

Chen Qingrui suing by her father and next friend Tan Kok Kiong v Phua Geok Leng
[2001] SGHC 64

Case Number : Suit 937/2000/K
Decision Date : 30 March 2001
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Liew Teck Huat and D Vivekananda (Niru & Co) for the plaintiff; N B Rao and Anand Kumar (B Rao & KS Rajah) for the defendant
Parties : Chen Qingrui suing by her father and next friend Tan Kok Kiong — Phua Geok Leng

JUDGMENT:

Cur Adv Vult

1. The plaintiff, Ms Chen Qingrui, who was hit by a car driven by the defendant, Ms Phua Geok Leng, sued Ms Phua for negligence. As the injuries sustained by Ms Chen in the accident were so severe that she is now unable to comprehend what is happening around her, these proceedings were instituted by her father on her behalf. Ms Phua asserted that she was not negligent and that the accident occurred because Ms Chen failed to have any regard for her own safety when she crossed the road without noticing that a car was in her path.

Background

2. On 25 September 1999, at about 2.30 pm, Ms Phua, who was driving a Toyota sedan (Registration No EV 1898U), turned from Margaret Drive into Tanglin Road and headed towards Orchard Road. Ms

Chen was then standing on a raised concrete kerb, on the same side of the road on which Ms Phua was driving her car.

3. Ms Chen was hit by Ms Phua's car as it passed by the raised concrete kerb in question. As a result of the impact, Ms Chen fell and sustained serious injuries. She was rushed to hospital in an ambulance. Apart from injuries to her head and brain, she had several small facial lacerations, a laceration of the right pinna and multiple abrasions on her trunk. She is presently blind, bound to a wheelchair and unable to speak. Her doctors are of the view that she is likely to be permanently disabled.

4. In the statement of claim, the following particulars of Ms Phua's negligence were furnished:

- (i) failing to keep any or proper look-out or to have sufficient regard for other road users;
- (ii) driving at a speed that was excessive in the circumstances;
- (iii) failing to have sufficient control over her car;
- (iv) driving in a reckless and dangerous manner;
- (v) failing to keep and maintain a safe and proper path;
- (vi) failing to apply her brakes in time; and
- (vii) failing to stop, slow down or swerve so as to manage or control her car to

avoid the collision.

5. In her defence, Ms Phua asserted that the collision was caused solely by or contributed to by Ms Chens negligence. The particulars of Ms Chens alleged negligence included the following:

- (a) failing to keep a proper lookout or to have any regard for her own safety when crossing the road;
- (b) stepping off the kerb onto the road without giving Ms Phua a reasonable opportunity to avoid the collision;
- (c) failing to allow Ms Phuas vehicle to pass by completely before attempting to cross the road;
- (d) crossing or attempting to cross the road when it was unsafe to do so; and
- (e) failing to make use of the pedestrian control crossing which was nearby.

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Physical characteristics of Tanglin Road

6. The section of Tanglin Road where the accident occurred is a formed, sealed bitumen road, with concrete kerbing on either side of the travel lanes. The traffic in the opposite lanes is separated by painted white lines. For traffic travelling towards Orchard Road, the width of Tanglin Road narrows from the Margaret Drive intersection towards a bus stop, near the place where the accident occurred. About 40-45 metres north of where the accident occurred is a pedestrian crossing, with a system of traffic lights to assist pedestrians trying to cross over to the other side of the road.

7. It was not disputed that there did not appear to be any factor involving the road or its environment which led to the accident. As such, the accident must have been caused by either Ms Phua or Ms Chen or by both.

Experts conclusions

8. Two experts in traffic accident investigation and reconstruction gave evidence. Ms Phuas expert witness, Mr Willy Goh, and Ms Chens expert witness, Mr Kelvin Koay Hean Lye, held entirely different views as to how the accident occurred. Mr Goh said that Ms Chen caused the accident while Mr Koay thought that the blame for the accident fell squarely on Ms Phuas shoulders.

9. As the damage sustained by Ms Phuas car was relied upon by both experts to justify their conclusions, it would be convenient at this juncture to refer to the condition of the car after the accident. It appears from the findings of the traffic police and from Ms Phuas own police report that the windscreen had a crack resembling a spiders web at the top left corner and that the left wing mirror was damaged. In addition, the left front wheel cover was dislodged. Mr Willy Goh contended that although the traffic police did not record it, the outside left panel of the car was also damaged. This was denied by Mr Koay.

