Ong Bee Nah v Won Siew Wan (Yong Tian Choy, Third Party)
[2005] SGHC 52

Case Number : Suit 278/2004

Decision Date : 16 March 2005

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong JC

Counsel Name(s) : Paul Yap Tai San (Rayney Wong and Eric Ng) for the plaintiff; Lisa Yeo and Edwin Chua (Lawrence Chua and Partners) for the defendant; M Ramasamy and Hemalatha Silwaraju (William Chai and Rama) for the third party

Parties : Ong Bee Nah — Won Siew Wan — Yong Tian Choy

Evidence – Admissibility of evidence – Whether evidence of defendant's criminal conviction for driving without due care or reasonable consideration admissible – Section 45A Evidence Act (Cap 97, 1997 Rev Ed)

Evidence – Proof of evidence – Admissions – Onus of proof – Whether defendant's admissions contained in plea of guilt taken in criminal proceedings constituting conclusive evidence in civil proceedings – Whether onus of proof shifting to defendant to prove acts in question not committed by her – Section 45A Evidence Act (Cap 97, 1997 Rev Ed)

Evidence – Weight of evidence – Whether evidence of defendant's criminal conviction for driving without due care or reasonable contradicting or undermining defendant's civil case – Section 45A Evidence Act (Cap 97, 1997 Rev Ed)

Evidence – Witnesses – Credibility – Whether inability of witness to recall isolated particulars diminishing overall weight of testimony – Whether driver's testimony and passenger's testimony corroborating each other – Whether corroborative testimonies of husband and wife biased

Tort – Negligence – Contributory negligence – Driver approaching traffic junction with no stop sign and where traffic lights in his favour – Whether driver under duty to slow down automatically or to sound horn or flash headlights of vehicle – Whether driver contributorily negligent for having car radio on and having conversation with passenger at time of accident

16 March 2005

Andrew Phang Boon Leong JC:

Introduction

1 This case arose from a traffic accident between vehicles driven by the third party and the defendant respectively.

2 The plaintiff, the third party's wife, was the front-seat passenger in the third party's vehicle. Both the plaintiff and the defendant sustained physical injuries. The injuries to the plaintiff were particularly serious and they will continue to have a significant long-term impact on her.

3 Both vehicles also sustained serious damage.

4 The issue before the court concerned liability. Simply put, who was to blame for this unfortunate accident? It is accepted by all counsel that the plaintiff was not contributorily negligent. Hence, the issue in this case is whether the third party or the defendant was to blame for the accident. If both were to blame, then it is necessary to ascertain, further, in what proportion liability should be allocated.

5 Although the issue can be simply stated, its resolution illustrates – once again – the complex interplay between the evidence given (which was, understandably, given from a subjective perspective) on the one hand and the objective facts as well as context on the other.

6 Indeed, as we shall see, the resolution of this case depended, in the final analysis, on which party's account was to be believed. This is not surprising, of course, in so far as traffic accidents are concerned.

7 It would be appropriate to commence with a brief statement of the factual background.

Factual background

8 The basic facts were straightforward. However, the *interpretation* of those facts was quite vigorously disputed by the parties concerned. In this section, I will set out the basic facts which are not the subject of dispute or controversy by the parties. I will deal with the controversial facts when considering the respective parties' evidence.

9 On 18 January 2003, at approximately 1.00pm, the third party and the plaintiff were travelling along the extreme left lane of Jalan Boon Lay towards Jalan Bahar in a vehicle (SDE 9274 T) driven by the third party. The plaintiff, his wife, was the front-seat passenger. At the material time, this particular vehicle was approaching the junction of Jalan Boon Lay and Boon Lay Way, with the intention of proceeding straight ahead.

10 The defendant was driving her vehicle (SCJ 2775 X) at the material time. She was travelling along the second lane of Jalan Boon Lay in the opposite direction with the intention of making a right turn at the junction mentioned above.

11 A collision occurred between the above two vehicles. The third party had been driving straight ahead whilst the defendant was in the process of making a right turn at the time of the accident.

12 All the parties concerned agreed that the traffic flow along Jalan Boon Lay at the material time was light.

13 The weather was also clear and traffic conditions generally good.

14 Unfortunately, despite counsel's efforts in procuring one, no sketch plan was available to assist the court.

The plaintiff's evidence considered

15 I found the plaintiff to be a credible witness. She responded to counsel's questions clearly and without vacillation. She did not attempt to finesse her answers and did not purport to be able to answer each and every question put to her. However, her inability to recall isolated particulars related to minutiae which one would not reasonably expect of a passenger and did nothing to diminish the overall weight of her evidence. Indeed, the fact that she did not attempt to modify and/or embellish her answers buttresses my overall finding that she was a witness of truth. There is a sense in which a "perfect" witness might, ironically, merit an even keener assessment of his or her testimony by the court – if nothing else because a reliable and truthful witness would (typically, albeit, admittedly, not invariably) exhibit lapses from time to time, although these would not usually be major in nature. This view is buttressed by the following observations of V K Rajah JC (as he then was) in the Singapore

High Court decision of *Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR 628 at [19]:

> Indeed, it has been often said, on high authority, that a witness who can give flawless evidence may be treated with some caution, as perhaps a rehearsed witness.

16 For example, when the plaintiff was asked whether she could recall which part of the third party's (her husband's) vehicle had crossed the second white line at the junction when she noticed the appearance of the defendant's car, she replied, quite plainly, that she could not recall. However, in response to the very next question by Ms Yeo, counsel for the defendant, she stated, quite clearly and firmly, that the defendant's vehicle was "already very close" to the third party's car when she first noticed it. At this point, she endeavoured, at the insistence of counsel for the defendant, to give an estimate (of approximately two metres).

17 The plaintiff was then asked whether she could estimate at what speed the defendant's car was negotiating the right turn relative to the third party's vehicle. Her simple and direct response was as follows:

> I don't really know. When I saw the [defendant's] vehicle, it had already appeared and I had a shock.

18 There was only one instance where the plaintiff's evidence was not particularly helpful. However, even then, her evidence was by no means discredited. This concerned the question as to whether or not her husband (the third party) had in fact braked when he spotted the defendant's vehicle. Although the plaintiff clearly stated that the third party had in fact braked, she did also, on at least two occasions, state that the natural instinct or reflex was for a driver in such a situation to apply the brakes. This inference, whilst detracting somewhat from her response, is not altogether untrue as a matter of general observation, although much would of course depend, in the final analysis, on the actual evidence adduced. Another difficulty concerned the fact that the plaintiff had not mentioned that the third party had braked in her affidavit. Her response to this omission was that she had merely been asked whether there was any way the accident could have been avoided and that it was her view (as expressed in the affidavit) that the defendant's vehicle was too close and that there was nothing that could be done. In the circumstances, the plaintiff stated that, "It did not occur to me that we had to mention that we had to apply the brakes."

