

**IN THE GENERAL DIVISION OF  
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC 70**

District Court Appeal No 39 of 2022

Between

Pappa w/o Veeramuthu

*... Appellant*

And

National University Health  
Services Group Pte Ltd

*... Respondent*

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**JUDGMENT**

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[Tort — Negligence — Breach of duty]

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**Pappa w/o Veeramuthu**  
**v**  
**National University Health Services Group Pte Ltd**

**[2023] SGHC 70**

General Division of the High Court — District Court Appeal No 39 of 2022  
Hri Kumar Nair J  
22 February 2023

29 March 2023

Judgment reserved.

**Hri Kumar Nair J:**

**Introduction**

1 Mdm Pappa w/o Veeramuthu (“**Mdm Pappa**”) is 80 years old. On 10 April 2017, while recovering from surgery on her broken right leg in Jurong Community Hospital (“**JCH**”), she fell and fractured her other leg. She brought an action for damages against the respondent, National University Health Services Group Pte Ltd (the “**respondent**”), which owns and manages JCH. Following a three-day trial in DC/DC 890/2020, the learned District Judge (the “**DJ**”) dismissed her claim. This is her appeal against that decision.

2 I allow the appeal for the reasons below.

## **Facts**

### ***Background to the dispute***

3 On 12 March 2017, Mdm Pappa was admitted to Ng Teng Fong General Hospital (“**NTFGH**”). She had fallen at home and suffered a fracture of her right thigh bone. She underwent a right hip fixation with dynamic hip screw surgery the next day. Mdm Pappa’s recovery at NTFGH was uneventful. She was assessed as a patient at risk of falling and underwent daily physiotherapy and occupation therapy sessions.

4 Mdm Pappa was assessed to require rehabilitative care. On 20 March 2017, she was transferred to JCH, where she was placed in an eight-bed ward. On or around 28 March 2017, she developed an infection and was transferred to a single-bed isolation ward (the “**Room**”). She was also assessed as a patient at risk of falling throughout the duration of her stay at JCH.

5 In the Room, there was a single bed (the “**Bed**”), an emergency call bell (the “**Bell**”), a geriatric chair, a chair for visitors (the “**Visitor’s Chair**”) and a table on rollers of an adjustable height (the “**Table**”). There was also a toilet within the Room (the “**Toilet**”). Two doors separated the Room from the corridor of the ward – a first door which opened into a smaller room (for the purposes of preparing to enter, and cleaning up after exiting, the Room) and then a second door to enter the Room. When Mdm Pappa was in the Room, she was not visible to the nursing staff outside the Room. Neither was there any close-circuit television (“**CCTV**”) in the Room. Her only means of communicating with the nursing staff was via the Bell.

***Mdm Pappa's fall***

6 On 10 April 2017, just before 8am, Patient Care Assistant Ms Myat Swe Zin Myint (“**Ms Myat**”) entered the Room to assist Mdm Pappa with her morning hygiene routine. Mdm Pappa’s breakfast was also brought in and placed on the Table.

7 After Ms Myat left the Room, at about 8.35am, Staff Nurse Ms Hou Wenfeng (“**Ms Hou**”) entered the Room on her medication rounds. When she entered the Room, Mdm Pappa was seated in the Visitor’s Chair with the Table (and her breakfast) in front of her. Ms Hou gave Mdm Pappa her medication and left. No one entered the Room thereafter until after Mdm Pappa fell.

8 A few minutes after Ms Hou left, Mdm Pappa attempted to get out of the Visitor’s Chair on her own but fell (the “**Fall**”). Mdm Pappa crawled to the Bed and managed to press the Bell. JCH’s records show that the Bell was activated at 8.53am. What happened after Mdm Pappa was attended to is not disputed: she was carried back on to the Bed, her vital signs were checked and a doctor reviewed her condition. Mdm Pappa’s children, Ms V Tamilselvi d/o Veeramuthu (“**Ms Tamilselvi**”) and Mr V Thiruchelvam (“**Mr Thiruchelvam**”), were contacted and went to JCH.

9 Mdm Pappa was found to have suffered a sub-trochanteric fracture of the left femur and underwent surgery on 11 April 2017. On 18 April 2017, she was transferred to St Luke’s Hospital for rehabilitation, and thereafter, arrangements were made for her to attend reviews at the Specialist Outpatient and Orthopaedic Clinics at NTFGH and physiotherapy sessions.

### **The parties' cases**

10 The parties' respective accounts of what happened in the Room (a) when Ms Myat and Ms Hou were there; and (b) between the time Ms Hou left the Room and the time Mdm Pappa suffered the Fall, diverge in material aspects.

### ***Mdm Pappa's claim***

11 Mdm Pappa's case is that after Ms Myat had assisted her with her morning routine, Ms Myat brought her to the Visitor's Chair to have her breakfast, which was placed on the Table in front of her. The Visitor's Chair was approximately one metre away from the Bed. At about 8.35am, Ms Hou entered the Room to give Mdm Pappa her medication, saw Mdm Pappa seated in the Visitor's Chair and left the Room without checking whether the Bell was within Mdm Pappa's reach. Mdm Pappa started to experience immense and unbearable pain in her back. The Bell was out of her reach. She tried to shout for help, but no one came to her aid. As she did not know when the nursing staff would next enter the Room, she decided to move to the Bed on her own. In doing so, she lost her balance and fell. She cried out in pain but no one came to her aid. She managed to crawl to the Bell and pressed it. She was attended to by the nursing staff after about 10 to 15 minutes. At about 10.40am, she gave an account of the Fall to a doctor reviewing her case, with Mr Thiruchelvam acting as her interpreter as she could not speak English.

12 Mdm Pappa pleaded a myriad of breaches on the part of the respondent. She claimed that:

- (a) The respondent and/or its employees, servants and/or agents had been negligent and breached their duty of care owed to her, by failing to

render reasonable medical and/or nursing care. This failure was a consequence of their:

- (i) failing to take any or any reasonable care to ensure that there was proper and effective supervision and/or monitoring of her;
- (ii) failing to take any or any reasonable steps to monitor her at regular intervals to ensure that she was comfortable and not in pain;
- (iii) failing to “have known or ought to have known” that she would not have been able to sit in the Visitor’s Chair for a prolonged period of time, which was approximately 50 minutes, without feeling any pain;
- (iv) failing to take any or any timely action to assist her out of the Visitor’s Chair and onto the Bed;
- (v) negligently allowing her to be able to transfer herself from the Visitor’s Chair to the Bed without any assistance from the respondent and/or its agents, employees and/or servants;
- (vi) failing to observe that she suffered the Fall;
- (vii) failing to ensure that the Bell was within her reach;
- (viii) failing to take any or any timely action once she pressed the Bell for help after she had suffered the Fall;
- (ix) failing to take any or any timely action to assist her off the floor after she suffered the Fall;



- (x) failing to manage, control, take appropriate measures or in any way do whatever was reasonably necessary to ensure her safety and to ensure that she did not suffer the Fall during her period of hospitalisation at the respondent's hospital;
  - (xi) failing to have a safe system in place to ensure that she did not suffer the Fall;
  - (xii) failing to have in place and/or to comply with appropriate protocols, standard operating procedures and/or guidelines to ensure the safety of patients and prevent them from suffering falls, especially in the case of elderly patients who are cared for in single-bed isolation rooms, such as the Room, and are noted to be high fall-risk patients, such as herself;
  - (xiii) failing to take adequate steps to ensure that she did not suffer any injuries during her hospitalisation at the respondent's hospital;
  - (xiv) failing to provide appropriate medical and/or nursing care, treatment and/or advice to her at the respondent's hospital;
  - (xv) failing to provide a safe environment for her; and
  - (xvi) in these circumstances, negligently exposing her to a risk of a fall, which they knew or ought to have known might occur, and any injuries that would arise as a result of a fall.
- (b) The doctrine of *res ipsa loqitar* applied.
- (c) The respondent had breached the contract it had with her, by:

- (i) failing to render reasonable and good medical and/or nursing treatment, care and advice to her; and
- (ii) causing and/or failing to take appropriate measures to prevent the Fall.

***The respondent's defence***

13 The respondent's case is that at about 7.40am, Ms Myat helped Mdm Pappa with her toileting and hygiene needs in the Toilet. Ms Myat then, at Mdm Pappa's request, assisted her to sit upright on the Bed, with her legs over the side, to have breakfast. Ms Myat placed the Table with the breakfast in front of Mdm Pappa. After checking that the Bell was within Mdm Pappa's reach, Ms Myat left the Room. Later, at about 8.35am, Ms Hou entered the Room to give Mdm Pappa her medication. She saw Mdm Pappa seated in the Visitor's Chair, with the Table in front of her. It is the respondent's case that Mdm Pappa must have made her own way from the Bed to the Visitor's Chair. Ms Hou ensured that Mdm Pappa consumed her medication. She decided to leave Mdm Pappa seated in the Visitor's Chair as she appeared comfortable and did not complain of any pain. She checked that the Bell was within Mdm Pappa's reach and left the Room. Mdm Pappa then tried to move to the Bed on her own, which she knew she should not have done. She could have asked for assistance by using the Bell but failed to do so. The nurses and staff also responded to Mdm Pappa within a reasonable time – Mdm Pappa was attended to at around 9am after the Bell was activated at 8.53am.

14 The respondent therefore maintains that it was neither negligent nor in breach of its contract with Mdm Pappa. It argued that it had put in place adequate fall protection measures to minimise Mdm Pappa's risk of falling at

JCH. However, these required the cooperation and compliance of Mdm Pappa. In this instance, Mdm Pappa neither tried to call for assistance using the Bell to move from the Visitor’s Chair to the Bed, nor informed Ms Hou about her alleged back pain which precipitated her attempt to self-ambulate. Accordingly, the Fall was not caused or contributed to by any breach on the respondent’s part.

15 The respondent further argues that Mdm Pappa was contributorily negligent for:

- (a) moving from the Bed to the Visitor’s Chair on her own without calling for assistance;
- (b) failing to inform Ms Hou, or any of the respondent’s staff, that she was in pain or discomfort while sitting in the Visitor’s Chair and/or that she wanted to be assisted from the Visitor’s Chair back to the Bed;
- (c) failing to use the Bell to call for nursing assistance before attempting to move from the Visitor’s Chair to the Bed on her own, even though the Bell was visible and within her reach at the material time; and
- (d) failing to adhere to the nurses’ instructions not to ambulate on her own without calling for nursing assistance.

