

Ari bin Abdullah (by his committee of person and estate, Sariah bte Tarmon and another) v
Ong Chwee Siew (Farida bte Umar (administratrix of the estate of Mohd Hussin bin Ismail,
deceased) (third party)
[2007] SGHC 15

Case Number : Suit 377/2006, 328/2006
Decision Date : 29 January 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : N Kanagavijayan (Kana & Co) for the plaintiff in Suit No 377 of 2006; Ramasamy Chettiar (Acies Law Corporation) for the defendant in Suit No 377 of 2006 and in Suit No 328 of 2006; P E Ashokan (KhattarWong) for the third party in Suit No 377 of 2006; Shanmugam Manohar (K Krishna & Partners) for the plaintiff in Suit No 328 of 2006
Parties : Ari bin Abdullah (by his committee of person and estate, Sariah bte Tarmon and another) — Ong Chwee Siew (Farida bte Umar (administratrix of the estate of Mohd Hussin bin Ismail, deceased) (third party)

Evidence – Admissibility of evidence – Defendant convicted in criminal trial of causing death and serious injury due to his negligent driving – Whether his convictions were relevant in the present civil proceedings – Whether the statement of facts in the criminal proceedings were admissible as evidence in the present proceedings

Tort – Negligence – Contributory negligence – Plaintiffs claiming against defendant for negligent driving resulting in serious injury and death – Whether the defendant could seek contribution from the two plaintiffs on the ground of contributory negligence

29 January 2007

Judgment reserved.

Tan Lee Meng J:

1 Suit Nos 377 and 328 of 2006 concern a motor accident (“the accident”) on 26 February 2005 at the junction of Woodlands Road and Sungei Kadut Avenue, in which a motor cycle collided with a lorry. The motor-cyclist, Mr Mohd Hussin bin Ismail (“Hussin”), was killed while his pillion rider, Mr Ari bin Abdullah, (“Ari”), was so badly injured that he is now incapable of managing his own affairs. Suit No 377 of 2006 was instituted by Ari’s parents, who form the Committee of Persons having charge of his affairs, and Suit No 328 of 2006 was instituted by Hussin’s wife and the administratrix of his estate, Mdm Farida bte Umar (“Farida”). The defendant in both these suits is the driver of the lorry in question, Mr Ong Chwee Siew (“Ong”).

2 Ong joined the plaintiff in Suit No 328 of 2006 as a third party in Suit No 377 of 2006, seeking a contribution for the damages payable to Ari on the ground of contributory negligence.

Background

3 On 26 February 2005, at about 7.55 am, Ong drove his company’s lorry, bearing registration number XB 8720K along Woodlands Road towards the direction of Upper Bukit Timah Road. At the signalised T-junction of Woodlands Road and Sungei Kadut Avenue, he made a right turn into Sungei Kadut Avenue.

4 While turning right, Ong’s lorry had a head to side collision with Hussin’s motor cycle. As has been

mentioned, Hussin was killed while his pillion rider, Ari, sustained serious injuries. Ong's lorry also collided with another lorry bearing registration number XB 6782S, which was driven by one Mr Goh Chye Lye ("Goh").

5 At the time of the accident, the weather was fine, the road surface was dry and visibility was clear. The signal lights at the T-junction did not malfunction and the traffic flow at the junction was moderately heavy.

6 After investigations had been completed, the police were satisfied that Ong had been negligent in that he failed to stop and give way to on-coming vehicles having the right of way before he made a right turn from Woodlands Road into Sungei Kadut Avenue. Ong was charged with a number of offences in relation to the accident.

7 In DAC No 044419/2005, he was charged under section 304A of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code") for causing Hussin's death. The charge was as follows:

[T]hat you, on 26 February 2005, at about 7.55 am, at the signalised T- junction of Woodlands Road and Sungei Kadut Avenue, Singapore, being the driver of motor lorry XB8702, did cause the death of a motor cyclist, namely one Mohd Hussin bin Ismail, male/aged 32 years old, by doing a negligent act not amounting to culpable homicide, to wit, by failing to stop and give way to on-coming traffic having the right of way whilst you were making a right turn, thus the vehicle you were driving encroached into the path of one motor cycle, bearing registration No FN9635P, which was ridden by the deceased, who was proceeding from the opposite direction, causing a head to side collision between the said motor cycle and your vehicle and consequently resulting in the deceased's death and you have thereby committed an offence punishable under Section 304A of the Penal Code, Chapter 224.