19 On one view, this omission could be considered a difficulty. On another view, however, it is reasonable to expect the plaintiff, as a *passenger only*, to give the answers she did. Indeed, the only person who *would* know whether or not the third party had braked would obviously be the third party himself. Indeed, I will consider the third party's evidence on this particular issue below.

20 Generally speaking, I found that the plaintiff's evidence was useful in so far as it corroborated that of the third party, who was the actual driver of the vehicle. This was so, especially with regard to the general speed and position at which the third party had been travelling, as well as with regard to the general position the car she had been travelling in was in when she noticed the traffic light was green in the third party's favour.

21 Indeed, I found that the more pertinent evidence was given by the third party himself. This is not surprising in view of the fact that he was the driver of the vehicle, with the plaintiff being his passenger. Thus, although he gave his evidence at the end of the hearing, it would, in my view, be more appropriate to set out as well as comment on his evidence at this particular point in my judgment, before proceeding to consider the defendant's evidence.

The third party's evidence considered

22 As was the case with the plaintiff, I found the third party to be a credible witness. Like the plaintiff, he responded clearly and directly to the questions posed to him. He was not evasive. On the extremely few occasions when he demonstrated just a little irritability, this was understandable in view of the nature of the specific questions posed to him in cross-examination.

23 The third party confirmed that he drove the vehicle in question both on evenings as well as during weekends. He also confirmed that he had been travelling in the extreme left lane. Although the traffic was light, the third party stated that there were vehicles travelling in the other lanes as well and that they were overtaking his vehicle. Indeed, the third party also stated thus:

> I usually travel at a low speed and I know that slow-moving vehicles need to keep left.

24 No one, in fact, controverted the fact that the third party was travelling on the extreme left lane of Jalan Boon Lay – a lane reserved for slow (or slower-moving) vehicles. Although this is not itself conclusive, it does support my own observation that the third party is generally a cautious driver who persisted in driving in the extreme left lane even though, at the material time, the traffic flow was light.

25 The third party further stated that he had checked the traffic lights at the junction for the first time when his vehicle was approximately 30m to 40m from the junction itself. He then proceeded till he was 10m to 20m away from the junction, at which point he claimed that he had spotted the defendant's car in a stationary position at the right turning lane on the opposite side of Jalan Boon Lay. At this point, the third party stated that he checked the traffic lights again, ensuring that they were green in his favour and that the traffic ahead of him was clear before proceeding to move into the junction. His speed up to that point was approximately 60km/h and continued to be so until he came to the stop line at the junction – at which point he saw the defendant's car planning to turn. At that particular point in time, the third party claimed that he had jammed his brakes but that as his and the defendant's vehicles were too close to each other, his vehicle collided into the defendant's.

26 The third party further claimed, in this regard, that when he had gotten out of the car, he noticed brake marks on the road which were two to three metres long. I do note that this last-mentioned fact was only adduced during re-examination by his own lawyer. I saw no reason, however, having regard to the demeanour of, and general way in which, the third party had responded to questions up to that point in time, to disbelieve the third party in so far as this particular piece of evidence was concerned. As I have already mentioned, I found the third party to be a reliable and credible witness who responded as best as he could to the various questions posed to him and who, albeit on only a very few occasions, demonstrated his irritation at questions which seemed to him to be unfair. I should add that this very occasional manifestation of irritability, far from detracting from the persuasiveness of his evidence, actually gave it a practical edge that strengthened it instead.

27 Counsel for the defendant attempted to discredit the third party's evidence by a number of contrary propositions that, by the nature of the case itself, could not really be justified by a clear and objective substratum of facts. This is not surprising since the establishment of these – and other – facts was at least one of the main foci of the present hearing. I was nevertheless impressed by the third party's ability to respond to each proposition that was put to him – including the allegation that he had been travelling at an excessive speed at the material time as he was attempting to clear the junction and beat the red traffic light.

28 Further, as I have earlier observed, the third party did not strike me as being a reckless – let alone, careless – driver. On the contrary, he appeared to me a driver who was not given to taking unnecessary risks on the road. For this reason, amongst others, I was also of the view that the third party's assertion that he had in fact jammed the brakes when he saw the defendant's car planning to turn was true. In this regard, it seemed to me that the distance between the stop line at the junction and the defendant's car was indeed so close that even if the brakes were applied by the third party at that particular point in time, that would not have sufficed to prevent the accident which ensued.

29 It is important to note, further, that the defendant's car was at the very edge of the second (and outer) turning pocket. One must also bear in mind the fact that the defendant's car was at that particular point moving and, as we shall see, was (by the defendant's own admission) accelerating – if not then, then at least a split second later.

30 I should mention, however, that the third party's assertion to the effect that his sudden braking had resulted in skid marks on the road was not, unfortunately in my view, supported by any corroborative evidence. It may well be the case that the third party's assertion was in fact true. Indeed, this is quite likely, having regard to the general tenor of his evidence as I have pointed out above. However, resolution of this particular issue is not, in my view, crucial, having regard to the quality of the third party's evidence which I have already referred to above.

31 However, I should mention that, under cross-examination by counsel for the defendant, the third party did admit that the car radio was on and that he did converse with his wife. Counsel for the defendant seized upon this admission to argue that the third party was in fact distracted and thus was not concentrating on his driving in general and keeping a lookout for, *inter alia*, the defendant's car in particular.

32 When considered literally and technically, this particular argument appeared to favour the defendant. However, the third party's admission in this particular respect must be examined in context.

33 Had this fact been given in a dry and hypothetical examination question, it might well have been inferred that the third party had been remiss in his driving. In the real world, however, it is commonly the case that the radio is on, often as background entertainment. In many situations, it might even be the case that music, for example, which emanates from the radio actually calms frayed nerves which I assume are not uncommon on Singapore roads – especially during peak hours.

34 It is also commonly the case that the driver and passenger(s) will talk to each other in an informal fashion. This is, I believe, part of common human interaction unless there are special circumstances present – for instance, where spouses have had a recent and/or ongoing disagreement with each other.

35 Indeed, I also understand that it is quite common that many drivers also speak remotely *via* mobile telephones, utilising of course earpieces as the direct handling of such telephones would result in criminal sanctions (see s 65B of the Road Traffic Act (Cap 276, 2004 Rev Ed)).

36 However, all this does not necessarily mean that the driver is thereby derelict in the due care and attention he or she has to give in so far as his or her responsibilities *qua* driver are concerned. There may obviously be exceptional situations where the sounds from the car radio and/or excessive conversation may in fact distract the driver concerned.

37 Having listened carefully to the evidence in this regard, I found that this was not a major

plank in defendant counsel's argument in the first instance. In any event, I found that there were no exceptional circumstances which would lead me to conclude that the third party had in fact been distracted by either the sounds from the car radio and/or by what appeared to be normal and casual conversation with his wife, the plaintiff.