10. Mr Goh concluded that the accident was caused by Ms Chen, who stepped off the concrete kerb onto the road as Ms Phuas car approached and collided with the left portion of the car. According to him, Ms Chens thigh first hit the left side of the car and dented it, after which her head hit the windscreen. He asserted in his report that the missing hubcap was dislodged by Ms Chens leg.

11. In contrast, Mr Koay said that at the time of the accident, Ms Phuas vehicle was travelling too fast and much too close to

the raised concrete kerb and this resulted in the collision with Ms Chen, who was standing on the said kerb. He said that Ms Phuas left wing mirror hit Ms Chen, causing her to spin and hit the cars windscreen. Mr Koay added that the left wheel cover of Ms Phuas car was dislodged when it hit the kerb and this showed just how close Ms Phuas car was to the kerb. He asserted that his reconstruction of the accident was consistent with the injuries suffered by Ms Chen and the damage sustained by Ms Phuas car.

Did Ms Chen walk into the car

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12. If, as was contended by Mr Willy Goh, Ms Chen suddenly stepped down from the raised concrete kerb onto the road and gave no opportunity to Ms Phua to avoid her, the accident in question was, without more, caused by Ms Chen. In *Chisholm v London Passenger Transport Board* [1939] 1 KB 426, 438, Scott LJ pointed out that a pedestrian, even if willing to risk his own life, has no right to suddenly embarrass a driver who is driving at a reasonable speed at which he can stop quickly. In the same case, MacKinnon LJ said at p 442 as follows:

If the car is coming along at the reasonable rate of x miles per hour, at which it can be stopped in y feet, for a pedestrian to walk in front of it when it is less than y feet from him, and he can plainly see it, is the acme of recklessness.

13. In the present case, Mr Goh did not succeed in establishing that it was Ms Chen who caused the accident by crossing the road without warning and colliding with the left side of Ms Phuas car. To begin with, Mr Koay pointed out that if Ms Chen had caused the accident by walking into the vehicle without realising that it was coming towards her, she would have hit the outside panel of the left side of Ms Phuas car and damaged it. He noted that while the vehicle had a cracked windscreen, a damaged left wing mirror and a dislodged hubcap, there was no evidence of any damage on the outside left panel of the car. When cross-examined, he explained:

If the pedestrian had stepped out onto the road and hit the car, I would expect her leg to be injured. There would also be substantial damage on the panel but there wasnt. Within that short span of time, the vehicle would have passed the pedestrian in about 0.5 seconds. So if the pedestrian had stepped out onto the road, it is likely that the front bumper will be affected and I would have found dents.

14. Mr Goh conceded that his version as to how the accident occurred can only be credible if there was some damage to the left side of Ms Phuas car. When cross-examined, he said as follows:

Q. Are you saying that if there is no damage to the fender on the left side of Ms Phuas car, your theory would have been different.

A. Yes, it will be one hundred percent different.

15. Mr Goh insisted that the police photographs of Ms Phuas car showed dents in the fender above the left front wheel of the car. However, Mr Koay said that he could not tell from the photographs in question whether or not the said fender had been dented. When cross-examined, he stood his ground and said as follows:

Q. Look at the police photographs. Can you see the dents?

A. Does not appear to be dents because there is reflection.

Q. I put it to you that there are at least two dents. One is on the fender and the other is just above it.

A. I dont agree. Photographs can be deceiving.

16. Mr Koay maintained his stand when he was asked further questions regarding the dents. His answers were as follows:

Q. Look at the portion of the vehicle above the left front fender. Do you see a discernable dent?

A. I cant really confirm this. There is a continuation of a shadow.

Q. Just to the right of that, can you see a brown patch?

A. I dont. Unless there is another photograph, I cant tell.

Q. Now, the dent that you say you cant see. It is above the left front fender.

A. I really cannot confirm this as there is a continuation of shadow. Unless there is a different photograph of a different view.

17. Ms Phuas counsel, Mr NB Rao, submitted that Mr Koay was evasive. However, it is pertinent to note that all three traffic police officers who gave evidence also could not confirm from the photographs in question that there were dents in the left fender of the car. The first witness, Sergeant Roslan, said as follows when cross-examined:

Q. The original photograph shows a dent on the left fender.

A. Cannot conclude whether it is a dent or a light reflection.

18. Sergeant Roslan, who investigated the present accident case, testified that the only damage to the vehicle was the cracked side mirror and the cracked windscreen. He conceded that the front left hubcap was also missing and that this was not recorded. This, Mr Rao pointed out, showed that the investigation was not thorough. All the same, it ought to be noted that Sergeant Roslan said that apart from the missing hubcap and the damage stated in the police report, which made no reference to dents, he did not notice any other damage to the car.