8 In DAC No 044420/2005, Ong was charged under s 338 of the Penal Code for doing an act so negligently as to endanger human life and resulting in the causing of grievous hurt to Ari.

9 Ong also faced a third charge under section 65(b) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("Road Traffic Act") for driving without reasonable consideration for other persons using the road.

10 Ong pleaded guilty to both the charges under the Penal Code. The remaining charge under s 65(b) of the Road Traffic Act was taken into account for the purpose of sentencing. Ong was fined \$9,000 for causing Hussin's death and \$1,000 for causing grievous hurt to Ari. He was also disqualified from holding or obtaining a driving licence for all classes of motor vehicles for six years.

The trial

11 The plaintiffs in both Suit Nos 377 and 328 of 2006 asserted that Ong is wholly responsible for the accident. On the other hand, Ong claimed that Hussin shouldered part of the blame for the accident.

12 For the purpose of determining whether Ong is wholly to blame for the accident, his convictions under s 304A for causing Hussin's death and under s 338 of the Penal Code for causing serious injury to Ari are relevant in the present proceedings in view of s 45A of the Evidence Act (Cap 97, 1999 Rev Ed) ("the Evidence Act"), which reversed the rule in *Hollington v F Hewthorn and Company, Limited* [1943] 1 KB 587.

13 Section 45A, which was extensively discussed by Andrew Phang J (as he then was), in *Ong Bee Nah v Won Siew Wan (Yong Tian Choy, Third Party)* [2005] 2 SLR 455, provides as follows:

Relevance of convictions and acquittals:

45A—(1) Without prejudice to sections 42, 43, 44 and 45, the fact that a person has been convicted or acquitted of an offence by or before any court in Singapore shall be *admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that offence*, whether or not he is a party to the proceedings; and where he was convicted, **whether he was so convicted upon a plea of guilty or otherwise**.

(2) A conviction referred to in subsection (1) is relevant and admissible unless --

(a) it is subject to review or appeal that has not yet been determined;

(b) it has been quashed or set aside; or

(c) a pardon has been given in respect of it.

(3) A person proved to have been convicted of an offence under this section shall, *unless the contrary is proved, be taken to have committed the acts and to have possessed the state of mind (if any) which at law constitute that offence*. [emphasis added]

14 Reference must also be made to s 45A(5) of the Evidence Act, which provides that where relevant “any document containing details of the information, complaint, charge, agreed statement of facts or record of proceedings on which the person in question is convicted shall be admissible in evidence”. In this context, Ong admitted that the Statement of Facts presented to the court by the prosecution in relation to the criminal charges faced by him were true. The following parts of the Statement of Facts merit attention:

6 Investigation revealed that ... *the accused did not stop to give way to on-coming vehicles (having the right of way) travelling from the opposite direction along Woodlands Road*. This resulted in a head to side collision with one motor cycle ... ridden by the deceased and his pillion rider....

16 *The accused person was therefore negligent to wit, by failing to stop and give way to on-coming vehicles having the right of way, thus causing a head to side collision between the said motor cycle and his m/lorry, which caused the deceased person’s death and grievous hurt to the injured party.*

15 Ong’s convictions under sections 304A and 338 of the Penal Code and his acceptance of the Statement of Facts furnished by the prosecution in the criminal cases undermine the foundation of his defence, which is that the traffic lights showed a green arrow in his favour when he turned right from Woodlands Road into Sungei Kadut Avenue. It ought not be overlooked that Ong was represented by his counsel, Mr Lai Mun Onn, when he faced the criminal charges and the records of the hearing before the District Judge showed that the charges had been read and explained to him and that he had understood the charges as well as the nature and the consequences of a plea of guilt.

