presence and position of the opening in the working platform. The plaintiff further alleged that the defendants had breached various provisions of the Factories Act (Cap 104, 1998 Rev Ed) ("the Act") in failing to construct soundly and to properly maintain means of access.

6 In the common Defence filed by the defendants, they denied they were negligent or were liable for the plaintiff's injuries. The defendants alleged that the plaintiff lost his grip while he was descending the ladder and hence he fell onto the deck. They denied he fell into and through the alleged opening in the floor on level 2.

The evidence

7 Apart from the plaintiff, no one saw or was at the scene of the accident. The plaintiff was the only witness for his case while the first and second defendants called one witness each.

The plaintiff's case

8 According to his written testimony, the plaintiff was working on level 3 of module 10 of the vessel on 22 June 2002. He had been carrying out welding works there for about four to five days. The plaintiff's daily routine was to collect his equipment from the store. The equipment comprised of a white pail (hereinafter referred to as "the equipment pail") which contained his gloves, welding shield, welding torch, welding brush, chisel and rope, a blue tube (holding his welding rods) and a container which was used to hold discarded welding rods ("the container").

9 After collecting his equipment, the plaintiff would climb from level 1 to level 2 of module 10 to where the welding machine was located, using an access ladder ("the access ladder"). From level 2, he would collect the equipment pail and the container that had been tied to a rope at level 1 by the "fireman" or the fireman's assistant. The fireman's duty was to ensure that no fires occurred and to take the necessary preventive measures. After he had pulled the rope and the equipment to level 2, the plaintiff collected the equipment pail and container and walked to another area of the level, using a different ladder ("the second ladder") to climb up to level 3 of module 10. He used a rope to hoist the equipment pail from levels 2 to 3. The height between levels 2 and 3 of the module was less than the height between levels 1 and 2, which was about 3m.

10 The siren for workers to disembark from the vessel would go off daily at 11.50am. Workers were not allowed to be on the vessel during the lunch break. To ensure he got off the vessel in time, it was the plaintiff's practice to pack up his equipment and start descending from levels 3 to 2 to 1 by about 11.30am everyday. The plaintiff would store his equipment pail and container temporarily at the storage area on level 2 before he descended to level 1. To descend from level 2 to level 1, the plaintiff would walk to an area at level 2 where staging was laid and use yet another ladder ("the third

ladder") to descend.

11 Before 11.00am on the morning of 22 June 2002, the plaintiff needed to visit the toilet. Accordingly, he descended from level 3 to level 2 using the second ladder. He then used the access ladder to get from level 2 to level 1 and descended from there to the level below module 10 where the toilet was located.

12 After using the toilet, the plaintiff noted it was near the lunch hour. He decided to wait at the temporary storage area until it was time to disembark from the vessel for the lunch break. He then realised that he had not detached his welding torch on level 3 of the module. The plaintiff first ascended to level 1 to switch off the power to the welding machine. He then proceeded to level 3 to detach his welding torch and to pack his equipment into the equipment pail. Thereafter, the plaintiff lowered his equipment pail to level 2, descended to level 2 by the second ladder, collected his equipment pail from level 2 and put it in the temporary storage area.

13 It was the plaintiff's case that he then proceeded to walk in the direction of the third ladder (which was nearest the temporary storage area) so that he could descend to level 1. He claimed he followed the exact same route he had used in the two weeks prior thereto. He further asserted that previously, there were stagings constructed and laid such that from (and beyond) the temporary storage area, he could walk straight towards the third ladder.

14 The plaintiff claimed that in the afternoon of 21 June 2002, he had seen workers removing scaffolding and staging from level 3 of module 10. That evening, when he left the second defendant's shipyard, he had mentioned this fact to his co-workers and he was told that the reason for the removal of the scaffolding and staging was an inspection by the vessel's owner scheduled for Sunday, 23 June 2002.

15 However, on 22 June 2002, when he was walking towards the third ladder at about 11.30am, the plaintiff said he suddenly fell into and through an unfenced opening where there should have been a platform. There were also no warning signs or barriers around the opening. The plaintiff fell all the way down to level 1 of module 10 where he landed on his back. He provided no further details of the accident.