**Decision below**

16 The DJ’s main findings of fact, as set out in his Grounds of Decision (“GD”) issued on 28 November 2022, are as follows:

(a) Mdm Pappa failed to show on a balance of probabilities that the Visitor’s Chair was one metre away from the Bed at the time of the Fall.<sup>1</sup> The photographs adduced by the respondent in the Agreed Bundle of Documents (“**BOD**”) were an accurate representation of the actual distance of the Visitor’s Chair from the Bed at the time of the Fall.<sup>2</sup>

(b) Mdm Pappa could move the Table on her own and could transfer herself from the Bed to the Visitor’s Chair.<sup>3</sup> Self-ambulation by Mdm Pappa, while not prudent, was not impossible,<sup>4</sup> so it was neither impossible nor implausible that Mdm Pappa would feel confident enough to transfer herself from the Bed to the Visitor’s Chair.<sup>5</sup>

(c) The Bell was within Mdm Pappa’s reach;<sup>6</sup> further, even if it was not, the cord of the Bell was within her reach.<sup>7</sup>

(d) Ms Myat served Mdm Pappa her breakfast at around 8.00am with Mdm Pappa seated on the Bed, and not the Visitor’s Chair.<sup>8</sup>

(e) Ms Myat did not place Mdm Pappa in the Visitor’s Chair.<sup>9</sup>

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<sup>1</sup> GD at paras 50 and 81.

<sup>2</sup> GD at para 51.

<sup>3</sup> GD at para 54.

<sup>4</sup> GD at para 55.

<sup>5</sup> GD at para 54.

<sup>6</sup> GD at paras 79–82.

<sup>7</sup> GD at para 81.

<sup>8</sup> GD at para 67.

<sup>9</sup> GD at para 67.

(f) Mdm Pappa did not complain of pain in her back when Ms Hou gave Mdm Pappa her medication and provided her with Ketoprofen 30mg plasters for pain.<sup>10</sup>

(g) Mdm Pappa probably did not have unbearable back pain immediately preceding the Fall.<sup>11</sup>

(h) Mdm Pappa’s claim of unbearable back pain was “an afterthought concocted to plug the gap in her case and provide a justification for her attempt to self-transfer from the [V]isitor’s [C]hair to the [B]ed, which was the real cause of her fall”.<sup>12</sup>

17 Pertinently, the DJ found that Mr Thiruchelvam’s evidence recounting Mdm Pappa’s account of the Fall to the doctor at 10.40am on 10 April 2017 amounted to hearsay evidence which should be given no or minimal weight.<sup>13</sup> He also found that Ms Myat was a credible witness<sup>14</sup> and that Mdm Pappa was not – the DJ observed that Mdm Pappa was defensive, evasive, gave rehearsed evidence, and was at times muddled and incoherent.<sup>15</sup>

18 The DJ found that Ms Hou, and thus the respondent, had not fallen below the standard of care required, for the following reasons:

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<sup>10</sup> GD at paras 75 and 76.

<sup>11</sup> GD at paras 73–78.

<sup>12</sup> GD at para 78.

<sup>13</sup> GD at para 56.

<sup>14</sup> GD at para 58.

<sup>15</sup> GD at paras 59–66.

- (a) Ms Myat did not transfer or cause Mdm Papa to be seated in the Visitor's Chair.<sup>16</sup>
- (b) Ms Myat and Ms Hou did not leave the Bell out of Mdm Pappa's reach.<sup>17</sup>
- (c) Ms Hou did not fall below the required standard of care when she allowed Mdm Pappa to remain seated in the Visitor's Chair. This was especially since Mdm Pappa did not highlight any problems with remaining in the Visitor's Chair, did not request to be moved back to the Bed, appeared to be familiar with using the Bell to seek assistance and Ms Hou had ensured that the Bell was within Mdm Pappa's reach.<sup>18</sup>
- (d) The fact that the respondent did not have CCTVs installed in the Room or some other form of round-the-clock monitoring of isolation rooms did not mean that it was negligent.<sup>19</sup>
- (e) The respondent attended to Mdm Pappa seven minutes after she had used the Bell, which did not fall below the requisite standard of care.<sup>20</sup>

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<sup>16</sup> GD at para 68.

<sup>17</sup> GD at para 82.

<sup>18</sup> GD at paras 70 and 72.

<sup>19</sup> GD at paras 83 and 85.

<sup>20</sup> GD at paras 86 and 87.

**Parties' cases on appeal**

*Appellant's case*

19 Mdm Pappa submits that the DJ's findings were against the weight of the evidence, including the objective or undisputed evidence. In particular:

- (a) The DJ erred in finding that the Visitor's Chair had been placed significantly less than one metre from the Bed.
- (b) The DJ erred in failing to give sufficient weight to Mr Thiruchelvam's evidence on what Mdm Pappa had said to him shortly after the Fall, which was corroborative of Mdm Pappa's evidence.
- (c) The DJ erred in finding that Mdm Pappa had independently self-ambulated from the Bed to the Visitor's Chair.
- (d) The DJ erred in finding that Ms Hou did not fall below the standard of care required of her by allowing Mdm Pappa to remain seated in the Visitor's Chair.
- (e) The DJ erred in finding that Mdm Pappa had not been suffering from unbearable back pain immediately preceding the Fall.
- (f) The DJ erred in finding that the Bell was within Mdm Pappa's reach at all times.
- (g) The DJ erred in finding that the respondent had not failed to monitor Mdm Pappa adequately, including by not having CCTVs installed in the Room.

(h) The DJ erred in failing to consider whether the “agony of the moment” principle applied to the present case.<sup>21</sup>

***Respondent’s case***

20 The respondent essentially aligns itself with the findings of the DJ above.

**Issues to be determined**

21 The crux of Mdm Pappa’s case is that the respondent was negligent because it allowed Mdm Pappa, who was incapable of self-ambulating, to remain seated in the Visitor’s Chair with the Bell out of reach; consequently, when Mdm Pappa experienced unbearable back pain and could not reach the Bell, she had little choice but to attempt to self-ambulate, which resulted in the Fall. Accordingly, I consider the issues in the appeal through these broad questions:

- (a) Could Mdm Pappa self-ambulate?
- (b) Was the Bell within Mdm Pappa’s reach while she was seated in the Visitor’s Chair?
- (c) Why was Mdm Pappa permitted to remain seated in the Visitor’s Chair?
- (d) Why did Mdm Pappa try to move back to the Bed on her own?

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<sup>21</sup> Appellant’s Case at para 35.



22 The DJ based his findings on both the objective evidence as well as the credibility of the witnesses. In my view, the credibility of the factual witnesses is suspect at differing points and in different ways, which I explain more fully below. Accordingly, I will approach each issue by first analysing the objective evidence, before considering the witness testimony.

### **Could Mdm Pappa self-ambulate?**

23 This issue is comprehensively covered by the objective evidence, against which the oral evidence of the witnesses can be tested. It also sets the context for the dispute – Mdm Pappa’s claim is premised on her being *forced* to attempt self-ambulation because she was in unbearable pain and was unable to reach the Bell. In contrast, the respondent claims that the Fall was a consequence of Mdm Pappa voluntarily deciding to move without assistance from the Visitor’s Chair to the Bed when she knew that she ought not do so.<sup>22</sup> In this regard, the respondent asserts that Mdm Pappa had earlier made her own way from the Bed to the Visitor’s Chair without assistance. This raises two questions: (a) *could* Mdm Pappa self-ambulate; and (b) *would* she likely have done so?

24 The DJ found that “it was not completely impossible or implausible that [Mdm Pappa] would feel confident enough to transfer herself to the Visitor[’s] Chair”. He based the finding on the following: (a) Mdm Pappa had been recovering from her earlier surgery for about a month by the time of the Fall, and had been undergoing daily physiotherapy and occupational therapy sessions for several weeks; (b) Ms Tamilselvi had been told that Mdm Pappa was expected to be discharged on the same day as the Fall or within the next one or

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<sup>22</sup> Defence at paras 15(c), 16(c) and 16(g)(i).

two days, which suggested that her condition had improved; (c) Ms Myat gave evidence that Mdm Pappa was on “minimum assistance” and could self-ambulate; and (d) the Visitor’s Chair had been very near to the Bed.<sup>23</sup>

25 The evidence, in particular the objective evidence, does not support the DJ’s conclusion.

***Mdm Pappa’s Morse score***

26 The respondent maintained records of Mdm Pappa’s Morse Fall Risk score, which, as JCH Senior Nurse Manager Ms Arvinder Kaur (“**Ms Kaur**”) explained, is a measure of a patient’s risk of falls. This takes into consideration a patient’s mobility, their diagnosis, and nursing interventions administered to, or procedures undergone by, the patient.<sup>24</sup> The higher the score, the greater the risk of falls; a score of 25 qualifies a patient as a fall risk.<sup>25</sup>

27 At the time of her admission to JCH on 20 March 2017, Mdm Pappa’s Morse Fall Risk score was 40.<sup>26</sup> This *increased* to 50 on 4 April 2017,<sup>27</sup> and remained there until the day of the Fall.<sup>28</sup> At trial, Mdm Pappa’s counsel pointed out that the 10 point increase had been incurred under the label of

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<sup>23</sup> GD at para 54.

<sup>24</sup> Ms Kaur’s Cross-Examination (“**XX**”) / Court Transcript (Day 2: 31 March 2022) at p5 lines 18–21.

<sup>25</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p6 line 2; p7 lines 8 and 11.

<sup>26</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p6 line 14.

<sup>27</sup> Agreed Bundle of Documents (Volume 2) (“**BOD2**”) at p424; Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p9 line 16.

<sup>28</sup> BOD2 at p346; Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p7 lines 3 and 8.

“gait/transferring”, and Ms Kaur explained that this refers to a patient’s reliance on assistance for transfers.<sup>29</sup> Furthermore, while Mdm Pappa denied suffering from dizziness,<sup>30</sup> the respondent had recorded complaints of worsening giddiness.<sup>31</sup>

28 The DJ recognised that Mdm Pappa had posed a fall-risk but did not appear to appreciate that there had been an increase in her Morse Fall Risk score which suggested that her condition had not been improving.<sup>32</sup> Crucially, he also did not consider this evidence *for the purpose of assessing whether Mdm Pappa could self-ambulate* and instead merely acknowledged this as part of the background to the dispute.<sup>33</sup>

#### ***Mdm Pappa’s hospital records***

29 According to the nursing report prepared by the respondent, as at 5 April 2017, which was five days before the Fall, Mdm Pappa was only able to ambulate with a broad-based quad stick (there was no such aid available in the Room) with “one-person assistance”.<sup>34</sup> However, no evidence was led to explain what this means. It is also unclear what basis this contention was made in the nursing report, which was purportedly prepared in reliance on Mdm Pappa’s medical and nursing records, as well as an interview with Ms Myat.<sup>35</sup>

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<sup>29</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p10 line 11.

