Cheong Ghim Fah and Another v Murugian s/o Rangasamy
[2004] SGHC 19

Case Number : Suit 493/2002

Decision Date : 07 February 2004

Tribunal/Court : High Court

Coram : V K Rajah JC

Counsel Name(s) : Chia Boon Teck and Roy Yeo (Chia Yeo Partnership) for plaintiffs; Vijay Kumar Rai (V K Rai and Partners) for defendant

Parties : Cheong Ghim Fah; Goh Jak Fong @ Goh Jit Fong — Murugian s/o Rangasamy

Evidence – Witnesses – Attendance – Absence of defendant – Whether adverse inference to be drawn – Section 116 illustration (g) Evidence Act (Cap 97, 1997 Rev Ed)

Tort – Negligence – Contributory negligence – Whether pedestrian negligent in jogging on road with back towards traffic – Relevance of breach of Highway Code (Cap 276) – Apportionment of liability – Highway Code (Cap 276, R 11, S 8/75), s 3(1) Contributory and Personal Injuries Act (Cap 54, 2002 Rev Ed)

Tort – Negligence – Duty of care – Duty of motorist towards pedestrian

Tort – Negligence – Res ipsa loquitur – When principle should be applied

7 February
2004
Judgment reserved.

V K Rajah JC:

1 The 20th of February 2002 began predictably enough for Superintendent Leong Wai Mun, like any other day for the preceding 23 years. He arose before the crack of dawn. He attired himself in his customary jogging attire; white singlet, blue/white shorts, white socks and white/grey running shoes. He had lived in the Spottiswoode area for 23 years, since his marriage. A keen sportsman, he ran around the neighbourhood every morning, even on the first day of the Chinese New Year. The run would commence at about 5.45am and he would invariably return home between 6.20am to 6.30am. After a shower and breakfast, he would send his daughter to school and his wife to her workplace. He would then proceed to work. His workplace was near the home. He was the commander of the Port of Singapore Authority – a position of considerable responsibility. The first plaintiff, his wife, describes him as a very responsible man.

2 With considerable affection, she also recalls that he was a "creature of habit". One of his twin sons says he was as "predictable as a clock".

3 Superintendent Leong could not have realised, when he set off on his morning run that day, that the day would not end predictably. When he did not return home at 6.30am, the first plaintiff was not unduly worried. Perhaps, he had run into a colleague. By 7.00am, she began to worry. The daughter was asked to take a taxi to school. The first plaintiff became frantic. She had an intuitive feeling that something was amiss. She instinctively asked her son to visit all the main hospitals. When the Accident & Emergency Department of the Singapore General Hospital was contacted at 8.00am, it confirmed that an unidentified jogger had been sent to the Intensive Care Unit after he had been knocked down in a traffic accident. Her son was asked to identify the victim. The son confirmed it was indeed his father and made a phone call to his mother. She was shocked and horrified. She

rushed to hospital. She did not have an opportunity to communicate with him. He was in a coma and died six hours later.

4 Thus began a most distressing saga for the first plaintiff. She was beside herself. She was most anxious to learn what had transpired. How did the accident happen? She learnt that the defendant was riding a motorcycle that collided into Superintendent Leong ("the deceased") somewhere along Lower Delta Road. The defendant was also conveyed to the Singapore General Hospital by ambulance. The defendant sustained a 3cm laceration on his right eyebrow area, a mildly displaced left LeFort I fracture and a minimally displaced right zygomatic fracture. Soon after admission, he discharged himself from hospital. On 26 February 2002, he made a police traffic accident report. He said he was blameless; "the guy suddenly ran across the road, I cannot stop in time and I hit the subject". Soon after making the report, he left Singapore, apparently with an intention never to return. The police sought his assistance in their enquiries into the accident. He did not give any assistance. A warrant of arrest was issued against him, to no effect. Interpol assistance was then sought; again without success.

5 There were no eye-witnesses to the accident. Two public-spirited Singaporeans were, however, in the immediate vicinity of the scene of the tragic accident. Ron Lew, a Republic of Singapore Air Force serviceman, was having a "smoke" at the side of the road intersection of Bukit Purmei Road and Lower Delta Road facing the direction of Bukit Merah, when he noticed the defendant's motorcycle "moving fast" from Lower Delta Road. The defendant's motorcycle was travelling in the left lane of Lower Delta Road in the direction of the World Trade Centre. He did not see how the accident occurred but rushed to give assistance at the accident scene, immediately after he heard a load screeching sound and realised that there had been an accident. He voluntarily gave assistance to the police in their enquiries. The plaintiffs called him as a witness. Tay Ying Yi, a student from Ngee Ann Polytechnic, heard the sound of an accident while he was standing at Bukit Purmei Avenue by Lower Delta Road. He too rushed to give assistance. He did not see how the accident had happened. I found them both to be upright and fair witnesses. Their evidence will be referred to in detail.

The plaintiffs begin proceedings

6 In March 2002, the plaintiffs commenced proceedings against the defendant. The family had been dependent on the deceased. The children were still schooling. The first plaintiff has had to make difficult adjustments to her life. She has had to provide for the education and support of her three children single-handedly.

7 These then are the seeds of the present proceedings. The plaintiffs and their lawyers thought that this would be a straightforward case. The defendant had left Singapore. It seemed that he did not want to return and vindicate himself. Since the filing of the statement of claim, unfortunately for the plaintiffs, there have been more than a few twists and turns.

8 The plaintiffs ascertained that the defendant's insurers were Aetna Universal Insurance Sdn Bhd ("Aetna") a Malaysian insurance company. The defendant was riding a Malaysian registered motorcycle. Aetna was informed of the commencement of proceedings. So was the defendant, who was now in Penang, his hometown. The defendant, on receipt of the writ, wrote a brief note to Aetna, copied to the plaintiffs' solicitors. He enclosed a copy of the writ and a copy of the cover note, and told Aetna to "Kindly do the needful". He did nothing further. There have been no subsequent communications to the plaintiffs or their solicitors from the defendant.

9 Aetna did not respond to the plaintiffs' solicitors. In due course, after evidencing proper

substituted service of the writ on the defendant, the plaintiffs entered an interlocutory judgment against the defendant, with damages to be assessed. This was on 11 October 2002. This did not, however, entail the neat outcome and clinical certainty that the plaintiffs were expecting.

