Malvinder Singh Sanger s/o Uttam Singh *v* Sunjit Singh Gill
[2011] SGHC 113

Case Number	: Suit No 994 of 2009
Decision Date	: 06 May 2011
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: Charan Singh (Charan & Co) for the plaintiff; Patrick Yeo and Lim Hui Ying (KhattarWong) for the defendant.
Parties	: Malvinder Singh Sanger s/o Uttam Singh — Sunjit Singh Gill

Tort – Negligence

6 May 2011

Woo Bih Li J:

Introduction

1 The plaintiff's claim against the defendant was for personal injury arising out of an accident on 2 December 2006 at about 5.50am in a Central Expressway ("CTE") tunnel from Upper Cross Street towards Ang Mo Kio involving a Mazda car driven by the defendant.

2 The defendant's car spun out of control and hit the left wall and then the right wall of the tunnel before coming to a stop. The plaintiff's left arm was injured.

The different versions

3 The defendant's version was that he was travelling at a speed of about 40 to 50 kilometres per hour ("kph") when his car was hit by another car from the rear causing him to lose control of his car which then hit the walls of the tunnel. The car was dark in colour and the defendant thought that it was a Honda Civic. The driver of that car drove off after the accident. The defendant added that the plaintiff was unsteady before he got into the defendant's car as the plaintiff had consumed more alcohol than he should have during an event the night before. The plaintiff was also reaching for the steering wheel of the defendant's car just before the accident occurred and had also not been wearing his seat belt.

4 The plaintiff's version was that no car had hit the defendant's car from the rear. The defendant had been speeding at about 100 kph and refused to slow down even though the plaintiff urged him to do so. As the defendant was negotiating a bend in the tunnel, he was about to doze off and lost control of the car. The plaintiff said he himself was wearing a seat belt and denied he tried to reach for the steering wheel of the car before the accident occurred.

The evidence and the court's conclusion

5 The trial proceeded on the issue of liability only. The main dispute was over the defendant's version that another car had hit his car from the rear. The burden was on the defendant to establish this version on a balance of probabilities.

6 The witnesses who had first-hand knowledge about this version were the defendant and the plaintiff themselves. Thus, each side sought to establish that the other side was not a credible witness by pointing out inconsistencies in various aspects of the evidence of each of these witnesses.

7 On one aspect of the defendant's evidence, he was shown to be incorrect. He referred to the plaintiff as his cousin in his statement to the police made at about 1.30pm on the day of the accident. The plaintiff was not his cousin and was at most a close friend. The defendant suggested that he referred to the plaintiff as his cousin because of their close relationship. The plaintiff's counsel, Mr Charan Singh ("Mr Charan"), sought to make much out of the misdescription of the relationship as I shall elaborate on later.

8 Generally speaking, I found that there were inconsistencies in various aspects of the evidence of each of these witnesses on issues other than the main dispute. Each seemed to lack some credibility. As regards the main dispute as to whether another car had hit the defendant's car from the rear, there was evidence in favour of the defendant's version, other than his own evidence, as I shall elaborate on later.

9 The damage to the defendant's car, especially the rear thereof, was not properly established. While admissibility of the photographs of the damaged car (which were introduced for the defendant) was not in issue as the plaintiff admitted the authenticity of the photographs, the photographs were not clear. The photographer was not called to give evidence. No one who had assessed or repaired the damage was called to give evidence. Even with the photographs, the defendant's evidence about the damage to the rear of his car was not steady. I found the photographs and evidence about the damage to be neutral. They did not establish the defendant's version that his car had been hit by another car from the rear. Neither did they disprove his version.

10 Fortunately for the defendant, there was an important piece of evidence that supported his version.

11 After the accident, the plaintiff had taken a taxi to Tan Tock Seng Hospital ("TTSH") where he was admitted and warded. TTSH records contained Inpatient Clerking Notes in respect of the plaintiff. Under the heading "HISTORY SHEET", someone had written, *inter alia*: "Pt's car hit by another vehicle from rear".

12 The handwriting was that of a medical officer, Dr Uma Alagappan ("Dr Alagappan"). The notes were written on the same date of the accident, *ie*, 2 December 2006 at 10.35am. Unsurprisingly, by the time she gave evidence on 4 March 2011, she could not identify the plaintiff or remember who gave her the information she had recorded.

13 She said that usually she would obtain such information from the patient himself. If the source was from someone else like a relative, she would mention the source in her notes. No other source was mentioned in her notes. Even if the patient was unable to give a history of what had happened, for example, if he was unable to talk, she would try and obtain the history from someone else in the patient's presence and try to get verification from him.

14 The plaintiff denied giving the information recorded by the doctor. It was suggested to the doctor that the patient was too drowsy then to give the information as he was under medication. To this suggestion, the doctor pointed out that according to another part of the Inpatient Clerking Notes under the heading "CLINICAL EXAMINATION SHEET", she had described the plaintiff's general condition as "Comfortable, Alert".

