

Stafford Rosemary Anne Jane (administratrix of the estate of Stafford Anthony John,
deceased) v Goo Tong Sing and Another
[2006] SGHC 77

Case Number : Suit 430/2004
Decision Date : 11 May 2006
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Lynette Chew Mei Lin and Sharmini Selvaratnam (Harry Elias Partnership) for the plaintiff; Anthony Wee (Rajah & Tann) for the defendants
Parties : Stafford Rosemary Anne Jane (administratrix of the estate of Stafford Anthony John, deceased) — Goo Tong Sing; SBS Transit Ltd (formerly known as Singapore Bus Services Limited)

*Tort – Negligence – Contributory negligence – Motorcyclist killed in collision with bus
– Motorcyclist having blood alcohol concentration of 68mg/100ml – Defendant relying on
motorcyclist's blood alcohol concentration to argue motorcyclist unfit to ride at time of accident
– Whether motorcyclist riding without due care and beating red traffic lights at time of accident
– Whether deceased contributorily negligent in causing accident – Section 67 Road Traffic Act (Cap
276, 1997 Rev Ed)*

11 May 2006

Judgment reserved.

Kan Ting Chiu J:

1 This action arose from a road traffic accident involving a motorcycle and a bus at the intersection of two roads.

2 The accident took place in the evening of 12 January 2002 at about 8.09pm. A Harley Davidson motorcycle ridden by Anthony John Stafford ("the deceased") was proceeding along the left-most lane of Clementi Road, going straight at the intersection with Commonwealth Avenue West, heading towards Upper Bukit Timah Road. The bus, driven by Goo Tong Sing ("the bus driver"), had come from the opposite direction along Clementi Road, and was making a right turn into Commonwealth Avenue West, across the path the deceased was taking.

3 Clementi Road and Commonwealth Avenue West meet at almost right angles. As one approaches the intersection of Clementi Road from the direction of Upper Bukit Timah Road (the direction the bus was taking), there are five lanes in that direction. The right-most lane is exclusively for vehicles turning right. The lane next to it is for vehicles to turn right or go straight. There are right-turn pockets marked for these two lanes. The next two lanes are for vehicles going straight, and the left-most lane is for vehicles going straight or turning left.

4 When one approaches the intersection along Clementi Road from the opposite direction, *ie*, from the direction of the Ayer Rajah Expressway (the direction the deceased was taking), there are four lanes. The right-most lane is for vehicles turning right. The lane next to it is for vehicles turning right or going straight, and the next lane is for vehicles going straight and the last lane is for vehicles going straight or turning left. There are no turning pockets for any of these lanes.

5 The deceased died from the injuries suffered in the accident. The plaintiff in this action is the administratrix of the estate of the deceased. The bus driver was sued as the first defendant, and his

employer, SBS Transit Ltd, was sued as the second defendant. The bus driver was not injured in the accident, but died before the hearing of the action, which then proceeded against the second defendant.

6 During the hearing, I did not have the benefit of the evidence of the deceased or the bus driver. There was, however, the evidence of an eye witness, Low Chong Eng ("Low"), which I shall refer to.

7 The plaintiff's claim was that the accident was caused by the negligence of the bus driver, which was particularised as:

- (a) failing to keep any or any proper lookout;
- (b) driving at an excessive speed in the circumstances;
- (c) failing to observe the presence of the deceased on his motorcycle proceeding straight along Clementi Road;
- (d) failing to have any or any proper control over bus No SBS 7248 H;
- (e) failing to give way to the deceased;
- (f) failing to give any or any sufficient warning of his approach;
- (g) encroaching into the path of the deceased when it was unsafe and dangerous so to do;
- (h) colliding into the deceased;
- (i) failing to exercise reasonable care, skill and prudence in the driving, use and management of bus No SBS 7248 H; and
- (j) failing to stop, swerve, slow down or otherwise avoid the said collision.

8 The police investigations led to the bus driver being charged in court, where he pleaded guilty to a charge under s 304A of the Penal Code (Cap 224, 1985 Rev Ed) for causing the death of the deceased by a negligent act not amounting to homicide by failing to give way to the deceased's motorcycle when turning right.