38 Finally, counsel for the defendant also argued that the testimony of both the plaintiff and the third party would be biased because they were, respectively, wife and husband and also had a common interest in the outcome of the present case. As this was a general argument that applied to both plaintiff and third party alike, I thought it best to consider it only after considering both parties' evidence in more detail first. I have, in fact, already mentioned that both the plaintiff and the third party struck me as being truthful and reliable witnesses who did not attempt to finesse their respective testimonies. That they are husband and wife and have a common interest in the outcome of the present case is literally true. However, this is a situation which they did not engineer or manipulate: no reasonable person would wish to be involved in an accident. What was crucial, in my view, was whether or not they were reliable witnesses who attempted their level best to tell the truth. On this score, I found them to have passed with flying colours.

39 I turn now to consider the defendant's evidence.

The defendant's evidence considered

The defendant's conviction under s 65 of the Road Traffic Act

40 The main obstacle in the present case in so far as the defendant was concerned was clear from the outset. Not surprisingly, therefore, this was one of the main points of focus in the present case. This concerned the defendant's conviction under s 65 of the Road Traffic Act (Cap 276, 1997 Rev Ed) on 26 November 2003 for inconsiderate driving – or, to be more accurate, for driving without due care or reasonable consideration. The provision itself reads as follows:

> If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both.

41 It is important to note, also, that this was an actual criminal conviction, as the offence was not compounded. It should be further noted that the defendant had pleaded guilty to the offence. Finally, the defendant had also been legally represented at these criminal proceedings.

42 Such evidence (of a criminal conviction) is now admissible under s 45A of the Evidence Act (Cap 97, 1997 Rev Ed), which reversed the rule to the contrary embodied in the old English authority of *Hollington v F Hewthorn and Company, Limited* [1943] 1 KB 587 ("*Hollington v Hewthorn*"). It appears, however, that the admissibility of such evidence is not conclusive in and of itself. Nevertheless, the defendant's conviction and (in particular) the Charge as well as Statement of Facts in relation to the Charge constituted, in the nature of things, an extremely significant piece of evidence that weighed very heavily against her in the context of the current proceedings.

The decline and fall of Hollington v Hewthorn

43 Interestingly, counsel who argued against the rule in *Hollington v Hewthorn* was none other than Lord Denning MR himself (or Denning KC, as he then was). His argument, forcefully put, was that

evidence of a previous criminal conviction ought to be taken into account, not as conclusive, but rather as *prima facie* evidence of (in that case) negligent driving. The Court of Appeal roundly rejected the argument (a point noted over two decades later by Lord Denning MR in the English Court of Appeal decision of *Goody v Odhams Press Ltd* [1967] 1 QB 333 at 339, who emphatically (and not surprisingly, perhaps) stated that he "thought that decision was wrong at the time" and that he "still [thought] it was wrong"; see also *per* the learned Master of the Rolls in *Barclays Bank Ltd v Cole* [1967] 2 QB 738 at 743 and in *McIlkenny v Chief Constable of the West Midlands* [1980] QB 283 at 319).

44 Goddard LJ (as he then was), who delivered the judgment of the court in *Hollington v Hewthorn*, pointed to the long-standing nature of the legal position to the contrary – itself not, incidentally and with respect, very persuasive in the absence of other justification(s). In fairness, the Court of Appeal did refer to other reasons – including the argument that the conviction was confined to the criminal proceedings in question and that its admission in evidence in subsequent civil proceedings would lead to a retrying of the criminal proceedings as well as the fact that the opinion of the criminal court would be simply opinion and, hence, irrelevant (see especially at 595). The need to take into account *acquittals* was also raised (see at 601).

45 It will suffice for our present purposes to note that the case itself has had a rather mixed reception within the English case law itself (see, for example, *per* Hoffmann J (as he then was) in *Land Securities Plc v Westminster City Council* [1993] 1 WLR 286 especially at 288, and the authorities cited therein: in particular the House of Lords decision of *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, especially at 543, *per* Lord Diplock).

46 The academic response was far more critical (see, for example, the note by A L Goodhart, (1943) 59 LQR 299; J A Coutts, "The Effect of A Criminal Judgment on a Civil Action" (1955) 18 MLR 231; and Cecil A Wright, "Evidence – Admissibility of Criminal Convictions in Civil Actions – Hearsay" (1943) 21 Canadian Bar Rev 653).

47 However, the above arguments in *Hollington v Hewthorn* were comprehensively dealt with by the Law Reform Committee of Great Britain in its persuasive and succinct Report (see the Law Reform Committee, *Fifteenth Report (The Rule in Hollington v Hewthorn)* (Cmnd 3391, 1967); and noted by Michael Dean, "Law Reform Committee: Fifteenth Report on the Rule in *Hollington v Hewthorn*" (1968) 31 MLR 58). This resulted in the legislative amendment of the relevant English law (now embodied within ss 11 and 13 of the UK Civil Evidence Act 1968 (c 64)). Section 11 of the UK Civil Evidence Act in fact constitutes the basis upon which the present Singapore position (as embodied within s 45A of the Evidence Act) is based (which I deal with in more detail at [51] *ff*).

48 More to the point, perhaps, is the fact that the principle in *Hollington v Hewthorn* has not only been criticised but has also (on many occasions) *not been followed* in courts across the Commonwealth. The various Commonwealth precedents were, in fact, helpfully set out in detail by Goh Joon Seng J in the Singapore High Court decision of *Choo Michael v Loh Shak Mow* [1994] 1 SLR 584 and it would serve no real purpose to retraverse ground so well-covered by the learned judge.

49 Suffice it to state that jurisdictions where the principle in *Hollington v Hewthorn* has not been followed include New Zealand (see *Jorgensen v News Media (Auckland) Limited* [1969] NZLR 961), Western Australia (see *Mickelberg v The Director of the Perth Mint* [1986] WAR 365 and Ontario (see *Demeter v British Pacific Life Insurance Co* (1983) 150 DLR (3d) 249, affirmed (1984) 13 DLR (4th) 318). Even closer to home, Kamalanathan Ratnam J, in the Malaysian High Court decision of *Ramanathan Chelliah v Penyunting,* [1998] 2 CLJ 691 also refused to follow the principle in *Hollington v*

Hewthorn (see also the learned judge's decision in *Anwar bin Ibrahim v Abdul Khalid* [2001] 5 MLJ 48 as well as the earlier decisions of *Chock Kek Ling v Patt Hup Transport Co Ltd* [1966] 1 MLJ 120, *Lim Ah Toh v Ang Yau Chee* [1969] 2 MLJ 194 and *Chang Chong Foo v Shivanathan* [1992] 2 MLJ 473). *Jorgensen v News Media (Auckland) Limited*, a New Zealand Court of Appeal decision, is especially helpful, given the depth of its historical as well as general analyses.