19. Sergeant Kasmawati, like Sergeant Roslan, was also unable to confirm from the police photographs that the dents described by Mr Goh were present. During cross-examination, she said as follows:

Q On the photographs, do you see dents on the left fender and just above the left front tyre.

A. *Appears* to be a light dent or it may be due to light reflection. It is *not conclusive*.

(emphasis added)

20. Finally, Mr Chay Kim Pang, a mechanical engineer with the police force, who inspected Ms Phuas vehicle after the accident, stated in no uncertain terms that he could not see any of the alleged dents in the police photographs. When cross-examined, he said as follows:

Q. Look at the photograph and at the top of the front left fender. Do you see dents on the left front fender?

A. No.

Q. Look at the enlargement of the photograph. Any dent on the left front fender?

A. No.

Q. On the top?

A. Looks like a reflection.

Q. Do you see a brown mark to the right?

A. Looks like a reflection.

21. More importantly, Ms Phua did not mention the alleged dents or any other dent when describing the damage to her car in her own police report or in her affidavit of evidence-in-chief. She should have done so as she said during cross-examination that the dents were very obvious to her when she inspected her car immediately after the accident. Her answers were as follows:

Q. Do you think that the dents were caused by the accident?

A. Definitely.

Q. In paragraphs 14 and 18 of your affidavit of evidence-in-chief, you said nothing about the dents.

A. Yes.

Q. If the dents were caused by the accident, you should have mentioned this.

A. The affidavit was taken one year after the accident and I did not recall the dents until I was shown the photographs.

22. In her answer to the last of the above questions, Ms Phua gave the impression that she had forgotten about the dents because she filed her affidavit of evidence-in-chief one year after the accident. However, in her police report, which was made on the day of the accident, she also did not mention any dent to the body of her car. Faced with this revelation, Ms Phua said that in the police report, she only referred to the "obvious" damage to her car. However, earlier on, when cross-examined, she had said that it was pretty obvious to her that her car had been dented. The relevant answers are as follows:

Q. When you inspected your car after the accident, did you look at the area of impact?

A. I saw it.

Q. Did you take a close look at the front left side of the car after the accident?

A. It was *pretty obvious* to me.

Q. What damage?

A. Windscreen and left wing mirror.

Q. No other damage?

A. Slight dents on the fender.

(emphasis added)

23. In view of the aforesaid, I hold that it has not been established that the left side of Ms Phuas car was damaged in a manner which would support Mr Gohs reconstruction of the accident.

24. Apart from the lack of evidence of damage to the left side of Ms Phuas car, the credibility of Mr Gohs reconstruction of the accident was also damaged when he was cross-examined in relation to his assertion that Ms Chens thigh was the first part of her body to strike the car. He said as follows:

Q. You said in your second report that the hubcap hit the lower part of Ms Chens body. Which part?

A. Below knee level.

Q. But you said earlier on that it was her thigh that first hit the vehicle and that her legs were away from the vehicle.

A. Possible.

25. Faced with such contradictory answers, I intervened and Mr Gohs answers to my questions sounded the death knell for his version as to how the accident occurred:

Ct. The hubcap is in front of the dents you referred to on the left side of the car. If the hubcap had been dislodged by Ms Chens leg, her thigh would not, as you had insisted, have been the first part of her body to be struck by the vehicle. Could the hubcap have been dislodged by Ms Chens leg?

A. Not the leg.

Ct. How was the hubcap dislodged?

A. Maybe, by Ms Chens dress.

26. Mr Rao tried to mitigate the damage caused by the above answers by stating as follows in p 20 of his written submissions:

When he was asked which part of the leg came into contact with the hubcap, [he] indicated that it was the leg below the kneecap and when he was asked if it was the foot, calf or ankle he indicated that it could have been any of these parts. He also advanced the explanation that the [plaintiffs] clothing may have been caught on the hubcap and the difficulty in that evidence is that we do not know if plaintiff was wearing pants or other clothing.

