IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 211

Suit No 307 of 2019

Between

Ting Jun Heng

… *Plaintiff*

And

(1) Yap Kok Hua

(2) Ng Li Ning

… *Defendants*

ORAL JUDGMENT

[Tort] — [Negligence] — [Contributory negligence]
[Damages] — [Computation]
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16–19 June, 4 September 2020

2 October 2020 Judgment reserved.

Aedit Abdullah J:

Introduction

1 These are my brief remarks to convey the decision I have reached, for the assistance of the parties before me, as well as those involved in the related cases or matters.

2 In these oral remarks, I will only summarise very briefly the facts, parties' submissions, and my reasoning; full grounds will be issued if needed. For reasons of length, I will not be able to go into all matters raised by the parties at this point.

The Background

3 In the evening of 19 April 2018, the Plaintiff, together with three fellow students, took a taxi driven by the 1st Defendant, from Clementi to the National University of Singapore ("NUS"). The taxi stopped at the junction between Commonwealth Avenue West and Clementi Road to turn right onto Clementi Road in the direction of the Ayer Rajah Expressway and the NUS. A discretionary right turn could be made at the junction at the material time.

4 The taxi was in one of two turning lanes at the junction, and then moved into its respective turning pocket. The vehicle to the taxi's left moved to execute

the discretionary right turn. The 1st Defendant also chose to make the turn. Tragically, the 1st Defendant's taxi was then hit by the 2nd Defendant's vehicle, which was going straight through the junction. The traffic lights were in the 2nd Defendant's favour, and he had seen the other vehicle making the turn, but apparently did not see the taxi next to that vehicle until it was too late.

5 One of the passengers in the 1st Defendant's taxi died. The Plaintiff and two others were injured. The first Defendant was charged with a number of offences, including failing to ensure that his passengers were belted up; he pleaded guilty to two of the charges, with other charges, including the seat-belt offence, taken into consideration for sentencing. The 2nd Defendant's criminal matters were still ongoing at the time of the trial before me.

6 The Plaintiff claimed damages against the 1st and 2nd Defendants for negligence in the driving of their vehicles. The trial before me was on liability only, with the precise quantum of damages to be determined subsequently.

7 At trial, reliance was placed on the testimony of the various witnesses, but particularly also on video evidence, which came from various sources. The primary dispute was on the care which had to be exercised by the 2nd Defendant, who was the driver going straight. It was not disputed by the 1st Defendant that he had been negligent in executing the turn; the question was really the apportionment of liability as between him and the 2nd Defendant. A secondary issue was whether the Plaintiff had indeed used his seatbelt.

The Parties' Arguments

8 In brief:

(a) The Plaintiff argues that in respect of the apportionment between the Defendants, the 2nd Defendant bore some substantial responsibility as he did not slow down when he approached the junction, and failed to keep a proper lookout. The focus of the Plaintiff's arguments is on refuting any contributory negligence; in particular, it is argued that it has not been proven that the Plaintiff was not wearing a seatbelt when the accident occurred.

(b) The 1st Defendant's Counsel argues that the 2nd Defendant had driven so fast that the 1st Defendant could not take any evasive action. The 1st Defendant's expert witness gave his opinion that the 2nd Defendant was driving at 88 to 93 kmph. This was derived from momentum exchange calculations, which the 1st Defendant argues is to be preferred to analysis of the video footage. Between the two Defendants, it is argued by the 1st Defendant that the apportionment, leaving aside the Plaintiff's contributory negligence, would be 55 to 60% on the 1st Defendant, and 40 to 45% on the 2nd Defendant.

(c) The 2nd Defendant's Counsel argues, relying on his expert, that the speed of the 2nd Defendant's vehicle was between 74 to 87 kmph, with an average speed determined to be at 82 kmph. However, in any event, the 2nd Defendant submits that there is no dispute between the parties that he was driving at a speed above the speed limit, and that the court need not choose between the experts in determining the appropriate apportionment. However, should the court have to do so, the

2nd Defendant's counsel argues that the 2nd Defendant's expert opinion should be preferred.

(d) The two Defendants both argued that there was contributory negligence by the Plaintiff as he had failed to wear his seatbelt.

The Issues

9 For the purposes of these remarks, I will focus only on my determination of the respective liabilities of the two Defendants, the experts' opinions concerning the speed of the 2nd Defendant's vehicle at up to and at the point of collision, and whether there was any contributory negligence by the Plaintiff in not wearing his seatbelt.

The First Defendant's liability

10 The greater degree of responsibility certainly lay on the 1st Defendant, which was not disputed by his counsel. The 1st Defendant was executing a discretionary turn, with the traffic lights in favour of oncoming traffic. Priority lay with those vehicles going straight; it was incumbent upon the 1st Defendant to keep a proper lookout, and exercise prudent judgment in executing the turn. If there was any doubt about whether it was safe, the 1st Defendant should have either waited for oncoming traffic to clear, or for it to be stopped and the right turn green arrow traffic lights to come on. He, however, failed to do so, and just followed the vehicle next to him, which turned, but which fortunately did not get hit by or hit oncoming traffic.