50 In *Choo Michael v Loh Shak Mow* ([48] *supra*) itself, Goh J boldly – and quite correctly, in my view – refused to follow the principle in *Hollington v Hewthorn*, observing, *inter alia*, thus (at 600, [49]):

> In the light of the views expressed by Lord Diplock in [*Hunter v Chief Constable of the West Midlands Police* [1982] AC 529] that *Hollington v Hewthorn* was generally considered to have been wrongly decided, it is quite clear that *Hollington v Hewthorn* would have been expressly overruled by the House of Lords if it had not been abolished earlier by statute. For that reason, and for the reasons given by the Law Reform Committee recommending its abolition in England by statute, I do not propose to follow *Hollington v Hewthorn*. To do so would be tantamount to allowing a collateral attack by means of a civil action against a final decision of a court of competent criminal jurisdiction, thus permitting an abuse of the process of the court. I therefore hold that the defendant's conviction is admissible evidence, while not conclusive, of the fact of his guilt in respect of the offence with which he was charged.

Section 45A of the Evidence Act

5 1 *Choo Michael v Loh Shak Mow* was not only a path-breaking but was also a prescient decision. Just over two years later, as already alluded to above, the Singapore Legislature introduced (via the Evidence (Amendment) Act 1996 (No 8 of 1996)) a new s 45A to the Evidence Act which *legislatively abolished* the principle in *Hollington v Hewthorn* (see also generally Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process* (LexisNexis, 2nd Ed, 2003) at pp 172–174). In this regard, the following statement by Prof S Jayakumar, the Minister for Law, during the Second Reading of the Evidence (Amendment) Bill is apposite (see *Singapore Parliamentary Debates, Official Report* (18 January 1996) vol 65 at col 455):

> Let me move to new section 45A concerning the rule in *Hollington v Hewthorn*. Section 45A is to reverse a common law rule (known among lawyers as the rule in *Hollington v Hewthorn*, an English case) that operated to exclude evidence of judicial findings of convictions or acquittals from admissibility in subsequent cases. This common law rule states that the evidence in an earlier criminal case cannot be admitted against the defendant in a later civil trial, although, as is known, the standard of proof is higher in a criminal case. For example, a criminal conviction for dangerous driving is inadmissible as evidence of negligence in a civil action for causing personal injuries to the other driver. Reversing this rule means that judicial time and legal costs will be saved by not having to litigate all over again issues which have been decided by another court in previous proceedings. The amendments, Sir, on this matter are similar to provisions in the English and Australian legislation.

52 Section 45A of the Evidence Act itself reads 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*.

(4) Any conviction or acquittal admissible under this section may be proved by a certificate of conviction or acquittal, signed by the Registrar of the Supreme Court or the Registrar of the Subordinate Courts, as the case may be, giving the substance and effect of the charge and of the conviction or acquittal.

(5) *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*.

(6) The method of proving a conviction or acquittal under this section shall be in addition to any other authorised manner of proving a conviction or acquittal.

(7) In any criminal proceedings, this section shall be subject to any written law or any other rule of law to the effect that a conviction shall not be admissible to prove a tendency or disposition on the part of the accused to commit the kind of offence with which he has been charged.

(8) In this section, "Registrar" has the meaning assigned to it in the Supreme Court of Judicature Act (Cap. 322) and the Subordinate Courts Act (Cap. 321), respectively.

[emphasis added]

Application of s 45A of the Evidence Act to the present case

53 The Charge to which the defendant in the present case pleaded guilty stated that the defendant "on or about the 18th January 2003 at about 12.53 pm, along the X-junction of Boon Lay Way and Jalan Boon Lay, Singapore, did drive motorcar SCJ 2775 X without reasonable consideration for other road users, *by failing to give way to the oncoming motorcar SDE 9274 T, when making a right turn, without the green filter arrow showing yet* and you have thereby committed an offence punishable under Section 65 of the Road Traffic Act, Chapter 276"[1] [emphasis added].

54 Paragraph 2 of the Statement of Facts is particularly apposite and reads as follows:[2]

On 18.01.03 at about 12.53 pm, defendant was travelling on the extreme right lane of the 5 lanes dual carriageway road of Jln Boon Lay towards AYE. At the X-junction of Boon Lay Way, [the

defendant] *failed to give way to the oncoming vehicles which have the right of way, when making a right turn, without the green filter arrow showing yet, thus caused oncoming motorcar SDE 9274 T to collide onto her m/car*. The collision impact caused defendant's motorcar to spin and collided onto a lamppost also. [emphasis added]

55 As already mentioned, the defendant's conviction in the present case is, on the present law, an extremely significant piece of evidence. Indeed, if the Charge and, in particular, the Statement of Facts (reproduced above at [53] and [54] respectively) were accepted, they would directly contradict as well as undermine the very basis of the defendant's case. Both are clearly admissible by virtue of s 45A of the Evidence Act (reproduced above at [52]), and both were pleaded as admissions by the plaintiff.

56 It is important to note that, by virtue of s 45A(1), such evidence is admissible "whether he was so convicted upon a plea of guilty or otherwise". Hence, the evidence is admissible, notwithstanding the fact that the defendant had pleaded guilty to the offence concerned. Also relevant is s 45A(5), which is reproduced above at [52].

57 Returning to the facts of the present case, it is, for example, a critical part of the defendant's case that she had had the right of way and that it was, in fact, the third party who had beat the traffic lights. In particular, the defendant argued that when she executed the right turn from Jalan Boon Lay into Boon Lay Way, the green arrow was in her favour, whereas in the Statement of Facts under her criminal charge for inconsiderate driving, the *exact opposite* was in fact set out therein. Indeed, the fact that the defendant had admitted that she had proceeded to make the right turn even though the green arrow was not displayed constituted the basis for the charge under s 65 of the Road Traffic Act, to which the defendant pleaded guilty and as a consequence of which she was fined $1,000.

58 In order to avoid what is, in my view, an extremely damaging obstacle to her chances of success in the present case, it is clear that the onus of proof was on the defendant to prove, *inter alia*, that she had not "committed the acts and [did not possess] the state of mind (if any) which at law constitute" the offence she had been charged with and pleaded guilty to (see s 45A(3), reproduced above at [52]).