10 A Malaysian law firm, Murali B Pillai and Associates ("Murali"), suddenly entered the picture. In a letter dated 1 November 2002, they claimed they acted for ING Insurance Bhd ("ING"), who had apparently taken over Aetna. The plaintiffs' solicitors apprised them of what had happened and sought confirmation that ING would assume responsibility for the defendant. The plaintiffs' lawyers found Murali to be unresponsive. The plaintiffs' lawyers tried repeatedly to procure an urgent response, but to no avail. On 28 March 2003, Murali suddenly sprang into action. They asked for all the relevant documents. These documents were dispatched by the plaintiffs' solicitors on 1 April 2003. The plaintiffs must have been relieved. After all, a finding of liability against the defendant without coverage from his insurers could well be meaningless – a paper judgment. This relief was short-lived. Murali sent a notice dated 3 April 2003, stating that the requisite notice in accordance with s 96(2) of the Malaysian Road Transport Act had not been given. The insurers were therefore not at risk for the accident. The plaintiffs' solicitors immediately responded. They countered that notice to Aetna had been given and enclosed the notice. It was dated 2 April 2002 and had been sent by registered post.

11 ING then changed its mind and decided to contest the present proceedings. In addition to Murali, it appointed the defendant's present Singapore solicitors. The interlocutory judgment was set aside. The plaintiffs were sent back to the starting line.

12 At this stage, it is pertinent to advert to a curious feature of these proceedings. It was obvious from the outset that the defendant was not going to give evidence in these proceedings. When the defendant's counsel sought leave at the hearing to amend the defence, I asked him on whose instructions he was acting. Mr Rai candidly informed me that he was acting on instructions from the Malaysian solicitors for the defendant's insurers, *ie* Murali. He was not in touch with the defendant directly. The defendant had sought to give instructions through an intermediary. Mr Rai stated that he was not relying on those instructions.

The evidence

13 The court does not have any direct evidence of what actually transpired at the scene of the accident. The plaintiffs could not adduce any direct evidence. The defendant has throughout the proceedings been unwilling to give any evidence. Fortunately, there is independent evidence in the form of a sketch plan, vehicle damage report and some evidence in the surrounding matrix of facts.

14 There is an autopsy report annexed as an exhibit to the first plaintiff's affidavit. Unfortunately, it was not admissible; the pathologist had not been asked to give evidence and it was not an agreed document either by consent or an order of court. Mr Rai, quite properly, objected to any reference to it by the plaintiffs' counsel; it was hearsay evidence. I cannot draw an adverse inference against the Defence for not agreeing to the admission of the autopsy report. It has raised a legitimate evidential point. It is for the plaintiffs to prove their case with the best admissible evidence available to them.

15 Given the absence of direct evidence, I am of the view that the location of the accident, the lighting and visibility conditions and the line of sight of vehicles approaching the relevant intersection, are of real significance. I had asked counsel to accompany me to the site of the accident, timing our visit to coincide precisely with the time in the morning the accident occurred. We visited the accident site on an early January morning. The accident had occurred on a late February morning two years

earlier. I asked counsel to take into account that in Singapore, sunrise in the months of January and February occurs at slightly different times.

16 The principal witness for the plaintiffs was Ron Lew. On the day of the accident, he left home a little earlier than usual to go to work. He had just finished watching football on television. He was wide awake. At the junction of Bukit Purmei Road and Lower Delta Road, he paused to smoke a cigarette. Traffic was light. In his words:

> Whilst waiting for the green man to appear before I crossed the road, I was looking around the junction and saw a motorcycle rider [*sic*] by the Defendant coming down from Lower Delta Road at a *very fast speed*. The Defendant's motorcycle was travelling in the left lane of Lower Delta Road, in the direction of the World Trade Centre. [emphasis added]

17 Soon after observing the defendant's motorcycle, he heard a loud "screeching and sliding sound". He saw that the defendant's motorcycle had fallen down. He rushed to the scene to assist. He noticed that the defendant was lying on the road with his motorcycle pinning down his legs. The position of the motorcycle was close to the kerbside in the left lane of the two-lane road. He noticed that the deceased was wearing white and blue jogging attire. He was cross-examined at length by the defendant's counsel. He maintained that while it was early morning and still dark, visibility was good. The street lights were on. He insisted that the motorcyclist was travelling fast towards a red light which changed as the motorcyclist reached it. The motorcyclist did not appear to slow down. There was light traffic just ahead of the motorcyclist; two or three cars, some motorcycles and a container lorry, that later turned right. He first saw the defendant's motorcycle when it was about 100m away from the stationery cars, which were waiting at the junction on account of the red light. He did not see the deceased. He did not hear any braking sounds. He stood by the contents of his earlier police statement which were consistent with his present evidence. He had in that statement estimated the defendant's speed to be about 70km/h.

18 Despite the fact that there was some inconsistency in his evidence, I found him to be an honest, reliable and straightforward witness. He was unwavering in his observation concerning the defendant's speed.

19 I would like to make an observation about cross-examination techniques sometimes employed by counsel. Counsel should appreciate that when a witness is cross-examined at length about an incident that has happened in almost the blink of an eye, they cannot expect the witness to recollect what has transpired with punctilious accuracy and consistency. While counsel are allowed to probe a witness for consistency and credibility, the micro-dissection of the evidence of an unschooled witness will often produce some inconsistencies. 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. I paid particular attention to Lew's evidence. I knew at the outset that he was the only witness capable of giving evidence connected with the events before the impact took place. The submissions that were made by the Defence in relation to the reliability of Lew's evidence were groundless. Mr Rai was relying on peccadillos. Lew was consistent in the crucial portions of his evidence. I accept his evidence that it appeared to him that the defendant was speeding just before the accident and did not slow down as he approached the road intersection.

