Mohammad Kassim Bin Sapil v Quah Lai Tee and Others
[2003] SGHC 118

Case Number : Suit 875/2002

Decision Date : 28 May 2003

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Raymund Anthony (Brij Rai & RA Anthony) for the Plaintiff; Ramasamy Chettiar (Harry Elias Partnership) for 1st Defendant; Christopher Fernandez (Khattar Wong & Partners) for 2nd Defendant; Abdul Rashid Gani (Khattar Wong & Partners) for 2nd Defendant; Anthony Wee (Rajah & Tann) for 3rd Defendant

Parties : Mohammad Kassim Bin Sapil — Quah Lai Tee; Foo Wan Kam; Chew Kim Teck

1 The Plaintiff, Mohammad Kassim Bin Sapil, was at the material time a delivery assistant in the employment of Active Metal (S) Pte Ltd ("Company"). On the morning of 22 October 1999, the Plaintiff together with the 1st Defendant, Quah Lai Tee ("Quah") who was driving the Company's lorry (YG 672G) were on their way to make a second delivery of the day. It began to rain when they were driving along the Pan Island Expressway ("PIE") towards the direction of Tuas. Quah then pulled over to the hard shoulder of the expressway and stopped near lamppost no.1847 in order to cover the lorry load of stainless steel plates with a canvas sheet. Both the Plaintiff and Quah climbed onto the back of the lorry where the Plaintiff positioned himself at the rear end of the lorry with his back against approaching traffic whilst the Quah was near the front cab-end of the lorry. They were in the process of covering the steel plates when a vehicle (SCX 358G) driven by the 2nd Defendant, Foo Wan Kam ("Foo"), collided into the rear right side of the stationary lorry. The impact threw both men off the lorry on to the ground. Unfortunately for the Plaintiff, he sustained injuries to his head including a fracture at the back of his skull.

2 Moments before Foo's vehicle collided with the lorry, a taxi (SHA 5706P) driven by the 3rd Defendant, Chew Kim Teck ("Chew") skidded. Both taxi and Foo's vehicle collided into each other. Foo lost control of his vehicle and it collided into Quah's stationary lorry.

3 The Plaintiff is claiming damages for injuries and consequential losses suffered by him as a result of the negligence of all three Defendants in the driving, use, management and control of their respective vehicles. The Defendants have blamed each other either in whole or in part for the accident. Chew has also pleaded that the Plaintiff was guilty of contributory negligence.

Liability

(i) 2nd and 3rd Defendants

4 I shall deal first with the collision between the vehicles of Foo and Chew, as it is clear that it is this accident that triggered the chain of events leading to the Plaintiff's injuries.

5 Chew in his affidavit of evidence-in-chief stated that he was driving on the centre lane of the PIE with the intention of exiting the PIE at Pioneer Road North to convey his passenger, Madam Ng Yoke Leng ("Ng"), to her destination in Jurong West. Chew claimed that the taxi suddenly, without reason, skidded and swerved diagonally to the right hitting the metal railing along the central road divider, ricocheted off the railing and skidded diagonally towards the left to straddle the broken white line separating the centre and right lanes. His taxi was heading in a forward direction. Chew claimed in his police report that after that point in time, Foo's vehicle came upon him from behind and collided

into the left rear end of his taxi.

6 Foo's version of the accident differed from that of Chew's in two respects. Firstly, the relative positions of SCX 358G and SHA 5706P prior to the latter vehicle skidding and secondly, the sequence in which the accident happened. Both Defendants agreed that at the time of the collision, the road condition was wet and traffic was light.

7 In his written testimony, Foo stated that while he was driving on the centre lane of the PIE, he noticed Chew's taxi on the extreme right lane and it suddenly skidded into his path. The left front portion of the taxi hit the front right side of his vehicle. The taxi then swerved to the right, grazing the central road divider before colliding into his vehicle a second time. This time, the point of impact was between the taxi's left rear portion and his vehicle's right rear portion. The taxi ended up on the road shoulder about 60-80 metres in front of the stationary lorry.

8 At this juncture, it is worthwhile to note that there was no mention by Chew in his written testimony of any impact to the right rear portion of Foo's vehicle. The photographs tendered by Foo in evidence show damage to the right rear fender and bumper. SSGT Lakhbir Singh, the investigating Traffic Police officer, was shown the same photographs and he agreed that it might have been due to an oversight on his part that the vehicle damage record of SCX 358G did not indicate any damage to the right rear fender and bumper. The vehicle damage record of SHA 5706P indicated damage running along the length of the taxi on the left side. Under cross-examination, Chew agreed with the suggestion of Mr. Abdul Rashid, Counsel for Foo, that any damage to the right rear fender and bumper of SCX 358G must have been due to the collision with the taxi. Given the evidence before me, Counsel for Chew, Mr. Anthony Wee, in his Closing Submissions rightly conceded that the taxi did cause a serious dent to the right rear fender of Foo's vehicle. However, in an obvious attempt to neutralise the effect of the inconsistencies in the testimonies of Chew and Ng, he rationalised that the two impacts happened so quickly that to the people in the taxi it felt like one impact.