59 In this regard, an issue does arise as to the *precise weight* to be given to the defendant's criminal conviction in the present case. There was in fact a division of opinion in the English Court of Appeal in *Stupple v Royal Insurance Co Ltd* [1971] 1 QB 50 ("the *Stupple* case") with regard to this particular issue. Lord Denning MR, for instance, thought (at 72) that "the conviction does not merely shift the burden of proof" but that it was "a weighty piece of evidence of itself" which the other party would then have to overcome in attempting to prove that the offence in question was not committed. On the other hand, Buckley LJ thought that the conviction merely served as a trigger which brought the presumption into play and that "like any other presumption, [the statutory presumption] will give way to evidence establishing the contrary on the balance of probability, without itself affording any evidential weight to be taken into account in determining whether that onus has been discharged" (see at 76). There appears to be more than a modicum of controversy in so far as this particular issue is concerned, as evidenced by the contrasting approaches adopted by two of the leading textbooks on the law of evidence. One prefers Lord Denning MR's view (see *Phipson on Evidence* (Sweet & Maxwell, 15th Ed, 2000) at
para 38-87), whilst the other endorses Buckley LJ's view (see *Cross and Tapper on Evidence* (LexisNexis, 10th Ed, 2004) at p 123). It is interesting that Lord Denning MR himself did not take the point further in *Wauchope v Mordecai* [1970] 1 WLR 317 at 321 as the point did not arise on the facts of that case. The learned Master of the Rolls can, in the circumstances, hardly be taken to have

changed his views expressed in the *Stupple* case above. Interestingly, his views were in fact endorsed by Moore-Bick J in the English High Court decision of *Phoenix Marine Inc v China Ocean Shipping Co* [1999] 1 Lloyd's Rep 682 at 685, and for the reasons given in *Phipson on Evidence*.

60 In the Singapore High Court decision of *PP v Heah Lian Khin* [2000] 3 SLR 609, Yong Pung How CJ observed as follows (at [89]):

> Plainly, s 45A [Evidence Act] was limited to proving the fact that a particular individual had been convicted or acquitted of an offence, where relevant to an issue in the proceedings, and was really intended to save judicial time and costs in subsequent civil proceedings. *It did not create an avenue for the admission of a previous conviction of a person as substantive evidence against an accomplice in subsequent criminal proceedings*. Furthermore, charges which have been taken into consideration are neither convictions nor acquittals. [emphasis added]

61 It can be seen that the case cited above does not really resolve the issue inasmuch as the holding, in so far as s 45A of the Evidence Act is concerned, was probably confined to the much narrower and more specific issue that was before the court in that particular case.

62 In my view, neither approach is, with respect, wholly correct. Each captures a facet of the holistic approach that ought to be adopted. In the *practical* sphere of application, in addition to shifting the burden of proof, the conviction concerned will almost certainly figure in the court's mind in at least a minimally substantive way. This is consistent with Lord Denning MR's view. However, to the extent that such evidence will not be conclusive in and of itself, Buckley LJ was also correct in pointing out that the court can – and must – take into account evidence to the contrary that might prevail at the end of the day. I am thus of the view, as already alluded to above, that *both* Lord Denning MR's and Buckley LJ's approaches reflect the realism and common sense that are necessary in aiding the court in arriving at a result that must, in the final analysis, be closely linked to the specific facts and circumstances in question. Technically, though, one could state that the adoption of such an approach does, in effect, endorse Lord Denning MR's views inasmuch as it still gives weight to the evidence concerned. But one ought not to be too overly concerned with technicalities, in my view. In any event, on the facts of the present case, it is clear (as we shall see) that even if one adopted the more favourable approach towards the defendant as embodied in the views of Buckley LJ in the *Stupple* case, the defendant would still fail in discharging the onus of proof.

63 Indeed, in fairness to the defendant, I now proceed to state as well as analyse various general arguments and/or factors that might be invoked in her favour. One is the suggestion that in a running-down case, the probative value stemming from evidence of a conviction of a driving offence might be of little or no value (see *per* North P in the New Zealand Court of Appeal decision of *Jorgensen v News Media (Auckland) Limited* ([49] *supra*) at 976). However, everything depends, of course, upon the specific facts themselves. I see no reason in this case, for example, why the evidence of (especially) the Statement of Facts should be of limited value. On the contrary, since they have a bearing on a crucial part of the factual matrix, *viz* whether or not it was she or the third party who had in fact beaten the traffic lights, I would have thought that such evidence would indeed be of very significant value.

64 More importantly, the defendant's conviction under s 65 was not one that resulted from a trial as such. The defendant in fact *pleaded guilty* to the charge. Indeed, counsel for the defendant made much of this particular fact. In particular, it was argued by the defendant that she was in fact not guilty of the offence and that she had pleaded guilty for other extraneous reasons. It is interesting to note, right at the outset, that the defendant gave different reasons for pleading guilty at different points in her testimony. Although these reasons were not necessarily inconsistent with

each other, the general approach of the defendant does support my more general conclusion (which I elaborate upon below) to the effect that she was quite evasive in her responses to the questions put to her, especially in cross-examination.

65 It is important to reiterate that s 45A(1) of the Evidence Act makes it clear that evidence of a conviction is still admissible, notwithstanding the fact that the accused had pleaded guilty instead of going through the entire process of a criminal trial. The rationale for this was recognised by the UK Law Reform Committee itself when it observed thus (see *Fifteenth Report (The Rule in Hollington v Hewthorn)* ([47] *supra*) at para 12):

> Where a plea of guilty can be proved under the existing law, considerable weight attaches to it, for people, if they are innocent, do not usually plead guilty to criminal offences which render them subject to punishment. We see no reason in logic or in common sense why the conviction resulting from a plea of guilty should not have probative value in establishing that the accused, whether or not he is a party to the civil action, was guilty of the conduct of which he was convicted. We think it should be admissible in subsequent civil proceedings in the same way as a conviction upon a contested trial.

66 Nevertheless, the Committee did proceed to observe further (at para 13) that, *inter alia*, that "[e]rror may arise for a number of reasons". One of the reasons canvassed was this (see *ibid*):

> The accused may have pleaded guilty, particularly to a minor offence, not because he had no defence but for reasons of personal convenience – to save time and expense or to avoid disclosing some embarrassing though non-criminous fact which would come to light if the case were defended.

67 However, it is important to note that this was a reason that militated against the recommendation (by the Committee) that a conviction be *conclusive*. Indeed, it would be open – as it was to the defendant in the present case – to prove why she pleaded guilty to the offence. In the words of Lord Denning MR in the *Stupple* case ([59] *supra*) at 72 (and echoing the views of the Law Reform Committee in the preceding paragraph):

> Sometimes a defendant pleads guilty in error: or in a minor offence he may plead guilty to save time and expense, or to avoid some embarrassing fact coming out. Afterwards, in the civil action, he can, I think, explain how he came to plead guilty.

68 Indeed, more than ample opportunity was given to the defendant in the present case to explain why she had pleaded guilty and it is to these reasons and their persuasiveness (or otherwise) that I now turn – bearing in mind the fact that the evidence concerned is otherwise extremely significant and (more importantly) very detrimental to the defendant's case (and see [55] above).

69 First, the defendant stated that she had pleaded guilty to the charge of inconsiderate driving under s 65 of the Road Traffic Act because of the high cost as well as the risk of contesting the charge in court. Significantly, this reason was to be found in the defendant's affidavit.[3]

70 Under cross-examination, however, the defendant added another reason – that she wanted to "avoid stress". She also added that she had "no choice" and thus pleaded guilty to the charge.