9 The bus driver admitted without qualification the facts presented by the Prosecution, *inter alia*, that:

On 12 Jan 2002 at about 8:09 p.m., the [bus driver] was travelling on the extreme right lane of the 3-lane dual carriageway of Clementi Road towards the signalised cross-junction of Commonwealth Avenue West and Clementi Road. At the said junction, the [bus driver] committed a negligent act when executing a right turn into Commonwealth Avenue West as he failed to give way to the deceased who was coming from the opposite side of the road. This resulted in a head-to-side collision between the said motor-bus and the motorcycle ridden by the deceased.

10 Upon his conviction the court imposed on the bus driver a fine of \$10,000 or five months' imprisonment in default thereof, and disqualified him from holding a driving licence of all classes for ten years.

11 The plea of guilt and conviction were relied on by the plaintiff as part of her case. The evidence in those proceedings were admissible evidence in this action under s 45A(1) of the Evidence Act (Cap 97, 1997 Rev Ed) which provides that:

[T]he fact that a person has been convicted or acquitted of an offence by or before any court in Singapore shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that offence, whether or not he is a party to the proceedings; and where he was convicted, whether he was so convicted upon a plea of guilty or otherwise.

12 The second defendant however denied liability and alleged negligence against the deceased, pleading that:

- (a) the bus driver had turned right when the right-turn green arrow lights were in his favour;
- (b) the deceased had beaten the traffic lights which were red against him when he entered into the junction;
- (c) the deceased had failed to keep a proper lookout, was riding too fast, and had failed to exercise reasonable care and control over his motorcycle in colliding into the bus; and
- (d) the deceased had consumed alcohol immediately prior to the accident and his judgment on the road was thereby affected.

It was also pleaded that the deceased was riding while on medication. This allegation was based on the presence of quinine in the deceased's urine, but was not pursued as there was no evidence that the deceased was under any medical treatment.

13 Some of the police investigation papers were admitted in evidence at the trial. They included photographs of the vehicles and the scene of the accident, the sketch plan and key of the scene of the accident and the damage noted on the motorcycle and the bus.

14 The sketch plan showed the bus at a position two metres from the edge of the yellow box intersection. To put that in context, the bus had blocked all but two metres of the left-most lane of Clementi Road on which the deceased was travelling. There were glass and other fragments on the road at the front right corner of the bus but there were no skid marks, scratch marks or brake marks.

15 The police investigation officer confirmed that a person travelling in the direction taken by the deceased would have seen the intersection clearly from 150m, and that there was a slight downward slope along that stretch of the road.

16 The damage to the vehicles was as follows:

- (a) The motorcycle:
 - (i) front left signal broken;
 - (ii) front left wing mirror broken;
 - (iii) left crash bar damaged;
 - (iv) fuel tank damaged; and

- (v) scratch marks on the exhaust pipe.
- (b) The bus:
 - (i) front right windscreen mirror webbed;
 - (ii) front right bumper damaged; and
 - (iii) front right part damaged.

17 Although the bus driver had died before this action came on for hearing, his police report was admitted in evidence, and he had filed his affidavit of evidence-in-chief in the proceedings.

18 The police report was included amongst the agreed documents which authenticity was not disputed. The affidavit of evidence-in-chief was admissible in evidence as an admission under ss 17(1) and 18(1) of the Evidence Act.

19 In his police report the bus driver stated:

On 12/1/02 @ 2010 hrs, I was driving Bus Service Number 165 vehicle No: SBS7248E along Clementi Rd towards Commonwealth Ave West. At the junction of Clementi Rd and Commonwealth Ave West, I stopped my bus inside the "Turn Right" Box while waiting to turn right into Commonwealth Ave West. *When the traffic light turned red and the green arrow showed, I proceed to move my vehicle.* As I was about to turn into Commonwealth Ave West, I saw a motorcycle travelling from the opposite direction of Clementi Rd (towards Sunset Way). I immediately jammed brake but the m/cycle (2600J) collided into the right front of my bus. My bus suffered slight damage but the rider of the m/cycle is killed on the spot. [emphasis added]

and in his affidavit of evidence-in-chief, he stated:

3. On the day of accident, 12 January 2002, at about 8.00 p.m. to 8.30 p.m., I was driving the 2nd Defendants' motor bus bearing registration no. SBS 7248H ("my motor bus") along the right most lane of Clementi Road. The road was a 2-way traffic road with 4 lanes on either side divided by a concrete centre divider.

