6 September 2000 was just another working day for Nib Bahadur Sunar in Hong Kong. He was happy with his job at the Tin-Wo-Engineering company that was subcon-tracted by the construction giant Paul Y-ITC Construction Holdings, a Hong Kong-based company that has construc-tion projects in seven countries in the Asia Pacific region. Paul Y-ITC in turn was contracted by the Mass Transit Railway (MTR) that carries over two million persons every day.

It was Sunar’s sixth day in this job. As one of four ‘steel fixers’ he loaded 20 to 30 12-metre steel reinforcing rods into a rod-bending machine. Sunar’s job was to hold the rods while the machine bent them.

At about 4.30 p.m. Sunar was at the machine when the operator pressed the wrong button and the rod he was holding smashed into his stomach. He fell backwards onto the stack of rods with unbearable pains in his back and stomach; he felt as if he were going to die. His workmates tried to help him but the operator told them to go back to work. He lost consciousness as sympathetic workmates helped to take him to the site office. He was taken to hospital, where he was treated and then discharged the next day. He went home hoping that he would soon be better and back at work. He never imagined what lay in store.

From Hong Kong to Nepal and back

Sunar was born in Hong Kong in 1962 where his father was working for the British Army. In 1972 his father died and due to residency requirements in Hong Kong he moved to Nepal where life was hard. Sunar dreamed of returning to Hong Kong, to earn a living and sustain himself and his family. His dream came true in 1995 when he was awarded permanent residency in Hong Kong. He returned working first as a watchman and then on the construction of Hong Kong’s new airport where he earned well, making from HK$400* to HK$600 (US$1.00 = HK$7.73) a day and of Hong Kong’s new airport where he earned well, making.

From bad to worse

Sunar was given two weeks’ sick leave at the hospital and advised to take bed rest. But in less than a week the Tin-Wo supervisor rang him and asked him to go back to work. Sunar said he was unable to go due to his injury. However, the supervisor kept calling him over the next few days and even threatened him. Meanwhile, his health wors-ened; severe pain developed in his back and stomach and he passed blood with urine. This was the beginning of endless trips to the hospital emergency department, trips that con-continue even now. He is admitted to hospital now and then to treat unbearable back and stomach pain. Within a month of the accident, Sunar had difficulty walking and he deterio-rated to such an extent that now he needs support to walk.

One month after the accident, Sunar went to work to submit sick leave documents and to pick up sick leave money that he is entitled to by law. However, Tin-Wo staff told him to take the papers to the Paul Y-ITC main offices, which he did. But whenever he asked them for money the staff refused to say anything. Sunar cannot speak English or Chinese well and it became very difficult for him to com-municate with the company people. Meanwhile his economic situation grew worse, he had not paid his room rent for two months, and had no money for food for his family.

Sunar was totally devastated and did not know what to do.

Legal tangle

Sunar’s situation was desperate. With no money he did not know how to sustain his family. He had no idea about his legal rights and there was no one available to guide him. His friend recommended that he contact a Nepalese person called Sachdev, who worked with a law firm called Massie and Clement Solicitors. Sachdev was sympathetic and promised to give all the help he could. He introduced Sunar to John Massie, a lawyer at Massie and Clement Solicitors, who promised him that they would make the company pay his dues and asked him to sign some papers. Sunar believed Sachdev who acted as interpreter and signed the papers. He was told that he did not need to pay anything and they would charge him only when he received compensa-tion from the company.

In the following months the law firm made Sunar sign many papers written in English that he could not under-stand. This firm managed to obtain sick leave money for him from the company until March 2001 and also asked him to undergo a medical examination with a private doctor arranged by the company.

After the examination he was called to the lawyer’s office again where he was informed that the doctor’s re-port said that he was normal and there was no major injury. The lawyer explained that his case was weak. Sunar was surprised to hear this; walking on crutches with pain in his back all the time, he could not understand how the doctor could have given such a report.

OCCUPATIONAL SAFETY AND HEALTH

JUSTICE AND HUMANITY

EVASIVE IN HONG KONG

SANJIV PANDITA

From bad to worse

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Sunar left the lawyer’s office and decided to fight on his own. He sought help from Hong Kong government’s Legal Aid Department, where legal help is provided free of charge to those in need. The Legal Aid Department offered him the services of a private lawyer, David Brettel. At this point his previous lawyers refused to return the relevant papers regarding this case. More than one year has passed since Mr Brettel began handling the case, but Sunar is yet to see any light in this case.

Private Doctor Troubles

Sunar was examined by two private medical specialists. Dr George conducted the first examination, which was arranged by the Tin-Wo-Company and Paul-Y group. This report claims there is no relation between Sunar’s accident and his present medical condition. Until recently Sunar did not know that the examination was made for the company.

Things went even worse with the Legal Aid lawyer. Sunar had to undergo two more medical examinations carried out by Dr Lau Hoi Kuen in August 2002. These examinations were agreed by both parties’ lawyers. Sunar’s lawyer sent him a letter informing him about the joint examination. He had no clue that both parties had agreed to the examination.

Dr Lau’s report is even bleaker than Dr George’s, saying that Sunar is exaggerating his back problems and has lost no earning capacity due to the accident. Dr Lau’s report also mentions a surveillance video that shows Sunar walking in a leisurely fashion and bending down when he entered a temple.

Sunar did not know that the video was being shot nor when it was made; it is legal in Hong Kong to shoot such videos in public. According to Sunar he was in pain all the time even though he may look calm on the film; he is a devout Hindu and bending is an important religious custom when entering a temple, even though it may be very painful. An important question is that since he was earning HK$400 to HK$500 a day at the time of the incident, why would he fake an injury that impoverished him when he is not sure if he can ever get occupational health compensation?

At present, he is attending a series of assessment boards arranged by the Labour Department to evaluate his disability. He is not sure how long the process will take or if he will be awarded any compensation at all. This is not the end of his miseries. On 23 April 2003 when he was attending his first assessment, a woman on the assessment panel, who he believes was from the Labour Department started to shout at him repeating the words. “….who told you, you have back pain? ….who told you, you have a back injury?” This happened in front of two doctors and a nurse who were also in the assessment team. Sunar, whose wife was with him, was shocked at the woman’s behaviour. He broke down and cried aloud and his wife cried with him. Then he was asked to leave the room and no further assessments took place. Sunar is deeply hurt by this incident; he feels alone in this harsh world.

Sunar is fighting an uphill battle for justice. Instead of receiving the disability compensation that he is due, he has been intimidated, insulted, and verbally abused by the company, lawyers, and even the government. Sonar has received some social security payments every month since March 2002. That is the only good thing that happened to him in the past three years, yet the money is insufficient (about HK$8,000 per month) for him and his family.

To rub salt into his wounds, Massie and Clement Solicitors have sent him a bill for over HK$50,000 for their work. Were the situation not so tragic, it would be comical rather than unjust to ask a crippled person, who has no job and a family of six, to pay such a large amount of money, whereas the MTR and the Paul Y-ITC group, which are worth billions of dollars, get away without paying even one single cent in compensation to Sunar, who injured his spine and abdomen contributing to one of Hong Kong’s best railways. Still he waits with wet eyes for news that will ensure a secure future for his wife and four kids. He says, “My life is over, I am living and fighting for my children so that they can study and not remain ignorant like me, susceptible to exploitation by everyone.”

Sunar is only 41 years old.

This article is based on Sunar’s written submissions and interviews with him in Hindi translated into English by Sanjiv Pandita.