Insurance & Personal Injury

Accidents without Cause – Can I Sue?

Introduction

As in most (if not all) of civil litigations, plaintiffs bear the burden of proving their own cases. Taking a simple personal injury claim as an example, if a pedestrian wants to bring a claim for damages for personal injury caused by a traffic accident, he would need to adduce appropriate evidence and satisfy the court, inter alia, that his injuries were indeed caused by the driver’s carelessness or negligence.

However, proving the cause of an accident could be a very difficult task. Sometimes an accident is no one’s fault, and not every victim of accidents would be entitled to recover compensation from others. Having said that, there is still a way to draw inference on liability of an accident when its cause is unknown, and that is the maxim of “res ipsa loquitur”.

Res Ipsi Loquitur – the facts speak for themselves

Res ipsa loquitur simply means “the facts speak for themselves”. The maxim is better illustrated with an example: an employee was using a spray gun supplied by his employer, and while he was trying to unlock the nozzle with a pin, paint sprayed out and caused injuries to his eyes (Chan Kwok Ping v Hop Yick Engineering Co (a firm) [1997] HKLRD 1390, [1997] 4 HKC 166, CA). In the case, the cause for the accidental spray-out was unknown, all the employee knew was that the spray gun was supplied by the employer, and that it accidentally sprayed out causing him injury. In such circumstances, although the employee was not able to prove that the accidental spray-out was caused by the negligence on the part of his employer, he could draw inference from the facts available, on the assumption that such accident would not have happened but for some defects of the spray gun, which was provided by the employer.

Another classic example would be falling objects from a height – say, an employee working in his employer’s warehouse is hit by an object fallen from a shelf whilst no one was around. There was no one around to cause that object to fall, but the Court may be prepared to accept that an object would not normally fall without any negligence on the part of the controller of that warehouse (i.e. the employer).

Before one can make use of res ipsa loquitur to draw inference on liability, a plaintiff would need to show that the cause of the accident is unknown, that the defendant was in control of all the circumstances (whether a venue or a tool), and that the accident is a kind that does
not ordinarily happen if proper care has been taken (per Bokhary PJ in _Sanfield Building Contractors Ltd. v Li Kai Cheong_ (2003) 6 HKCFAR 207).

**Res Ipsa Loquitur** illustrated – with unsuccessful cases

In _Chan Cheung v Honour Hall Engineering Ltd (in liquidation) and another_ (DCPI 2225/2012, judgment dated 26 May 2014), the plaintiff was employed by the defendant in working at a road construction site. The road construction site was surrounded by water-filled plastic barriers. It was the plaintiff’s case that a private vehicle accidentally crashed into the plastic barrier, which in turn knocked down the plaintiff causing injury. The vehicle absconded after the accident. As the vehicle owner / driver were nowhere to be found, the plaintiff sued his employer.

The plaintiff tried to rely on the maxim of _res ipsa loquitur_ against his employer contending that the barrier came loose after being hit evidenced that the plastic barrier was not strong enough; and as the plastic barrier was provided by the employer, he should be liable for negligence.

The plaintiff’s argument failed on two grounds. Firstly, the court was of the opinion that the key issue was not whether the barrier was strong enough, but whether the accident was one that would not ordinarily happen without negligence of the employer. The court further pointed out that if the vehicle is large enough and its speed fast enough, no barrier would be strong enough to remain standing. Secondly, this accident was not one with unknown cause – the cause was clearly the vehicle which has absconded.

In another recent case of _Lee Wai Ming v Hong Kong Guards Ltd and another_ (DCPI 987/2012, judgment dated 13 May 2014), the plaintiff was employed by the defendant as a security guard of a residential block, who was responsible for opening the lobby entrance doors whenever large objects, like a rubbish trolley, need to go through the lobby entrance. The lobby entrance door has two aluminum framed glass flaps, and each of the flaps were equipped with a hinge which has a self-closing and self-locking device – if the door flaps are opened to less than 90 degrees, the flaps would close automatically at a safe speed, but if the door flaps are opened to 90 degrees, the device in the hinge will cause the flaps to hold still at 90 degrees.

The accident occurred when the plaintiff was opening the door flaps for the rubbish trolley to egress. The plaintiff claimed that after she opened the right flap to 90 degrees (and thus should have hold still), she turned to the other flap, but was hit on the back of her head by the swinging back right flap before she attempted to open the left flap. The plaintiff sought to rely on _res ipsa loquitur_ in that but for the employer’s negligence in having defective hinges, the right flap would not have swung back and caused her injuries.
Again the court did not accept the plaintiff’s argument. The court was of the view that although the relevant doors were within the premises of the defendant, the plaintiff was actually in control of those door flaps at the material time, and it was more likely than not that the accident was caused by the plaintiff’s failure to push the flap to reach 90 degrees to trigger the self-locking mechanism.

**Conclusion**

As explained above, the maxim of *res ipsa loquitur* allows the court to draw inference on liability from circumstantial evidence. However, there are prerequisites to be satisfied before the court would accept to apply such maxim – and even if the maxim applies, it is always possible for a defendant to adduce contrary evidence in rebutting such inference on liability.