71 When confronted with the fact during cross-examination by counsel for the plaintiff, Mr Yap, that she had in fact been legally represented, the defendant replied thus:

At that time, the lawyer told me that if I contested the charge, I had to be prepared to spend time and money – all of which was unknown. The lawyer clearly explained the legal provision under which the charge was made out. He explained that even if I negotiated the turn with the green light, I was still under an obligation to give other vehicles the right of way. So I elected to plead guilty.

72 There followed an exchange between both counsel for the plaintiff and the defendant, as follows:

Q: I put it to you that no lawyer would give you such advice because if the green arrow was showing, the red light would be present for vehicles in the opposite direction, and the other vehicle would not have the right of way.

A: I do not have good legal knowledge and could not assess the professional advice given to me.

73 When the defendant was cross-examined by counsel for the third party, Mr Ramasamy, there followed an interesting exchange, with two material parts (at the beginning and at the end of the exchange) being set out as follows:

Q: Earlier, when you were asked whether the contents of [the Statement of Facts] were true, you wanted an interpreter to read them out to you. You are a very careful person. As such, when Statement of Facts were read by the prosecutor, you would surely have objected if they were not true?

A: Yes.

Q: Even if your lawyer had advised you wrongly on the law, you know the facts and, if they were untrue, you would not have admitted to them?

A: Yes.

…

Q: AB-10 – the top – "further amended" – so there were amendments and further amendments – true?

A: Yes, if this is recorded as such.

Q: But you did not amend the crucial part of the Statement of Facts. I put it to you that you agreed to the Statement of Facts and pleaded guilty to the charge of inconsiderate driving, fully aware of the nature and truth of the Statement of Facts.

A: Yes, I was fully aware of the charge of not giving way – so I had no choice.

74 During re-examination by her counsel after cross-examination by counsel for the plaintiff, the defendant stated her disagreement with the facts in the Statement of Facts, in particular, that the green filter arrow was not showing at the material time.

75 During re-examination by her counsel after cross-examination by counsel for the third party, the defendant attempted, somewhat late in the day, in my view, to state that she had in fact

objected to the Traffic Police's Statement of Facts. She also referred to a letter of representation tendered to the Traffic Police and the following exchange during re-examination is instructive:

> Q: Why was the Statement not changed?
>
> A: Because amendments were not allowed by the Traffic Police.
>
> Q: Why was this so?
>
> A: I do not know the reason.
>
> Q: What are your reasons for pleading guilty to the Statement of Facts which you did not agree with?
>
> A: Pleading guilty and whether or not I admitted the Statement of Facts are two different things. At that time, I was under immense pressure and such pressure was not only due to my concern as to the amount of legal fees payable. It was also partly the result of a statement made by the Inspector.
>
> [Witness breaks down – needed time to compose herself]
>
> I was told that the victim might be paralysed for life. This had put me under great stress, although I was not the party at fault. I was labouring under a kind of feeling that although I was not the one who did the killing, but someone had died because of me. Therefore, at that time, although I did not agree with the Statement of Facts, I pleaded guilty because I had no choice.

76 I have set out the defendant's testimony in some detail as it has a significant bearing on her credibility as well as reliability as a witness in general and her reasons for pleading guilty in particular.

77 In so far as the defendant's attempted explanations as to why she pleaded guilty were concerned, I found her responses to both counsel for the plaintiff and counsel for the defendant rather evasive and defensive. This was so, even having regard to the fact that she was under cross-examination. The extracts set out above obviously do not capture fully the demeanour of the witness herself. Nevertheless, even a cursory glance at the testimony tends to confirm that the defendant was not intent in any way on responding firmly and directly to the questions posed to her. Indeed, even in response to her own counsel during re-examination, the defendant was evasive. In response, for instance, to her *own* counsel's question with regard to the reasons she pleaded guilty to the Statement of Facts which she did not agree with, her opening response itself was (as reproduced at [75] above) that "[p]leading guilty and whether or not I admitted the Statement of Facts are two different things".

78 A notable thread running through the defendant's testimony during cross-examination was her insistence that she had no choice. In point of fact, however, she was legally represented (unlike the situation in the Singapore High Court decision of *Tan Bernice Amelia v Loh Chee Song* [2000] SGHC 197). Further, the defendant struck me as a businesswoman who was not unschooled in the ways of the world.

79 Counsel for the defendant did attempt what in my view appeared to be "damage control" during re-examination of the defendant. It was only at this rather late point in time (and compare the Singapore High Court decision of *Tan Bernice Amelia v Loh Chee Song*) that the letter of representation on behalf of the defendant to the Traffic Police was tendered in evidence. As seen in

the extract above, her response was rather tame. I bear in mind, in particular, the fact that she was not only legally represented at the time but also the fact that, during cross-examination, she could be quite combative. Her response (at [75] above) to the effect that the Statement of Facts were not changed "[b]ecause amendments were not allowed by the Traffic Police" elicited a further question from her own counsel inquiring why this was so – to which she responded (somewhat tamely), "I do not know the reason."

80 I do note, however, that the defendant did break down on the witness stand (see [75] above). Nevertheless, I note, further, that this was during re-examination by her own counsel, during which time her somewhat emotional response was an at least unintentional attempt to add a further reason as to why she had pleaded guilty – because she felt guilty for the serious injuries suffered by the plaintiff. I do not accept this as a valid reason, coming as it did right towards the end of her testimony. In fairness to the defendant, however, I do not think that this demonstrated insincerity on her part. I think that, at least at *that* particular point in time, she genuinely felt bad that the plaintiff had sustained such serious injuries as a result of the accident. However, that is a matter that is wholly irrelevant to the issue as to whether or not she had succeeded in proving that she had pleaded guilty to the charge of inconsiderate driving when she was in fact innocent.

81 It is interesting to note that counsel for the defendant, during her closing submissions, utilised the word "compelled" to characterise the circumstances surrounding the defendant's plea of guilt. Having regard to my analysis of the evidence above, I found such a characterisation to be inappropriate. It is interesting, too, that the word utilised by counsel ("compelled") was very similar to the phrase utilised by the defendant ("no choice"). The real issue, however, was whether or not the defendant could successfully demonstrate that she indeed had been devoid of choice when pleading guilty. In this regard, I find that she had not satisfied me that she lacked that power of choice.

82 It is also important to note that the defendant had, as we have seen, the fullest opportunity to state her arguments, which did not (in my view) stand up under the probing searchlight of cross-examination. It would of course have been quite different if the admissions had not been tested in cross-examination (as was the case in *Banque Nationale de Paris v Tan Nancy* [2002] 1 SLR 29 at [62]).

83 I have dealt thus far with the significance to be accorded to the defendant's conviction under s 65 of the Road Traffic Act for inconsiderate driving. I hasten to add, however, that her actual testimony during the trial itself led me to believe that the defendant was not a reliable witness. This is already demonstrated, to some extent, by the reasons why I rejected her arguments as to why her conviction ought not to be taken into account. In fact, the defendant's testimony with regard to this issue (*viz* her conviction) was *representative* of her overall credibility as a witness.

