IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 93

Civil Appeal No 196 of 2020

Between

Ng Li Ning

… *Appellant*

And

(1) Ting Jun Heng
(2) Yap Kok Hua

… *Respondents*

In the matter of Suit 307 of 2019

Between

Ting Jun Heng

… *Plaintiff*

And

(1) Yap Kok Hua
(2) Ng Li Ning

… *Defendants*

GROUNDS OF DECISION

[Tort] — [Negligence] — [Contributory negligence]

Ng Li Ning
v
Ting Jun Heng and another

[2021] SGCA 93

Court of Appeal — Civil Appeal No 196 of 2020
Tay Yong Kwang JCA, Woo Bih Li JAD and Quentin Loh JAD
13 August 2021

30 September 2021

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

The facts

1 This appeal concerns the apportionment of liability in a very unfortunate collision involving two vehicles in which a young female passenger in one of the vehicles lost her life and the other passengers in the same vehicle suffered injuries. The traffic accident took place on Thursday, 19 April 2018, at around 7.30pm at the traffic lights controlled cross-junction where Clementi Road intersects Commonwealth Avenue West ("CAW"). The roads were dry and visibility was good.

2 A Nissan vehicle ("the Nissan") driven by the appellant was travelling along CAW towards Boon Lay Way. A taxi driven by the second respondent ("the Taxi") came from the opposite direction of CAW and was waiting to turn right into Clementi Road towards the Ayer Rajah Expressway ("AYE"). The

Taxi was the first vehicle in the inner right-turning lane at the junction. The traffic lights were green in favour of the Nissan. The "green arrow" traffic light for the Taxi to proceed to turn right had not yet come on but the Taxi had the discretion to proceed across the junction if it was safe to do so.

3 There were vehicles behind the Taxi also waiting to turn right. There were also vehicles waiting in the other right-turning lane on the Taxi's left. Similarly, there were vehicles waiting at the other side of CAW, intending to turn right into Clementi Road in the direction of Upper Bukit Timah Road.

4 The first respondent (who was the plaintiff at the trial in the High Court) was one of four passengers inside the Taxi. He was seated in the rear middle seat. His friends occupied the front seat and the other two rear seats. The passenger seated next to the Taxi's rear left window was a young female.

5 When there was a lull in traffic proceeding from CAW in the same direction as the Nissan and the traffic lights were still green for traffic coming from that direction, two motorcycles waiting with the Taxi and the other vehicles in the turning lanes proceeded to cross the junction. The waiting vehicle to the left of the Taxi also started to move forward. This vehicle was referred to at the trial as the "unknown vehicle". A moment or two later, the Taxi followed although the second respondent's view of his left was obstructed partially by the unknown vehicle. It was not disputed that the second respondent merely followed the unknown vehicle without ensuring that it was safe for him to do so.

6 Just as the unknown vehicle managed to cross the junction, the Nissan charged into the junction and missed colliding into the rear end of the unknown vehicle narrowly. Unfortunately, the Taxi was then in the path of the Nissan

which smashed into the Taxi's left side. The impact was so great that the Nissan's tyres were lifted off the road for a moment or two. The Taxi was sent spinning across the junction and it crossed the front view of the vehicles stopped at Clementi Road heading in the direction of Upper Bukit Timah Road. The Taxi's rear left female passenger's head was seen swinging wildly outside the Taxi's rear left window, with its glass apparently shattered. Sadly, she died in the accident. The Taxi then started to reverse as if on its own volition and finally ended up along the stretch of Clementi Road that leads to the AYE.

7 The sequence of events described above comes from video footages recorded by the in-vehicle video-cameras of the vehicle waiting immediately behind the Taxi at the junction and of the vehicles stopped at Clementi Road, coming from the direction of the AYE and heading in the direction of Upper Bukit Timah Road. The video footage from the vehicle waiting immediately behind the Taxi had sound recording and it captured the loud sound of the impact clearly.