27. Notwithstanding Mr Raos explanation, it is clear that Mr Goh, who first insisted that the left front wheel hubcap had been dislodged by Ms Chens leg, finally accepted that this was not correct. His swift retraction of his assertion that Ms Chens leg dislodged the hubcap raised serious doubts as to the validity of his conclusions on the cause of the accident. He probably conceded that he was wrong only because if he did not, his assertion that it was Ms Chens thigh that first struck Ms Phuas car could not stand.

28. More startling was his assertion that the left front wheel hubcap could have been dislodged by Ms Chens dress. This was not mentioned in his reports. If the type of dress worn by Ms Chen is not known, Mr Goh was merely speculating that her dress could have dislodged the hubcap. Besides, he did not explain the position when I expressed surprise that Ms Chens dress could have dislodged the hubcap.

29. I was also surprised when Mr Goh said that he visited the accident site a number of times to look for the hubcap or parts of it. Presumably, the missing hubcap could have shed some light on the cause of the accident. He had no answer when I told him that as he first visited the accident scene some one and a half years after the accident, the hubcap would have been swept away long before his first visit. Surely, he could not have hoped to find the missing hubcap in Tanglin Road so long after the accident.

30. It is thus evident, and especially so when it has not been established that the left side outside panel of Ms Phuas car had been dented during the accident, that Mr Gohs reconstruction of the accident cannot be accepted. As such, his assertion that the accident was caused solely by Ms Chen is rejected.

Whether or not Ms Phua was responsible for the accident

31. Having found that Ms Chen did not cause the accident by walking into the path of Ms Phuas car and colliding with its left side, I find that it is more probable than not that Ms Phua drove her car in a manner which caused the injuries to Ms Chen. It appears that the accident was caused because Ms Phua was travelling far too close to the raised concrete kerb in question and at an excessive speed.

32. There is sufficient evidence that Ms Phua drove far too close to the raised concrete kerb. According to Ms Susan Lim, who was on the opposite side of the road when the accident occurred, Ms Phua was driving very close to the kerb just before the accident occurred because some cars in front of her were trying to turn right from Tanglin Road to get to the church on the other side of the road. Ms Phua disagreed with Ms Lim and said that there were no cars in front of her. She claimed that she had to drive close to the left side of the road because the cars in the opposite direction were moving rather closely to the white painted line dividing the two lanes of traffic along this stretch of the road. This assertion was not mentioned in her affidavit of evidence-in-chief.

33. Ms Phua said that at the relevant time, her car was around two feet away from the raised concrete kerb although she subsequently said that she did not know how wide two feet was. This was not stated in her affidavit of evidence-in-chief even though it must have been obvious to her that the distance between her car and the raised concrete kerb would be relevant for determining the cause of the accident. She may well have been closer to the kerb than two feet. Being very close to the kerb, she should have exercised caution when, as she admitted, she noticed that there was a pedestrian standing on the kerb. It is pertinent to note that in *London Passenger Transport Board v Upson and Anor* [1949] AC 155, 162, Lord Porter rightly noted that while it is hardly possible to be certain of avoiding accidents where the injured party is guilty of gross negligence, a driver is obliged to keep a proper lookout even for negligent pedestrians. In *Moore v Poyner* [1975] RTR 127, 132, Buckley LJ summed up the position as follows:

I think one can formulate the appropriate test in the present case in these terms: would it have been apparent to a reasonable man, armed with commonsense and experience of the way pedestrians, are likely to behave in the circumstance such as were known to the defendant to exist in the present case, that there was a possibility of a danger emerging, to avoid which he should slow down or sound his horn, or both?

34. The evidence is that, Ms Phua, who was driving far too close to the raised concrete kerb, continued to drive at too fast a

pace after she saw Ms Chen. In para 10 of her affidavit of evidence-in-chief, Ms Susan Lim, who was at the scene of the accident, said that Ms Phua's car was moving at quite a fast speed just before the accident occurred. In her police report, Ms Pauline Ong, who was also at the scene of the accident, used the phrases "quite a fast speed" and "zooming car" to describe the speed of Ms Phua's car before the accident occurred.

35. Ms Phua asserted in her affidavit of evidence-in-chief that she was not travelling at more than 40 km per hour. However, in her police report, she said that her car was still on third gear and was travelling at between 40 to 50 km per hour when the accident occurred. Mr Koay, who agreed that Ms Phua was probably driving at the speed of 40-50 km per hour, submitted as follows:

A speed of 40-50 km/h would have been too fast for a vehicle attempting to travel to the left of a turning vehicle, especially where there was a young pedestrian in the immediate area. This was a young pedestrian who through her action had indicated that she was about to cross the road.

