Gobi Nadhan a/l Balakrishnan v Tan Chin Sian
[2007] SGHC 57

Case Number : Suit 66/2007

Decision Date : 27 April 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : M Ramasamy s/o Karuppan Chettiar (Acies Law Corporation) for the plaintiff; Edwina Fan Yuen Chi and Josephine Kang (Kelvin Chia Partnership) for the defendant

Parties : Gobi Nadhan a/l Balakrishnan — Tan Chin Sian

27 April 2007

Choo Han Teck J:

1 Sometime between 6.10am and 6.20am on 5 December 2004 the plaintiff was riding his motorcycle along Bukit Timah Road towards the direction of Serangoon Road. He was a Malaysian working as a crane driver at the Port of Singapore Authority, Tanjong Pagar Complex, at Keppel Road. When he entered the junction between Bukit Timah Road and Cavenagh Road his motorcycle collided with a motorcar driven by the defendant. The defendant drove from the opposite direction and was making a right turn towards the Central Expressway when the two vehicles collided. Both parties claimed that they had the right of way because the traffic lights were green in their favour.

2 The plaintiff testified that he was travelling at 60km/h, admitting that he was going at 10km/h above the speed limit, which at that time, was 50km/h (it was subsequently been raised to 60 km/h). He said that the sky was dark but the street lamps were lit. When he was about 50m from the traffic junction he noticed the traffic light was red against him, but turned green as he passed a petrol station and so he continued. The evidence from the photographs indicated that the petrol station was about 40 to 50 metres from the traffic junction. The plaintiff testified that as he entered the road junction the defendant's car hit his motorcycle in the front right wheel. He fell from the impact and was injured. There was no photographic evidence of the extent of the damage to the plaintiff's motorcycle. There were some photographs showing the damage to the defendant's car, and they showed a crumpled front right side of the car.

3 The defendant was at the time, about 22 years old, and was a student at the Singapore Management University. He and his friends were out the previous night (4 December 2004) from about 10pm celebrating the end of their examinations. They celebrated through the night and concluded with breakfast at McDonald's in the early hours of 5 December 2004. The defendant was sending three of his friends home after breakfast when the accident occurred. One of them was in the front passenger seat and was engaged in conversation with him. The other two were "dozing off" in the rear passenger seats. None of the defendant's passengers testified in court. The defendant said under cross-examination that two of them were sleeping and the third was unable to give an account of the accident. No evidence was adduced under examination-in-chief and cross-examination as to the nature and extent of the celebrations, and the court will note that the parties consider that irrelevant. The defendant testified that the traffic lights were green in his favour but the green arrow light signalling that traffic from the opposite direction would have stopped had not yet appeared. He slowed down and allowed his car to "roll" into the turning pocket, and at that point, the green arrow

appeared. He therefore proceeded to turn right. He first noticed the plaintiff's motorcycle when it was about 5 or 6 metres away at the stop line of the road where the plaintiff was travelling. The defendant testified that he immediately stopped his car but it was too late. He demonstrated in court the respective position of the two vehicles just before and at the point of impact.

4 Miss Fan, counsel for the defendant submitted that the junction where the defendant had stopped was at the crest of a slope and that "the photographs show that [the defendant] could only see the first vehicle stopping at the stop line of the opposite side." This submission was more extravagant than either the defendant had provided in his testimony and the photographs. The photographs taken from the defendant's car for the purposes of the trial were a little unclear because the defence was content to admit them even though they were taken on a rainy day. Nonetheless, the 'slope' did not seem so steep that the defendant could only see the first vehicle at the opposite stop line.

5 When two vehicles collide at a road intersection and the driver and rider of the vehicles each claiming the right of way, the court may never know what really happened. However, the court's role is a less ambitious one, and that is, to decide which version of the competing stories was the more probable one. In this regard, Miss Fan submitted that I should reject the plaintiff's story in preference to that of the defendant's because the plaintiff's evidence was inconsistent on various points. First, he was not clear as to which lane he was on at the material time, and secondly, that he was not truthful in saying that he kept to the speed limit of 60 km/h when the speed limit was, at the material time, 50 km/h. Miss Fan also submitted that the plaintiff's report that the defendant's car hit his motorcycle at the side was not correct because the evidence showed that the plaintiff's motorcycle sustained its main damage at the front. Counsel also urged me to find him an evasive witness because he did not answer questions put to him. However, the examples given by counsel do not support the definition of "evasiveness". One such question was counsel's suggestion to the plaintiff that he (plaintiff) was travelling on the extreme left lane and to which the witness replied by saying "disagree".