8 The first respondent was injured in the accident and he commenced action against the drivers of the Nissan and the Taxi. The trial in the High Court concerned only the issue of liability, in particular, the respective percentages of contributory negligence of the first respondent (the plaintiff at the trial and the rear middle passenger in the Taxi), the second respondent (the first defendant at the trial and the driver of the Taxi) and the appellant (the second defendant at the trial and the driver of the Nissan). The decision of the trial Judge is set out in *Ting Jun Heng v Yap Kok Hua and another* [2021] SGHC 44 ("GD").

9 The allegation against the first respondent was that he was not wearing a seat belt while commuting in the Taxi. The trial Judge was aware that whether a passenger put on the seat belt or not was irrelevant to the occurrence of the

accident. However, he opined that what mattered in a claim in negligence was not just the accident or collision itself but also the damage that flowed from it. He held that the relevant question was whether the first respondent was responsible for the injury suffered by him (GD at [68]). On the evidence, he found that it was not proved that the first respondent did not put on his seat belt. Accordingly, the trial Judge held that the first respondent was not contributorily negligent for his injury. Since the appellant did not appeal against this finding despite having included the first respondent as a party in this appeal, we need not discuss this issue further.

10 As between the Taxi and the Nissan, there was no dispute that the Nissan had the right of way at the junction and that the second respondent (the Taxi driver) should bear greater liability for the accident. The second respondent conceded that he proceeded to make the right turn by simply following the unknown vehicle when it moved. On the other hand, the appellant (the Nissan driver) accepted that he was travelling above the road's speed limit of 70 kmph. He had seen the unknown vehicle moving to cross the junction. However, he did not think that he needed to slow down when he was near the junction as he was confident that his Nissan would not collide with the unknown vehicle. He did not see the Taxi until it was too late.

11 The trial Judge considered the video footages, the factual evidence of the parties and the expert evidence led by both defendants. He held that there was want of due care on the part of the Taxi driver and that he failed to keep a proper lookout when making the right turn. Accordingly, the primary

responsibility for the collision could not be attributed to the appellant's speeding (GD at [17]).

12 The trial Judge concluded that the Nissan was travelling at between 74 and 87 kmph and that its average speed was 82 kmph (GD at [29]). He noted that even the lower speed in this range was above the road's speed limit. Further, the appellant failed to exercise due care when approaching the junction although he had the right of way. The junction was a large one and traffic was moderately heavy at around 7.30pm that weekday evening.

13 After considering the relative causative potency and the moral blameworthiness of both drivers, the trial Judge eventually apportioned liability at 65% on the second respondent's part and 35% on the appellant's part. He also ordered both drivers to pay the first respondent costs fixed at $95,000, excluding disbursements, for the trial on liability.

The appeal before the Court of Appeal

14 The appellant appealed against the apportionment of liability. He referred to 13 local cases and four foreign cases decided between 1992 and 2015 which involved accidents between a straight-moving vehicle with the traffic lights in its favour and a vehicle making a discretionary right turn into the path of the first vehicle. The appellant referred to such a situation as the "Discretionary Right Turn Scenario". He submitted that these cases show that liability against the straight-moving vehicle was assessed consistently at between 0 and 20% in almost 90% of the cases. Two "outlying decisions"

apportioned liability at 30% and 40% respectively. The appellant sought to distinguish these two cases on their facts.

15 The appellant also referred to the Motor Accident Guide ("MAG") issued by the State Courts and pointed out that it recommends 15% liability against the straight-moving vehicle, consistent with more than 70% of the cases that he had referred to. He further referred to the outcome predictor on the Motor Accident Claims Online ("MACO") portal launched by the Courts of the Future Task Force and submitted that the predicted outcome of 20% liability against the straight-moving vehicle was also consistent with almost 90% of those cases or 100% if the two "outlying decisions" were not taken into consideration.