16 Ong’s explanation as to why he pleaded guilty to the criminal charges in question and accepted that the Statement of Facts were true must be given sufficient attention. In paras 5 and 6 of his affidavit of evidence-in-chief (“AEIC”), he attempted to distance himself from his plea of guilt in relation to the criminal charges when he stated as follows:

5 I was charged for causing death and grievous hurt (s 304A & 338 of the Penal Code) under the 'rash' limb. I had legal representation and I told my lawyers that the green arrow appeared before I made the right turn at the material time. However, my lawyers told me that there is a risk that I would be convicted if I choose to claim trial and defend the criminal charge, [in] which event I am likely to receive a custodial sentence, I was advised to make representations to the Attorney General's Chambers by way of plea bargaining. I was about 52 years old then and I wanted to avoid a custodial sentence and maintain a clean record. Therefore I agreed and inducted my lawyers to make representation as advised.

6 My lawyers told me that the representation was not acceded to and the original charges stood. I asked my lawyers to negotiate further with the A-G's Chambers. Eventually they agreed to reduce the 2 charges to the "negligent" limb which does not attract a mandatory jail term. I therefore accepted it. I was told that I would receive a driving disqualification order. I was prepared to forego my driving licence because I have been driving for many years and I was prepared to switch to another line of work.

[emphasis added]

17 However, when cross-examined by the third party's counsel, Mr P E Ashokan, Ong undermined his own AEIC when he testified that no one had advised him that he faced a mandatory jail sentence under the unamended charges. The relevant part of the cross-examination is as follows:

Q Who told you that there was a mandatory jail sentence if the charges were not amended?

A Nobody told me about it.

Q That could not have been the reason why you pleaded guilty to the amended charges?

A I agree.

18 Ong's subsequent explanation for pleading guilty to the criminal charges effectively scuttled his defence against the plaintiffs in both suits against him. When cross-examined by Mr Ashokan, he testified as follows:

Q You pleaded guilty *because you knew that you were in the wrong* by not giving way to vehicles going straight?

A Yes.

[emphasis added]

19 Ong's explanation on why he admitted that the Statement of Facts in the criminal cases were accurately stated was also not helpful to his defence. When cross-examined by Ari's counsel, Mr N Kanagavijayan, he stated as follows:

Q You admitted the statement of facts without qualifications?

A Yes

Q Why did you admit the statement of facts?

A I don't know.

Q You cannot just say you don't know. I am giving you an opportunity to explain your position.

A I have nothing to say.

20 When Ong's counsel, Mr Ramasamy Chettiar, tried to salvage the situation regarding his admission of the Statement of Facts, he remained unhelpful. The relevant part of the re-examination is as follows:

Q Why did you say that you don't know why you admitted the Statement of Facts?

A I really don't know.

21 Apart from admitting that he knew that he was in the wrong when he pleaded guilty, Ong also contradicted his assertion in para 7 of his AEIC that he was "very sure" that the traffic light showed a green arrow that gave him a right of way when he made the right turn that resulted in the accident. When cross-examined by Mdm Farida's counsel, Mr Shanmugam Manohar, Ong admitted that he was not sure whether the green arrow had appeared before he made the fateful turn that killed a man and resulted in another man losing his mental faculties. The relevant part of the proceedings reads as follows:

Q You mentioned that the traffic lights were green when you were turning. This is contrary to para 7 of your AEIC where you said that you were very sure that the green arrow appeared. Can you explain this inconsistency.

A. I already said that this may be because of my wrong judgment.

Q. What is "wrong judgment"?

A. It is whether the green light and green arrow were together side by side or whether there was only a green light without the green arrow.

22 Ong's counsel, Mr Chettiar, sought to clarify the position regarding the green arrow but this did not result in any retraction of what the former had said during cross-examination. The relevant part of the proceedings is as follows:

Q Was the green arrow there?

A From what I saw, it appeared but from the police point of view, it did not appear.

Q What is your version?