11 The 2nd Defendant's Counsel referred to the changing position of the 1st Defendant as to what the 1st Defendant allegedly saw and did at the junction. It is sufficient to note at this point that the inference from the video evidence

showing the movement of the relevant vehicles clearly indicated that there was want of due care, and that the 1st Defendant failed to keep a proper lookout. The primary responsibility for the collision could not be at all laid at the door of the 2nd Defendant's speeding.

The Second Defendant's liability

12 The level of responsibility to be ascribed to the 2nd Defendant is consequent on, primarily, the degree to which he exercised a proper lookout, as well as the speed at which he was travelling. In respect of the latter, while the two experts were agreed that the 2nd Defendant was speeding, and it was not disputed by the 2nd Defendant himself that he had been travelling over the speed limit, a finding should nonetheless be made by the Court.

The speed at which the 2nd Defendant was travelling

13 Taking first the question of ascertaining the 2nd Defendant's speed up to and at the point of collision, in determining this issue, I begin by considering the views of the two experts. I accept that each of the experts was well-qualified to testify in respect of the collision between the vehicles. While the 2nd Defendant's Counsel took issue with the expertise of the 1st Defendant's expert, I find, having examined his formal qualifications and experience, that he was qualified within the meaning of s 47(2) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") to give his opinion.

14 The expert witnesses used different methods to analyse the collision and the events leading up to it, arriving at different speeds for the vehicle driven by the 2nd Defendant. As will be noted below, that difference was not substantial, and the 2nd Defendant's Counsel submitted that it would not affect the findings

on relative liability. Nonetheless, for the record, I will make an express finding on the opinions expressed.

15 I accept that either method adopted may give a credible and reliable opinion. The 1st Defendant's expert used calculations based on the momentum and relative positions of the vehicles to analyse the collision and derive the likely speed at which the 2nd Defendant's vehicle was travelling up to and at the point of collision as being in the range of 88 to 93 km per hour. The 2nd Defendant's expert analysed video footage from one source to derive the speed of the 2nd Defendant's vehicle, which in his opinion was between 74 and 87 km per hour. Later, the 2nd Defendant's expert was given a video recorded by cameras maintained by the LTA; this video led him to conclude that the average speed up to impact was 82 km per hour. Video analysis was also used by the Health Sciences Authority ("HSA"), but while its report was before the Court, that evidence was not tested through cross-examination of its maker, and I thus was reluctant to place much weight on it; for what it is worth, the speed determined by the HSA was about 92 to 97 km per hour.

16 The 2nd Defendant pointed out several errors made by the 1st Defendant's expert, namely the direction of traffic for one of the roads at the junction, as well as the figure for the coefficient of friction, which would influence the braking distance of the 2nd Defendant's vehicle. The errors were not, however, such as to lead me to reject the 1st Defendant's expert's opinion. These were relatively minor and did not affect his credibility as a whole.

17 The choice between the two opinions came down to an assessment of which was more reliable in the specific circumstances of this case, particularly given the constraints on the real and objective evidence used in the respective analyses, as well as the assumptions that had to be made.

18 I find that the momentum exchange analysis is on the facts here, less reliable, and that the video analysis, while suffering from some shortcomings, is to be preferred. The assumptions underlying the momentum exchange analysis rendered it less reliable to my mind. Among these were:

(a) That the Forensic mapping was accurate. Momentum exchange requires an accurate determination of position, so that speed and momentum can be reliably calculated. There were, however, concerns about the forensic mapping here.

(b) Other assumptions also had to be made, including the relative weights of the vehicles. This was a function of the weight of the persons in the vehicles at the material time, other baggage or loads, and even the fuel carried. Although it may be that the variation ultimately may not be that great, it would seem that on the facts of this case, the figures derived may be subject to too many contingencies for the momentum exchange analysis to be preferred.

19 I am aware that the video evidence suffered from some deficiencies too. The resolution of the images was not that high. The frame rate was also not ideal. But overall, on comparing the concerns as between video analysis and momentum exchange analysis, I conclude that the video evidence here is more reliable, and thus the video analysis is to be preferred.

20 I therefore accept the evidence of the 2nd Defendant's expert, who, as noted above, concluded that the speed of the vehicle was 74 to 87 kmph, with an average speed of 82 kmph. Even taking the lower speed within the range, the 2nd Defendant was above the speed limit, and certainly was so in terms of his average speed.

The 2nd Defendant's driving

21 Aside from the question of the 2nd Defendant's speed, I find that the 2nd Defendant failed to keep a proper lookout and otherwise drive with proper care at the junction.