<sup>30</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p6 line 30, p7 lines 10, 16–18.

<sup>31</sup> BOD2 at p101 and p139.

<sup>32</sup> GD at para 11.

<sup>33</sup> GD at para 11.

<sup>34</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p13 line 9.

<sup>35</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p4 lines 8 and 14.

30 The respondent’s representative, Ms Kaur, was however clear in her evidence. Ms Kaur agreed with Mdm Pappa’s counsel’s assertion that Mdm Pappa had “not [been] in a position” to self-ambulate from the Bed to the Visitor’s Chair.<sup>36</sup> The DJ accepted the respondent’s counsel’s argument that, read in its proper context, what Ms Kaur meant “was that it was not ‘prudent’ for [Mdm Pappa] to do so, and not that it was impossible for her to do so”.<sup>37</sup> But this was not all that Ms Kaur said. The relevant extract of her cross-examination is as follows:

Q ... Would you agree with me that [Mdm Pappa] was not in a position to ambulate independently on the 10th---or just before 10 April 2017?

A Is indicated as one-man assist.

Q So a one-man assist would mean that the patient is unable to ambulate independently?

A That’s correct.<sup>38</sup>

31 The DJ focused on the phrase “not in a position” and did not deal with Ms Kaur’s clear evidence that the phrase “one-man assist” meant that Mdm Pappa had been “unable” to ambulate independently.<sup>39</sup> In the circumstances, I disagree with his conclusion that Ms Kaur’s evidence only amounted to it not being “prudent” for Mdm Pappa to do so. If that was all Ms Kaur meant, it was incumbent on the respondent to clarify in re-examination, which it did not do.

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<sup>36</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p37 line 12, p20 line 14.

<sup>37</sup> GD at para 55.

<sup>38</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p20 lines 11–17.

<sup>39</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p20 line 17.

***Mdm Pappa's recovery and expected date of discharge***

32 In arriving at his conclusion that Mdm Pappa had possibly felt confident enough to self-ambulate, the DJ relied on the fact that Mdm Pappa had been recovering since her surgery on 13 March 2017 and had been undergoing daily physiotherapy and occupational therapy sessions. I disagree that these facts support the DJ's conclusion.

33 No evidence was adduced as to Mdm Pappa's recovery over the course of her stay at JCH and what this suggested in terms of her ability to self-ambulate. Given that it is the respondent's case that Mdm Pappa had made her way from the Bed to the Visitor Chair without assistance, it was incumbent on the respondent to lead evidence that this was possible. In this regard, the evidence would likely have been available – she had been undergoing physiotherapy at JCH and had had attending doctors – but the respondent chose not to lead any. The respondent's only evidence was via Ms Myat, but very little weight should be given to this, for reasons I explain later at [44]–[46], [64], [105] and [106].

34 Likewise, the DJ's reliance on Ms Tamilselvi's evidence of Mdm Pappa's expected discharge date was misplaced.<sup>40</sup> It is unclear what information Ms Tamilselvi had received, and from whom, as she was not cross-examined. In any event, that evidence would be hearsay.

35 Instead, the respondent would be expected to have evidence of Mdm Pappa's likely date of discharge, but did not lead any. The respondent's

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<sup>40</sup> GD at para 54.

Patient and Family Communication Record,<sup>41</sup> which was referred to at the trial, was not relevant: this document suggests that Mdm Pappa’s estimated discharge date was 10 April 2017. However, under cross-examination, Ms Kaur explained that this refers to “[physio]therapy discharge” and not home discharge.<sup>42</sup> She further testified that she knew that Mdm Pappa was going to be discharged after 10 April 2017 but could not give the exact date.<sup>43</sup> The respondent’s evidence on this issue was unsatisfactory, and the DJ should not have relied on the evidence of Ms Tamilselvi without examining its basis.

36 For completeness, I note that Mdm Pappa was referred to a Progress Note dated 6 April 2017, which states “EDD on 10/4/17”.<sup>44</sup> She was asked if she was going to be discharged on 10 April 2017 and she denied it, stating that she did not know when she was going to be discharged.<sup>45</sup> Accordingly, it was not Mdm Pappa’s evidence that she had expected to be discharged from the hospital on 10 April 2017. Further, the respondent did not call the maker of the Progress Note and its witnesses did not even rely on the Progress Note as evidence of Mdm Pappa’s expected date of discharge.

37 In any event, the fact that Mdm Pappa was due to be discharged on or soon after 10 April 2017 is not determinative. While it suggests that Mdm Pappa

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<sup>41</sup> BOD2 at p200.

<sup>42</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p25 lines 11–18.

<sup>43</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p24 line 23, p25 lines 17 and 18.

<sup>44</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p14 line 24; BOD2 at p111.

<sup>45</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p14 lines 15, 29 and 32.

was recovering and no longer required hospital care, it does not mean she would be able to self-ambulate.

***Oral testimony***

38 Mdm Pappa testified that she was unable to self-ambulate and required assistance.<sup>46</sup> On the day in question, she claimed that she had been carried by Ms Myat from the Bed to the Visitor’s Chair.<sup>47</sup> I note that Mdm Pappa’s evidence on her mobility was somewhat embellished – she claimed that she had never used the Toilet but had instead worn pampers, had been wiped instead of having a shower, and had washed her hands in a container of water brought by a nurse instead of doing so in the Toilet.<sup>48</sup> It was not contended by her counsel that this was accurate and such scenarios were not put to the respondent’s witnesses. In any event, the fact that she was always assisted to the Toilet does not in any way contradict or diminish her case that she was unable to self-ambulate. I deal with Mdm Pappa’s credibility in detail below.

39 Significantly, Mdm Pappa’s evidence that she was unable to self-ambulate was not challenged at trial; neither was it put to her that she had made her own way from the Bed to the Visitor’s Chair. The DJ did not appear to have considered this. The respondent submits, on appeal, that Mdm Pappa was able to self-ambulate because the nursing records for the days leading up to the Fall

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<sup>46</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p8 line 9, p13 lines 6–9.

<sup>47</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p15 line 28, p16 lines 16 and 18, p26 line 26.

<sup>48</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p12 line 27 – p13 line 5.

show that she had been “Able to turn self”, that she had “Self regulated” and required “Minimal assist”.<sup>49</sup> These records do not assist the respondent:

(a) These records were not raised in the District Court proceedings, and the respondent’s witnesses were not asked who had made these assessments, what these phrases mean or how they are relevant to Mdm Pappa’s ability to self-ambulate.

(b) Furthermore, the records showing that Mdm Pappa had been “Able to turn self” and had “Self regulated” are irrelevant because these refer to her “Positioning frequency”<sup>50</sup> and “Head of Bed Elevated”<sup>51</sup> respectively, which presumably apply to when Mdm Pappa had been laying in the Bed.

(c) There is a separate entry under the heading of “Mobility”, for Mdm Pappa’s “Level of Assistance”, which consistently states “One man assistance”.<sup>52</sup>

40 The respondent’s attempt to shore up its evidence in this manner on appeal only underscores the difficulties with its case.

41 More importantly, Mdm Pappa’s conduct while she was a patient at JCH is consistent with her case that she could not ambulate independently. She was constantly advised and reminded by the nursing staff and her family that she should always use the Bell when she needed assistance. The evidence suggests

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<sup>49</sup> Respondent’s Case at para 38.

<sup>50</sup> BOD2 at p381.

<sup>51</sup> BOD2 at p370.

<sup>52</sup> BOD2 at p370 and p381.



she always did so. Indeed, according to the respondent’s call bell records, between 20 and 28 March, Mdm Pappa used the call bell 86 times,<sup>53</sup> and between 28 March and 10 April, 223 times.<sup>54</sup> The respondent’s nursing staff regarded her as a cooperative patient.<sup>55</sup> There was no evidence that she ever *tried* to ambulate on her own.

42 Mdm Pappa herself stated that she would use the Bell each time she required assistance, which included each time she moved around,<sup>56</sup> and the respondent’s witnesses agreed with this.<sup>57</sup> Mr Thiruchelvam’s evidence was that Mdm Pappa would use the call bell every time she needed assistance, particularly where she needed assistance in moving,<sup>58</sup> and this was also accepted by the respondent.<sup>59</sup>

43 The respondent’s only witness with respect to Mdm Pappa’s ability to self-ambulate was Ms Myat. Ms Kaur had not personally interacted with Mdm Pappa at all, and Ms Hou surprisingly did not give any evidence on this issue, although she had been in charge of Mdm Pappa’s ward. The DJ relied on Ms Myat’s evidence that Mdm Pappa had been on “minimum assistance” at the

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<sup>53</sup> Agreed Bundle of Documents (Volume 3) (“**BOD3**”) at p600.

<sup>54</sup> BOD3 at p612.

<sup>55</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p40 lines 7, 10 and 11.

<sup>56</sup> Mdm Pappa’s Affidavit of Evidence-in-Chief (“**AEIC**”) at para 17; Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p13 line 9.

<sup>57</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p40 lines 7–11; Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p51 line 14.

<sup>58</sup> Mr Thiruchelvam’s AEIC at para 16.

<sup>59</sup> Court Transcript (Day 1: 30 March 2022) at p41.

material time – which meant that “she can transfer but not stable”, and “[if] she try [to ambulate from the bed to the visitor’s chair herself], she can [do so]”.<sup>60</sup>

44 Ms Myat’s evidence should have been given very little weight. She did not explain the basis for her opinion, or what expertise she had for making that assessment (she was a Patient Care Assistant).<sup>61</sup> It is not disputed that she had never seen Mdm Pappa self-ambulating or attempting to do so. Significantly, she testified that 10 April 2017 was her *first* day at the ward and that was the *first* time she had looked after Mdm Pappa.<sup>62</sup> It was not her evidence that she had reviewed Mdm Pappa’s records or was familiar with her history and progress. In other words, her sole contact with Mdm Pappa was limited to the 30 minutes or so she had spent assisting Mdm Pappa that morning. Accordingly, Ms Myat was not familiar with Mdm Pappa and could not have been in a position to accurately assess Mdm Pappa’s abilities. The DJ did not appear to have considered all these facts.