84 Indeed, the defendant's overall weakness as a witness distinguishes this case from that in the Singapore High Court decision of *Lim Yam Teck v Lim Swee Chiang* [1979] 1 MLJ 162, where Kulasekeram J in fact accepted the plaintiff's explanation for his pleading guilty in the Summons Case in the Magistrate Court (and which, not surprisingly, was relied upon by counsel for the defendant). In that case, the learned judge found (at 163) that "the plaintiff had given a true account as best he could of what happened in connection with this accident" whereas he "considered the defendant to be an untruthful witness". The precise *opposite* was in fact the situation in so far as the present case is concerned. Indeed, the inquiry ought to take into account the *whole* of the evidence available and this would include the *plaintiff's and third party's evidence (and, more importantly, the reliability and credibility of that evidence) as well*.

85 A similar approach was taken in the Malaysian High Court decision of *Noor Mohamed v*

Palanivelu [1956] MLJ 114, where Buhagiar J observed thus (at 116):

> On behalf of the defendants, it was submitted that in criminal charges of this nature [here a charge of inconsiderate driving] it very often happens that an accused pleads guilty to avoid the further complications and expense of a trial and that in the present case Ramasami, the instructor, D.W. 7 had actually advised the first defendant not to plead guilty. I do not see much force in that argument and while the plea of guilty is not necessarily conclusive evidence of the first defendant's negligence in the present suit it is an admissible admission which supports the plaintiff's case and which weighs against the defendant.

Even more pertinently, Buhagiar J stated (*ibid*):

> In coming to the conclusion I have reached I have not relied solely [on] such admission; I consider that *on the whole of the evidence* the probability is that the accident occurred as stated by the plaintiff. While I cannot say from the demeanour of the defence witnesses that they were deliberately telling an untruth I do not consider that their version of the events is correct. P.W. 3 is, in my opinion, a reliable witness ... [emphasis added]

86 When compared to the facts of the present case, it can be seen that even if I were to find that the defendant was not deliberately telling an untruth, the weight of the plaintiff's and the third party's testimony would clearly have tipped the scales against the defendant. Once again, though, it should be noted that the *totality* of the evidence is crucial (see also the discussion above at [84]).

87 The present case is in fact more akin to the Malaysian High Court decision of *Chock Kek Ling v Patt Hup Transport Co Ltd* ([49] *supra*), where Raja Azlan Shah J (as he then was), when faced with the argument by counsel for the fourth defendant (at 121) to the effect that his client had pleaded guilty to a charge of driving without due care and attention in respect of the accident because "not only were the facts not put to his client but they were not admitted by him" and hence resulted in "a serious defect which affects" the weight of the evidence, was of the view (*ibid*) that this "is an ingenious way of reasoning, but I think it is too late in the day to attack the record". The defendant's argument in the present case was, in substance and in the final analysis, very similar.

The defendant's overall credibility as a witness

88 In so far as the defendant's *overall* credibility and reliability as a witness is concerned, I found the defendant, first, to be relatively prolix in her answers. She was also extremely wary of virtually all the questions asked during her cross-examination. It was almost as if she was seeing a trap behind every bush.

89 The defendant often adopted a very interesting method of evading questions posed to her by counsel for the plaintiff as well as counsel for the third party. Instead of responding directly to the questions, she tended to avoid them by prolixity and, on occasion, by giving irrelevant or roundabout answers. On other occasions, she was quite combative. As mentioned above, she did break down on one occasion. This did demonstrate her remorse, at least to a certain extent. However, this did not, as an isolated instance that could be explained by reference to other reasons, detract from my overall impression of her as a rather evasive and unreliable witness.

90 I should add that the various witnesses' credibility was crucial to the outcome of this case. I have in mind, in particular, the issue of in whose favour the traffic lights were. There is here no middle ground: if the traffic lights were in favour of one, they must have been against the other. Even if the defendant argues that the (main) green light was showing, this would mean that she would have had

to stop at the right turn pocket simply because the traffic lights would then have been in favour of the third party. The traffic lights would only have been in her favour when they (the main lights) turned red and the green arrow was displayed. At this point, the third party would have had to stop because the traffic lights would have been against him.

91 Having observed the witnesses closely and reviewed their evidence, I came to the conclusion that both the plaintiff and the third party were credible and persuasive witnesses, although I could not (unfortunately) say the same of the defendant. Hence, unless there was any other argument that counsel for the defendant could pray in aid, it was clear that the defendant would be wholly liable for the accident which occurred. There was, in this regard, in fact one final argument which might have aided the defendant – and it is to that argument that my attention now turns.

Is there a general duty to slow down when approaching a junction?

92 Counsel for the defendant made much of the argument to the effect that the third party had not slowed down as his vehicle approached the junction but, on the contrary, had maintained his then existing speed of 60km/h (in her closing submissions, counsel for the defendant went, in fact, even further and referred to the need on the part of the third party to, *inter alia*, sound the horn and flash the headlights of his vehicle).

93 The legal issue that arises is whether or not there is indeed a general duty for a driver to slow down (or take some other precautionary measures, such as those just mentioned) when approaching a traffic junction even though the lights are in his or her favour.

94 I could locate no general rule to this effect. This is not surprising since the facts of each case can vary so greatly.

95 I must not, however, be taken as stating that no general principles are in fact possible. It seems to me that there is – in the absence of clear and compelling circumstances to the contrary – *no* legal duty on a driver to slow down *automatically* each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present.

96 Put even more generally, I found the following statement of principle by Lord Dunedin in the House of Lords decision of *Fardon v Harcourt-Rivington* (1932) 146 LT 391 at 392 to be entirely apposite both as a general guideline as well as a specific pronouncement in so far as the present fact situation was concerned:

> The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal. If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.

97 The learned law lord proceeded to add, a little later in his judgment, thus (*ibid*):

> [P]eople must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities.

98 Lord Macmillan also observed, in a similar vein, thus (*ibid*):

> In each case the question is whether there is any evidence of such carelessness in fact as amounts to negligence in law – that is to breach of the duty to take care. To fulfil this duty the user of the road is not bound to guard against every conceivable eventuality, but only against such eventualities as a reasonable man ought to foresee as being within the ordinary range of human experience.

99 The above observations constitute wise counsel indeed, and are sound not only in law but are grounded in moral fairness and practical common sense. Not surprisingly, therefore, they find application in the local context (see, for example, the Singapore High Court decision of *Ng Swee Eng v Ang Oh Chuan* [2002] 4 SLR 425).