9 Under cross-examination, Chew said that before the taxi skidded, he was on the right lane and at the time his vehicle skidded, he was already travelling on the centre lane. This evidence contradicts the evidence of his witness Ng.

10 Ng first recalled her account of the accident in a letter dated 27 October 1999 to India International Insurance Pte Ltd, Chew's insurers, five days after the event. In it, she wrote that the taxi was travelling on the right lane of the PIE when Chew lost control of his vehicle and swerved to the right, hitting the central divider. The impact against the divider caused the taxi to veer left into the centre lane whereupon it collided with Foo's vehicle.

11 Ng subsequently made a police report of the accident on 1 December 1999, presumably, in support of her claim to the insurers. Although there was no mention of the position of the taxi prior to the skidding, she confirmed in her affidavit of evidence-in-chief that the attending police officer wrote the report based on her letter dated 27 October 1999. The insurers settled her claim on 13 December 1999.

12 In her affidavit of evidence-in-chief signed on 24 October 2002, Ng recorded that she was unsure whether the taxi was on the right most lane of the PIE prior to the skidding. As to her uncertainty, she explained, during cross examination by Mr. Rashid, that at the time she wrote the letter the taxi was on the right lane but was told by Chew's Counsel, during the preparation of her affidavit, that there were three lanes on the carriageway. In the witness box, she again vacillated and said, "the taxi was teetering from [the] right lane".

13 I am satisfied that when Ng wrote to the insurers of the taxi driver to submit her claim, she was clear that the taxi was travelling on the right lane of the PIE . I accept this, as it is contemporaneous evidence compared to the account of this particular point in her testimony given some three years after the accident. Her letter captures in its freshest form as early as practicable her impressions of the accident before dilution of those impressions by doubts and rationalisation brought about through the effluxion of time and discussions. I would also mention that this October l999 letter was not included in Chew's List of Document. It was produced as an exhibit to Ng's affidavit of evidence-in-chief dated 24 October 2002. By this time, Foo's account of the accident was already revealed in his Defence that was filed earlier on 11 September 2002. His affidavit of evidence-in-chief was sworn on 17 October 2002.

14 Chew's story also departed from the evidence before the District Judge on how his taxi skidded and how impact damage to his taxi was sustained. Both matters are, in my view, material to the question of liability.

15 Chew in his written testimony stated that after the accident he attended at Traffic Police Headquarters, Maxwell Road, to give a statement to the traffic police. SSGT Lakhbir Singh testified that Chew's statement to him was that "he was travelling on [a] straight road. It was raining heavily and he applied [his] brakes to slow down to change lanes. As a result of that, his vehicle skidded and he lost control of [his] vehicle." In the Statement of Facts accompanying the Charge, it was stated that while changing lanes the taxi skidded and Chew lost control of his vehicle. Chew's statement to SSGT Singh was not repeated either in his police report or in his evidence before me. Chew in fact took a completely different position in his written testimony when he said: "Suddenly, without any reason, my taxi started skidding".

16 Before the District Judge, Chew admitted to the Statement of Facts without qualification and pleaded guilty to the Charge of driving without due care and attention contrary to s65 Road Traffic Act (Cap. 276). Chew was fined S$1,000. The Charge reads as follows:

> "… on 22nd October 1999 at about 11.48 am along Pan Island Expressway Singapore, [you]did drive m/taxi SH5706P without due care and attention to wit, by causing your vehicle to skid and side swiped m/car SCX358G, causing the said vehicle to veer to the left and collided onto m/lorry YK672G that was stationary at the road shoulder and you have thereby committed an offence punishable under section 65 of the Road Traffic Act Cap 276."

17 Under cross-examination by Mr. Rashid, Chew confirmed that he understood the Statement of Facts. He did not seek to explain the difference in his unqualified admission of the Statement of Facts - while changing lanes, the taxi skidded and he lost control of his vehicle - and his account before me. I also accept Mr. Rashid's submission that the damage to Foo's vehicle in two places is consistent with the fact that the taxi skidded when Chew was changing lanes from right to the centre lane and not when he was in the centre lane.