A I saw the green colour but *it may be my own wrong judgment.*

[emphasis added]

23 Any doubt as to whether the green arrow appeared in Ong's favour so as to give him the right of way when he made a right turn from Woodlands Road into Sungei Kadut Avenue was dispelled when he clearly accepted during cross-examination that while making a right turn, he had failed to stop to give way to vehicles having a right of way.

24 Goh, who was driving a lorry alongside the motor-cycle at the time of the accident, testified that Ong was travelling very fast in the opposite direction and that he did not stop when he should have done so before turning right into the path of his lorry and the motor cycle. In paras 7 and 8 of his AEIC, Goh stated as follows:

7 When I reached the traffic lights-controlled junction of Woodlands Road and Sungei Kadut Avenue, *the traffic lights were showing green in favour of the rider of motor-cycle No FN 9635P and me*. As such, I proceeded to enter the said junction. The rider of motorcycle No FN 9635P also entered the said junction.

8 [Ong's lorry] which was in the opposite direction, instead of stopping at the said junction, made a right turn and cut into the path of motorcycle No FN 9635P and my motor tipper. As [Ong's lorry's] cutting in was too sudden, the rider of motorcycle No FN 9635P and I could not avoid colliding into [Ong's] lorry.

[emphasis added]

25 Goh's evidence regarding the green lights in his favour was not challenged during cross-examination. I found Goh to be a credible witness and I was impressed with his candour and demeanour. His evidence certainly lent weight to the assertion that Ong was wholly responsible for the accident.

26 Ong furnished no credible evidence of any contributory negligence on Hussin's part. In a situation such as this, the decision of the English Court of Appeal in *Joseph Eva, Limited v Reeves* [1938] 2 KB 393 ("*Joseph Eva*") is relevant and the following words of Scott LJ at 404-405 are instructive:

Nothing but absolute confidence in the mind of the driver invited by the green to proceed, that he can safely go right ahead, accelerating up to the full speed proper to a clear road in the particular locality, without having to think of the risk of traffic from left or right crossing his path, will promote the free circulation of traffic, which next to safety is the main purpose of all traffic regulation. Nothing again will help more to encourage obedience to the prohibition of the lights, than the knowledge that, if there is a collision on the cross-road, the trespasser will have no chance of escaping liability on a plea alleging contributory negligence against the car which has the right of way. Finally, nothing will help more to encourage compliance with the summons of the green to go straight on than the knowledge of the driver that the law will not blame him if unfortunately he does have a collision with an unexpected trespasser from the left or right.

27 Admittedly, in *Loh Saik Pew v Tan Chuan Huat* [1975-1977] SLR 189, the Court of Appeal ruled that there was contributory negligence on the part of the respondent, a motor cyclist, who should have kept a lookout for vehicles coming into the cross-roads and in the path of his vehicle. However, in that case, FA Chua J, who delivered the judgment of the court, distinguished *Joseph Eva* on the ground that the appellant had entered the crossroads when the lights were amber and not when they were red. Furthermore, at [12], FA Chua J added:

We are of the view that although the respondent was entitled to proceed and enter the junction immediately the lights turned green in favour, he should in his own interest have kept a lookout for vehicles coming ... in case some vehicle *which had properly entered the crossroads* might still be passing across. If he had looked to his right when moving off from the stop line he would have seen the appellant's motor van coming and *would have been able to take effective steps to avoid a collision*.

[emphasis added]

28 In the present case, the question of amber lights did not arise and Ong had turned right to enter the junction without giving way to oncoming traffic. After taking all circumstances into account, there can be no doubt that Ong is solely liable to Ari for the injury caused to him as a result of his negligence. Ari is thus entitled to damages and to the costs of the action. The damages will be assessed by the Registrar.

29 Ong's claim against the third party for contributory negligence is dismissed with costs.

30 As I found that Ong is wholly responsible for the accident, it follows that Farida's claim for damages with respect to Hussin's death in Suit No 328 of 2006 succeeds with costs. The damages will be assessed by the Registrar.

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