45 The DJ also did not consider that Ms Myat subsequently appeared to have qualified her evidence:

Q Would you agree with me that the patient was not in a position, on 10 April, to ambulate herself on her own from the bed to the visitor’s chair, do you agree or do you disagree?

A If she try herself, she can.

Q So do I take it that you disagree with me?

A Because we cannot know what she think---she is able or she is not able to transfer herself.

Q So do I take it that you are not sure of that?

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<sup>60</sup> GD at para 54.

<sup>61</sup> Ms Myat’s AEIC at para 1.

<sup>62</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p47 line 18.

A Yes, I am not sure.<sup>63</sup>

It is not entirely clear what Ms Myat meant by her evidence – whether she was now not sure whether Mdm Pappa could self-ambulate, or that she was not sure whether Mdm Pappa believed she could self-ambulate. For the reasons above, and given her very limited interaction with Mdm Pappa, her opinion is unsubstantiated and speculative.

46 In this regard, Ms Myat’s evidence should also be treated with caution. It is undisputed that Ms Hou found Mdm Pappa seated in the Visitor’s Chair after Ms Myat had left the Room. Ms Myat’s own evidence was that it was wrong and risky for Mdm Pappa to be seated in the Visitor’s Chair. This was consistent with Ms Kaur’s evidence that the Visitor’s Chair was not for patients, and the respondent’s own internal regulations that patients should be properly supported when seated. I elaborate on this below (see [68]). It was therefore in Ms Myat’s interests to testify that she had not seated Mdm Pappa in the Visitor’s Chair, and that Mdm Pappa was capable of self-ambulating. In this regard, I also note that Ms Myat volunteered that Mdm Pappa had been able to self-ambulate from the Bed to the Visitor Chair despite the fact that (a) she did not give any evidence as to the position of the Visitor Chair when she was in the Room; and (b) she would not have known, on her own evidence, how far Mdm Pappa had been seated from the Bed.

47 In the circumstances, the evidence leads to the conclusion, on the balance of probabilities, that Mdm Pappa could not self-ambulate from the Bed to the Visitor’s Chair.

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<sup>63</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p46 lines 13–21.

48 The next question is whether she *would* have tried to move on her own. The evidence here is even clearer. As stated above, the undisputed evidence was that Mdm Pappa always followed instructions given to her throughout her stay at JCH, whether they were from the respondent's staff or her family members. She was reminded time and again to call the nurses using the Bell if she needed any assistance. The objective evidence was that she used the Bell 309 times over 21 days leading up to the Fall.<sup>64</sup> There is no evidence that she ever attempted to move without assistance. In the circumstances, it appears unlikely that she would, for no good reason, suddenly decide to ambulate without first calling for assistance, not once, *but twice*, on 10 April 2017. This supports her case that the Bell was not within her reach. Nonetheless, this should still be assessed against the other evidence, to which I now turn.

#### **Was the Bell within Mdm Pappa's reach?**

49 The question of whether the Bell was out of Mdm Pappa's reach can be determined by assessing two constituent issues: (a) the location of the Bell; and (b) the location of the Visitor's Chair when Mdm Pappa was seated on it.

#### ***The location of the Bell***

50 It was not strongly disputed that the Bell was on the Bed. Ms Myat testified that she had placed the Bell on the Bed next to Mdm Pappa before she had left the Room, and Ms Hou testified that she had seen the Bell on the Bed.<sup>65</sup> Neither of their evidence on this issue was challenged at trial.

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<sup>64</sup> BOD3 at p600 and p612.

<sup>65</sup> Defence at para 9(c); Defence at Annex A: nursing report at para 7.

51 Mdm Pappa’s evidence on this issue was unclear. In her AEIC, she stated that the Bell was on the Bed approximately one metre away from her and thus out of her reach,<sup>66</sup> and that after the Fall, she crawled to the Bell located on the Bed<sup>67</sup> and pulled the cord of the Bell, which was hanging against the side of the Bed, causing the Bell to fall to the floor before she pressed it.<sup>68</sup> However, under-cross-examination, she said that (a) she did not know where the Bell was;<sup>69</sup> and (b) after the Fall, she crawled to press the Bell, which was on the ground.<sup>70</sup>

52 I discuss the inconsistencies in Mdm Pappa’s evidence generally below. Nonetheless, on this issue, the real dispute was as to the position of the Visitor’s Chair and whether Mdm Pappa could reach the Bell from her seated position. In this regard, Mdm Pappa gave consistent evidence that the Visitor’s Chair had been too far away from the Bed such that she could not reach the Bell.

53 For completeness, I deal with a point made by the DJ that, even if Mdm Pappa could not reach the body of the Bell, she could reach the cord which hung from the Bed.<sup>71</sup> Setting aside the fact that this was not raised at trial for Mdm Pappa’s response, this finding appears to be premised on the respondent’s case that the Visitor’s Chair was next to the Bed.

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<sup>66</sup> Statement of Claim (“**SOC**”) at para 12; Reply to Defence (“**Reply**”) at para 42; Mdm Pappa’s AEIC at paras 23 and 24.

<sup>67</sup> SOC at para 14; Mdm Pappa’s AEIC at para 25.

<sup>68</sup> Mdm Pappa’s AEIC at para 25.

<sup>69</sup> Mdm Pappa’s cross-examination / Court Transcript (Day 1: 30 March 2022) at p33 line 11.

<sup>70</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p33 lines 22 and 26.

<sup>71</sup> GD at para 81.

***The distance between the Visitor’s Chair and the Bed***

54 On this issue, only the evidence of Mdm Pappa and Ms Hou is relevant – Ms Myat had not seen Mdm Pappa sitting in the Visitor’s Chair and did not give any evidence as to its location relative to the Bed.

55 Before I turn to the witness testimony, I deal with the objective evidence which the DJ relied on to determine that the Visitor’s Chair had been directly next to the Bed. The DJ referred to (a) photographs produced by the respondent concerning the position of the Visitor’s Chair; and (b) photographs produced by the respondent concerning the layout of the Room. He concluded, *based on the photographs*, that the Visitor’s Chair could not have been a metre away from the Bed as this would mean that the Visitor’s Chair would have been in the way of the curtains surrounding the Bed as well as the Toilet door.<sup>72</sup>

56 The DJ should not have relied on the photographs as they are not relevant to the position of the Visitors’ Chair at the material time.

*Position of the Visitor’s Chair from the photographs*

57 First, the photographs were not of the Room.<sup>73</sup>

58 The respondent provided no explanation as to why it did not, or could not, provide photographs of the Room. In this regard:

- (a) In their letter dated 14 September 2021, Mdm Pappa’s solicitors asked for photographs of the Room.

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<sup>72</sup> GD at para 51.

<sup>73</sup> Ms Tamilselvi’s Supplementary Affidavit of Evidence-in-Chief (“SAEIC”) at Exhibit TV-1.

(b) In their response dated 20 September 2021, the respondent’s solicitors enclosed two photographs purportedly taken of a room “similar to” the Room.

(c) In their letter dated 21 September 2021, Mdm Pappa’s solicitors specifically asked for (i) photographs of the Room that showed the door of the Room, the entryway leading to the Room, the position of the Toilet, the corridor of the ward leading to the Room and a wide angle of the entire Room; (ii) the current status of the Room; and (iii) reasons for the respondent’s inability to provide photographs of the Room.

(d) The respondent’s solicitors did not respond to these questions. No reason was offered for this. They wrote back in a letter dated 8 November 2021, providing six photographs of *another* room, stating that this room was “essentially identical in its layout to” the Room, without explaining their inability to produce photographs of the Room.<sup>74</sup>

(e) No explanation was given as to what “similar” or “essentially identical” meant.

59 It is curious why the respondent could not produce photographs of the Room, or at least a layout drawn to scale, when this information must be easily available to it. As stated above, the respondent’s solicitors avoided answering Mdm Pappa’s solicitors’ questions on this. Indeed, none of the respondent’s witnesses were asked if the photographs provided an accurate representation of the Room. The respondent also did not put to both Ms Tamilselvi and Mr Thiruchelvam that the photographs were an accurate representation of the

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<sup>74</sup> Ms Tamilselvi’s SAEIC at Exhibit TV-1.

Room, as it declined to cross-examine them. It is therefore unclear whether the dimensions of the Room and the rooms in the photographs are the same, and if not, how they differ.

60 Second, and more fundamentally, the photographs are not relevant to the position of the Visitor's Chair *at the material time*. This is because the Visitor's Chair was not fixed to any surface of the Room and could be moved. Ms Tamilselvi's evidence was that when she visited Mdm Pappa, she recalled the Visitor's Chair being placed further from the Bed than depicted in the photographs.<sup>75</sup> But that is also unhelpful as that was not specific to the time of the Fall.<sup>76</sup> Even taking the DJ's approach of reasoning from the relative positions of the sink, curtains surrounding the Bed and the Toilet door to deduce the distance between the Visitor's Chair and the Bed, the position of the Visitor's Chair next to the Bed as depicted in the photographs is also not logical as it would block access to the bedside drawers. Furthermore, neither party, at any point, relied on or addressed the issue of the Visitor's Chair blocking the curtain in the Room.

61 The fact of the matter is that the Visitor's Chair could be placed wherever the user wished it to be placed. The location of the Visitor's Chair at the time of the Fall should therefore not be determined by the relative positions of the curtains, sink and the door of the Toilet, and certainly not by looking at photographs of a different room. It is therefore possible that the Visitor's Chair was about a metre away from the Bed when Mdm Pappa sat in it on 10 April 2017.

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<sup>75</sup> Ms Tamilselvi's SAEIC at paras 8 and 11.

<sup>76</sup> Ms Tamilselvi's SAEIC at paras 8.



