

Lyu Yongqiang v Yu Mau Hing and another
[2015] SGHC 200

Case Number : Suit No 559 of 2014
Decision Date : 31 July 2015
Tribunal/Court : High Court
Coram : Lai Siu Chiu SJ
Counsel Name(s) : Eric Liew Hwee Tong (Gabriel Law Corporation) for the plaintiff; Anthony Wee (United Legal Alliance LLC) for the defendants.
Parties : Lyu Yongqiang — Yu Mau Hing and another

Tort – Negligence

31 July 2015

Lai Siu Chiu SJ:

1 This claim related to an accident that took place on 10 August 2013 (“the accident”) involving a public bus belonging to SBS Transit Ltd (“the second defendant”) that was driven by Yu Mau Hing (“the first defendant”) and a cyclist Lyu Yongqiang (“the plaintiff”).

2 The trial before this court was only to determine liability. At the conclusion of the trial, the plaintiff was awarded interlocutory judgment on the basis that the two defendants were 90% liable for the accident while the plaintiff was 10% liable. This court further directed that damages to be awarded to the plaintiff would be assessed by the Registrar on the basis of 90% liability on the part of the defendants, with interest on the damages assessed and the costs of this trial and of the assessment reserved to the Registrar.

3 The defendants are dissatisfied with this court’s decision and have appealed in Civil Appeal No. 113 of 2015. I now set out the grounds for the orders that were made.

The facts

4 According to the plaintiff, on the morning of 10 August 2013, at about 7.15am, he was riding his bicycle along Victoria Street heading in the direction of Hill Street. He was then in the extreme left lane of Victoria Street and was in front of Bugis Junction Shopping Centre (“Bugis Junction”) which was on his left side. Suddenly, SBS bus no. 8365X (“the Bus”) with the first defendant at the wheel came from behind the plaintiff and side-swiped his bicycle’s handle, causing the plaintiff to lose his balance and fall off his bicycle. The wheel of the Bus then ran over the plaintiff’s right leg causing a fracture of the ankle. The Bus did not stop until it reached the bus-stop ahead of Bugis Junction. An ambulance subsequently arrived and took the plaintiff to hospital.

5 Subsequently, by a letter dated 10 September 2013 from the Traffic Police department, the first defendant was notified he had committed the offence of inconsiderate driving under s 65(b) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (“the RTA”). The letter offered a fine of \$200 to compound the offence, which offer the first defendant accepted. He paid the fine and received a penalty of nine demerit points.

6 The plaintiff is a mainland Chinese national who came to Singapore to work as a welder with a construction company. As a result of the accident, the plaintiff was unable to work and returned to China in January 2014.

7 The first defendant's version of the accident (according to his affidavit of evidence-in chief ("AEIC")) was that he had stopped the Bus near the Bugis MRT station for passengers to alight and to board. He then drove off, travelling in the extreme left lane ("the bus lane") and proceeded straight along Victoria Street as the traffic lights at the junction of Rochor Road and Victoria Street ("the Junction") were in his favour.

8 The first defendant first saw the plaintiff when the latter was cycling on the pedestrian crossing across Rochor Road. By the time the first defendant had driven the Bus into the Junction and the front of the Bus was about halfway through the Junction, the plaintiff had reached the Bugis Junction side of the Junction. The first defendant noticed that the plaintiff then started swerving his bicycle towards the right and was riding in the bus lane.

9 The first defendant was then driving the Bus in the bus lane and had caught up with the plaintiff. He decided to swerve the Bus to the right as well in order to give the plaintiff more room. However, the plaintiff continued to swerve his bicycle towards the right and the first defendant correspondingly also swerved the Bus to the right. Unfortunately, despite the first defendant's evasive action, the left side of the Bus came into contact with the right side of the plaintiff's bicycle. The plaintiff lost control of and fell off, his bicycle.

10 The first defendant immediately stopped the Bus after the collision and attended to the plaintiff who was subsequently conveyed by an ambulance to the Singapore General Hospital where he was warded for five days until 14 August 2013.

11 The first defendant disclaimed any fault for the accident, contending that the accident would not have occurred but for the negligence of the plaintiff in riding his bicycle. He asserted that had the plaintiff not swerved right and continued to do so in the bus lane where the Bus was then travelling, there would have been no contact between the Bus and the bicycle; the accident would not have happened.

12 The first defendant had filed a police report on the day of the accident. In his AEIC, he dissociated himself from the contents therein (at Agreed Bundle of Documents ("AB") pp1-3) as:

- (a) he had spoken to the police officer in Mandarin and the latter had written the report for him in English;
- (b) while he was conversant in English, he may have signed the report too hastily at the time because he was still affected by the accident.

Having seen the video footage recorded by the closed circuit television camera ("CCTV") installed in the Bus, the first defendant deposed that his police report did not correctly reflect how the accident happened as the CCTV footage had jogged his memory.