16 I should point out at this juncture that when the plaintiff's solicitors first wrote to the defendants on 13 November 2002 (see PB5-6) giving notice of his claim, the former alleged that when the plaintiff stepped towards the third ladder to go down, he stepped into empty space instead of planks which should have been around the third ladder. It was then alleged that the plaintiff's momentum carried him through empty space until he landed on the deck. The plaintiff was also said to be working on level 2 not level 3 of the vessel that day.

17 The plaintiff denied the defendants' contention that the accident happened because he had probably lost his grip while climbing or descending the third ladder. The plaintiff described the allegation as baseless and utterly false. In his affidavit evidence, the plaintiff sought to disprove the allegation in lengthy submissions contained in numerous paragraphs. He also denied he was not wearing his safety helmet at the material time. Otherwise, he would not have survived the accident. He agreed he was not then wearing his safety belt, the reason being that there was no requirement for him to do so.

18 The plaintiff deposed that:

(a) He was quite some distance away from the third ladder when he fell and he could not

therefore (as the defendants alleged) have attempted to get to the area behind the third ladder.

(b) It was impossible for him to have gone from the temporary storage area to the area behind the third ladder as this was a roundabout and relatively long L-shaped route to take. In any case, there was a barrier in front of that area; he could not have climbed over the barrier in order to gain access to the area behind the third ladder.

19 The plaintiff alleged that he only attended two short and general safety courses for his work on board the vessel. There was a one-day safety course conducted at the shipyard after which he was issued with a temporary pass to work on the vessel. In late May or early June 2002, he attended a one-day course at the Ministry of Manpower ("MOM"). On his own, the plaintiff had attended other safety courses relating to working on board vessels in or about 1973, 1979 and 1987.

20 The plaintiff was cross-examined *in extenso*. He revealed there were other workers apart from him that day in module 10. The workers were the first defendant's as well as from other contractors and/or the second defendant. He denied that his work place that day was on top of the generator shown in the defendants' photographs (in particular that in DB139), even though the equipment pail was found on the turbine after the accident. The plaintiff claimed that he only placed his equipment there when he went for lunch that day.

21 Questioned on the discrepancy between his written testimony and what was stated in his lawyers' letter dated 13 November 2002 (see [16]), the plaintiff explained that his lawyer only visited him once when he was in hospital (which visit lasted more than 30 minutes). He only gave his lawyer a brief account of what happened on 22 June in Mandarin; that may have led to her misunderstanding. He admitted he had mentioned level 2 to his lawyer but denied it was because the accident took place on level 2, not 3. The plaintiff further denied he changed his version of where the accident occurred because he was worried he may fail in his claim, after his lawyer informed him of what was pleaded in the Defence. If the plaintiff was working on level 2 as the defendants pleaded, then it meant that the alleged opening would not have been a concealed danger.

22 Counsel for the defendants pointed out that there could not have been scaffolding or staging in the area where the plaintiff said it had been removed in the afternoon of 21 June 2002 as the distance was too short and there was a lamp (still wrapped in plastic) in that area. The plaintiff claimed that the scaffolding was horizontal not vertical; it was actually many pieces of planks joined together to form a platform which extended to an area behind the third ladder and which was located between levels 1 and 2. If the plaintiff had indeed seen workers removing scaffolding, counsel pointed out that it must mean that the plaintiff was working on level 2, not 3. The plaintiff could not possibly have seen the workers if he was on level 3. The plaintiff explained he could see from level 3 because level 3 was an open area and the area where the scaffolding was dismantled was also an open area. He claimed he had walked a few steps, looked up and saw the opening but lost his balance and fell.

23 At a later stage during cross-examination, the plaintiff said the place (presumably where he walked) was very small, he could not see the opening, he thought there were planks there and, by the time he realised there were no planks he had already lost his balance. The plaintiff denied he had failed to keep a proper lookout and that he was to blame for the accident. He further denied there were railings at the places marked "D", "E" and "F" in the photograph in the defendants' bundle of documents (at DB131) but agreed there were barriers at areas marked "A", "B" and "C" in the same photograph. In the next breath, he said he did not see the barriers because they were not there.