*Oral testimony*

62 As stated above, the only witnesses who gave evidence on the position of the Visitor’s Chair at the material time were Mdm Pappa and Ms Hou. Mdm Pappa did not agree with the position of the Visitor’s Chair in the photographs. Mdm Pappa testified that there were differences between the photographed room and the Room: she stated that the Visitor’s Chair had been further away from the Bed.<sup>77</sup>

63 Ms Hou stated in her AEIC: “I enclose as ‘HWF-1’ a photograph showing how [Mdm Pappa] (depicted by Enrolled Nurse Myat Swe Zin Myint in the photograph) was seated in the visitor’s chair beside her bed at the material time.”<sup>78</sup> “HWF-1” depicts the Visitor’s Chair immediately next to the Bed.<sup>79</sup> Accordingly, her evidence suggested that the distance between the Visitor’s Chair and the Bed when she was in the Room was as depicted in “HWF-1”, *ie*, they were less than a metre apart.

64 At the hearing of the appeal, the respondent’s counsel further submitted that in so far as Ms Myat and Ms Hou both testified that the Bell had been within Mdm Pappa’s reach while she was seated in the Visitor’s Chair, the logical conclusion was that the Visitor’s Chair had been close to the Bed. The DJ accepted Ms Myat and Ms Hou’s evidence that they had ensured that the Bell was within Mdm Pappa’s reach, stating that this was “one of the most routine thing[s] that would operate in the mind of a nurse, and there was simply no

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<sup>77</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p36 line 19; Mdm Pappa’s AEIC at para 20; SOC at para 9.

<sup>78</sup> Ms Hou’s AEIC at para 4.

<sup>79</sup> Ms Hou’s AEIC at Exhibit HWF-1.

reason for both Ms Myat and [Ms] Hou to have omitted to do so on this particular occasion.”<sup>80</sup> It is unsafe to draw this conclusion. First, Ms Myat and Ms Hou were not independent witnesses – they each had a personal incentive to testify as they did. If they had not left the Bell within reach, that would have constituted a breach of their duties. Second, and significantly, Ms Myat did not, and could not, give any evidence as to whether the Bell was within Mdm Pappa’s reach when she was seated in the Visitor’s Chair since, on the respondent’s case, Mdm Pappa had self-ambulated to the Visitor’s Chair after Ms Myat left the Room. Further, while the DJ characterised Mdm Pappa’s evidence that the Bell had not been within her reach as a bare assertion, the same could be said of Ms Hou’s evidence as well.

65 I therefore test the evidence of both parties against the objective evidence on what transpired between Mdm Pappa and Ms Hou when the latter was in the Room.

#### **Why was Mdm Pappa permitted to remain seated in the Visitor’s Chair?**

66 In my view, this is the most important issue as it deals with what happened just before the Fall. Further, it is also part of Mdm Pappa’s case that the respondent was negligent in failing to ensure that she was moved back to the Bed when she was found seated in the Visitor’s Chair by Ms Hou.

#### ***The Respondent’s Manual***

67 I first examine the respondent’s own protocols in relation to fall risk patients such as Mdm Pappa.

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<sup>80</sup> GD at para 80.

68 The Jurong Health Services Procedure Manual on the Management and Prevention of Fall (the “**Manual**”)<sup>81</sup> prescribes the following rule in relation to patients sitting out of bed:

5.3.2 Apply safety strap / belt when patient is seated out of bed and on a wheelchair, geriatric chair or commode. Ensure that geriatric chair if used, has a rest board, and that the wheels and brakes of movable devices are always locked.

69 It does not prescribe a separate set of rules for fall-risk patients in isolation rooms.<sup>82</sup> In any event, it is not disputed that the Visitor’s Chair was not equipped with straps or other safety devices.

70 It is also the respondent’s case that it was not appropriate to place Mdm Pappa in the Visitor’s Chair: it was put to Mdm Pappa that Ms Myat would not have seated Mdm Pappa on the Visitor’s Chair since they were trained not to do so.<sup>83</sup>

71 Ms Kaur confirmed that the Manual does not suggest that a fall-risk patient could be seated in the Visitor’s Chair<sup>84</sup> – instead, she stated that the Visitor’s Chair was for visitors’ use and not patients’ use.<sup>85</sup> Nonetheless, she testified that whether a patient found sitting in a visitor’s chair should be moved to the bed or the geriatric chair would depend on the nurses’ assessment of a number of other factors, including whether the patient was comfortably seated, whether the call bell was within reach, what the nurse was otherwise occupied

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<sup>81</sup> BOD3 at p518.

<sup>82</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p22 line 13.

<sup>83</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p24 lines 3–9.

<sup>84</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p24 line 19.

<sup>85</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p21 line 6.

with,<sup>86</sup> and whether the patient was cooperative.<sup>87</sup> I find some of these qualifications difficult to understand, given that the clear purpose of the rule was to ensure that the patient had adequate support to *prevent* a fall. It cannot be determinative that the patient is cooperative or has the call bell within reach – the patient may, *if not properly supported*, fall before they are able to call for help.

72 In contrast, Ms Myat’s testimony was unequivocal. She testified that the respondent’s rules require that fall-risk patients be seated on a geriatric chair and not the Visitor’s Chair<sup>88</sup> and that if a patient was found seated on a visitor’s chair, they should be transferred to a geriatric chair.<sup>89</sup> She explained that this was because there were safety features on a geriatric chair, including a safety belt and a lap board,<sup>90</sup> which was accordingly much safer for the patient.<sup>91</sup> She also agreed that it was “wrong” for a patient to sit in the Visitor’s Chair<sup>92</sup> and that this was “not a very safe thing”.<sup>93</sup>

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<sup>86</sup> Ms Kaur’s Re-examination (“**REX**”) / Court Transcript (Day 2: 31 March 2022) at p39 lines 5–9, 16–22.

<sup>87</sup> Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p40 lines 7, 8, 10 and 11.

<sup>88</sup> Ms Myat’s Examination-in-Chief / Court Transcript (Day 2: 31 March 2022) at p42 lines 31 and 32; Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p44 lines 17, 22 and 25.

<sup>89</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p45 line 1, p53 line 7.

<sup>90</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p44 lines 1, 4, 8 and 10, p53 lines 1–3.

<sup>91</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p44 line 19.

<sup>92</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p44 line 25.

<sup>93</sup> Ms Myat’s XX / Court Transcript (Day 2: 31 March 2022) at p44 line 30.

***Ms Hou's evidence***

73 Ms Hou's evidence was that she had entered the Room at about 8.40am,<sup>94</sup> administered medication to Mdm Pappa and left thereafter. She said that she had attempted to raise the railing of the Bed on the side closer to Mdm Pappa, but had been stopped by Mdm Pappa. It is curious why she had tried to do so given that Mdm Pappa was not in the Bed, but she was not asked about this at the trial. Ms Hou testified that she had not thought it necessary to move Mdm Pappa back to the Bed as she had appeared comfortable and Mdm Pappa had not informed her of any pain or discomfort.<sup>95</sup> This was important to Ms Hou's evidence as she had testified, consistent with what Ms Kaur said,<sup>96</sup> that she would have moved Mdm Pappa back to the Bed if Mdm Pappa had informed her that she was experiencing discomfort.<sup>97</sup> The DJ accepted Ms Hou's evidence.

74 The main problem with Ms Hou's evidence is that it is inconsistent with the respondent's own records.

75 The records show that at about 8.39am, two Ketoprofen 30mg plasters (the "**Plasters**") were applied on Mdm Pappa's middle back and right knee. Ms Kaur testified, and it is undisputed, that such plasters are used as pain relief,

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<sup>94</sup> Ms Hou's AEIC at para 4.

<sup>95</sup> Defence at paras 9(c), 15(c), 16(c) and 16(g)(i); Ms Hou's AEIC at para 8.

<sup>96</sup> Ms Kaur's XX / Court Transcript (Day 2: 31 March 2022) at p39 lines 6–9.

<sup>97</sup> Ms Hou's AEIC at para 8; Ms Hou's XX / Court Transcript (Day 3: 19 May 2022) at p15 lines 25 and 26.

and are applied where the patient is experiencing pain.<sup>98</sup> The clear inference is that Mdm Pappa was suffering some pain, *inter alia*, in her back, and informed Ms Hou of this.

76 Ms Hou denied that this happened, but her evidence is unsatisfactory. In her AEIC, she made no mention of applying the Plasters and stated that “at no point did [Mdm Pappa] inform me that she had any back pain or was in any discomfort”.<sup>99</sup> Under cross-examination, she testified that Mdm Pappa had not complained of pain in her back but had merely requested for plasters, and that it was common practice to give patients additional plasters for future use if they asked for it. Her answer is worth reproducing:

Q Ms Hou, would you have administered this plaster if not for a complaint from the patient that she was experiencing pain on her back?

A I can recall the time I never really noticed the patient complained of pain or on her back, but she just request the plaster, I just give. Because when we do the plaster, some patient will always ask for standby or extra. She must request, so I give. But I didn't recall she was really in back pain at that time.<sup>100</sup>

77 The DJ reproduced the above portion of Ms Hou's cross-examination in his GD and accepted her evidence.<sup>101</sup> But it is plainly not credible.

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<sup>98</sup> BOD2 at p304; Ms Kaur's XX / Court Transcript (Day 2: 31 March 2022) at p19 line 29, p20 lines 7 and 10; Ms Hou's XX / Court Transcript (Day 3: 19 May 2022) at p12 line 31, p14 line 30.

<sup>99</sup> Ms Hou's AEIC at para 8.

<sup>100</sup> Ms Hou's XX / Court Transcript (Day 3: 19 May 2022) at p15 lines 1–8.

<sup>101</sup> GD at para 75.

78 First, the obvious difficulty with Ms Hou’s answer is that the Plasters had not been just given to Mdm Pappa, but had been *applied* on her.<sup>102</sup> Second, even her own answer, taken on its face, appeared to refer to patients who already have plasters applied on them and are asking for more. Third, how would Ms Hou know *where* to apply the Plasters, in this case, Mdm Pappa’s right knee and middle back, unless Mdm Pappa specifically informed her of the areas where she was suffering pain? As stated above, the undisputed evidence was that Ketoprofen plasters are applied where the patient is experiencing pain. Fourth, according to the respondent’s records, this appeared to be the first time Ketoprofen 30mg plasters were applied to Mdm Pappa’s back, specifically; the respondent’s records make clear that Ketoprofen 30mg plasters had previously been administered but do not specify locations for those instances.