13 I should point out at this stage that the difference between the first defendant's version of the accident as stated in his AEIC and in his police report related to *where* he first saw the plaintiff. In his police report, the first defendant said it was after the Bus had crossed the Junction that he first noticed the plaintiff turning left from Rochor Road into Victoria Street. In para 9 of his AEIC, the first defendant deposed that he was about to drive the Bus into the Junction when he first noticed the

plaintiff riding a bicycle halfway across the Rochor Road pedestrian crossing. I am uncertain as to the significance of the discrepant versions. The defendants had relied heavily on the video footage from the CCTV of the Bus that was shown to the court, in particular, videos numbered 1, 2, 8, 3 and 5, to show what happened. I should add that no objections were raised by counsel for the plaintiff to the video recordings.

The pleadings

14 Nothing turns on the pleadings. The statement of claim contained the usual averments of negligence by a plaintiff against a defendant in an accident claim. I should point out however, that counsel for the defendants in his closing submissions took issue with the plaintiff's plea that the Bus had encroached into the path of the plaintiff's bicycle at the material time, submitting there was no evidence at the trial (which is correct) to support this allegation.

15 The (common) Defence filed by the two defendants denied liability for the accident – it was contended it was the plaintiff's negligence that caused or contributed to the collision between the Bus and the bicycle. The defendants cited the plaintiff's breach of Rules 29 and 34 of the Road Traffic Act's Highway Code (Cap 276, R 11, 1990 Rev Ed) ("the Highway Code Rules") and Rules 5, 8 and 10 of the Road Traffic (Bicycles) Rules (Cap 276, R 3, 1990 Rev Ed) ("the Road Traffic Rules for bicycles") as particulars of such negligence. The defendants also alleged that the plaintiff was cycling at too fast a speed at the material time. (This allegation was not borne out by the evidence adduced at the trial).

The evidence

16 The plaintiff was the only witness for his case. Similarly the first defendant was the only witness for the two defendants.

17 For his cross-examination of the plaintiff, counsel for the defendants relied wholly on the footage recorded by the CCTV in the Bus (see [13]).

Counsel sought to elicit the following facts from the plaintiff when he showed the video footage to the latter:

- (a) after the Bus had stopped at the bus-stop outside Raffles Hospital for passengers to alight and to board, the Bus had continued its journey travelling in the centre of the bus lane;
- (b) thereafter, when the plaintiff riding his bicycle came into view, the Bus moved to the right of the bus lane and then straddled the left and middle lanes to avoid the plaintiff, thus widening the gap between the Bus and the plaintiff's bicycle; and
- (c) at one stage when the Bus was crossing the Junction near the plaintiff, a motorcyclist overtook the Bus on its right side.

18 Counsel's purpose was to show that the first defendant while driving the Bus took all reasonable steps to avoid the plaintiff when he was cycling in the bus lane. Counsel asserted that it was the plaintiff who encroached into the path of the Bus by swerving to the right and thereby caused the accident.

19 The plaintiff not unexpectedly denied he was liable. He explained (as shown by the photographs at AB pp14-22) that on the day of the accident, there was ongoing construction work at the

pedestrian crossing and at Victoria Street on the side of Bugis Junction next to the bus lane. There were construction barriers on the left side of the road next to the bus lane as well as hoarding that prevented pedestrians or cyclists from using the pavement on the left side of the road facing in the direction of Hill Street. The obstructions prevented the plaintiff from cycling closer to or on the pavement.

20 When the Bus overtook his bicycle, the plaintiff testified he felt a gust of wind (as if he was in a wind tunnel) and it was that sensation that caused him to lose his balance and the handle of his bicycle to swerve to the right into the path of the Bus.

21 As for the first defendant, he testified that he did not slow down when the Bus caught up with and overtook the plaintiff's bicycle. He explained he did not give way to the plaintiff either when the Bus entered the Junction because the plaintiff was then steering to the left. The first defendant said he signalled and steered the Bus to the right towards the centre lane when he was overtaking.

22 During cross-examination, the first defendant denied he was too close to the plaintiff when overtaking him and that caused the latter to wobble and lose his balance on his bicycle. While he agreed with the suggestion of counsel for the plaintiff that he was heading for the bus-stop about 30m ahead, the first defendant denied he had cut back into the bus lane too quickly after overtaking the plaintiff and the Bus was too close to the plaintiff, thereby causing the accident.

The issue

23 The only issue the court had to determine was, who caused the accident? Was it the plaintiff or the first defendant or were both partly responsible?

The evidence

24 I start by referring to the subsidiary legislation relied on by the defendants (at [15]), starting with Rules 29 and 34 of the Highway Code Rules under the section on Pedal Cyclists:

When Riding

29. Always ride on the left-hand edge on a dual carriageway but do not ride on a footpath. Allow other traffic to overtake you safely. Keep a straight course and avoid sudden swerves.

...

34. Always keep your head up.

25 Next, I set out the relevant Road Traffic Rules for bicycles:

Rider to give signals

5. The rider of a bicycle shall in order to inform traffic that he intends —

(a) to 'stop' — hold out his right arm horizontally with the forearm vertical and with the palm of the hand to the front;

(b) to 'slow down' — hold out his right arm horizontally with the palm of the hand downwards, and move the arm up and down several times;

- (c) to 'proceed to the right' — hold out his right arm horizontally with the palm to the front; and
- (d) to 'proceed to the left' — hold out his left arm horizontally with the palm of the hand to the front.