24 The defendants had other photographs (see DB135, 141 and 142) that showed bloodstains, indicating that the plaintiff landed near the generator and the third ladder after his fall. The

bloodstains suggested that the plaintiff's head was nearer the ladder than his feet, a fact which his counsel made much of in her closing submissions (see [48]).

The defendants' case

25 The first defendant called as its witness, Lim Nyuk Kok ("Lim"), the site manager of Multiheight Scaffolding Pte Ltd ("Multiheight"), which company was engaged to erect the scaffolding and the working platform in module 10 on the vessel at the material time.

26 Lim (DW2) testified that as his company erected the scaffolding, he was requested by the first defendant to explain the structure of the scaffolding and working platform. In his affidavit, Lim deposed that the opening through which the plaintiff alleged he fell was fenced and barricaded and contrary to the plaintiff's claim, there was no working platform erected or wooden planks placed between the I-beam and the generator before the accident or at any time. He pointed out that the second defendant had a number of safety requirements regarding the construction of scaffolds and working platforms. The second defendant deployed safety officers to patrol and inspect scaffolds and working platforms regularly and his company would have faced serious consequences in the event of non-compliance with the second defendant's safety requirements.

27 Lim referred to the defendants' photograph at DB131. He deposed that the opening marked "A" to "F" was clearly fenced or barricaded. "A" to "F" were the railings which demarcated the edge of the working area or platform. His company would not and did not erect a working platform or place any wooden planks outside the area barricaded by those planks. He added that if indeed his company had erected such a working platform or place any wooden plank(s) between the generator and the I-beam, there would have been no need to erect the railings marked "D", "E" and "F" on top of the generator.

28 Counsel for the plaintiff sought to rebut Lim's assertions in cross-examination. His answers were not helpful at times as Lim could not recall many details due to the passage of time. He was, however, certain that it was not possible that workers of other contractors could have removed (from the area behind the third ladder) the wooden planks that formed the temporary working platform. This was because contractors in shipyards are told not to use or erect other contractors' scaffolding. Lim had no personal knowledge of what scaffolding had been erected in module 10 at the material time, although he could recall and estimate, that the area was three times the size of Courtroom 6A. Lim did not visit the vessel on 22 June 2002 either before or after the accident.

29 Lim agreed that because there was a height difference (estimated to be 2-3ft) between the working platform and the top of the generator, it was necessary to erect barricades along the entire width of the top of the generator so as to prevent any hazards of tripping. However, the railing marked "F" in DB131 could not run along the whole length of the top of the generator because it was blocked by a metal structure. He was categorical in his disagreement with counsel's suggestion that there were no horizontal poles or railings or fencing and that was the reason for the plaintiff's fall. Lim pointed out that the second defendant had supervisors and safety officers who checked every day to ensure that scaffoldings were properly erected and it would not have been possible for them to have overlooked the omission if indeed the railings or barricades shown in DB131 had been cut off or were incomplete, on the day of the accident.

30 The second defendant's witness was Mohamed Aliffi bin Ismail ("Ismail") who is its safety manager. Ismail (DW2) received a report at 11.30am on 22 June 2002 that there was an accident in module 10 of the vessel. Accompanied by his subordinate, Ng Sze Kiat ("Ng"), Ismail went to the accident site and cordoned off the area immediately. After Ng had made arrangements to send the

plaintiff to hospital, Ismail and Ng walked round the accident area. Ng took photographs of the site in Ismail's presence (which photographs are those in the defendants' bundle of documents). They saw the plaintiff's bloodstain near the third ladder. Ng then climbed to level 2 where he found in a bucket on top of the generator (and took photographs of) the plaintiff's welding mask bearing the plaintiff's surname Sim; they concluded that must have been the plaintiff's work place.

31 In his written testimony, Ismail deposed he looked up from level 1 towards the working platform on level 2 and found that the working area on level 2 was barricaded with railings. He noticed a small gap of about 180mm (about 7in) wide on the working platform at level 2 behind the third ladder. However, as the plaintiff was found in front of the third ladder, Ismail concluded that he could not have fallen through the gap (which in any event was too small).