16 While the appellant accepted that each case depended on its own set of facts, his professed reason for this appeal was "to clarify the current judicial thinking" and his "main clarion call is for certainty". He argued that certainty of the law was important, particularly in the area of motor accident cases. It would prevent proliferation of unnecessary litigation in such cases and help parties to resolve matters reasonably and sensibly. It would also assist insurers to resolve cases expeditiously and economically whenever possible.

17 The appellant submitted that the trial Judge's decision was inconsistent with the existing body of case law, the MAG and the outcome predictor on the MACO portal. He contended that "it is essential for the rather established position on liability with respect to the Discretionary Right Turn Scenario to be reaffirmed" and that if the present "'outlier' decision is allowed to remain, it would, no doubt, cause a stir to the existing equilibrium in the State Courts as this 'outlier' decision is binding on the State Courts". The State Courts would have to spend a substantial amount of time and resources to fine-tune the right balance again. There would also be loss of confidence in the efficacy of the

MAG and the outcome predictor on the MACO portal because of the inconsistency between the trial Judge's decision and the outcome arrived at using those two tools.

18 The second respondent argued that the appellant's view of the turning lanes on the opposite side of CAW was blocked by the vehicles waiting to turn right in the two rightmost lanes on the appellant's end of CAW. This should have caused the appellant to be careful. Instead, he maintained his excessive speed throughout and missed the unknown vehicle narrowly when that vehicle moved across the junction. Even the appellant's expert witness described that miss as "a close shave".

19 The second respondent contended that it was disingenuous of the appellant to say that in a large and busy junction in a heavily populated area, there was only a mere possibility of more than one turning vehicle and that one could not be expected to look out for something that one could not even see. The second respondent agreed with the trial Judge that one must look at the entire chain of events holistically rather than place emphasis on the first event leading to the accident, namely, his encroaching into the appellant's path. He pointed out that the trial Judge held that apportionment of liability was a fact-sensitive exercise and submitted that the trial Judge was therefore not bound by any of the cited precedent cases involving the Discretionary Right Turn Scenario. Moreover, almost all of the cases were cited by the appellant without presenting their facts.

The decision of the Court of Appeal

20 It was quite obvious, from the video footage (with sound recording) from the vehicle waiting behind the Taxi at the junction and the video footages

from the vehicles waiting at the stop line of Clementi Road from the direction of the AYE towards Upper Bukit Timah Road, that the Nissan was charging down its stretch of CAW towards the junction at a recklessly high speed, seemingly oblivious to the presence of turning vehicles from the opposite direction. There were two lines of vehicles waiting to turn from both directions of CAW. With the many vehicles' lights on, one cannot imagine the appellant not noticing the heavy presence of vehicles at the junction.

21 The appellant claimed that he saw the unknown vehicle making its move to turn and believed that his Nissan would not hit it if the Nissan continued at the same speed that it was travelling at. He therefore did not think of slowing down when he approached the junction. Yet, it was clear that the Nissan missed that turning vehicle's rear end only narrowly and then smashed into the Taxi's left side. The appellant's expert witness called that miss a "close shave" and, having viewed the video footages, we agree.

22 The sound of the collision was even captured clearly in the video footage from the vehicle waiting behind the Taxi. Further, the Nissan was lifted off the road surface for a moment or two by the impact of the collision. The impact was therefore obviously very great. It sent the Taxi spinning across the junction and it was truly heart-breaking and horrific to watch the Taxi's rear left female passenger's head swinging wildly outside the Taxi's rear left window, apparently having smashed her head against that window and shattered the glass. The facts showed, therefore, that the Nissan had been speeding dangerously along its stretch of CAW as it approached the junction and that the appellant was seemingly oblivious to the presence of the many vehicles waiting to turn right from the opposite end of CAW. On these facts, it was hardly

surprising that the trial Judge assessed the appellant to be 35% liable for the accident for the reasons that he has spelt out.