...

Bicycle to be ridden on left side of the road

8. Every bicycle shall be ridden close to the left hand edge of the roadway and in such a manner as not to obstruct vehicles moving at a faster speed.

...

Bicycle to be ridden in an orderly manner

10. No bicycle shall be ridden or propelled otherwise than in an orderly manner and with due regard for the safety of others.

26 On his part, counsel for the plaintiff had referred to a publication – The New Highway Code (Book 2), Final Theory of Driving – and in particular to the following extracts in Section 4 (Driving in Traffic) under the sub-heading on Cyclists to support the plaintiff's case that the first defendant owed and had breached the duty of care to the plaintiff:

... Because they ride close to traffic, cyclists are vulnerable to injury in a collision. As a driver, it is your special responsibility to pay attention to them and to provide for their safety.1. When sharing the road with cyclists, expect sudden moves on their part at all times. A patch of oil, debris, a pothole, an opening door of a parked car and other hazards can force a cyclist to swerve suddenly into your path.2. When approaching or passing a cyclist, give him/her ample space and be extra alert. Be prepared to slow down or stop. When a cyclist glances back, it is an indication that he/she may change direction anytime.

...

6. When overtaking, keep a safe gap between your vehicle and the cyclist. Don't cut in sharply after overtaking the cyclist. This could result in your vehicle "side brushing" or hitting the cyclist.

...

27 I should make it clear at this juncture that while the video recordings taken by the Bus were helpful, they could not/did not capture the plaintiff's movements as he cycled along Victoria Street. Despite the valiant efforts of counsel for the defendants, the video recordings of the Bus could not give any indication of how far apart the Bus was from the plaintiff (breadthwise), at and after the first defendant overtook the plaintiff's bicycle at, the Junction.

28 If the Bus was too close to the plaintiff (as his counsel contended), then it was the first defendant who caused the plaintiff to lose his balance on the bicycle. On the other hand, if it was the plaintiff who was reckless in his manoeuvring of his bicycle and, instead of swerving left or riding straight, he swerved right instead into the path of the Bus (which was what counsel for the defendants alleged), then it was the plaintiff's own negligence that caused the accident.

The decision

29 Having considered the evidence presented by the parties as well as the testimony of the two witnesses, I found that on a balance of probabilities, it was more likely than not that it was the first defendant who caused the accident.

30 Even taking into consideration the duties and responsibilities of a cyclist as set out in the subsidiary legislation, it did not appear to me that the plaintiff was negligent in the manner he rode or manoeuvred his bicycle on the day of the accident.

31 To elaborate, the subsidiary legislation relied on by the defendants specifically prohibited the plaintiff from:

- (a) riding on a footpath (Rule 29 of the Highway Code Rules); and
- (b) riding other than on the left hand edge of the roadway (Rule 8 of the Road Traffic Rules for bicycles).

Consequently, the plaintiff was not wrong to have ridden his bicycle in the bus lane of Victoria Street that morning. He was not allowed to ride on the pavement as that was meant for pedestrians nor was he allowed to cycle in the other two lanes of the road.

32 In my view, the first defendant:

- (a) should have overtaken the plaintiff's bicycle at a lesser speed and not cut back to the bus lane immediately thereafter;
- (b) should have then increased the distance between the Bus and the bicycle; and/or
- (c) should have then continued driving the Bus in the centre lane until he was nearer to the bus stop ahead of Bugis Junction before switching back to the bus lane.

Taking any of the above measures would have prevented the accident. Unfortunately, the first defendant did not, resulting in the Bus running over the plaintiff's right leg after the plaintiff lost his balance and fell off his bicycle.

33 I disagree with the submission of counsel for the defendants that all the above options were considered in retrospect. The first defendant as a prudent motorist should have given due consideration to such measures as he was driving a public bus *vis-à-vis* the plaintiff who was riding a bicycle. In all likelihood, the first defendant had breached Rule No 6 (at [26]) in cutting back to the bus lane immediately after overtaking the plaintiff with the resultant "side-brushing" of the plaintiff's bicycle. The first defendant's conduct fell short of the standard of care expected of a road-user.

34 It bears remembering that the first defendant had been fined \$200 for the offence of inconsiderate driving under s 65(b) of the RTA (at [5]). In his AEIC, the first defendant did not refer to the fine or the offence. It was only during cross-examination (at notes of evidence on 28 April 2015 at p45) that the first defendant said he paid the fine of \$200 "without giving it too much thought". However, he disagreed with counsel for the plaintiff that he had "side-swiped with [the] plaintiff's bicycle" as per the charge.

35 I therefore rejected the submission of counsel for the defendants that the plaintiff was the

author of his own misfortune as the first defendant had done all he could and that both defendants were not liable. However, I took cognisance of the fact that the plaintiff could have/should have stopped cycling to allow the Bus to pass and travel some distance ahead before he resumed his journey. As he failed to do so, I apportioned 10% liability to the plaintiff for the accident.

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