32 Based on their investigations, Ismail and Ng concluded that the probable cause of the accident was that the plaintiff had lost his grip and/or had slipped and fallen from the third ladder. They noted that the plaintiff was not wearing any helmet or safety belt at the material time despite being provided with such personal protective equipment. After Ismail had had a discussion with Ng, the latter prepared an investigation report which Ismail approved and confirmed.

33 Ismail referred to the letter dated 13 November 2002 from the plaintiff's solicitors (see [16]). He deposed that there could not have been planks placed across the opening *before* the accident as the opening was outside the working platform of level 2. He dismissed the plaintiff's allegation that the area was dark, pointing out that this was not borne out by his site inspection and the photographs Ng took. In fact, visibility was good. If indeed planks were missing, the plaintiff should have noticed it as he was descending to level 1 and should have looked down in the process.

34 Ismail pointed out that the plaintiff was an experienced welder who had attended safety courses including the first defendant's safety orientation course and safety meeting. Safety of workers in the second defendant's shipyard was and is a paramount concern of the second defendant. The company implemented disciplinary rules to ensure that the safety system was complied with. If the plaintiff had kept a proper lookout when he was descending from the working platform on level 2, if he had kept a good grip, foothold and a good balance on the rungs of the third ladder and surrounding railing, if he had used the personal protective equipment as provided, the accident could have been avoided.

35 In cross-examination, Ismail recalled that there were lacerations on the plaintiff's head. He disagreed with counsel that the plaintiff landed on his back pointing out that the plaintiff could well have hit his head first before he landed on the deck. Ismail also disagreed that it was physically impossible for the plaintiff's head to have been nearer the third ladder if indeed he fell while descending or climbing the third ladder. Ismail doubted that there were infringements of safety rules and regulations during the time the vessel was being converted as safety officers constantly patrolled the vessel. Photographs would have been taken by such officers if there was infringement particularly if the infringement was major.

36 Ismail disagreed with counsel that the photographs taken by Ng were not contemporaneous; he recalled they were taken at about 12.30pm-1.00pm on 22 June 2002 itself. While Ismail agreed he would not know whether *all* the photographs taken by Ng that day were contained in the defendants' bundle, he was certain that *all the photographs which were developed* were taken on 22 June 2002.

37 Counsel put to Ismail that the plaintiff must have been checked before he boarded the vessel that morning and the plaintiff must have been wearing his helmet and safety belt; otherwise he would have been barred from the vessel. Since the plaintiff's helmet and safety belt were not found after

the accident, they must have been removed by someone. Ismail disagreed with the suggestion, stating that it did not make sense as Ng had asked for the two items to be surrendered by whoever had found the same after the accident but no one came forward. He pointed out that if indeed the plaintiff was wearing his helmet when he fell, the plaintiff's head injuries would not have been so severe. (In so far as the safety belt is concerned, I note that the plaintiff himself admitted he was not wearing it at the time of the accident as there was no need to do so).

38 Ismail revealed that because access to module 10 was restricted, there were few entry points from the main deck to that module. Although he had no personal knowledge of the situation at the time of the accident, Ismail disagreed with counsel's suggestion that there was an uncovered gap through which the plaintiff fell. Ismail said that there were railings (which he identified in the defendants' photograph at DB139) at the edges of the top of the generator and which were clearly visible. Hence, although the plaintiff claimed he fell through the uncovered opening, Ismail opined that it was unlikely as the plaintiff's blood was found at the very end of the generator. Since the plaintiff could not have fallen from the top of the generator because it had railings, Ismail said the only possibility was that the plaintiff fell from the third ladder. If indeed there was an uncovered opening as the plaintiff claimed (and which was not apparent from the defendants' photographs), Ismail pointed out that Ng, who was an experienced safety officer, would have taken photographs of the same.

39 In re-examination, Ismail explained that the fact that the plaintiff's feet was nearer to the third ladder than his head could also be due to the plaintiff having stumbled first before he fell, noting that the defendants had no knowledge of the level from which he fell.

The issue

40 The only issue to be determined as regards liability is, how did the plaintiff come to fall? If he fell from the uncovered opening on level 2 as he claimed, the defendants or one of the defendants are liable for his injuries. If he fell from the third ladder as the defendants contended, the plaintiff fails in his claim.