79 In fact, a closer look at Ms Hou’s evidence reflects an attempt to distance herself from the implications of her application of the Plasters on Mdm Pappa. Ms Hou first agreed that she had applied the Plasters on Mdm Pappa’s back and knee.<sup>103</sup> However, when Mdm Pappa’s counsel later asked if Ms Hou had administered the Plasters because of Mdm Pappa’s complaint of back pain, she denied that Mdm Pappa had suffered from back pain and framed her response as giving the Plasters “for standby or extra”.<sup>104</sup> This is the response reproduced by the DJ, *to the exclusion of her earlier contradictory answer*. Ms Hou then denied that the application of the Plasters

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<sup>102</sup> BOD2 at p304; Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p19 line 29, p20 lines 7 and 10; Ms Hou’s XX / Court Transcript (Day 3: 19 May 2022) at p12 line 31.

<sup>103</sup> Ms Hou’s XX / Court Transcript (Day 3: 19 May 2022) at p12 line 31, p14 lines 7–16.

<sup>104</sup> Ms Hou’s XX / Court Transcript (Day 3: 19 May 2022) at p15 lines 4–8.

meant that Mdm Pappa had been experiencing back pain.<sup>105</sup> This response is questionable – as counsel for Mdm Pappa submitted, there was no reason for Ms Hou to have placed the Plasters on Mdm Pappa’s back if she had not been suffering back pain. Ms Kaur’s evidence (at [75] above) supports this submission. Ms Hou’s attempt to explain away the application of the Plasters is suggestive of evasion. My finding that Mdm Pappa had experienced and informed the respondent of some pain is not, in my view, affected by Mdm Pappa’s evidence that she had not told any nurses or doctors about her back pain.<sup>106</sup> The objective evidence clearly shows that she must have told Ms Hou about the pain in her back and knee.

80 There is thus objective evidence of Mdm Pappa experiencing back pain before the Fall. Ms Hou’s evidence is suspect, and this also calls into question her assertion that the Bell was within Mdm Pappa’s reach.

81 The evidence also contradicts the DJ’s finding that Mdm Pappa did not make any complaint of back pain throughout her admission at JCH from 20 March 2017 to 10 April 2017.<sup>107</sup>

### **Why did Mdm Pappa try to move back to the Bed on her own?**

82 The respondent has not offered any theory as to why Mdm Pappa would choose to move back to the Bed on her own, save that it was a decision she had made despite being able to ask for assistance. Mdm Pappa’s case is that after Ms Hou left the Room, she felt unbearable pain in her back; unable to reach the

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<sup>105</sup> Ms Hou’s XX / Court Transcript (Day 3: 19 May 2022) at p15 line 21.

<sup>106</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p32 line 31.

<sup>107</sup> GD at para 74.



Bell and unsure of when a member of staff would return to the Room, she decided to try and get back to the Bed by herself, but fell.

83 The DJ rejected Mdm Pappa’s evidence that she had suffered unbearable back pain, describing it as “an afterthought concocted to plug the gap in her case and provide a justification for her attempt to self-transfer from the [V]isitor’s [C]hair to the [B]ed.”<sup>108</sup> This finding is doubtful, given that the DJ did not take into account the objective evidence that Mdm Pappa had been administered the Plasters for her back. Given her age and medical condition, it is not implausible that her pain had become worse the longer she had been seated in the Visitor’s Chair. After all, the Visitor’s Chair was not suitable for Mdm Pappa to sit in.

84 I nonetheless consider this issue by also referring to two other sources of evidence, namely Mdm Pappa’s reported pain scores and medical records, and Mdm Pappa’s contemporaneous account of the Fall. The DJ considered the former, but not the latter.

#### ***Mdm Pappa’s pain score***

85 At the trial below, Mdm Pappa’s Counsel referred to the hospital records showing Mdm Pappa to have suffered “constant/continuous” pain at 8.20am in the morning of the Fall. The DJ did not accept the argument as the “pain descriptor” was one of “aching/discomfort”. The DJ also noted that the pain score was only indicated as “1” (out of 10).<sup>109</sup>

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<sup>108</sup> Respondent’s Written Closing Submissions at para 28; GD at para 78.

<sup>109</sup> GD at para 76.

86 Mdm Pappa’s pain scores in the morning before the Fall were recorded in her “Vital Signs” records which the respondent kept.<sup>110</sup> According to these records, her pain scores were as follows:

(a) At 8.20am, she had a pain score of “1”, with the pain located on her right leg. This was described as “Aching; Discomfort” and its frequency was “Constant/continuous”. This appears to have been recorded by Ms Myat, although she had no recollection of this, nor of making the said pain assessment.<sup>111</sup>

(b) At 8.36am, she had a pain score of “0”, with no other details provided. This was recorded by Ms Hou.

(c) At 8.39am, she had a pain score of “0”, with no other details provided. This was recorded by Ms Hou.

(d) At 9.12am, she had a pain score of “0”, with no other details provided. This was recorded by Ms Hou.

(e) At 10.30am, she had a pain score of “5”, with the pain located on her left leg. This was described as “Aching”. This was recorded by Ms Hou.

87 I find these records highly unsatisfactory and unreliable. First, it is incredible that Ms Hou recorded Mdm Pappa’s pain score as “0” at 9.12am, just a few minutes after the Fall which resulted in a broken femur. The unchallenged

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<sup>110</sup> BOD2 at p347; Ms Kaur’s XX / Court Transcript (Day 2: 31 March 2022) at p17 lines 14–32.

<sup>111</sup> BOD2 p347 and p652; Ms Myat’s REX / Court Transcript (Day 2: 31 March 2022) at p55 line 30.

evidence was that Mdm Pappa had been in considerable pain and crying.<sup>112</sup> Second, it is unclear how these assessments were even done. It is undisputed that Mdm Pappa only spoke Tamil and both Ms Myat and Ms Hou could not. They testified that they had communicated with Mdm Pappa using hand gestures and simple words.<sup>113</sup> But, as the respondent's counsel conceded at the hearing of the appeal, a pain assessment requires the attending nurse/staff to engage with the patient to ascertain the degree of pain. It is unclear how this could be done with hand gestures and simple words. Third, it is not Ms Myat and Ms Hou's evidence that they even made any pain assessments that day. When asked about the pain score she had purportedly recorded at 8.20am, Ms Myat stated that she could not recall if she had recorded Mdm Pappa's pain score or assessed Mdm Pappa for pain.<sup>114</sup> Ms Hou's evidence, which is more material, was that Mdm Pappa had looked comfortable and had not complained of pain, and her only engagement had been to give Mdm Pappa her medication. If Ms Hou had asked Mdm Pappa if she was in pain or conducted a pain assessment, this would have been material, but that was not her evidence.

88 I note that Mdm Pappa challenged the reliability of these records, both in her pleadings<sup>115</sup> and as a ground of appeal.<sup>116</sup> However, neither Ms Hou nor any of the other witnesses for the respondent were asked about the pain scores. Nonetheless, the respondent is also not relying on the records as evidence of the

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<sup>112</sup> Mdm Pappa' AEIC at para 27.

<sup>113</sup> Ms Myat's XX / Court Transcript (Day 2: 31 March 2022) at p50 line 24, p51 lines 31 and 32, p52 lines 1 and 2; Answer to interrogatories at no. 3; Ms Hou's AEIC at para 10.

<sup>114</sup> Ms Myat's XX / Court Transcript (Day 2: 31 March 2022) at p50 lines 8 and 12.

<sup>115</sup> Reply at para 35.

<sup>116</sup> Appellant's Case at para 70.

pain experienced by Mdm Pappa at the material time, and no weight should therefore be placed on them.

89 In the circumstances, in so far as the DJ relied on the low pain score given at 8.20am as evidence that Mdm Pappa had not had unbearable back pain, that was an error. In any event, Ms Myat, on her own evidence, left the Room after leaving Mdm Pappa sitting on the Bed. Even if Ms Myat seated Mdm Pappa in the Visitor's Chair, she left the Room shortly thereafter. The low pain score recorded by Ms Myat, even if she carried out the pain assessment and even if accurate, would not be reflective of Mdm Pappa's condition after having sat in the Visitor's Chair for some time.

***Mdm Pappa's contemporaneous account of the Fall***

90 The DJ failed to consider an important piece of evidence.

91 At about 10:40am, less than two hours after the Fall, Mdm Pappa gave an account to a doctor of what happened. Her son, Mr Thiruchelvam, acted as interpreter, and set out what he interpreted in his AEIC. Mr Thiruchelvam's evidence was that Mdm Pappa had informed the doctor that after she was left seated in the Visitor's Chair, she began to suffer unbearable back pain, tried to get up from the Visitor's Chair to go to the Bed to rest, but fell; Mdm Pappa had also told the doctor that the Bell was not within her reach and she was therefore unable to call for assistance.<sup>117</sup>

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<sup>117</sup> Mr Thiruchelvam's AEIC at para 19.

92 The facts of (a) this meeting with the doctor; and (b) Mr Thiruchelvam’s involvement as an interpreter, are corroborated by a Progress Note recorded by one Dr Hong Weng Tan on 10 April 2017 at 10.41am.<sup>118</sup>

93 The Progress Note does not record anything about Mdm Pappa’s back pain. However, that is not material as the respondent did not challenge Mr Thiruchelvam’s evidence and did not call Dr Hong. At the hearing of the appeal, the respondent’s counsel stated that the respondent did not dispute Mr Thiruchelvam’s evidence of the account he interpreted to the doctor. The respondent argued instead that Mr Thiruchelvam’s evidence regarding the Fall constituted hearsay.<sup>119</sup> The DJ accepted this argument.<sup>120</sup> With respect, the DJ erred in disregarding Mr Thiruchelvam’s evidence entirely.

94 It is undisputed that what Mr Thiruchelvam interpreted to the doctor on behalf of Mdm Pappa at 10.40am was accurately set out in his AEIC. It also appears that this was her first opportunity to recount what had happened.

95 Mdm Pappa’s account to the doctor hence constitutes a contemporaneous account of the Fall. A contemporaneous account of a witness which corroborates their testimony at trial makes their evidence more credible: in *Re A (Relocation)* [2020] EWHC 2878 (Fam), the court found that the father had assaulted the mother, on the basis of “photographic evidence, the discharge summary from local hospital Emergency Department, and the police disclosure *including the mother’s contemporaneous account to the police and that of her work colleagues*” [emphasis added] (at [65]). Here, Mdm Pappa’s

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<sup>118</sup> BOD2 at p86.

<sup>119</sup> Respondent’s Reply Submissions at para 12.