23 There is no rule or principle that dictates that drivers with the right of way should not be held to be more than 20% liable against drivers who are turning their vehicles across a junction. As the appellant acknowledged, much depends on the facts of the case. Although he claimed that the facts of this case are similar to those in the decided cases, we do not think so.

24 This appeal illustrates the benefits of having in-vehicle video-cameras. In this case, the video footages from various vehicles and from different vantage points were of tremendous aid to the court compared to the days where the only documentary evidence usually comprised photographs of the accident scene after the event, sketch plans, traffic police reports, damage reports and sometimes medical reports, supplemented by the testimony of the drivers and the witnesses whose recollection a year or two after the accident could range from being imprecise to being inaccurate, even if the witnesses were completely honest. With the advantage of the video footages and technical aids like the pause function and some speed notations, we could actually see from various vantage points how the accident happened and, as mentioned earlier, even hear the sound of the impact.

25 The trial Judge found that the Nissan was travelling at between 74 and 87 kmph as it approached the junction and that the average speed would have been 82 kmph. This finding was that of the appellant's traffic accident reconstruction expert, Mr John Ruller. The parties did not dispute this finding on appeal. During the discussions at the hearing, counsel for the appellant, Mr Anthony Wee ("Mr Wee"), accepted that the stretch of CAW that the Nissan was travelling on as it approached the junction sloped slightly downwards. That

would have aided the appellant's view of the junction. This was a large junction. The roads leading to that junction had four or five lanes, not including the filter lanes for turning away from the four roads. As mentioned earlier, as it was about 7.30pm, the lights from the vehicles at the junction would have been turned on and the headlights of the two rows of turning vehicles waiting at the other end of CAW from the direction of the Taxi would have been fairly obvious to a driver who is careful and conscious of his surroundings. The traffic was fairly heavy. From the direction of the Nissan, there were also two rows of vehicles waiting to turn right.

26 The appellant agreed under cross-examination that he kept his foot on the Nissan's accelerator as he approached the junction and did not slow down as his assessment was that the traffic lights were in his favour and the way ahead was clear. He also believed that the Nissan would not collide with the unknown vehicle although he saw it moving across the junction in the path of the Nissan. In the circumstances prevailing at the junction that evening as described, we do not think this was merely a misjudgement of the situation. It was highly blameworthy as it resulted in a "close shave" between the Nissan and the unknown vehicle. Further, any reasonable driver in the appellant's situation would have anticipated that there could be other turning vehicles as well even if he could not see them directly.

27 In *SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] 2 SLR(R) 211, this Court ruled at [37]:

> … When a motorist approaching an intersection [saw] a vehicle poised to make a turn across his path, the first thing that he [had to] prepare for [wa]s the possibility that the other driver [would] make the turn before he clear[ed] the intersection. He [had to] watch out for any indication that the driver might do

> so. Above all, he [had to] drive his vehicle at a speed that [would enable] him to react appropriately should [that] occur. …

28 In similar vein, Judith Prakash J (as she then was) said in *Chai Yew Cian v Yeoh Yeow Yee and others* [2015] SGHC 124 at [34]:

> The [bus driver going straight at a traffic light controlled cross-junction] had the right of way but he also had a duty to take care so as to avoid or mitigate the consequences of the mistakes of other road users. An experienced driver, he should have known of the possibility that another motorist might try to cross the junction too early. He should have kept a better lookout so that he would have been prepared to deal with such a situation. …

29 The video footages showed two motorcycles from the Taxi's end of CAW crossing the junction followed by the unknown vehicle on the left of the Taxi. There can be little doubt that the Nissan's speed, calculated to be about 20.5 metres per second, assuming it was travelling at the lower end of the range of 74 to 87 kmph, was not a speed at which the driver could take reactive action if some other turning vehicle also started to cross the Nissan's path.