The findings

41 I start with some observations on the evidence adduced in court. First, although the plaintiff's photograph in his bundle (PB4) was the exact same photograph (save that his was black and white) as that found in the defendants' bundle (at DB131), the plaintiff would not admit the defendant's (coloured) photograph as well as other photographs found in the defendants' bundle of documents (at DB132-145) on the basis that the photographer (Ng) was not called to testify. It was therefore argued that there was no evidence that the photographs showed the accident scene after it happened.

42 Counsel for the defendants on the other hand submitted that the photographs were taken shortly after the accident and reflect the structure of the working platform at the time of the accident as:

- (a) The plaintiff's welding mask was also captured in one of the photographs.
- (b) The area was cordoned off immediately and entry to the access, second and third ladders was barred after the accident. No one could have gained access to module 10.
- (c) Ismail had testified that the bloodstains of the plaintiff captured in the photographs

were fresh and had not yet oxidised.

(d) It would not have been possible for anyone to change the structure of the work platform or rearrange the planks or scaffolding as counsel for the plaintiff suggested to the defendants' witnesses.

(e) Even if changing the work platform was a possibility, it was unlikely that such changes could be effected within such a short period before the photographs were taken or before Ismail and Ng came onto the scene.

(f) Ismail had said under cross-examination that he was present when the photographs were taken (save for those at DB138–139) and therefore he had personal knowledge.

I accept that on the evidence, the photographs were indeed taken on the day of and after, the accident. I had questioned Ismail on Ng's whereabouts and was told that Ng had left the second defendant's employment and was working in China. I should therefore not draw an adverse inference for Ng's absence from court, as was suggested by counsel for the plaintiff.

43 The reasons for the plaintiff's refusal to agree to the authenticity of the defendants' photographs were obvious; the evidence reflected in the photographs was damaging to his case. The photographs showed barriers surrounding the alleged opening through which the plaintiff purportedly fell. One barrier was marked "A", "B" and "C" on one side of DB131 and three barriers marked "D", "E" and "F" on the opposite side, which barriers met and joined a horizontal barrier marked "G", "H", "I". The photographs further showed railings surrounding the edges of the generator. Indeed, in his own written testimony (see para 41(iv)), the plaintiff deposed he was doing welding work mainly to the handrails when he was working on level 2 of the module. The photographs showed the plaintiff's version of the accident to be inherently improbable. There could not have been planks (parallel with the I-beam) in the opening and which had been removed a day before the accident.

44 It was absurd of counsel for the plaintiff to suggest in her submissions (para 34) that there was a time lag between the time of the accident and the taking of the photographs by Ng such as to enable the scaffolding structure to be altered or changed. Even if there was a time lag (which I find there was not as Ismail was at the scene within an hour of the accident's occurrence), it was not long enough for any scaffolding to be altered, let alone removed. Construction or dismantling of scaffolding is not an easy job that can be carried out by anyone but only by specialist contractors like Multiheight.

45 If indeed the plaintiff had seen workers a day earlier removing scaffolding from the area around the third ladder, then as counsel for the defendants pointed out, that testimony was inconsistent with his evidence that he only used the third ladder to descend to level 1 for the lunch break and not for climbing to levels 2 and 3 to work. I would have thought that if he had indeed mentioned to his fellow workers that he had seen scaffolding being removed in the afternoon of 21 June 2002, the plaintiff would or should have called one of his fellow workers to testify to that effect.

46 In her cross-examination of the defendants' witnesses as well as in her closing submissions, counsel for the plaintiff repeatedly emphasised that no one saw or was at the scene of, the accident when the plaintiff fell. That being an undisputed fact, the burden was on the plaintiff to explain to the court how he fell. However, as noted earlier at [15], the plaintiff did not explain, let alone satisfactorily, how the accident happened. All he said was, he stepped into empty space instead of a platform and fell. Under cross-examination, his testimony was vague and evasive. He had admitted

during cross-examination that there were barriers at the edges of the top of the generator as well as those marked "A", "B", "C" and "D", "E", "F" but claimed those barriers were not there on the day of the accident. He attempted to say that the barriers were temporary before I told him that was an irrelevant fact. I was also not satisfied with the plaintiff's explanation on the discrepancy between the version of the accident as given in his solicitors' letter dated 13 November 2002 and in his testimony in court.

