Yang Xi Na v Lim Chong Hong and Another (Ong Ah Seng, Third Party) [2006] SGHC 96

Case Number : Suit 405/2005

Decision Date : 31 May 2006

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Rajinder Singh (Rajah & Tann) for the plaintiff; M Ramasamy and Grace Malathy d/o Ponnusamy (William Chai & Rama) for the defendants; Fazal Mohamed and Pak Waltan (B Rao & K S Rajah) for the third party

Parties : Yang Xi Na — Lim Chong Hong; Woodlands Transport Service Pte Ltd — Ong Ah Seng

Tort – Negligence – Contributory negligence – Collision between moving vehicle and parked vehicle – Whether driver of parked vehicle contributing to accident by parking vehicle where it was when accident taking place – Extent of liability of driver of parked vehicle for accident

Tort – Nuisance – Essential factors – Collision between moving vehicle and parked vehicle – Whether parked vehicle constituting actionable nuisance where such parked vehicle an obstruction on road

31 May 2006 *Judgment reserved*.

Kan Ting Chiu J:

1 This is a case arising out of a motor accident between one moving vehicle and one parked vehicle. The first vehicle was a bus conveying workers to the factory of Tech Semiconductor Pte Ltd.

2 The accident took place on 6 August 2004 at night, at about 8.41pm. The bus was proceeding along Woodlands Industrial Park D, Street 1 ("Street 1"), and was already outside the factory, with one right turn to go into Woodlands Industrial Park D, Street 2 ("Street 2") before entering the factory gate.

3 At the stretch of Street 1 where the accident happened, there were two lanes for traffic travelling in the direction of the bus, and one lane for traffic travelling in the opposite direction. There was an unbroken white lane separating the sets of lanes. There was a gate to the factory along Street 1 on the opposite side of the road to the bus, but the bus was not going to enter the factory through this gate. It was going to go past the gate, make a right turn from Street 1 into Street 2 and enter the factory through another gate along Street 2.

4 The bus did not go as far as Street 2. Somewhere opposite the gate along Street 1, it collided into the second vehicle, a motor tipper (a lorry with the loading section that can tip backwards) parked along the left lane with no lights on.

5 The plaintiff, who was in the bus, was injured in the accident. She sued the bus driver and his employer. They in turn joined the driver of the tipper as a third party in the proceedings and claimed that he should indemnify them against the plaintiff's claim. The third-party claim was based on the allegation that the driver of the tipper was negligent in parking the tipper there. They also pleaded nuisance, curiously, as one of the particulars of negligence.

6 The bus driver had made two reports of the accident. In his police report made on 7 August 2004, he stated:

> On 6th August 2004 at about 2045hrs, I, Lim Chong Hong I/C S1392230F, driver of PH2586G, turned right onto Woodlands Industries [*sic*] Park D St 1 towards Tech Factory gate 2. When I approached Tech Factory Gate 1, there were vehicles queuing to turn right into Tech Factory gate 1 at the outer lane and I continued to advance on the left lane. As the surrounding was dim, I only realized that there was a tipper truck, without switching on any hazard lights, parked along the left lane when I was just a short distant [*sic*] away. Upon realising it, I immediately swerved my vehicle to the right. As the opposite lane was of advancing vehicles, I have to control my right swerve to avoid these advancing vehicles. As a result, the tip of the left-hand side of my bus collided onto the rear of the tipper truck XB 5311A.

and on the same day, he made a report to the insurers of the bus in which he repeated *verbatim* his police report.

7 In this action, he deposed an affidavit declaring:[note: 1]

> Shortly before the accident, I had turned right into Woodlands Industrial Park D Street 1 ("the road") from Woodlands Avenue 3. After turning right from Woodlands Avenue 3, I noticed that the road branched into 2 lanes. I also noticed some cars on the extreme right lane ahead, waiting to turn right into Tech Semiconductor Gate 1 which was located to my right.
>
> I therefore proceeded to filter into the inner left lane. Shortly after passing the waiting cars to my right, I suddenly noticed a large truck (with registration number XB 5311A) (hereinafter referred to as "the truck") parked along the extreme left lane just in front of me. As the truck did not have its hazard lights on and the road was not brightly lit, I did not notice its presence until I was a short distance from it. It is not usual for vehicles to be parked on this stretch of road as there is a continuous white line in the middle of the road prohibiting parking. In the premises, I did not expect the said large truck to be parked there.
>
> I immediately applied my brakes and swerved to my right in an attempt to avoid hitting the truck. At the same time I tried to control my swerve to the right in order to avoid hitting approaching vehicles on the opposite lane. Despite my attempts to avoid a collision with the truck, the left side of the bus collided into the right rear edge of the truck.