20 The evidence of the two plaintiffs did not add anything to my understanding of how the accident took place. The only other directly relevant witness the plaintiffs called was Sergeant Nge Keok Kin, a traffic police investigator. He arrived soon after the accident took place. The sketch plan produced was drawn up by him. He confirmed that the weather was fine and the road surface dry. While there were no skid marks, there were definitely gouge marks. The gouge marks close to the

pavement were "most likely" caused by the footrest of the motorcycle, which stuck out. The gouge marks indicated that the motorcycle had already fallen to its side. In other words, the motorcycle could not possibly have been upright when the gouge marks were made. The second yellow line was about 70cm from the kerb and the gouge marks were about 30cm from that line. The left lane of the road was about 3.7m wide. Gouge marks are useful as they assist in determining not only the path of the motorcycle but its relative position on impact. Upon visiting the accident site, Sgt Nge thought that the lighting might have been slightly dimmer at the time of the accident. He could not tell the court where the impact took place. The damage report indicated that the front headlights of the defendant's motorcycle were "smashed". None of this evidence was challenged by the Defence.

21 Harbans Singh, a former colleague of the deceased, also gave evidence. For many years he had jogged regularly with the deceased, invariably along the same route. He had stopped in 1995 when he moved residence. Parts of his evidence are pertinent. He said:

> When I ran with the deceased, we used to run along the side of the road, one in front of the other. We were always very conscious not to depart from the side of the road and we usually used either the single or double yellow lines by the side of the road as our guide. *We usually ran along the single or double yellow lines. Like most runners, we did not like to run on the pavements because they have many hindrances and obstructions such as tree roots, uneven ground, barriers, rubbish bins, etc.*
>
> The deceased was a very careful runner. He was always mindful of his position as a senior police officer and consciously carried himself exemplarily. He always obeyed traffic rules and would never jay-walk or cross against a "red-man" even when there was absolutely no vehicles. He would simply jog on-the-spot and waited until the "green-man" comes on.
>
> [emphasis added]

22 Under cross-examination, he disagreed that jogging along the side of the road, when there was a pavement, is inappropriate. In his view, joggers like to run on a continuous surface. To jog continuously on the same flat surface would be more convenient than to break the momentum by moving from high to low ground continuously. The time of the day was also an important factor in considering the appropriateness of jogging on roads. When pressed in cross-examination, this exchange followed:

> Q: I put it to you that jogging on the side of the road rather than the pavement was neither being careful, law abiding nor exemplary. It is wrong to jog on the side of the road when there is a pavement?
>
> A: Agree if I have a better choice. If the conditions of the 2 paths are equally convenient to the jogger.

I shall deal with this evidence later in the judgment.

23 As the defendant did not give any evidence, the plaintiffs have asked that an adverse inference be drawn against him and that his police report be ignored. The plaintiffs had earlier allowed the defendant's police report to be part of the evidence before the court. As the police report is already in evidence, I do not think it can be ignored. Discounting the weightage to be attributed to the police report is, I think, the proper approach; ignoring it altogether, even though the defendant is not present, strikes me as inappropriate. In that report made by the defendant some six days after the unhappy accident, he said:

> On 20.02.02 @ abt 0610 hrs, I was on my way to work at PSA Keppel Road. I was travelling from AYE twd Lower Delta Rd. When I approached Kampong Bahru, the traffic was red when I reached traffic light, it turned green, so I carry on riding @ 40 km. Just abt ~~100m~~ 150m from the traffic, one guy jogged on the left part of the road in the pedestrian walk way. When abt reaching the guy, the guy suddenly ran acrossed the road, I cannot stopped in time & I hit the subject.
>
> I then fell down & hit the side road divider. I injured on head & broken jaw.

24 It is noteworthy that in the same report, the defendant ticked boxes in the accident report to indicate that the accident took place on a straight two-way road with light traffic. The weather was clear. The road surface was described as "wet".

25 The only witness of any real relevance called by the Defence was Tay Ying Yi. He was the other independent witness who rendered assistance at the accident scene. He too saw the defendant's leg pinned under his motorcycle. The deceased was lying motionless with his head facing the central divider. He remembers seeing the deceased wearing a white singlet. The road surface was dry. He thought the deceased had been running on the road and not on the pavement. He formed this impression based on the relative position of the deceased's body and that of the defendant's motorcycle after the accident.

The pleadings

26 The pleadings contain the standard catalogue of allegations and counter-allegations. Included among the plaintiffs' particulars are allegations that the defendant had failed to keep "any or any proper lookout" and was "riding too fast". On the location of the accident, the plaintiffs pleaded:

> On or about 20th February 2002 at about 6.10am, the *deceased* was *jogging along the side of Lower Delta Road* (near the junction of Bukit Purmei Road) Singapore when the Defendant, who was riding his motorcycle bearing Malaysian registration number PEH 2791, negligently collided into the deceased. [emphasis added]

27 Significantly, the Defence admits that:

> [O]n 20th February 2002 at about 6.10am, the *deceased* was *jogging along the side of Lower Delta Road* near the junction of Bukit Purmei Road, Singapore; … [emphasis added]

and:

> [T]he deceased was involved in an accident with the Defendant who was riding his motorcycle bearing Malaysia registration number PEH 2791, Paragraph 2 of the Statement of Claim is denied and the Plaintiffs are put to strict proof thereof.

28 It is therefore undisputed for the purposes of these proceedings that the deceased was at the material time just before the accident "jogging along the side of the road". This is totally at variance with the defendant's police report which asserts that the deceased was jogging "on the left part of the road *in* the pedestrian walk way" [emphasis added]. The balance of the Defence is largely a mixture of conjecture and speculation – a patent attempt to embellish the defendant's police report with details that did not exist. This can only be regarded as an exercise in misplaced Micawberism. It is arbitrarily alleged, for instance, that the deceased had been crossing or attempting to cross the road when without warning he dashed into the path of the defendant and that he was attired in dark and non-reflective colours. It was also alleged, for good measure, that the deceased had not been

jogging against the flow of the traffic.

29 Right at the outset of the proceedings, I drew both counsel's attention to the provisions of the Highway Code ("HC"), in particular to rr 7 and 8, as well as s 112 of the Road Traffic Act (Cap 276, 1997 Rev Ed) ("the Act"). These had neither been pleaded nor referred to by the parties. Mr Rai then sought leave to introduce a series of amendments injecting yet more facts clearly based on pure conjecture into the Defence. I disallowed the introduction of any new factual allegations. There was no basis for this at such a late juncture and no factual stratum to support the new allegations. Besides, it was evident to me that his instructions did not emanate from the defendant. With the consent of the plaintiffs' counsel, the Defence was amended to include references to breaches of rr 7 and 8 of the HC and s 112 of the Act.