18 Chew also accepted in his plea of guilt another important fact in the Charge and admitted to in the Statement of Facts, namely the taxi veered to the centre lane and "sideswiped m/car SCX358G". A contradictory position was taken before me. In the present action, Chew claimed that before he could bring his taxi under complete control and whilst his taxi was straddling the broken white line separating the extreme right lane and the centre lane, Foo's vehicle hit the rear left portion of his taxi. He claimed that during the whole time the taxi skidded, his taxi was heading in a forward direction. Chew is in effect adopting his police report where he said that Foo's car hit his taxi from behind. By so doing, Chew has retracted an earlier admission that it was the taxi that veered to the centre lane and "sideswiped m/car SCX358G".

19 I find Chew's statement in his affidavit of evidence-in-chief that he told the traffic police sergeant exactly how the accident happened just as he had described it in his affidavit unbelievable, as it is irreconcilable with the other evidence. It is materially different from the Statement of Facts prepared by SSGT Singh. I would mention that Chew's police report is also materially different from the Statement of Facts and Charge. Chew said that he made the police report at about 6.00pm after his interview with the traffic police. From the overall circumstances, I can only conclude, on a balance of probabilities, that the statement in his police report that his taxi was hit from behind by Foo, was an afterthought. Without more, based on his conviction, it was Chew's taxi that had sideswiped Foo's car. See *s45A (3) Evidence Act* (Cap 97, 1997 Ed).

20 Chew let slip the fallacy of his testimony on this point in his answer to Mr. Rashid's question. He was questioned about the impact between his taxi and Foo's car and he said his taxi hit Foo's car rather than the other way around:

> Q: Which part of the car [SCX 358G]?
>
> A: My left hit the right front of [the] car.

21 Chew's credibility is affected for these reasons. Compared to Foo, Chew is an unreliable witness. Overall, his evidence on the material aspects of the case is inconsistent and self-contradictory as highlighted in earlier paragraphs. His evidence is also inconsistent when compared with the various accounts of some of the witnesses. I therefore accept Foo's version of how the collision occurred. I find that Chew's taxi skidded when he was changing lanes from right to the centre lane. Foo's car did not hit the taxi from behind. I find that without warning the taxi skidded and encroached into Foo's path and collided into Foo's car. On first impact, the left front part of the taxi hit the front right side of Foo's vehicle. The taxi also hit Foo's car a second time. The point of impact was between the taxi's left rear portion and the vehicle's right rear portion.

22 A skid may or may not be due to negligence. It is necessary for a defendant to prove that the skid was without any fault on his part: *Tan Gim Seng v Gurdev Singh Gill* [1965-1968] SLR 623. Lord Greene M.R. in *Laurie v Raglan Building Co. Ltd* [1942] 1 KB 152 said:

> "The skid by itself is neutral. It may or may not be due to negligence. If, where a prima facie case of negligence arises, it is shown that the accident is due to a skid which happened without default of the driver, the prima facie case is clearly displaced, but merely to establish the skid does not appear to me to be sufficient for that purpose." [p154]

23 Mackenna J in *Richley v Faull* [1965] 3 All ER 109 criticised Lord Greene's view that a skid by itself is neutral. In that case, Mackenna J held that an unexplained and violent skid was evidence of negligence. Such an outcome is obvious since the defendant there was unable to prove that the skid was not his fault.

24 Raja Azlan Shah J in *Lim Ah Toh v Ang Yau Chee & Anor* [1969] 2 MLJ 194 referred to *Browne v De Luxe Car Services* [1941] 1 KB 549 where the court there said: "A driver who is proceeding along a road which he knows to be slippery has imposed upon him the burden of driving with an extra degree of care". [p195]

25 In *Lim Ah Toh,* the skid happened as a result of the van driver's fault, and applying the approach in *Tan Giok Hue v Lim Swee Peng* [1960] MLJ 190 to the facts of the case, Raja Azlan Shah J said at 195 that "any motorist of reasonable prudence should have been well aware of the necessity

for exercising more than the ordinary degree of care" when all the factors favouring a skid were present i.e. the weather conditions and the wet road surface.

26 In my view, a skid occurring as it did was nothing surprising to Chew, an experienced driver of more than 20 years. A reasonable motorist in Chew's position would have been aware that his vehicle could skid if, under unfavourable weather and road conditions, he drove at an excessive speed without keeping a proper lookout and changed lanes without reducing speed. The PIE is a dual carriageway and in the particular section that the accident occurred it has three lanes and is straight. It was raining and the taxi was travelling at more than 80 kmph on a wet road surface. The wet surface was for that, but for no other reason, slippery. According to Ng, Chew was driving at a speed of 80-100 kmph. That was likely to have been the ranges of speed as traffic at the material time was light. In any case, Chew did not in his written or oral testimony say that he slowed down as he changed lanes. The location of the accident is about 200 metres away from the exit to Pioneer Road North. Chew had most likely made a swift change of lanes to get to the exit. I find that Chew under the prevailing weather and road conditions failed to exercise the extra degree of care that was then required of him. Chew was driving too fast without reducing speed whilst changing lanes and in the process lost control of his vehicle when his vehicle skidded. In addition, he failed to keep a proper lookout for Foo. All these factors point to Chew's negligence in the driving and management of his taxi. In my judgment, there was no break in the chain of causation between Chew's negligence and the subsequent events which occurred that lead to the Plaintiff's injuries. Once the skid commenced resulting in Chew losing control of his taxi, it started the chain of events leading to the injuries suffered by the Plaintiff. I find this to be causative of the accident and on this, the liability lies squarely on Chew unless the other parties have a contributory role if they are found to be negligent.