47 I would add that the plaintiff's affidavit evidence was peculiar in that it was long on arguments and short on facts. A considerable portion of the affidavit was taken up with justifying the plaintiff's movements that day and establishing his supposed daily routine.

48 Counsel for the plaintiff made much of the fact that if indeed the plaintiff had fallen off the third ladder, the plaintiff's feet should be close to the third ladder. Instead, when his body was found, it was perpendicular to the third ladder and parallel to the generator with his feet away from the third ladder. As such, counsel submitted, it was physically improbable for the accident to have happened in the manner concluded by the defendants. Counsel then went on (at length) to submit that the accident could only have happened according to the plaintiff's version.

49 I have considerable difficulties accepting counsel's submissions. First, while she focused on criticising the defendants' two witnesses as being unreliable and evasive (with which I disagree), counsel omitted to address a material issue. If indeed the plaintiff's version of the accident was true, he should have fallen facing down. If the plaintiff stepped forward into a void as he alleged, gravity dictates that he would have plunged down and landed on his face. There was no explanation at all from either his counsel or the plaintiff as to why he landed on his back instead. It is of no or little significance that the plaintiff's head and not his feet was closer to the third ladder. Perhaps the plaintiff tried to grab (albeit unsuccessfully) a rung of the ladder or the side of the generator while he was falling, in a desperate attempt to save himself. In the process, he might have shifted the position of his body so that his head was nearer to the ladder. Indeed, the plaintiff would have had to do a somersault to land on his back, if he had fallen in the manner he claimed. Further, had he been wearing a safety helmet, the plaintiff would not have sustained the serious head injuries that rendered him a quadriplegic.

50 I find on a balance of probabilities that the position in which the plaintiff landed on the deck is consistent with his having fallen off the third ladder either while he was climbing or descending the same. A person using a ladder must necessarily face the rungs. If he fell, it would be backwards.

51 If I am wrong in my finding and the plaintiff did fall in the manner he alleged, it is my view that the defendants would still not be liable. The defendants did not dispute that the plaintiff's workplace was a "factory" within the meaning of s 6 of the Act. The defendants did not breach s 33 of the Act as they did provide a safe means of access to and a safe place of employment on board the vessel in particular, there was no breach of ss 33(2) and 33(3) which state:

(2) All openings in floors shall be securely fenced except in so far as the nature of the work renders such fencing impracticable.

(3) There shall, so far as is reasonably practicable, be provided and maintained safe means of access to and egress from every place at which any person has at any time to work and every such place shall, so far as is reasonably practicable, be made and kept safe for any person working there.

52 At common law (see *Indermaur v Dames* (1886) LR 1 CP 274) an occupier is only liable to an

invitee (such as the plaintiff) for injuries or property damage suffered by him if:

- (a) The occupier actually knew or ought to have known of the danger.
- (b) The danger was unusual to that class of plaintiff having regard to the nature of the place and the knowledge of the invitee.

(See Michael F Rutter, *Occupiers' Liability in Singapore and Malaysia* (Butterworths, 1985) at p 129.)

I find that the defendants are not liable as occupiers either as there was no concealed or unusual danger on the vessel that they were aware of, where the accident happened. The plaintiff had undergone safety courses previously and had worked at the second defendant's shipyard and on the vessel in particular since April 2002. The opening that the plaintiff alleged was clearly visible and large (which he estimate to be about the size of the court's witness box). If he had kept a proper lookout, the plaintiff would or should have seen the opening.

53 The defendants did not dispute that they owed a duty of care to the plaintiff as occupiers. At common law, the defendants owed a duty to the plaintiff to:

- (a) provide a competent staff of men;
- (b) adequate materials; and
- (c) a proper system and effective supervision.

(See *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579 at [45] and [46].)

There was no breach of the duty to provide a safe system of work, due to the stringent safety checks that were put in place by the second defendant.

Conclusion

54 I am fully aware that the plaintiff has suffered horrendous injuries that have paralysed him and cut short his working life as a welder. It is with the greatest regret that I have to dismiss his claim with costs.

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