8 He was charged with and convicted for an offence of driving without due care and attention under s 65 of the Road Traffic Act (Cap 276, 1997 Rev Ed). He was fined $1,000 and disqualified from driving all classes of vehicles for eight months. He had pleaded guilty to the charge and admitted the facts presented by the Prosecution, *inter alia*, that:[note: 2]

> On the 6th August 2004 at about 8.41pm, defendant was driving motor bus PH 2586G with about 37 passengers seated inside his vehicle. He was traveling along the left lane of the 2-lanes, 2-way traffic of Woodlands Industrial Park D Street 1 towards the direction of Woodlands Industrial Park D Street 2. Somewhere near to lamppost 3, he drove without due care and attention by failing to keep a proper lookout for a parked tipper XB 5311 A which was parking in front of him. The defendant upon realizing the said tipper, tried to swerve to his right however, the front left portion of his vehicle still collided onto the rear right portion of the said tipper.
>
> …

> At the material time, the weather is fine and the road surface was dry. The visibility was fair and traffic flow was light.

In the proceedings before me, it was alleged that the bus was speeding as it approached the tipper, but the evidence available was inconclusive.

9 The driver of the tipper accepted an offer of composition on a charge of parking opposite an unbroken white line, an offence under r 22(a) of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed). His counsel submitted that the acceptance of the offer of composition was not an admission of guilt. Nevertheless, the tipper driver admitted in his affidavit of evidence-in-chief that:

> 4. I had parked my lorry along the extreme left side of Woodlands Industrial Park D, Street 1 which consisted of three lanes. There were two lanes going in the direction in which my vehicle was parked. There is one lane in the opposite direction. I had parked my lorry on the left lane of the two lanes going in the same direction and so there was ample space (one whole lane) on the right side of my vehicle for other vehicles to pass without encroaching onto the lane going in the opposite direction.
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> 5. I then left my vehicle to go to the turf club. When I returned to my vehicle subsequently, I discovered that one motor bus PH 2568G had knocked into my lorry.

10 After the bus driver and his employer accepted liability towards the plaintiff, their claim for indemnity against the tipper driver was the sole issue for determination.

11 It is important to consider the circumstances in which the bus collided with the tipper. The bus had made a right turn from Woodlands Avenue 3 to get into Street 1. At the start of Street 1, there was only one wide undivided lane for traffic travelling in the direction of the bus. However, before reaching the scene of the accident, a broken line was painted on the road, so that traffic moving in that direction was separated into two lanes. There was a gentle right bend along Street 1 after the junction with Woodlands Avenue 3 but the road had straightened out at the stretch where the accident took place.

12 In his reports to the police and the insurers and in his affidavit, the bus driver had stated that his bus was travelling along the left lane of the road, whereas the vehicles turning right into the factory were on the right lane. His explanation was that he did not notice the presence of the tipper until it was too late because the road was dimly lit.

13 At one stage of his cross-examination, he departed from this account and said that the vehicles waiting to turn right into the factory gate obstructed his path, and he had to switch to the left lane where the tipper was parked[note: 3] rather than remain on the right lane. However he withdrew this part of the narration and confirmed that he was travelling along the left lane.

14 From the evidence presented, I find that the road was not brightly lit. Although there was street lighting, the street lamps were on the opposite side of the road and there were roadside trees which would have blocked some of the street lighting. There were also lights illuminating the factory gate, which were not likely to have thrown much light on the tipper parked across the road. There was a container park to the left side of the road which was lit, but there was little evidence on the distance of the lights there and the degree of illumination they threw on the road. In the statement of facts on the traffic charge against the bus driver, visibility was described as "fair".

15 I also find that the bus driver had not kept a proper lookout to the front while he was

proceeding along the left lane, probably because his attention was diverted to the vehicles on the right lane turning into the factory gate. He might have failed to keep a proper lookout in front because he did not expect there to be vehicles parked on his lane. These factors, compounded by the reduced night visibility, could have caused him to collide into the left rear portion of the tipper when he tried too late to swerve right to avoid it.

16 The bus driver admitted that he had caused the accident, and had sought to get the tipper driver to share the responsibility. The tipper driver, however, did not accept any responsibility for the accident. His counsel submitted that:[note: 4]

> Although a duty is owed by the Third Party [the tipper driver] to other road users, the real consideration in this case has to be whether the Third Party was in fact responsible for the accident …

and that:[note: 5]

> The undisputed facts are that the 1st Defendant [the bus driver] had failed to keep a proper lookout, despite good visibility. It is submitted that the 1st Defendant had driven at an excessive speed which impaired his ability to manage his motor bus, thereby causing it to collide into the right side rear of the Third Party's lorry. In the circumstances, it is submitted that the presence of the Third Party's lorry on the side of the road did not contribute to the cause of the accident at all and that the sole cause of the accident was the 1st Defendant's negligent management of his motor bus.