36. In view of the aforesaid, there can be no doubt that Ms Phua drove too close to the raised concrete kerb and much too fast when she should have realised that, being so close to the kerb, her car was a danger to Ms Chen, whom she saw standing on the kerb seconds before the accident occurred. As it is clear that Ms Chen did not cause the accident in the manner asserted by Mr Goh, I thus find that Ms Phua's handling of her car was a cause of the accident.

Whether Ms Phua was solely responsible for the accident

37. I now turn to Mr Koay's assertion that Ms Phua was solely responsible for the accident. The basis for Mr Koay's assertion is that Ms Chen was standing on the raised concrete kerb when she was hit. As been mentioned, Mr Koay said that Ms Chen was first hit by the left wing mirror of Ms Phua's car while she was standing on the kerb. This caused her to spin and hit the windscreen.

38. There are serious unresolved difficulties with Mr Koay's reconstruction of the accident. To begin with, it must be borne in mind that the left wing mirror of Ms Phua's car was very close to the windscreen. Mr Rao forcefully pointed out that if Ms Phua's car was moving at the speed of 40 km per hour, it would have moved away from Ms Chen by 11.1 metres *per second* after she was hit by the left wing mirror. In short, within one second, the car would have been more than 30 feet away from Ms Chen. If she was, as Mr Koay asserted, first hit by the left wing mirror, the car and its windscreen would have moved much too far away from Ms Chen for it to be possible for her head to strike the windscreen. Mr Rao explained in p 39 of his written submissions as follows:

In our situation as proposed by Mr Kelvin Koay the plaintiff had around one quarter (27 hundredths compared to one tenth of a second) of the time required to initiate the most rapid of responses, yet by Mr Kelvin Koay's argument she had not only initiated the response but also completed the motor stage of flexing forward at the waist a sufficient distance to reach the observed head strike. This suggestion is totally impossible several times over. The plaintiff would not have been able to initiate the described response if she had four times the amount of elapsed time available, and then would have required an even greater period of time in order to complete the motor response of bending forward at the waist. This argument holds whether the plaintiff was on the kerb or the road pavement when struck by the mirror as the response phase itself could not have even been completed irrespective of how far down the plaintiff was required to bend.

This hypothesis put forward by Mr Kelvin Koay is therefore an impossible situation and totally misrepresents the physical realities.

39. Mr Koay disagreed with Mr Rao. During cross-examination, he said as follows:

Q. The height of the windscreen damage is 1.2 metres from the road. How long would it have taken the pedestrian to move forward to strike the windscreen?

A. That depends on muscle reflex. She was bent in the first place. That brought her height lower.

Q. As the vehicle had moved, the head would have come down almost twice as fast as a vehicle travelling at 40 km per hour in order to strike the windscreen?

A. Depends on muscle reflex.

However, Mr Koay produced no evidence to support his assertion. Even if Ms Chen was bent, the argument of Mr Rao would still hold water.

40. The question of the dislodged left front wheel cover was also not satisfactorily dealt with. Mr Koay said that the hubcap was dislodged by the kerb and that this showed just how close Ms Phuas car was to the kerb. Mr Rao pointed out that if the hubcap had hit the concrete kerb while the car was moving at 40 to 50 km per hour, there would have been a loud screeching noise. However, both the eye-witnesses, Ms Lim and Ms Goh, did not say that they heard such a loud screeching noise. Both of them merely said that they heard the sound of a metal piece dropping onto the road just before Ms Phuas car came to a halt some distance away from the place where Ms Chen was hit. Furthermore, if the hubcap had hit the kerb, there would have been scuff marks on the tyre. The police photographs of Ms Phuas car did not reveal any such marks on the front left tyre. These assertions were not convincingly countered by Mr Koay.

41. I thus find that Mr Koays reconstruction of the accident is also flawed and that it has not been established that Ms Chen was standing on the raised concrete kerb when the accident occurred. Whether or not Ms Chen played a part in causing the accident must thus be considered in the light of the uncertainties surrounding Mr Koays reconstruction of the accident.