22 Having the right of way essentially means that other users should yield or give way. But, having the right of way does not absolve that particular road user of the need to exercise due care. All driving occurs, particularly in urban Singapore, within an environment where there are risks to be managed, and dangers to be aware of. Even a road user with lights in his or her favour must still ensure that a proper lookout is kept, and enough reaction time worked in so that accidents can be avoided with some reasonable effort. This underlies various cases such as *SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] 2 SLR(R) 211 ("*Stafford*"). I do not understand *Ong Bee Nah v Won Siew Wan (Yong Tian Choy, third party)* [2005] 2 SLR(R) 455 to differ from this conclusion; much will depend on the specific facts of each case, as was emphasised in *Stafford* itself

23 In exercising such care, a driver must have heed of other road users, adjusting his speed lower if needed in the circumstances to reduce the risk of an accident occurring. The degree and nature of attention will vary: a driver in the fastest lane on an expressway can usually go at or close to the speed limit, but must, in particular, maintain a sufficiently safe distance from the vehicle in front to slow down or stop if something impedes traffic ahead of him; a driver in an area with crowds of pedestrians or near a school would need to exercise caution to allow enough reaction time should a pedestrian or cyclist cross into his path suddenly.

24 Therefore, a driver having priority or right of way can generally exercise it, but must be mindful that other users may not observe the rules and be able to react. Having the right of way does not equate to a licence to collide with another road user in exercising that right.

25 Thus, at a busy junction, a vehicle going straight with the traffic lights in its favour can continue to move forward, but the driver should still exercise a proper lookout and take steps to reasonably reduce the risk of collision. Where the drivers of the turning vehicles are over-optimistic, the driver going straight should exercise caution, slow down to allow for appropriate reaction(s), and sound the horn as appropriate. He should make sure that it is safe to continue straight before proceeding. The driver travelling straight should not proceed as if the vehicles ahead at the junction were incapable of turning into his path. I also note that there was insufficient evidence to determine whether the 2nd Defendant braked as he was about to collide, which went to the question of whether he was indeed keeping a proper lookout.

26 Furthermore, the 2nd Defendant, by his own admission, was above the speed limit. Based on the expert opinion which I accepted, he was going at a speed range of at least 74 kmph, with an average speed of 82 kmph. The conditions at the junction were such that he ought in fact to have gone slower than the speed limit to be able to respond to the turning traffic.

27 Thus, when the 2nd Defendant came to the junction, seeing vehicles turning, or at least one vehicle doing so, the appropriate reaction would have been to slow down, sound the horn if need be, and make sure no other vehicle was following suit in turning, either from behind or next to the one that took its chances. The 2nd Defendant did not do so.

Apportionment Between the Defendants

28 In determining the respective apportionment, regard would have to be had to the breaches by the respective parties. Thus, while the 1st Defendant would have to bear the bulk of the responsibility for turning without properly checking for oncoming traffic, the 2nd Defendant also bore a substantial portion of responsibility in proceeding as he did. The 1st Defendant's liability was certainly greater than 50%. The question was whether it would go all the way up to 85 % or more. But, to my mind, a 15 to 25% finding against the 2nd Defendant would be too low, while 40 to 50% would also be too high. To reflect the 2nd Defendant's speed and the need for him to have slowed down and exercised caution, I am of the view that the appropriate measure would be 35% responsibility on the part of the 2nd Defendant.

Contributory Negligence by the Plaintiff

Wearing of the Seatbelt

29 The only evidence to suggest that the Plaintiff had not been wearing his seatbelt at the material time was the fact that the 1st Defendant was charged with not having ensured that his passengers had in fact worn seatbelts. However, the 1st Defendant himself was not sure about whether the Plaintiff had done so. In the circumstances, little weight could be placed on the Defendants' claim.

30 There was no other evidence on this issue, such as from biomechanical or other experts, that the injuries suffered could only have been caused by the Plaintiff not wearing his seatbelt.

31 The Plaintiff himself testified that it was his usual practice to wear a seatbelt. There was no reason to find on the balance of the probabilities that he had not.

32 If the Plaintiff had not worn a seatbelt, then there would have been contributory negligence. It is true that whether or not the seatbelt was worn would have been irrelevant to the occurrence of the accident. However, what matters in a claim for negligence is not just the accident or collision itself, but the damage that flows from it: the relevant question is of the responsibility of a plaintiff for the injury that is suffered by him. That was what was laid down in *Froom v Butcher* [1976] QB 286 and approved by the Court of Appeal in *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377. I am satisfied that as a matter of principle, this position should be applied on the instant facts.

33 As for the effect of the 1st Defendant's plea of guilt and the reference in the Statement of Facts, to which he had admitted, to the passengers not wearing seatbelts, this was of little effect against the Plaintiff. The Plaintiff was not party to the criminal proceedings, nor was he convicted of any offence of not wearing a seatbelt. Section 45A of the Evidence Act does not assist the Defendants here in ascribing contributory negligence since it does not affect the position of the Plaintiff.

Conclusion

34 In conclusion therefore, considering the evidence and arguments, I conclude that the liability for the Plaintiff's injuries should rest as follows:

(a) 1st Defendant: 65%

(b) 2nd Defendant: 35%

The Plaintiff is not contributorily negligent for his loss, and no further adjustment needs to be made.

Aedit Abdullah
Judge

Ramasamy s/o Karuppan Chettiar (Central Chambers Law Corporation) for the plaintiff;
Teo Weng Kie and Shahira Binte Mohd Anuar (Tan Kok Quan Partnership) for the first defendant; and
Wee Anthony and Fendrick Koh (United Legal Alliance LLC) for the second defendant.