<sup>120</sup> GD at para 56.

contemporaneous account lends credence to her testimony (at [91] above). While in the above case the mother's contemporaneous account was reduced to writing, this distinction is not material as the respondent accepts that Mr Thiruchelvam's AEIC accurately reflected what he had interpreted at the material time. The contemporaneity of Mdm Pappa's account, which included the fact that the Bell had not been within her reach and that her unbearable back pain had prompted her attempt to self-ambulate to the Bed, thus corroborates her testimony at trial.

96 At the hearing of the appeal, the respondent's counsel accepted that the court could rely on Mr Thiruchelvam's evidence as corroboration of Mdm Pappa's evidence, albeit that limited weight should be accorded to it.

97 In the circumstances, I disagree with the DJ's dismissal of Mdm Pappa's evidence of being in considerable back pain on the basis that this evidence was a "concoct[ion]" and an "afterthought". Mdm Pappa mentioned her unbearable back pain *less than two hours* after the Fall, while in severe pain and distress.<sup>121</sup> It is harsh to suggest that she would have had the wherewithal to concoct her story in such circumstances. This was the substance of her account of how the Fall happened, and she has maintained this throughout these proceedings.

***Mdm Pappa's testimony of unbearable back pain***

98 Mdm Pappa said that she had started to experience immense and unbearable back pain after Ms Hou had left the Room.<sup>122</sup> I find her evidence on this issue credible.

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<sup>121</sup> Ms Tamilselvi's AEIC at para 16.

<sup>122</sup> SOC at para 11; Mdm Pappa's AEIC at para 22.

99 First, as explained above, it is evident that Mdm Pappa experienced some pain in her back prior to Ms Hou leaving the Room (at [75]–[80] above). Second, she was elderly, recovering from surgery and unable to ambulate. It also appears that this was the first time she was seated in the Visitor’s Chair,<sup>123</sup> which, as discussed above, was not suitable for her. Accordingly, it is possible that the intensity of back pain escalated the longer she sat there. Third, the degree and intensity of pain suffered by Mdm Pappa is necessarily subjective. Fourth, as discussed above, her evidence is supported by her contemporaneous account. There is therefore sufficient evidence to conclude that Mdm Pappa’s back pain was severe enough to prompt her to get up from the Visitor’s Chair.

100 I therefore find that there is sufficient evidence to support Mdm Pappa’s case, on a balance of probabilities, that the Bell was not within her reach and that she got up from the Visitor’s Chair unassisted on account of the back pain she was suffering.

#### ***Evidence concerning the Table***

101 The parties led evidence and made submissions on the position of the Table. Mdm Pappa argued that Ms Myat’s evidence was not credible as, in order for her to have self-ambulated from the Bed to the Visitor’s Chair, she would have had to push the Table away, which she could not do.<sup>124</sup> The respondent argues that this was something Mdm Pappa could have done. The DJ based his

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<sup>123</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p17 line 20–28, p18 line 11.

<sup>124</sup> Appellant’s Case at paras 53 and 54 (see also Plaintiff’s Written Closing Submissions at para 32).

conclusion in part on a finding that Mdm Pappa had been able to push the Table away from her in order to move back to the Bed.<sup>125</sup>

102 I do not find this issue material, and the evidence led is also unhelpful. The respondent sought to prove at trial that Mdm Pappa would have been able to move the Table by showing a video depicting how the Table could be moved, while its wheels were both locked and unlocked.<sup>126</sup> I do not find the video instructive given that (a) it depicts the Table (or its equivalent) being pushed by a much younger person standing up; (b) it does not show the movement of the Table when pushed by Mdm Pappa, or someone of similar strength and stature, while sitting on the Bed (which is the respondent's case); (c) it is undisputed that Mdm Pappa's breakfast was placed on the Table at the material time, and the video does not include that additional weight on the Table, or whether it could be pushed without spilling the breakfast; and (d) the video does not show how the Table could be pushed away from the Bed and repositioned in front of the Visitor's Chair after Mdm Pappa allegedly self-ambulated there (which is the respondent's case). Indeed, according to the video, if the Table was pushed in a certain way, it might topple.

103 Furthermore, given that it is the respondent's case that Mdm Pappa had been able to move from the Bed to the Visitor's Chair and reposition the Table, insufficient evidence was led as to whether this was possible. The DJ's finding that Mdm Pappa was able to push the Table is ultimately not helpful to either party.

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<sup>125</sup> GD at paras 52 and 67.

<sup>126</sup> Ms Kaur's AEIC at Exhibit AK-1; Ms Myat's AEIC at Exhibit MSZM-1.



### **Credibility of witnesses**

104 Given the objective evidence that the DJ did not either deal with or properly consider, his approach, which placed significant weight on the relative credibility of Mdm Pappa, Ms Myat and Ms Hou, is flawed; further, I disagree with aspects of the DJ's assessment of their relative credibility.

#### ***Credibility of Ms Myat and Ms Hou***

105 As stated above, the DJ appears not to have recognised that Ms Myat and Ms Hou were not independent witnesses or disinterested bystanders. It was in their personal interests to advance the version of facts that they did at trial. I have highlighted above various unsatisfactory aspects of their evidence.

106 Further, Ms Myat's evidence, that it was unsafe to seat Mdm Pappa, or allow Mdm Pappa to remain seated, in the Visitor's Chair, should not have been regarded as a strong factor in assessing Ms Myat's credibility, as the DJ found.<sup>127</sup> This evidence was not against Ms Myat's interests, since her position was that she had not moved Mdm Pappa to the Visitor's Chair.

#### ***Credibility of Mdm Pappa***

107 The DJ's findings were largely premised on his assessment that Mdm Pappa was not a credible witness. The DJ found that Mdm Pappa was evasive and her testimony appeared to be rehearsed,<sup>128</sup> and that she would

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<sup>127</sup> GD at para 58.

<sup>128</sup> GD at para 59.

change her evidence when confronted with evidence that did not align with her case.<sup>129</sup>

108 While the DJ did recognise Mdm Pappa’s advanced age, I find that he failed to give this sufficient weight. Mdm Pappa was an elderly, uneducated woman who had been through a traumatic and difficult period. By the time she gave evidence, she was 79 years old and it had been about four years since the Fall. Further, as a result of the Fall, her life had been affected considerably for the worse – she was no longer able to be independent and enjoy her usual activities. In the time between the Fall and her evidence, she lost her husband, who she had been caring for on account of his dementia. Her testimony also evidenced confusion and a failing memory, which make her contemporaneous account – which the DJ disregarded – all the more important. What came out clearly from her testimony was that she held the respondent responsible not only for her fall, but also the failure to respond promptly to her activation of the Bell, thereby leaving her on the floor in agony, in her mind, for a long time – I deal with this issue in the section below. Her impression was that the respondent’s staff were irritated by her constant use of the Bell and she also believed that the respondent would fabricate documents against her – her answers during cross-examination betrayed her dislike and suspicions of the respondent.

109 A clear example of the DJ’s mischaracterisation of her evidence is his finding that her claim to be suffering from back pain was an afterthought and was concocted. This is unwarranted and fails to take into account relevant evidence, including objective evidence that she had suffered from back pain before the Fall (at [75] above). The DJ also failed to consider that Mdm Pappa

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<sup>129</sup> GD at para 66.

had narrated a version of events largely consistent with the material aspects of her case less than two hours after the Fall, while she had been in great pain (at [91] above). It is therefore not the case that Mdm Pappa came to court, after obtaining legal advice, with a version of events which would increase her prospects of obtaining judgment.

110 In addition, where Mdm Pappa gave evidence that was incorrect or did not make sense, they appear to be on account of confusion and not dishonesty:<sup>130</sup>

(a) Mdm Pappa denied using the Toilet and claimed that she had been using pampers and had been wiped in lieu of having showers, although this contradicted the respondent's records. The respondent argued that this was a deliberate lie by Mdm Pappa to exaggerate her lack of mobility and the DJ relied specifically on this to highlight that Mdm Pappa was defensive and evasive.<sup>131</sup> As stated above, I agree that Mdm Pappa did embellish her evidence on this issue. However, shortly after giving this evidence, Mdm Pappa testified that she could not remember if she had gone to the Toilet.<sup>132</sup> This suggests confusion on her part. In any event, as stated above, the fact that she had gone to the Toilet with assistance does not undermine her case that she could not, and would not, ambulate independently. In fact, as the DJ himself observed, Mdm Pappa's allegation that the respondent fabricated the records of her toilet use had no bearing on the Fall.<sup>133</sup>

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<sup>130</sup> GD at paras 59, 60 and 66.

<sup>131</sup> GD at para 61.

<sup>132</sup> Mdm Pappa's XX / Court Transcript (Day 1: 30 March 2022) at p22 line 21, p23 lines 6 and 12.

<sup>133</sup> GD at para 62.

(b) The DJ relied on Mdm Pappa's dismissal of the respondent's call bell records<sup>134</sup> and found that this affected her credibility because her denial was calculated to ensure consistency with her case that the respondent had shown her minimal care and had taken a long time to respond whenever she had activated the call bell for help, including on the day of the Fall.<sup>135</sup> In my view, this conclusion is unwarranted. First, the extracts of the evidence the DJ relied on reflect Mdm Pappa's denial only in respect of specific occasions, and not all the time. Indeed, the extracts only show confusion on Mdm Pappa's part. Second, it has always been Mdm Pappa's case, and it is undisputed by the respondent, that she had dutifully followed instructions to press the bell when she had needed assistance. Her denial in the extracts does not change that position or improve her case. Third, there is in fact no record of how long the respondent's nurses had taken to respond to Mdm Pappa's call after the Fall,<sup>136</sup> and neither was it put to her that the respondent's staff had always responded to her use of the Bell within a short time. I deal with this below at [114] and [115].

(c) While discussing whether Mdm Pappa had been able to push the Table, Mdm Pappa suddenly stated that there had been no Table in the Room,<sup>137</sup> after giving evidence that there had been one.<sup>138</sup> In my view,

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<sup>134</sup> GD at para 63.

<sup>135</sup> GD at para 64.

<sup>136</sup> Ms Kaur's XX / Certified Transcript (Day 2: 31 March 2022) at p36 line 9.

<sup>137</sup> Mdm Pappa's XX / Court Transcript (Day 1: 30 March 2022) at p26 lines 7 and 8.