Applicable principles

Burden of proof

30 It is axiomatic that in negligence cases, as in all other civil cases, the burden of proof lies on the plaintiff to establish facts that will precipitate a decision in his favour. Our courts deal with facts and do not base their decisions on considerations of sympathy.

31 Counsel for the plaintiffs' knee-jerk instinct when confronted with a paucity of evidence was to fall back on the mantra of last resort – "*res ipsa loquitur*". There appears to be a belief that this evidential principle of common sense can somehow or other supplement or fill voids in the evidence. This belief is erroneous. The quintessential statement of principle is to be found in *Scott v London and St Katherine Docks Co* (1865) 3 H & C 596; 159 ER 665 where Erle CJ said:

> There must be *reasonable evidence of negligence*.
>
> But where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.
>
> [emphasis added]

32 This principle of common sense applies in situations where the occurrence of an incident is *prima facie* consistent with the want of care of the other party – the defendant. It does not apply in situations where the accident could conceivably have happened within any one of a number of different permutations: some consistent with the defendant's negligence, some with the plaintiff's negligence or even a combination of negligence on the part of both parties.

33 The plaintiffs in this case, perhaps *ex abundanti cautela*, expended a fair amount of energy in their attempts to persuade me that this principle applied to the present scenario. Plaintiffs' counsel appeared to suggest that merely by pleading that the deceased was hit from behind, the principle of *res ipsa loquitur* could be invoked. This is a misapprehension of the principle. They had put the cart before the horse. The onus is on the claimant to first prove the facts which create the *res ipsa loquitur* situation. The plaintiffs here had to first establish that the deceased had indeed been hit from the rear while jogging on the extreme left side of the road. The defendant had not admitted to hitting him from the rear. On the contrary, the cornerstone of the Defence was that the deceased had suddenly attempted to cross the road.

34 When there are two moving objects, it is clearly not sufficient to merely allege that the fact of the collision is proof of negligence. The law does not presume that a motorist who runs down a pedestrian on a road is always negligent; unless perhaps, if it is admitted by the motorist that the pedestrian was hit from the rear. If, on the other hand, the plaintiffs' case was that the deceased was on the pavement when he was hit, then it would have been an appropriate case for the application of the Latin maxim. The defendant's motorcycle would have no business being on the pavement.

35 The law of evidence is not a rigid body of rules. It provides for a broad spectrum of situations. It is not essential that a claimant must always have direct evidence to succeed. Indirect or circumstantial evidence can always be relied on. The Evidence Act (Cap 97, 1997 Rev Ed) recognises this approach. The common law has also long embraced this principle as succinctly stated by Lord Buckmaster in *Jones v Great Western Railway Co* (1930) 47 TLR 39 at 41:

> It is a mistake to think that because an event is unseen its cause cannot be reasonably inferred.

36 The burden of proof is not, however, diluted or diminished when circumstantial evidence is relied on. Conjecture, surmise, speculation and flights of imagination have no place in our law of evidence. The court has to make inferences and findings on the balance of probabilities. I say this here because the parties in this case, particularly the Defence, have infused their submissions with speculation, conjecture and much misplaced creativity. This is not helpful. Counsel should attempt to be dispassionate in weaving submissions into established facts. Speculation as to what might have happened, precariously combined with insubstantial strands of evidence, may serve only to highlight the hollowness of their case rather than serve or enhance their client's cause. Upon hearing the evidence I could not help but feel that that a number of submissions made by the Defence were nothing short of being rather remarkable.

Adverse inference(s)

37 Counsel for the plaintiffs then invited me to draw an adverse inference against the defendant, for absenting himself from these proceedings. They asserted that s 116(g) of the Evidence Act ("s 116(g)") plainly allowed the court to "dismiss the defendant's allegations of negligence" *in limine*. I do not agree with this approach. It seemed to me that what was being suggested was the adoption of a default summary procedure against the defendant. This cannot be done.

38 The defendant's absence did not in any way diminish the burden on the plaintiffs to establish primary facts establishing a *prima facie* case of negligence. If there was any evidence of the defendant's version of events, it had to be considered. The actual weightage accorded to that evidence is altogether a different consideration.

39 I note that s 116(g) has received considerable attention in the area of criminal law. Its boundaries in civil matters have not been clearly defined, though there is an overlap. Section 116(g) encapsulates a common sense rule. In the scheme of our adversarial litigation procedures, it is perfectly permissible for a party not to call witnesses or adduce evidence on any material point in issue. Section 116(g) mirrors the common law approach that a party cannot take issue with the raising of inferences about matters that the party has chosen to consciously conceal or hold back. The inference must, it has to be emphasised, be reasonably drawn from the matrix of established facts. Satisfying the court as to the availability and materiality of the evidence is a necessary prerequisite to any application of s 116(g). For example, it has often been said if there is a reasonable explanation why a witness, who is out of the jurisdiction, cannot give evidence, the inference may not be raised. Having said that, in today's advanced technological context, replete with video-

conferencing facilities and the like, older authorities on this point may need reconsideration.

40 It will be useful to understand how this principle has been applied in the common law context. For example, in the well-known case of *Chapman v Copeland* (1966) 110 SJ 569, the defendant driver decided not to give evidence. This was a case involving a fatal road accident where the plaintiff widow relied on evidence of brake and tyre marks. Salmon LJ (as he then was) was reported as saying:

> … that as the law stood there was no obligation on the defendant at the end of the widow's case to give evidence. *However, if he chose not to do so, he could not complain if, on a very narrow balance of probability, the evidence justified the court in drawing the inference of negligence against him.* … [W]here the defendant, quite legitimately, in a case in which there was nothing but accident mathematics, chose not to give evidence to the contrary, he could not complain. [emphasis added]

41 The case *R v Inland Revenue Commissioners, Ex parte T C Coombs & Co* [1991] 2 AC 283 illustrates that this inference is to be tempered if an explanation can be given for any omission or failure to adduce material evidence. Lord Lowry stated at 300:

> In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a *prima facie* case may become a strong or even an overwhelming case. *But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party, may be either reduced or nullified*. [emphasis added]

42 The English Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] 5 PIQR P324 at P340, very helpfully reviewed these and other authorities and distilled the relevant principles to be considered in drawing adverse inferences:

> (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."
>
> [*per* Brooke LJ]

43 I am of the view that this correctly sums up the principles that ought to apply to absentee

witnesses, pursuant to s 116(g). Care should be taken, by parties intending to raise such an inference, to "put" across the reasons for a witness's absence in the course of cross-examination. This is to give the opposing party an opportunity to explain the absence of a witness. Of course, if no witnesses are called or the reason(s) for a witness's absence is undisputed, then the procedure of "putting" the issue does not arise. In passing I should also perhaps refer to *Sarkar's Law of Evidence* (15th Ed, 1999) at 1686 where its commentary in relation to a provision that is *in pari materia* with s 116(g) states:

> Presumptions are *necessarily* made against parties who having a knowledge of the facts in dispute will not subject themselves to examination, when a *prima facie* case is made against them, and when by their own evidence, they might have answered it [*Nawab Syed v Amanee*, 19 WR 149 PC pp 150-51. … The Judicial Committee observed: "… Under such circumstances it is impossible to overlook the significance attaching to the refusal of the respondents and their son Jot Singh to enter the witness-box. It raises a presumption against them" [*Durga v Mathura*, 15 CWN 717, 721-22 10 IC 963 PC]. [emphasis added]

This may be somewhat overstating the position and I prefer the more measured approach in *Wisniewski v Central Manchester Health Authority.*

44 How should these principles be applied here? By all accounts, the defendant has consciously decided not to participate in these proceedings. The defendant's counsel contended that he was out of the jurisdiction and had a "legitimate" basis not to come to Singapore, as he faced police enquiries; the Defence has submitted that "the defendant did not testify *presumably* to avoid an outstanding warrant of arrest against him" [emphasis added]. This is decidedly not a legitimate or acceptable reason for the defendant's absence. To allow fear of apprehension or fear of the prospect of legitimate enquiries in the course of law enforcement to constitute a valid crutch for not giving evidence would be both absurd and contrary to public policy. Furthermore, a common sense approach should prevail. A person who has nothing to conceal would usually want to co-operate in such enquiries and vindicate himself. The defendant was not just a material witness; he was the *sole* witness to what transpired. I should also add that there was entirely no attempt whatsoever by the Defence to adduce his evidence by any other means that may have allowed for dispensing with his physical presence in Singapore.

45 In the circumstances of this case, the adverse inference arising from the defendant's absence creates an additional string in the plaintiffs' evidential bow.

Use of precedents

46 There is perhaps one other issue that should be addressed before dealing with the merits – the use of precedents in essentially factual disputes.

47 Counsel often expend considerable energy and ingenuity in moulding their factual submissions to fit the shape and tenor of a precedent which purportedly supports their case theory. This is not constructive. Precedents are valuable to the extent that they illustrate principle. Statements of fact and expressions of opinion contained in many factual precedents ought to be viewed with circumspection, particularly in factual cases like negligence proceedings. Often the unarticulated premises of these statements and opinions are difficult to divine. The factual context is often incomplete. Moreover, it would be highly unusual for two factual situations taking place at different times and/or locations to be identical in every respect. Facts may be similar but not identical. Too much time is often spent in our courts comparing and distinguishing factual precedents. This was never meant to be the spirit nor the intent of our common law. Counsel should instead try to

understand the legal, social or economic *raisons d'etre* underpinning a decision, assuming of course they exist. The search should be for principles. There should also be an understanding that what might be appropriate in the context of England, Australia or some other common law jurisdiction, may not always dovetail with the position in Singapore, notwithstanding our common legal heritage.

48 The search, to be even more precise, should be for principles applicable in today's context. I say this because principles that may have been apposite a century ago, or even a decade ago, may have to be viewed through the prism of time to assess their continuing relevance and applicability. The common law is not static. It evolves constantly in a measured manner. Counsel should also remember that each precedent itself must have had a beginning. They should not be inhibited by the lack of direct precedent if they can justifiably support their submissions by reference to other established and relevant principles together with the justness of their client's cause.

49 In these proceedings, I have been referred to a number of authorities on negligence, both civil and criminal, particularly by the Defence. I do not see any relevance, even penumbral, in a number of these authorities. While I appreciate that the intention of counsel was to assist the court, I feel the wood was lost for the trees somewhere along the way. The factual issues at hand are not complex though admittedly the issue(s) pertaining to the breach(es) of the HC did require some serious consideration.

The duty to keep a lookout

50 A user of our roads is always under a duty to keep a lookout. A failure to do so will invariably be viewed as negligence or contributory negligence on his part. This failure may be mitigated if it can be shown that the danger was concealed from him or that there were special circumstances allowing or inducing him to relax the normal standards of vigilance.

51 Perhaps the best encapsulation of the relevant principles and considerations is to be found in the observations of Rowlatt J in *Page v Richards and Draper* (unreported) cited in *Tart v G W Chitty and Company, Limited* [1933] 2 KB 453 at 457–458:

> It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of his seeing, as, for example a fog, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look-out, the probability is that the accident would never have happened.

52 A defendant who has run down a pedestrian from the rear is tossed on the horns of a dilemma: to demonstrate that he was keeping a lookout, he may be inclined to *overstate* the distance when he first saw the pedestrian before the impact; however in order to avoid a charge of speeding from being affixed, the temptation would be to try to have that distance *shortened*. It is no coincidence that this is precisely what the defendant in this case has done in his police report. I shall deal with this shortly.

Speeding

53 Speed is always relative and dependent upon the circumstances prevailing on the road being traversed. The general speed limit on our roads is 50km/h. Travelling within the speed limit will not ineluctably acquit a motorist of negligence. If for example there are circumstances warranting a safer speed, a motorist must adjust his speed to suit the road conditions. On the other hand, speeding *per se* will not invariably justify a claim of negligence. It will, however, be a strong indication of driving in a dangerous or negligent manner.