17 In the closing submissions, several cases involving collisions into parked vehicles were referred to by counsel. Two of the cases, *Dymond v Pearce* [1972] 1 QB 496 and *Chop Seng Heng v Thevannasan* [1975] 2 MLJ 3 offer guidance and assistance for the determination of this case.

18 *Dymond v Pearce* is a decision of the English Court of Appeal. A lorry was parked on the side of a dual carriageway road along a very shallow bend, and beneath a street lamp. Each carriageway was 24ft wide. As the lorry was 7½ft wide, 16ft of the carriageway was left for traffic to pass. The lorry driver had put on his tail lights, and the street lamps were also alight, affording excellent illumination. A motorcyclist who failed to look where he was going collided into the lorry at about 9.45pm at night. The pillion rider of the motorcycle sued the motorcyclist and obtained judgment against him. He also sued the owner and driver of the lorry for negligence and nuisance. His claim against the latter two was dismissed. He brought his case on appeal to the Court of Appeal, where it was dismissed again.

19 Sachs LJ held, on the allegation of negligence, at 500 that:

> To park a lorry, even of the size of the one under consideration, under a good street lamp on a one-way carriage track 24 feet wide with its tail lights on at the appropriate time cannot be said to be negligent, at any rate when there was no evidence of difficulties likely to be caused to traffic (the traffic was said to be light at the relevant times), or as to the risk of heavy mist or fog supervening. Moreover, the lorry was parked in that position on a bend which is the more likely to be clear of other vehicles pursuing a normal course.

20 On the issue of nuisance, the learned judge stated at 501:

> The law on the question of what constitutes a public nuisance in a highway is plain, despite the fact that in certain authorities cited to us dealing with wholly different sets of facts there can be

found phrases apt to deal with those facts which, if taken out of context, could impair the clarity of the position. The relevant law is compactly stated in the judgment of Lord Evershed M.R. in *Trevett* v. *Lee* [1955] 1 W.L.R. 113, 117 where he said:

> "The law as regards obstructions to highways is conveniently stated in a passage in *Salmond on Torts*, 11th ed., p.303: 'A nuisance to a highway consists either in obstructing it or in rendering it dangerous,' and then a number of examples are given, which seem to me to show that, prima facie, at any rate, when you speak of an obstruction to a highway, you mean something which permanently or temporarily removes the whole or part of the highway from the public use altogether."

and at 501–502:

> When looking at authorities concerned with highway nuisances it is important to remember that there are these two categories, because otherwise phrases relating to the second – danger – category may be read as necessarily applying to the first – simple obstruction. It is, however, prima facie common to both categories – which can in fact overlap – that in neither is it necessary to prove negligence as an ingredient (see *per* Lord Simonds in *Read* v. *J. Lyons & Co. Ltd.* [1947] A.C. 156, 182–183; *per* Devlin L.J. in *Farrell* v. *John Mowlem & Co. Ltd.* [1954] 1 Lloyd's Rep. 437, 440; and *per* Denning L.J. in *Morton* v. *Wheeler* [The Times (1 February 1956)]); that in both proof of what is prima facie a nuisance lays the onus on the defendant to prove justification (compare *Southport Corporation* v. *Esso Petroleum Co. Ltd.* [1954] 2 Q.B. 182); and that, of course, neither is actionable – in the sense that a claim for damages can succeed – unless the plaintiff can establish that damage has actually been caused to him by the nuisance.

Sachs LJ found that although nuisance was established, the accident was wholly attributable to the negligence of the motorcyclist, and so he dismissed the claim on nuisance as well.

21 Edmund Davies LJ took a different view on nuisance on a highway. He held that for nuisance to be established, there must be an obstruction of the highway and the obstruction must also constitute a danger to road users. On the facts, he found that there was an obstruction, but it did not present a danger and he therefore dismissed the claim on nuisance.