30 The appellant submitted that the factual situation in *Joo Yong Co (Pte) Ltd and another v Gajentheran Marimuthu (by his mother and next friend Parai a/p Palaniappan) and others* [2015] SGCA 38 ("*Joo Yong Co*") was indistinguishable from the facts of the present case. We do not think so.

31 In *Joo Yong Co*, a collision took place between 5.10pm and 5.20pm at the junction of Tuas West Road and Tuas Link 4. Gajentheran Marimuthu ("Gajentheran") was riding his motorcycle along Tuas West Road in the direction of Tuas Checkpoint. Following behind him was a motorcycle ridden by Mohd Rosli Wadi bin Mat Nor who had a pillion rider. Behind them was a third motorcycle ridden by Mohd Paqmi bin Md Arifin. When the three motorcycles were about to proceed into the junction, a lorry driven by

T Johaselvan ("Johaselvan"), an employee of Joo Yong Co (Pte) Ltd ("Joo Yong"), made a right turn into Tuas Link 4 from the opposite direction and cut into the path of the motorcycles. The first motorcycle collided with the middle part of the left side of the lorry and skidded underneath it. The second motorcycle collided with the front part of the lorry, also on its left side. The rider of the third motorcycle claimed that he swerved to the right and therefore avoided collision with the lorry. Joo Yong and Johaselvan disputed this and claimed that the third motorcycle collided with the lorry as well.

32 It is evident from the judgment in that case that there were considerable disputes of fact upon which this Court had to make findings. This Court found eventually that the lorry had cut across the path of two motorcycles (the third having swerved and missed the lorry) by turning right when the traffic lights were in favour of the motorcyclists. The accident occurred at around 5.20pm, unlike the present case where the time of the collision was around 7.30pm. The traffic was heavy but the junction was not similar to the one in issue in the present case. Tuas West Road had three straight-moving lanes with one more near the junction for vehicles turning right (see *Joo Yong Co* at [5]) but Tuas Link 4 was not as large. The judgment did not state how many lanes there were. One of the motorcyclists (Gajentheran) was found to be travelling, on his own evidence, at 80 kmph when he approached the junction. This Court found at [23] that Gajentheran was travelling within the speed limit but it was not a safe speed in the given conditions. Even the other motorcyclists, who said they were travelling at about 70 kmph, were not, in this Court's opinion, travelling at a safe speed in the given conditions. Mr Wee, counsel for the appellant, informed us that the speed limit for that stretch of road stated in the decision was incorrect. It was 70 kmph and not 80 kmph. Mr Teo Weng Kie, counsel for the second respondent, did not dispute this. However, the potential capacity to inflict

damage with a speeding vehicle like the Nissan when entering a large and fairly busy junction is far greater than that of a speeding motorcycle.

33 Another contentious fact was the resting position of the lorry. The lorry in that case had travelled across the junction, its front wheels were just inches away from the dotted pedestrian crossing at Tuas Link 4 and no part of the lorry was found to have protruded into the straight-moving lane marked as 1 (see *Joo Yong Co* at [12]). This Court accepted that there would have been a time lapse between the impact and the lorry actually stopping and found that it explained the final resting position of the lorry and that it was not at that position when the collisions took place (see *Joo Yong Co* at [14]).

34 In our opinion, in such fact-sensitive cases like the present class of road traffic accident cases, there is no rule that contributory negligence cannot extend beyond a certain percentage. It is well recognised that apportionment of liability in negligence is a very fact-sensitive balance and that the trial Judge who has heard the evidence is exercising an apportionment of a discretionary nature (see *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 at [54]). An appellate court should not intervene on the basis that it would have exercised its discretion differently if it had to decide the matter at first instance. The appellate court should not intervene on the issue of apportionment by the trial Judge unless it was clearly against the weight of evidence or was plainly wrong.