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Contributory negligence

42. For the purpose of considering whether or not there was contributory negligence on the part of Ms Chen, it would be pertinent at this juncture to reiterate that Mr Koays assertion that Ms Chens head hit the windscreen of the car after she was first hit by the left wing mirror has been rejected for reasons already stated. Mr Koay has provided no other explanation as to how Ms Chen could have been hit by Ms Phuas car in a manner which resulted in the cracking of the windscreen if she was still standing on the kerb when the accident occurred. It is not Ms Chens case that Ms Phuas car climbed onto the kerb. Furthermore, Mr Koays other assertion that Ms Phuas car was so close to the raised concrete kerb that the left front wheel hubcap was dislodged by the kerb has also been rejected for reasons already stated.

43. In view of the aforesaid, it is more probable than not that Ms Chua had stepped down from the raised concrete kerb onto the road when the accident occurred. Considering the traffic situation at that time, this was an unwise move. In her police report, Ms Lim, who witnessed the accident, said that before the accident occurred, she noticed that Ms Chens leg was already in "mid-air" and that she wanted to shout to warn Ms Chen as she saw Ms Phuas car approaching but "it was too late".

44. When cross-examined, Ms Lim tried to distance herself from what she had told the police. She said as follows:

Q. How can you tell that the girl did not step onto the road?

A. I was very sure that the girl was still standing on the island even when the car was approaching her. I am very sure her leg was not put out to cross the road.

Q. In court, you just said that you did not see the girls leg step out. However, Sergeant Kasmawati said that you gave her a statement in which you said that the girls leg was stretched out to cross the road. Why did you now say that her leg was not in mid-air?

A. Now, I have had time to recall. Even in my dreams, I can see the scene of the accident.

45. Ms Lims testimony in court is not altogether reliable. During cross-examination, she conceded that by the time Ms Phuas car reached Ms Chen, she was no longer able to see the lower half of Ms Chens body because she was on the other side of the road and her view of Ms Chen was blocked by the car. As such, she could not tell whether or not Ms Chen was still standing on the kerb when the accident occurred. In contrast, she was able to see Ms Chens legs before Ms Phuas car reached Ms Chen. As such, she was able to see whether or not Ms Chens legs were in "mid air" just before the accident occurred. After having had the opportunity to assess her and her evidence, I see no reason why her statement to the police should be ignored. It is noteworthy that she said that she wanted to shout to warn Ms Chen of the impending danger but it was too late for her to do so. If Ms Lim did not realise that Ms Chen was making a move to cross the road, there would have been no reason for her to want to shout to warn Ms Chen of the impending danger. I thus find that it is more probable than not that Ms Chen had stepped down from the kerb and onto the road when she was hit by Ms Phuas car and that in the light of the traffic situation at that time, this showed that she did not have a sufficient regard for her own safety.

46. It should also be borne in mind that Ms Chen should not have tried to cross the road at the place where the accident occurred. She should have made use of the pedestrian crossing, which was less than fifty metres away. She thus contravened Rule 3 of the Road Traffic (Pedestrian Crossing) Rules, which provides as follows:

Except as provided in paragraph (5), any pedestrian who is within 50 metres of either side of a pedestrian crossing, or within such shorter distance, as indicated by traffic signs shall make use of the pedestrian crossing for the purpose of crossing the road.

47. In *London Passenger Transport Board v Upson and Anor* [1949] AC 155, 162, Lord Porter rightly noted that a failure on the part of any person to observe the Highway Code may be relied upon by any party to the proceedings as tending to negative any liability which is in question in those proceedings. In *Tan Ngo Hwa & Anor v Siew Mun Phui* (Suit No 1638 of 1995, unreported), Rubin J had occasion to consider the effect of Rule 3 of the Road Traffic (Pedestrian Crossing) Rules. In this case, the defendant knocked down a young girl, who should have made use of a pedestrian crossing located within 50 metres away from the scene of the accident. Rubin J, who accepted that the defendant was grossly negligent in failing to keep any proper lookout for the pedestrians at the scene of the accident, said that if not for the fact that the deceased had not made use of the pedestrian crossing, he would have held the defendant totally liable for the accident. However, the fact that the pedestrian crossing was situated within 50 metres from the spot where the deceased tried to cross the road should be taken into account. As such, he held that the plaintiff was partly liable for the accident and ruled that the defendant was only liable to the plaintiff for 70% of the damages to be assessed by the Registrar.

48. Taking all circumstances into account, including the fact that Ms Chen should have used the pedestrian crossing instead of attempting to cross the road at the place where she was knocked down, I hold that there is contributory negligence on her part and that she is equally responsible for the accident.

49. Damages will be assessed by the Registrar. Ms Chen is entitled to costs.

Tan Lee Meng

Judge

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