The Highway Code

54 The provisions of the HC are of particular significance in these proceedings. Leaving aside the issue of whether the defendant has absolved himself of negligence, the plaintiffs' case itself inherently points to a patent breach of the HC by the deceased: the deceased was undisputedly jogging in the extreme left side of the road with his back to the traffic. *Ex facie* he was in breach of r 7 of the HC. For convenience, however, I shall refer to both rr 7 and 8, as the Defence is alleging that both rules have been breached:

> 7. Always walk facing oncoming traffic and not with your back towards it. *Where there is a pavement or adequate footpath, use it. Do not walk next to the kerb with your back to traffic*. Do not step into the road suddenly without looking. If there is no footpath and you have to walk along the road, then walk as close as possible to the edge of the road. This enables you to step off the road to avoid danger.
>
> If you walk on an unlighted road at night, always wear or carry something white. Even a handkerchief held in your hand or a folded newspaper may make you more visible to drivers.
>
> [emphasis added]

55 Section 112(5) of the Act states:

> A failure on the part of any person to observe any provision of the highway code shall not of itself render that person liable to criminal proceedings of any kind, *but such failure may in any proceedings whether civil or criminal and including proceedings for an offence under this Act, be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings*. [emphasis added]

56 The HC in Singapore has the status of subsidiary legislation. The position is similar in England. In England, it has been said on good authority that a contravention of the Highway Code has a limited effect. A breach by a party of the Highway Code, *ipso facto*, does not negative the liability of the other party to the accident. The English Court of Appeal in the leading case of *Powell v Phillips* [1972] 3 All ER 864 at 868 opined:

> It is, however, clear that a breach creates no presumption of negligence calling for an explanation, still less a presumption of negligence making a real contribution to causing an accident or injury. The breach is just one of the circumstances on which one party is entitled to rely in establishing the negligence of the other and its contribution to causing the accident or injury. Here it must be considered with all the other circumstances including the explanation given by Mr Wakeman [the plaintiff's witness]. It must not be elevated into a breach of statutory duty which gives a right of action to anyone who can prove that his injury resulted from it.

There is certainly merit in taking the common sense approach that a breach of the Highway Code *per se* does not *always* attract or negative liability. Nor should a breach of the HC be equated with the

breach of a statutory duty thereby establishing an independent cause of action. That aside, I am of the view that the policy and matrix considerations that may have underpinned this and similar English decisions should not have persuasive force in Singapore. I would interpret the word "tending" in s 112(5) of the Act as the operative word, tantamount to a legislative indication that there should be an inclination to connect a breach of the HC with a finding to "establish" or "negative" liability as the case may be. Granted that s 112(5) of the Act is *in pari materia* with its English progenitor, but the English decisions have neither construed the equivalent provision nor given adequate effect to the statutory nudge.

57 The trilogy of decisions where the co-relationship between the HC and risk apportionment was examined consists of *Powell v Phillips, Parkinson v Parkinson* [1973] RTR 193 and *Kerley v Downes* [1973] RTR 188. The approach taken in these cases is that it does not follow, as night follows day, that a breach of the HC will entail a finding of contributory negligence. A close analysis of these cases reveals that there were special circumstances in each of the cases justifying the exoneration of the pedestrians, notwithstanding breaches of the HC. It appears to me that the accidents in those cases took place in country roads or in inclement weather. It would be unproductive to distinguish each of these cases or to split hairs over them. It can however be fairly said that these cases took a benign view of the breaches of the equivalent provisions in the English HC by pedestrians. Public policy considerations in Singapore dictate a different approach. The smooth and effective flow of traffic in urbanised Singapore requires that real heed be paid to the requirements of the HC and other applicable traffic rules by all road users. Traffic discipline has to be respected, maintained and strictly policed to ensure seamless traffic flow and the safe usage of our roads. It would not be right to allow any road user to place his own convenience above his responsibilities to the public.

58 The HC in Singapore has been promulgated to apprise all road users of standards that they ought to observe when they use our roads. It does not impose arbitrary or unrealistic standards, to be heeded only when convenient. The HC is an important statement of practice, usage and responsibility that ought to be respected by all road users, save in limited exigencies. Failure to observe the HC can be perilous to other road users.

59 It must be emphasised that the HC itself states that while it is not a digest of traffic laws, it is a code of conduct and furthermore stresses the *responsibilities of road users to each other*: r 1. As r 3 of the HC pithily sums it up, "Road traffic requires the co-operation of all road users for its smooth and efficient operation". Road users in Singapore, whether they are motorists, motorcyclists, cyclists, pedestrians or joggers, must understand that while they all have natural rights to use our roads, these rights carry responsibilities.

60 For these reasons, the fact that a road user has ignored or failed to comply with the provisions of the HC should never be lightly dismissed. The consequences of a breach will be dependent, in my view, on a confluence of interplaying factors that ought to include:

(a) the particular provision of the HC breached;

(b) the circumstances in which the breach took place;

(c) whether the breach was conscious or inadvertently took place because of certain exigencies.

61 I have distilled these factors from the scheme of the Act and the HC. I have added "consciousness" as a criterion because due regard ought to be given sometimes to the age of the road user. Young children cannot always be assessed by the same yardstick as adults. This factor

should not be interpreted by ingenious counsel as a licence to legitimately plead "ignorance" of the HC provisions. The law will invariably presume knowledge.

Analysis of evidence

The undisputed and undisputable facts

62 The stretch of Lower Delta Road where the accident took place is a dual carriageway with two lanes on each side. The speed limit is 50km/h. The stretch of road was illuminated by street lamps on the opposite side of the road only. At the centre of the carriageway was a road divider – a grass strip with mature trees on it.

63 The material position of the road where the accident took place curves slightly after leaving the road intersection. Just before the earlier intersection of Bukit Purmei Road and Lower Delta Road, there is a fairly significant bend in the road. This bend is about 120m from the road intersection.

64 On the left-hand side of Lower Delta Road after the road intersection there is a fairly spacious concrete pedestrian pavement. It is not in issue that the pavement itself has not changed since the date of the accident. It is not in dispute that the deceased could have comfortably jogged on the pavement had he wanted to.

65 The Defence accepts, as evidenced by the pleadings, that the deceased was jogging along the side of Lower Delta Road, near the junction of Bukit Purmei Road, just before the defendant's motorcycle hit him. It is also admitted that the accident took place at 6.10am.

66 As I alluded to earlier, the Defence, as pleaded, undermines the very foundation of the defendant's police report which states that the deceased jogged on the left part of the road *in* the pedestrian walkway. This is a fundamental departure, for which counsel for the Defence has offered no explanation. Indeed, in his written submissions, Mr Rai has, amongst many variegated arguments, contended that "the accident took place in the extreme left lane, which is the lane closest to the concreted pedestrian walkway". As he had not taken instructions from the defendant, this can only mean that he himself found the defendant's statement in the latter's police report incredulous. I note that Tay, a defence witness, also took the position that the accident took place on the left lane of the road.