35 As described earlier, the Nissan was practically charging down CAW at a dangerous speed when it should have been obvious to any driver paying attention to the traffic situation ahead of him that the junction was fairly busy and that there were vehicles waiting to turn across the junction. The appellant agreed that he did not lift his foot off the accelerator although he did not

accelerate. Two motorcycles and the unknown vehicle were seen moving across the junction in the path of the Nissan when it was near the junction. It was surely incumbent on the appellant, as the driver of the Nissan, to have slowed down to a speed where he could deal with the possibility that a vehicle at the other end of CAW would start to turn right too early. An attentive and cautious driver would certainly have slowed down his vehicle immediately, especially if it was then travelling at between 74 and 87 kmph. However, the appellant did not do so and missed the turning unknown vehicle narrowly. As the Taxi started to move into the junction merely because the unknown vehicle had done so, the trial Judge was correct to hold the second respondent largely to blame for the accident and to have assessed his liability at 65%. Equally, the trial Judge was entirely justified in finding the appellant to be 35% liable although this percentage was not within the range that the appellant contended ought to be the norm.

36 Where the MAG and the MACO outcome predictor were concerned, the appellant submitted that these tools indicate respectively that he should bear only 25% and 20% liability for the accident. In our view, both tools are of little assistance to the appellant's case.

37 The MACO outcome predictor assumes that "[a]ll parties [are] driving at normal speed in normal traffic conditions". The estimate of 20% liability therefore does not take into account the fact that the Nissan was speeding into a fairly busy junction. In the situation here, we think this factor would increase the appellant's liability significantly.

38 The appellant submitted that the MAG recommends that he should bear only 25% liability based on the following reasoning. Scenario 7(b) in the MAG suggests that the driver of the straight-moving vehicle in the Discretionary Right

Turn Scenario should bear 15% liability. The MAG further recommends that if the driver having the right of way exceeds the speed limit, his liability should be increased by 10%. On this basis, the appellant argued that he should bear 25% liability at most. However, the MAG also recommends that if the other vehicle has crossed the junction substantially, the liability of the driver having the right of way should be increased by 5% to 10% as he would have had greater opportunity to avoid the collision. The video footages showed that the second respondent had almost crossed at least the path of the Nissan at the junction when the collision occurred. If the appellant had not been charging into the junction at a dangerous speed, he would have been in a much better position than the second respondent to prevent the accident from happening. The trial Judge's apportionment of 35% liability on the appellant's part was therefore in keeping with the MAG anyway.

39 Further, the MAG and the MACO outcome predictor are meant to provide only estimates of liability in common fact patterns giving rise to motor accident disputes. As apportionment of liability is a highly fact-sensitive exercise, much will turn on the specific facts of the case which we have already highlighted earlier.

40 We therefore dismissed this appeal. This case certainly does not establish a precedent that the relative liability of straight-moving vehicles with the right of way against turning vehicles has now been raised to 35% without qualification. The appellant's liability was assessed to be higher than most of the cases he cited simply because that degree of contributory negligence was justified on the facts.

41 On the issue of costs of this appeal, the appellant's costs schedule estimated costs at $15,000 and disbursements at $9,041.05. The second

respondent's costs schedule estimated costs at $32,100.10 and disbursements at $1,953.41. We ordered the appellant to pay the second respondent costs fixed at $22,000 inclusive of disbursements. We also ordered the appellant to pay the first respondent $750 as attendance costs, as requested by counsel for the first respondent, Mr Ramasamy s/o Karuppan Chettiar. The appellant should not have brought the first respondent into this appeal as the issues did not involve the first respondent. The usual consequential orders on security for costs would apply.

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Anthony Wee and Koh Keh Jang Fendrick (Titanium Law Chambers LLC) for the appellant;
Ramasamy s/o Karuppan Chettiar and Simone B Chettiar (Central Chambers Law Corporation) for the first respondent;
Teo Weng Kie, Shahira binte Mohd Anuar and Cham Xin Di Cindy (Tan Kok Quan Partnership) for the second respondent).