<sup>138</sup> SOC at para 13; Mdm Pappa's AEIC at para 24; Mdm Pappa's XX / Court Transcript (Day 1: 30 March 2022) at p25 lines 25 and 31, p26 lines 3 and 5.

this evidence does not help Mdm Pappa’s case at all and only points to her confusion, a conclusion which the DJ similarly reached.<sup>139</sup>

## **After the Fall**

### ***Time taken to respond***

111 My decision does not turn on the time taken by the respondent to respond to Mdm Pappa’s activation of the Bell at 8.53am following the Fall, but certain aspects of the evidence are troubling.

112 Mdm Pappa’s evidence was that after the Fall, she had pressed the Bell a few times<sup>140</sup> but no one came to her aid for some time. It was only after 10–15 minutes that a nurse had entered the Room.<sup>141</sup> Given the extreme pain Mdm Pappa had undoubtedly been in, her time estimate may not be reliable.

113 In contrast, the respondent pleaded that they had responded within seven minutes of the Bell being activated.<sup>142</sup> But it failed to adduce any evidence on this. The only contemporaneous reference to the seven-minute time period appears to be in a Progress Note written by Ms Hou at 2.02pm on 10 April 2017, which states that she “Was informed by EN Jane patient fell down at 0900hrs”.<sup>143</sup> Ms Hou did not refer to this document in her evidence. It is also not relevant since, first, Ms Hou was not the first nurse who had attended to Mdm

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<sup>139</sup> GD at para 65.

<sup>140</sup> SOC at para 14; Mdm Pappa’s AEIC at para 25; Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p27 line 2, p37 lines 16, 17 and 19.

<sup>141</sup> SOC at paras 15, 22(g), 22(i).

<sup>142</sup> Defence at para 16(e); Defence at Annex A: nursing report at para 8.

<sup>143</sup> BOD2 at p89.

Pappa and EN Jane was not called and no evidence was led from her as to when she had discovered that Mdm Pappa had fallen. Second, Ms Hou’s statement that Mdm Pappa had fallen at 9am is inaccurate since Mdm Pappa must have suffered the Fall before 8.53am, when she had pressed the Bell for assistance. Finally, the Progress Note does not say that Mdm Pappa had been attended to at 9am.

114 The respondent’s records do not show how long the respondent took to respond to Mdm Pappa’s activation of the Bell at 8:53am. The respondent’s system is designed such that it will record the time a bell is activated, and when a staff member attends to the patient and terminates the alarm. There is, however, one significant limitation: Ms Kaur testified that the system will not record the time taken to respond if it exceeds 5 minutes and 30 seconds from the time of activation – where the records state “Cancelled By: Escalation timeout”, the respondent can only say that the call bell was responded to *after* 5 minutes and 30 seconds.<sup>144</sup> That is what the respondent’s records reflect in Mdm Pappa’s case,<sup>145</sup> which means that she was attended to more than 5 minutes and 30 seconds after she had activated the Bell at 8.53am following the Fall.<sup>146</sup>

115 At the appeal, I asked the respondent’s counsel for the reason for this limitation, but she had no instructions on the matter. This was also not explored at the trial. It seems to me that the respondent would want to know how long its staff take to respond to alerts, both generally and in specific cases, for medical,

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<sup>144</sup> Ms Kaur’s XX / Certified Transcript (Day 2: 31 March 2022) at p35 lines 28 and 31.

<sup>145</sup> BOD3 at p610.

<sup>146</sup> Ms Kaur’s XX / Certified Transcript (Day 2: 31 March 2022) at p36 line 5.

operational, administrative and other purposes. It is therefore curious that the system is designed that way.

***Whether pressing the Bell once meant that Mdm Pappa did not require immediate assistance***

116 More troublingly, the respondent’s counsel put to Mdm Pappa that the fact that she had pressed the Bell only once meant that the respondent would not have known that she had required immediate assistance. This exchange is reproduced below:

Q And since, based on this record, which I just showed you you only pressed it once, I put it to you that the hospital staff would not have known that you required immediate help, you can agree or disagree.

A No, no.

Q Sorry, can you clarify when you say “no”? Do you agree or disagree that the hospital staff would not have known that you required immediate assistance?

A I disagree.<sup>147</sup>

117 At the hearing of the appeal, the respondent’s counsel maintained that the single press of the Bell meant that the response time of the respondent was reasonable; in contrast, had Mdm Pappa pressed the Bell several times in close succession, there would be a reasonable argument for the respondent to have responded more quickly.

118 I find this argument untenable and unfortunate. The purpose of the Bell is for Mdm Pappa to seek assistance when she needed it, including for emergencies. Considering that she was an elderly, fall-risk patient in an isolation room with no visibility from the outside and with no other patients around to

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<sup>147</sup> Mdm Pappa’s XX / Court Transcript (Day 1: 30 March 2022) at p39 lines 1–9.

assist her, it is incredible for the respondent to maintain that the onus was on Mdm Pappa to press the Bell multiple times in quick succession to get timely assistance. It completely ignores the very real possibility that her situation may be such that she could only press the Bell once. It was also not in evidence that Mdm Pappa had been told to press the Bell multiple times in an emergency. Indeed, the respondent's argument only suggests that Mdm Pappa could and would have been attended to sooner, had she pressed the bell repeatedly.

### **Whether the respondent had breached its duty of care to Mdm Pappa**

119 For the reasons above, I find that the respondent did, by (a) leaving Mdm Pappa in the Visitor's Chair and failing to move her to the Bed despite knowing that she was suffering pain in her back; and (b) failing to ensure the Bell was within her reach, breach its duty of care owed to Mdm Pappa.

### ***The applicable standard of care***

120 It is not disputed that the respondent owed a duty to take reasonable steps to minimise Mdm Pappa's risk of falls during her admission at JCH.<sup>148</sup> The only issue in contention is the standard of care. In my view, considering that Mdm Pappa was an elderly fall-risk patient who suffered giddiness, was unable to self-ambulate and occupied an isolation room with no visibility from outside the Room (*ie*, from the ward), the standard of care required that (a) Mdm Pappa should not have been allowed to occupy the Visitor's Chair, particularly in circumstances where she was suffering pain; and (b) the Bell should have been placed within her reach. I elaborate on each limb below.

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<sup>148</sup> Defence at para 5.



121 First, the standard of care owed by the respondent to Mdm Pappa required that the respondent should have ensured that Mdm Pappa had been seated, if not on the Bed, then on the geriatric chair. Given that Mdm Pappa was recovering from surgery, elderly and seated for the first time on the Visitor’s Chair which was not suitable for her use, there was a reasonably foreseeable risk that she would suffer discomfort or pain or not be adequately supported. In these circumstances, the respondent should not, in the first place, have allowed her to be seated in the Visitor’s Chair, which provides no safety features and is hence riskier. Furthermore, given that she had been in an isolation ward and had not been constantly monitored, it was also foreseeable that when she in fact started suffering discomfort or pain, she could not directly and immediately seek assistance from the respondent. While this would, to a significant extent, be mitigated by having the Bell within reach, this was not the case here. Accordingly, the respondent should have taken precautions: when Mdm Pappa had made known to Ms Hou that she was suffering some pain, Ms Hou should have moved Mdm Pappa to either the Bed or the geriatric chair. This is also prescribed by the Manual (at [68] above) and the respondent’s witnesses testified to the same effect (Ms Kaur at [71]; Ms Myat at [72] above). In fact, Ms Hou herself gave evidence that, if a patient experienced back pain, she would have transferred the patient back to their bed because it would be more comfortable “as well as much more safer for the patient”.<sup>149</sup> Clearly, regardless of whether Mdm Pappa expressly asked to be moved back to the Bed, the respondent ought to have moved her to the Bed, particularly as soon as it was aware that she suffered pain. Second, for the same reasons above, the respondent had to, in order to meet its standard of care, have ensured that the Bell was at

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<sup>149</sup> Ms Hou’s AEIC at para 8; Ms Hou’s XX / Court Transcript (Day 3: 19 May 2022) at p15 lines 25 to 29.

all times within Mdm Pappa's reach. Mdm Pappa could only have asked for help by pressing the Bell, since she could neither shout nor gesture in order to get attention. Furthermore, it should be highlighted that a key plank of the respondent's case is that Mdm Pappa had been a cooperative patient who had no difficulty pressing the Bell: indeed, this was a reason cited by the respondent's witnesses to explain why it was not necessary that a nurse, family member or caregiver remain with Mdm Pappa at all times and why she did not need to be moved from the Visitor's Chair to the Bed.<sup>150</sup> Indeed, the respondent itself appears to acknowledge that placing the Bell within Mdm Pappa's reach was crucial to their meeting the standard of care required of them.<sup>151</sup>

122 Notwithstanding that Mdm Pappa pleaded as a ground of appeal that the respondent failed to monitor her adequately by not having CCTVs installed in the Room,<sup>152</sup> no evidence was led that CCTVs needed to be installed to meet the standard of care. In light of the findings above, I do not need to say more about this issue.

### ***Breach of duty of care***

123 I found that Ms Hou had allowed Mdm Pappa to continue sitting on the Visitor's Chair despite having been informed of Mdm Pappa's pain. I also found that the Bell had, on the balance of probabilities, not been placed within Mdm Pappa's reach. Accordingly, the respondent had breached its duty of care owed to Mdm Pappa.

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<sup>150</sup> Ms Kaur's XX / Court Transcript (Day 2: 31 March 2022) at p39 lines 21–31, p40 lines 7, 8, 10 and 11; Defendant's Reply Submissions at paras 23 and 29.

<sup>151</sup> Respondent's Case at paras 61 and 62.

<sup>152</sup> Appellant's Case at paras 77 and 83(d).

***Causation***

124 The respondent's failure to observe their duty of care to Mdm Pappa had thus set the stage for the Fall, and caused Mdm Pappa to suffer loss. The evidence suggests that, but for the respondent allowing Mdm Pappa to remain seated in the Visitor's Chair and failing to ensure that the Bell was within her reach, Mdm Pappa would not have suffered the Fall. However, the issue of whether Mdm Pappa is to some, if any, degree responsible, by choosing to attempt self-ambulation, goes to the issue of contributory negligence.

***Conclusion***

125 I therefore overturn the DJ's verdict dismissing Mdm Pappa's claim. I will hear parties separately on the issue of contributory negligence and costs.

Hri Kumar Nair  
Judge of the High Court

Palaniappan Sundararaj and Ranita Yogeewaran (K&L Gates Straits  
Law LLC) for the appellant;  
Vanessa Yong and Melissa Er (Legal Clinic LLC) for the respondent.

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