22 In *Halsbury's Laws of England* vol 21 (LexisNexis, 4th Ed, 2004 Reissue), nuisance on the highways is explained taking into account the decisions in *Trevett v Lee* [1955] 1 WLR 113and *Dymond v Pearce* in para 322 thus:

> It is a nuisance at common law either to *obstruct a highway* or to *render it dangerous*. Obstruction or hindrance may be justifiable as an exercise of rights reserved by the dedicating owner, or as an ordinary and reasonable exercise of the rights of a frontager, or under statutory powers. Whether an obstruction, encroachment or other act or omission amounts to a nuisance is a question of fact, and it may be that an obstruction is so inappreciable or so temporary as not to amount to a nuisance. *Causing danger in a highway is a different form of wrongful interference which need not necessarily involve obstruction*. Generally, however, it is a nuisance to interfere with any part of a highway. It is no defence to show that, although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public. [emphasis added]

23 Obstructions of a road vary in magnitude; they can obstruct large or small parts of the road, and may be clearly visible and easy to get around, or may appear without warning and be difficult to

avoid. For an obstruction to constitute an actionable nuisance, the obstruction has to be a danger to road users.

24 When someone creates a condition on the highway which constitutes a danger to road users, that is a nuisance whether the danger is in the form of an obstruction or otherwise, *eg*, where oil flows onto the road and makes it slippery or smoke blows across the road and blocks visibility.

2 5 *Chop Seng Heng v Thevannasan* ([17] *supra*) is a decision of the Privy Council on an appeal from Malaysia. In this case, a moving lorry collided into a stationary lorry at 3.00am in the morning. The stationary lorry was parked along a winding road, with its lights on. It was found that conditions were misty with reduced visibility at the time of the accident. The road was wide enough to allow other vehicles to overtake it on the same lane.

26 In an action by a passenger of the moving lorry against both drivers and their respective employers, the trial judge found the driver of the parked lorry and his employer 75% liable and the driver of the moving lorry and his employer 25% liable. On appeal to the Federal Court, it was found by a majority that the driver of the moving lorry and his employer were fully liable.

27 When the matter went before the Privy Council, the decision of the Federal Court was set aside and the finding of the trial judge was restored. Lord Edmund-Davies, in delivering the decision of the court, cited with approval the dissenting judgment of Ong Hock Thye CJ in the decision of the Malaysian Federal Court in *Chan Loo Khee v Lai Siew San* [1971] 1 MLJ 253 at 254–255 that:

> If parking a car, however recklessly, so as to cause needless obstruction to other road-users, were to be held blameless, merely because other motorists could still have room to pass, *provided they kept a proper look-out*, then it would appear that the deliberate parking of a car anywhere, even in the middle of the highway, should be considered equally excusable, if not justifiable, regardless of the fact that, by reason of such obstruction, other motorists had come to grief by reason of their being not fully alert. In such cases there should, in my opinion, be proper apportionment of blame, depending on the circumstances. But, to exonerate the obstructionist completely – when it is undeniable that, but for the presence of the obstruction, there could not possibly have been an accident – is to ignore the principle of placing the blame fairly on those to be blamed for their acts or omissions. In this age of fast motor transport I think it is the duty of the courts to eschew excessive legalism and to require that every motorist should observe the golden rule of shewing due consideration for other road-users, or suffer the consequences of his failure to do so. [emphasis in original]

28 Lord Edmund-Davies then addressed his mind to the case before him and found (at 5) that:

> In the present case, all three members of the Federal Court accepted the trial judge's finding that the first defendant had, in the words of Ali F.J., "parked his lorry *too close to the corner*". This finding, when considered in conjunction with the time of the accident and the weather conditions then prevailing, makes it clear that the first and second defendants were rightly blamed in part for the accident. It follows that, on the issue of liability, the appeal of the fourth defendants should be allowed. [emphasis in original]

29 These two decisions are instructive in that they show that in each case, the liability of the driver of the parked lorry was determined by a consideration of the facts of the particular case.

30 In this case, I find these factors of particular relevance:

(a) the tipper was parked against an unbroken white line, where parking was prohibited;

(b) the tipper blocked the path of the bus along the left lane;

(c) the tipper driver did not turn on warning lights, or do anything to alert other road users of the presence of the tipper;

(d) visibility along that stretch of road was restricted at the time of the accident; and

(e) other road users may not expect vehicles to be parked illegally along the left lane of the road.

31 Counsel for the third party was correct to accept that the tipper driver owed a duty of care to other road users. However, I cannot agree with his submission that the tipper driver had not breached the duty when I take into account the factors listed in the foregoing paragraph. I find that the defendants had established their claims of negligence and nuisance against him.

32 I find on these facts that the third party had contributed to the accident and I order that he indemnifies the defendants against 20% of their liability to the plaintiff.

[note: 1]Affidavit of evidence-in-chief of Lim Chong Hong paras 5–7

[note: 2]Statement of facts paras 4 and 9

[note: 3]Notes of Evidence pp 123, 165–167

[note: 4]Third Party's Opening Statement para 16

[note: 5]Third Party's Opening Statement para 19