15 Mr Charan submitted that the information had come from the defendant himself who was trying to avoid responsibility for causing the accident. The defendant had referred to the plaintiff as his cousin in a report made to the police at about 1.30pm of the same day. He must have also described himself as the plaintiff's cousin to Dr Alagappan earlier that day so that she would trust him enough to receive information from him and write down his self-serving version in her notes. The defendant had spoken out of earshot of the plaintiff who was therefore in no position to correct him.

16 I found this submission unlikely to be true. Firstly, the doctor had said that if the source of the information was from someone other than the patient himself, she would have recorded the source down. Secondly, there would have been no reason to record the history from someone else other than the patient unless there was good reason to do so. The only reason suggested to her was that the plaintiff was drowsy then but this was contradicted by her notes that the plaintiff was alert.

17 I was of the view that it was more likely that the information came from the plaintiff himself. The information corroborated the defendant's version on the main issue.

18 There was yet another piece of evidence on the main issue which reinforced the above conclusion.

19 There was a letter dated 5 October 2007 written by one Dr Lee Keng Thiam of TTSH to Messrs Kannan SG ("Kannan SG") who were the plaintiff's initial solicitors. The letter was on the injury of the plaintiff and treatment thereof. However, the second sentence also mentioned the following: "He was apparently the front seat passenger in a car that was hit by another vehicle". By the time of the trial, it was not in dispute that Dr Lee had obtained such information from the clerking notes written by Dr Alagappan. Her notes had also mentioned that the plaintiff was in the passenger seat in a car and his left arm had hit against a dashboard.

20 It is not in dispute that the plaintiff saw Dr Lee's letter soon after 5 October 2007. Neither the plaintiff nor his solicitors asked TTSH in October 2007, or soon thereafter, as to the source of the information that the car in which the plaintiff was in had been hit by another vehicle. If the plaintiff's version was true, he would have been shocked by such an allegation and he would have promptly sought the clarification either by himself or through his solicitors. This was not done until 14 June 2010, almost three years later, when the plaintiff's present solicitors wrote to TTSH on that date. That letter was to seek medical notes and records and also to state that the plaintiff did not give any statement to any staff or doctor at TTSH. That letter alleged that the defendant had told the plaintiff that it was he who had given the version recorded by Dr Alagappan both to the traffic police as well as to a doctor at TTSH.

21 In addition, the letter of 5 October 2007 from Dr Lee was not disclosed in the first list of documents filed for the plaintiff on 1 April 2010. On 22 April 2010, the defendant's solicitors wrote to the plaintiff's solicitors to request for an in-patient discharge summary from TTSH. There was no reply.

22 On 12 May 2010, the defendant's solicitors filed a Notice to Produce for medical notes, reports and/or an in-patient discharge summary.

23 On 19 May 2010, the defendant's solicitors applied for discovery of specific documents. It was only thereafter that the plaintiff obtained a certified true copy (of the 5 October 2007 letter from TTSH) on 24 May 2010 and a copy was then forwarded to the defendant's solicitors.

24 Mr Charan suggested that he had not received the relevant papers or file from Kannan SG at

the time when the plaintiff's list of documents was filed but he was not able to give me concrete evidence to establish this.

25 The circumstances in which the letter dated 5 October 2007 was eventually disclosed suggested that the plaintiff was hiding it although Mr Charan submitted that the plaintiff did obtain a certified true copy thereof and eventually consent to the application for discovery of specific documents. In my view, that submission did not adequately address the reason why such an important letter was not disclosed in the plaintiff's list of documents in the first place.

26 I add that while the defendant gave a statement to the police about the accident on the same day as the accident at about 1.30pm, the plaintiff did not. The defendant's statement mentioned that his car was hit from the rear by another car, dark in colour and described as a Honda Civic.

27 On the other hand, the plaintiff did not give his statement to the police on the same day of the accident or soon thereafter. He said that when the police officers came to see him at TTSH, he was still shocked and dazed. He was very sleepy and in pain. So he told them that he would give a statement after he was discharged. He was discharged on 7 December 2006 but he said that his first attempt to give a statement to the police was in April 2007. He was unsuccessful and eventually Kannan SG wrote on 7 December 2007 to the traffic police to say that he wanted to give a statement. This was followed up by a few reminders from Kannan SG until apparently a telephone conversation between the traffic police and one of the staff of Kannan SG on 29 April 2008 in which the traffic police said that the matter was closed. Nevertheless, the plaintiff eventually gave a statement to the police on 17 December 2008 in which he claimed, *inter alia*, that the defendant had been driving at a fast speed of 100 kph. By then, there was no mention of another car hitting the defendant's car from the rear. The statement ended with a sentence that he was making the statement so that he could make a claim against insurers.

28 It seemed to me that the plaintiff delayed in making his statement to the police because he knew that another car had hit the defendant's car from the rear. It was only when he decided to make a claim against the defendant's insurers that he decided to make his statement with his version.

29 In the circumstances, I concluded that the defendant had established his version and I dismissed the plaintiff's claim with costs.