100 What counsel for the defendant was arguing for was, in effect, a *blanket* rule to the effect that all drivers were under a legal duty to slow down when approaching a traffic junction, *regardless* of the circumstances concerned *and even where* the traffic lights were in their favour. This would be most impractical and inefficient where there is otherwise no reasonable apprehension of danger. To reiterate the wise counsel of Lord Dunedin (above at [97]), "people must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities". Everything does ultimately, therefore, depend on the specific facts (see also *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 10th Ed, 2001) at para 9-193); and it is from this interactive relationship between the law and the facts that a fair and just result emerges.

101 The specific question that arises in the context of the present case, therefore, is this: Was there any reasonable apprehension of the possibility of danger in the circumstances in so far as the third party was concerned?

102 I have already reviewed the evidence in some detail. It was clear that the third party was in fact keeping a lookout and, more importantly, the traffic lights were in his favour. He did see the defendant's car. However, it was stationary. This is not surprising since, if the traffic lights were in the third party's favour, the *converse* must have been the case in so far as the defendant was concerned (see [90] above). It could not be otherwise unless, of course, the traffic lights had malfunctioned – which was clearly not the case here. It was to be expected, therefore, that the defendant's car would be stationary. It could not move until the lights had turned red against the third party. At this juncture, and this juncture only, would the defendant be allowed to move her car as, at that point, the green arrow would have come on in her favour.

103 One must, at this point, put oneself in the third party's shoes (or, more appropriately here, driving seat). One has only to do so to come immediately to the conclusion that there was no need to slow down (I find it significant, in this regard, that the third party did not actually increase his speed: a point which counsel for the defendant did not dispute). It is true that the defendant's vehicle was up ahead. However, it was stationary in the right turning pocket. Placed in the third party's situation, one would not have expected the defendant's vehicle to have moved forward since the lights were not in its favour. In other words, there could be no reasonable probability of any danger occurring that the third party would have to guard against by, *inter alia*, slowing down his vehicle.

104 I should add at this juncture that slowing down one's vehicle for no apparent reason would not only not have fulfilled any practical purpose but might also have inconvenienced other vehicles following behind. Indeed, if a vehicle was following too closely behind (*ie*, tailgating) the third party's vehicle, this could have possibly led to an accident or even frayed nerves (all of which are, unfortunately, not uncommon on Singapore roads today).

105 It is true that the defendant's vehicle did ultimately pose a danger. However, this was

something that was sudden and unexpected, given the situation I described briefly in the preceding paragraph. It was certainly not an eventuality that a reasonable driver in the third party's position ought to have guarded against. It was, at best, only "a mere possibility which would never occur to the mind of a reasonable man", to quote, once again, the words of Lord Dunedin above (see above at [96]).

106 Contrast this with another (albeit hypothetical) situation. If, for instance, a young child on the sidewalk were suddenly to tear loose from his mother's grasp and run across the road, there would be no doubt in my mind that a driver in the third party's position would have had (notwithstanding the fact that the traffic lights were in his favour) not only to slow down but actually to apply the emergency brakes on his vehicle to avoid hitting the child. Even then, I would have thought that the driver would not be negligent if the child was in fact too close to the vehicle and was, very unfortunately, injured in any event. However, what would *not* be acceptable would be a situation where the driver simply continued to maintain his speed without more. That, to my mind, would be unacceptable and certainly constitute negligence on the driver's part. The situation in the present case is, of course, radically different.

107 Indeed, there is another leading decision of the English Court of Appeal which held that where a driver entered a cross-roads with the traffic lights green in his favour, he was under no obligation to assume that there would be another vehicle entering the crossing across his path in disobedience to the red light: see *Joseph Eva, Limited v Reeves* [1938] 2 KB 393 (which was cited by counsel for the third party). However, it is important to note that, on the facts of the case presently cited, it was not possible for the former driver to notice the latter driver's vehicle in time. This was in fact precisely the situation on the facts of the present case as well – particularly given the fact that, as I have found, the lights were in the third party's favour (which, in turn, meant that they were *not* in the defendant's favour). The following observations by Scott LJ (at 404–405) are especially apposite:

> Nothing but implicit obedience to the absolute prohibition of the red – and indeed of the amber, subject only to the momentary discretion which it grants – can ensure safety to those who are crossing on the invitation of the green. 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-roads, 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.

108 Counsel for the defendant did cite the Singapore Court of Appeal decision of *Loh Saik Pew v Tan Huat Chan* [1975–1977] SLR 189. In that case, the court was of the view that the plaintiff was contributorily negligent as he ought to have kept a lookout for vehicles coming into the cross-roads and across the path of his vehicle. However, the facts of that case were quite different from the facts in both the present case as well as those in *Joseph Eva, Limited v Reeves* ([107] *supra*). In that case, the defendant, although attempting to beat the traffic lights, had in fact entered the cross-roads when the traffic lights were *amber*, and not when they had already turned red.

109 There can, in my view, be no blanket rule one way or the other. In my view, the only clear guiding principle is the broad one stated earlier to the effect that, in the absence of clear and

compelling circumstances to the contrary, there is *no* legal duty on a driver to slow down *automatically* each time he or she approaches a traffic junction if there is no stop sign or where the traffic lights are in his or her favour.

110 In a very real sense, each case will have to be decided on its particular factual matrix. In this regard, in addition to the cases already considered, one may contrast, for example, *Watkins v Moffatt* [1970] RTR 205, *Walsh v Redfern* [1970] RTR 201, and *Hopwood Homes Ltd v Kennerdine* [1975] RTR 82 (in all of which the court concerned found in favour of a driver travelling along a major road) and *Truscott v McLaren* [1982] RTR 34 (where the court found that the driver travelling along a major road was liable for contributory negligence).

Conclusion

111 I have in fact taken the opportunity both to set out as well as evaluate the evidence of the plaintiff, the third party and the defendant, respectively, as well as all the salient legal issues arising therefrom. I also considered the specific issue as to whether or not there was a legal duty to slow down when approaching a junction. All my findings are elaborated upon in detail above. It would presently be appropriate to summarise my findings before delivering my decision as to liability in the present case.

112 In summary, I find that:

(a) The plaintiff was a reliable and dependable witness.

(b) The third party was a reliable and dependable witness.

(c) The defendant was not a reliable witness and tended to be both prolix and evasive.

(d) The defendant failed to persuade me that her conviction under s 65 of the Road Traffic Act (having been admitted under s 45A of the Evidence Act) ought to be disregarded. Her conviction, together with the Statement of Facts supporting the Charge, further buttressed the case against her.

(e) There was no legal duty, in the circumstances of the present case, on the part of the third party to slow down when approaching the traffic junction in question.

113 In the circumstances, I find that the defendant was wholly liable for the accident and there will therefore be judgment for the plaintiff with costs, to be taxed or agreed. The damages to be awarded to the plaintiff will be assessed by the Registrar.

114 The defendant's action against the third party is therefore also dismissed with costs, to be taxed or agreed.

Judgment for the plaintiff. Defendant's action against the third party dismissed.

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[1]See AB-9

[2]See AB-10

[3]At AB-30, paragraph 6