27 Mr. Wee submitted in the alternative that the right proportion of blame attributable to Foo should be more than 20 per cent, as he would have been able to avoid the collision with the taxi had Foo not been speeding or had he been attentive in his driving. Foo has denied all that.

28 In my view, Chew's negligent driving created a danger to other road users and it caused the collision between the taxi and Foo's vehicle. The negligent driving of Chew caused Foo's vehicle to travel out of control, move across the carriageway where it crashed into the stationary lorry with the result that the Plaintiff fell off the lorry and sustained injuries. Foo said that when he first noticed the taxi encroaching into his path, he applied his brakes. But after the second impact, which followed close to the first, he lost control of his vehicle and crashed into the stationary lorry.

29 I am persuaded by the undisputed evidence of both Foo and Chew that the collision happened very quickly. That would mean that Foo was given very little if no time to react to an active state of affairs. Both vehicles were still moving in relation to each other as the dynamics of the skid was still being played out. The sudden emergency was created by Chew whose negligence from the point of view of causation was the effective cause of the collision. On the evidence before me, I reject Mr. Wee's submission that there was an interval of seconds during which Foo could have taken evasive action. There is no evidence, which would justify my finding that Foo had a reasonable opportunity to avoid the collision.

(ii) 1st Defendant

30 Mr. Wee in his submission contends that Quah had contributed to the accident since he had stopped his lorry on the road shoulder contrary to Rules 6 and/or 8 of the Road Traffic (Expressway Traffic) Rules. It is also said that Quah ought to have foreseen that other road users might collide with his lorry. Mr. Wee referred me to several cases on foreseeability. In my view, the real issue is

causation rather than foreseeability.

31 Counsel for Quah, Mr. Ramasamy Chettiar, submits that Quah had not breached the Road Traffic (Expressway Traffic) Rules when he stopped on the hard shoulder to place a canvas sheet over the stainless steel plates. It is said that the Rules imposed a public duty and a breach of the Rules would not give rise to any private liability. Thus, a breach of the Rules is not of itself evidence of negligence. It follows that Chew would have to separately establish on the facts, negligence on the part of Quah. Mr. Chettiar argues that on the facts, the lorry did not obstruct and thereby did not pose a danger to approaching traffic. Mr. Chettiar submits that for there to be contributory negligence on the part of Quah, there needs to be established that Quah had parked his lorry in such a way as to cause an obstruction thereby constituting a danger or hazard to other road users. In this respect, there is no evidence to support any such contention. Moreover, both Foo and Chew agreed that the stationary lorry parked on the road shoulder did not obstruct their path. SSGT Singh agreed that the lorry was parked well within the hard shoulder.

32 Given my earlier finding that there was no break in the chain of causation, it is not necessary to decide whether or not Quah was in breach of the Road Traffic (Expressway Traffic) Rules. On any view, Mr. Wee must establish that Quah owed a duty of care to the Plaintiff, that he was in breach of duty of care in allowing the lorry to remain stationary on the hard shoulder and that breach of duty was, in part, causative of either Foo's car crashing into the lorry or of the taxi colliding with Foo's car.

33 Assuming without deciding that the presence of the lorry on the hard shoulder was attributable to the negligence of Quah, that negligence did not contribute to the collision between the lorry and Foo's car. In the present case, the lorry was stationary with hazard lights on. (I accept Quah's evidence on this, as the Plaintiff's evidence is unreliable.) I find it hard to accept that the Plaintiff's injuries were caused by the presence of the lorry on the hard shoulder. As a matter of history, the presence of the lorry on the hard shoulder is a factor. It is, however, not relevant as an operative cause. The relevant and only legal cause is the negligent driving of Chew.

34 I find that Quah was neither the cause of the accident nor had he contributed to the accident in a negligent manner. Given the circumstances of the accident, I also find that the Plaintiff did not fail to take care of his own safety.

Result

35 I find the 3rd Defendant 100% to blame for the Plaintiff's injuries. I order damages to be assessed by the Registrar. As a corollary of my decision, I dismiss the Plaintiff's claim against the 1st Defendant as well as the 2nd Defendant. I will hear parties on costs.