67 It is not disputed that the weather was fine. The defendant in his police report states that the road surface was wet. However, every other witness including Tay confirmed that the road surface was dry. The sky was dark as it was still early morning, before sunrise. Visibility was fine, though there is an issue of exactly how bright the vicinity of the accident was. I accept that the visibility was sufficient for Lew to make out the defendant's motorcycle at some distance.

68 Traffic was light. The defendant's police report also echoes this fact. The traffic lights facing the defendant turned from red to green as the defendant closed in on it.

69 There was no sound of the defendant having applied his brakes. There is no evidence at all of the defendant having taken evasive action well before hitting the deceased.

70 The Defence pleads that the deceased was attired in dark and non-reflective colours, but not one atom of evidence has been tendered by the Defence to substantiate this. The evidence of the first plaintiff that the hospital returned to her the deceased's white jogging attire was not challenged. Indeed Tay, a defence witness, confirmed that the deceased wore a white singlet at the material

time. I find that the deceased was indeed clad in the appropriate jogging gear to make himself visible to any road user who was keeping a proper lookout. This assertion in the Defence is, putting it mildly, wholly misconceived. I do not understand how this can be pleaded without any evidence whatsoever. The defendant himself did not make any reference to the deceased's attire. Indeed, he said in his police report that he could see the deceased from about 150m away.

71 Just before the accident, based on Lew's evidence which is unchallenged on this point, two to three other cars were likely to have passed the deceased, ahead of the defendant.

72 The damage report prepared by the police revealed the front headlights as the most severely damaged part of the defendant's motorcycle. The defendant's motorcycle was in serviceable condition. It ought to be noted also that the left wing mirror of the motorcycle was damaged but functional.

73 The sketch plan is helpful. It corroborates Lew's evidence that he heard no braking sounds. Instead of skid marks, Sgt Nge found gouge marks. The gouge marks were close to the left edge of the road where the pavement is. There was more than ample space for a motorcyclist or even a car to have given a wide berth to the deceased, had he been running on the double yellow lines.

74 When the independent witnesses rushed to the scene of the accident, they found the defendant next to his motorcycle with his legs pinned under. The deceased was lying motionless some distance away. The distance between the beginning of the gouge marks and the position of the deceased's body was about 8m. Blood stains were only found in two areas at the scene. One area has been identified by Tay as the spot on the pavement where the defendant was later carried to. The other area is somewhere in the middle of the left lane of the two-lane carriageway. According to Tay, this is where the deceased's body was lying. Sgt Nge was also of the view that the bloodstains on the pavement "most likely" came from the defendant.

The disputed facts

75 In his police report the defendant stated

> Just abt ~~100m~~ 150m from the traffic, one guy jogged on the left part of the road in the pedestrian walk way. When abt reaching the guy, the guy suddenly ran acrossed the road, I cannot stopped in time & I hit the subject.

These two cryptic and inchoate sentences form the entire basis of the Defence. The Defence has quite simply no other evidence to support the particulars of the negligence pleaded. It is imperative to assess each of the assertions.

Was the defendant speeding?

76 The defendant took pains to state that he was travelling at 40km/h. Could this have been correct? Lew was positive that he saw the defendant's motorcycle proceeding at considerable speed, which he ventured to suggest was 70km/h. The defendant, he says, did not slow down as he approached the junction. Just as he reached the junction the light turned green in the defendant's favour. Lew's evidence withstood the furnace of cross-examination. The defendant on the other hand had chosen not to appear or to even give a full statement to his counsel. I accept Lew's evidence that the defendant was travelling fast. I do not need to hazard a guess as to what the speed was.

Was the defendant keeping a proper lookout?

77 Could the defendant have seen the deceased some 150m away? Taking into account the line of vision that an approaching vehicle would have before the road intersection, I find this assertion wildly improbable. I note that the defendant had initially stipulated the distance as 100m only to delete it and substitute it with 150m. Interestingly, a major portion of the defence counsel's submissions has focused on demonstrating that the defendant's vision of the deceased was obscured until probably the very last moment. A whole catalogue of possible factors for this was offered in the submissions: poor lighting, overhanging trees, dark non-reflective clothes worn by the deceased, traffic signage clutter and moving vehicles in front. Defence counsel has failed to appreciate that this has completely undermined yet another one of the triple assertions made by the defendant: based on this catalogue of factors submitted, the defendant could not conceivably have seen the deceased from *150m or even 100m away*. More importantly, it ought to be pointed out that the last 120m of Lower Delta Road leading to the junction with Bukit Purmei Road formed an angle of about 30º leading to the junction of Lower Delta Road. This was obvious to both counsel and to me when we visited the accident site. Mr Rai accepts this in his written submissions. This makes the defendant's alleged version of having seen the deceased at some distance most implausible. I find that the defendant has in his police report tried to portray himself as having kept a proper lookout. He was on the horns of a dilemma. How could he explain not having seen the deceased literally before running into him? The defendant has not successfully dismounted from the horns of his self-induced dilemma.

Did the deceased suddenly dash across?

78 Having rejected the defendant's first two assertions, does it inexorably crush the credibility of his third assertion that the deceased suddenly dashed across his path? There can be no doubt that the accident took place very close to the edge of the road next to the pavement. The distance of the gouge marks from the pavement indicates that the motorcycle fell on its side very close to the edge of the road. Harbans Singh's unchallenged evidence reveals that he and the deceased used to run on the yellow lines when they jogged on the roads. The deceased was a seasoned jogger following a routine; this was until the accident, a typical day in his life. He was on his way home. He was to give his daughter a lift to school, after his run, just as he always had.

79 Why would he suddenly dash across the road to the other side? He had just passed a road intersection with controlled traffic lights for pedestrians to cross. The Defence has given no plausible explanation why the deceased might suddenly have dashed across the road. In my view, on a balance of probabilities, the facts sufficiently warrant a dismissal of the defendant's third and last allegation as well. In the circumstances, I find it more than probable that the deceased was running on the yellow lines on the side of the road when the defendant's motorcycle collided into him. In this regard, I cannot ignore the fact either, that the defendant has consciously chosen not to have his evidence tested in court; the adverse inference here serves to further fortify the finding that has already been made.