6 I did not get the impression that the plaintiff lied in his version of the accident. He was a mildly reserved witness who spoke through the interpreter although he appeared to understand some English. The defendant was better educated and more articulate, but I was also unable to find that he was lying. The different versions in the circumstances of this case were, in my opinion, due to inattentiveness and false impressions, which, of course, are not the same as falsehood on the part of the witnesses. In my view, the accident more probably occurred when the traffic lights at the junction were green without the green arrow yet to appear, and the defendant made his turn thinking he had the right of way. However, he must have failed to notice the plaintiff's motorcycle until late, by which time, even though he stopped his car, the plaintiff's motorcycle hit the car in the manner demonstrated by the defendant in court. If the defendant did not stop, the injury to the plaintiff would probably have been far more serious. The fact that the defendant saw the plaintiff at that point implied that if he had only seen him earlier, the accident would probably not have occurred. Thus, the question was not whether the crest of the slope was so steep, as Miss Fan sseemed to think so. In my view, that would not have made much difference because if the defendant could not see beyond the slope, an unproven claim in the event, he ought to have proceeded with as much care. It might be possible that visibility distance was far too short for anyone to be certain, but the burden of proving that lay with the defendant because one can expect a well used road such as Bukit Timah Road to be well supervised and maintained by the Land Transport Authority. No evidence of the inherent danger being brought to the authority's attention was adduced. It was not disputed that the red arrow light was installed after the accident, but the circumstances and reasons were not in evidence. I can only surmise that the red arrow would make the junction safer, but that cannot lead to a finding that the junction was unsafe without it. The crucial fact was that from the photographs,

it seemed to me that a driver in the defendant's position just before turning right would have a clear view of at least six vehicles' length from the plaintiff's side of the road, and in that event, he would have ample time to stop for the plaintiff.

7 I was of the view that the plaintiff had contributed to the accident even on the findings I made in respect of the defendant's driving. A road user approaching a wide intersection has a duty to keep a lookout for other road-users, and had the plaintiff been alert, he ought to have seen that the defendant's car was not likely to give way. I find that the plaintiff was probably not attentive and was also probably riding at a speed faster than he ought to have. I was of the view that the combination of these two factors contributed to the collision. The apportionment of contribution in accident cases can never be a precise or even accurate exercise. Generally, unless the evidence justified a finding that both parties were equally to blame, the court would have to determine as best as it could on the evidence of the particular case how serious the plaintiff's conduct was in the contributing to the accident. The determination of the extent of contribution is not a determination of the cause of the accident. When an accident occurs, both parties must have met at the confluence of impact even though one or even both of them were not at all to blame. It follows that where a court had determined that one party's contributory negligence was, say 20%, it did not mean that that party caused 20% of the accident or that his action or conduct was 20% the cause of the accident, neither notion makes sense. Even the person whose contributory negligence was determined at 20% could have avoided the accident whether his contribution had been less or more. Hence, in terms of ascertaining what caused the accident, it had to be the conduct of both parties and from that perspective, the cause should be joint equally. But that often seems unfair. Why is that so? The answer is that superficially, some conduct appears more blameworthy than others. A man who drives a car at great speed and knocking down a pedestrian at a pedestrian crossing is deemed much more culpable than the pedestrian who, having seen the car coming at great speed, insists on his right of way at a pedestrian crossing even though the accident would have been avoided entirely had the pedestrian forfeited his right of way. When a court apportions contributory negligence, it is apportioning what it thinks were the blameworthiness for the accident, and any finding of that nature must depend on the circumstances of the individual case. On the facts of this case, I was of the view that the range could be between 10 to 20%. In the circumstances, I found the defendant liable for the accident and hold that the plaintiff's contributory negligence to be 15%.

8 For the reasons above, I ordered interlocutory judgment to the plaintiff with damages to be assessed and the plaintiff is awarded 85% of the sum assessed.