80 The point of impact must have been at or about the beginning of the gouge marks identified by Sgt Nge, close to the left side of the road – to be precise, on or immediately next to the double yellow lines where the deceased was jogging. I find that the deceased was hit from the rear while he was jogging along the yellow lines as he habitually did. The absence of blood stains, save in the two areas, indicates to my mind that he could have been thrown some distance by the force of the impact. It would not be unreasonable to surmise, based on the facts, that because of a split-second reaction of the defendant at the last moment, the full impact of hitting the deceased was absorbed by the smashed motorcycle headlights. I note, from the pictures of the motorcycle and the damage report, that the front mudguard of the motorcycle had no apparent damage.

81 I will go further. I am persuaded that the defendant has cobbled together a fanciful version

of what happened that fateful morning. The police report was made six days after the accident, after he discharged himself from hospital against medical advice. He had described the road surface as wet. Was he looking for another excuse to exonerate himself? There was no basis for this assertion either.

Contributory negligence

82 *Nance v British Columbia Electric Railway Co, Ltd* [1951] 2 All ER 448 *per* Viscount Simon at 450 was referred to with approval by F A Chua J in *Loh Saik Pew v Tan Huat Chan* [1975–1977] SLR 189 at 190 where Chua J said:

> Contributory negligence when set up as a defence does not depend on any duty owed by the injured party to the [party] sued and all that is necessary to establish such a defence is for the appellant [defendant] to prove that the respondent [plaintiff] *did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury,* ... [emphasis added]

83 A person may be guilty of contributory negligence if he ought to have objectively foreseen that his failure to act prudently could result in hurting himself. Certain observations on the plaintiffs' case are inescapable: the deceased jogging with his back to oncoming traffic and the failure of the deceased to use the adjoining pavement which was perfectly suitable for jogging. He had used the same route for some 23 years without incident but that is of little consequence. The plaintiffs have also led evidence to show that the deceased was a responsible man. This does not assist the plaintiffs. Firstly, character evidence is generally inadmissible in civil proceedings: s 54 of the Evidence Act. Secondly, being responsible does not necessarily make what he did safe. Every road user is a "careful" and "responsible" user until he meets with his first accident. The deceased as a road user had obligations to observe under the HC. *Prima facie* he was in breach of the HC and has to bear some responsibility for the accident.

84 I am fortified in my approach by the views of the learned editors of *Charlesworth & Percy on Negligence* (10th Ed, 2001) where I found this passage at 684, para 9-292:

> … It *is likely that the failure to use a footpath would be considered to be contributory negligence under modern traffic conditions*. Furthermore, a pedestrian is only entitled to expect other road users to exercise reasonable care. If, therefore, there is a footpath available then a motorist can expect a pedestrian, who is not crossing the road, to use the footpath. If under such circumstances a collision occurs a claim made by the pedestrian may fail on the ground that there was no negligence on the part of the motorist. Where a pedestrian was found lying in the road at night having been struck by a van there was *prima facie* evidence of negligence on the part of the van driver. [emphasis added]

85 I drew this passage together with other authorities adverted to in this judgment to counsel's attention. My views remain unchanged after receiving their supplemental submissions.

86 I had earlier addressed the factors that ought to be taken into account in considering whether there will be risk apportionment in a civil claim. It cannot be ignored that the deceased not only had his back to the traffic but also failed to use the adjoining pavement. Based on the plaintiffs' evidence it is clear that he did not use the pavement, which was suitable for running, because it was more convenient to jog on a continuous surface. He must have been aware of the risk involved. However, it should be noted that he did take care to wear jogging attire that would have made him visible from a reasonable distance and he did run close to the edge of the road. Most importantly, the defendant could very easily have avoided him, had he travelled at a reasonable speed and kept a

proper lookout. There was more than enough space in the left lane and the dual carriageway for the defendant to have given the deceased a wide berth. The traffic was light.

87 Taking into account this and the other relevant factors referred to earlier, I apportion liability between the deceased and the defendant. Apportionment is more an exercise in discretion than in clinical science; it is one that involves imponderables. Mathematics does not come into the picture given that the court exercises a general discretion, taking into account the causative potency as well as the blameworthiness to be assigned to the different parties involved. Section 3(1) of the Contributory and Personal Injuries Act (Cap 54, 2002 Rev Ed), by dint of the operative word "responsibility", requires a focus on the responsible causes of an accident. A review of all the material facts in these proceedings leaves me in no doubt that the defendant was the principal author of this tragic accident. The defendant was, all circumstances considered, 85% responsible for the accident. With this apportionment of liability, the plaintiffs are entitled to judgment and may proceed to have damages assessed.

Coda

88 It appears that jogging along roads in Singapore has evolved into a popular form of exercise, both at dawn and dusk. The HC was promulgated in 1975. Some may view it as being a little anachronistic and out of step with the present utilisation of our roads by joggers. Admittedly, much has also changed in Singapore since 1975, including a shift in health consciousness and altered individual exercise regimes.

89 Effluxion of time and different road usage patterns notwithstanding, the HC essentially encapsulates principles of common sense and prudence; the standards it imposes with regard to road usage are, to that extent, all-encompassing and timeless. Indeed, given the heavier incidence and flow of traffic in Singapore nowadays, it may even be said that the provisions of the HC are even more pertinent than ever. Joggers ought to be aware that a failure to observe the letter and spirit of the HC can entail civil consequences when an accident occurs.

90 This case does not suggest that it is unlawful to jog on our roads when there is a pavement available or that it is permissible to jog on our roads when there is no pavement. Neither should it be interpreted as ruling that running against the flow of the traffic will inevitably acquit a jogger of negligence, though this will be construed as a positive factor. Each case that comes before the court will have to be examined on its own particular facts. This tragic and unfortunate case does however bring home the risks of jogging on our roads. It is a lesson for even the most prudent jogger on our roads. Should an unfortunate accident happen, it would be cold comfort to be legally vindicated in the courts after a tragedy. Safety considerations are paramount and should always take precedence over convenience.

Judgment for the plaintiffs, costs reserved for further argument.