4. The flow of traffic was moderate at that time. The weather was fine and the road surface was dry. Visibility was clear.

5. As I reached near the scene of accident, my motor bus was about 3 to 4 motor vehicles behind the first motor vehicle that had stopped at the junction of Clementi Road and Commonwealth Avenue West ("the said junction") as the traffic lights at the said junction were red. We were waiting to turn right into Commonwealth Avenue West. When the traffic lights turned green, the motor vehicles in front of my motor bus started turning right into Commonwealth Avenue West one by one when the opposite traffic allowed for it. By the time my motor bus proceeded to the front of the queue, the traffic lights were still green. I therefore waited at the right-turning pocket for the green arrow to appear. Almost immediately after I reached the front of the queue, the traffic lights at the said junction turned red but *I am not sure whether the green arrow had appeared*. Once the traffic lights turned red, I proceeded to right. I lifted my foot off the brake pedal and my motor bus, being an automatic bus, inched forward. Just when I was about to step on the accelerator, I suddenly saw a motorcycle bearing

registration no. FS 2600J (which I subsequently found out was ridden by one Anthony John Stafford, the Deceased herein) travelling straight at a fast speed from the opposite direction. I immediately jammed the brakes of my motor bus to avoid colliding into the Deceased's motorcycle. I must add that as my motor bus is a heavy vehicle, it did not move very fast across the junction. I doubt that the speed of my motor bus was more than 10 km/h when my motor bus inched forward after I lifted my foot from the brake pedal to turn right into Commonwealth Avenue West. However, *as the Deceased's motorcycle was already very near my motor bus by the time I noticed its presence*, it collided into the right front side of my motor bus. *The Deceased did not swerve his motorcycle at all.*

[emphasis added]

20 Low was a witness for the plaintiff. He had contacted the traffic police after the accident and had given a statement on the accident. He recounted in his affidavit of evidence-in-chief that:

6. On 12 January 2002, I was driving along Clementi Road heading towards the direction of the Ayer Rajah Expressway ("AYE"), sometime between 8.00pm and 8.30pm. The weather was fine at that time and visibility was clear.

7. At the material time, I was driving towards Clementi Central to buy dinner. As I intended to make a right turn, I stayed on the 2nd lane from the right. There were 2 right turning lanes on Clementi Road for vehicles turning right into Commonwealth Avenue West (in the direction of Boon Lay). As I approached the Said Junction, the lights were red, so I stopped my vehicle, SDG 2661U at the lights. My vehicle was the first vehicle on the second lane from the right. The Double-Decker Bus was next to me as it was also the first vehicle on the right-most lane.

8. When the traffic lights turned green, I moved my vehicle forward into the "right-turn pockets" marked on the road while observing the on-coming traffic. I recall that the Double-Decker Bus was also in the right turn pocket on my right. *We were both waiting to turn right to* into Commonwealth Avenue West towards the direction of Boon Lay.

9. While waiting at the right turn pocket, I noticed that Double-Decker Bus inching forward out of the right turning pocket. I was about to follow suit when I decided to take another look at the traffic lights before I proceed to execute my right turn. *I saw that the traffic lights were still showing green* and it was at this instance that I also noticed *the Motorcycle travelling on the leftmost lane* coming from the opposite direction towards the Said Junction. *The Double-Decker Bus proceeded to move forward into the Said Junction in an attempt to execute its right turn* and I heard a loud bang and I heard the deceased scream. I then realized that the Double-Decker Bus had collided into the deceased.

[emphasis added]

and his evidence upon cross-examination by counsel for the second defendant was:

Q: When the bus inched forward the right most and middle lane, the opposite direction was clear of traffic?

A: Yes.

Q: The bus was somewhere in the middle of the junction?

A: Yes.

Q: When you saw the motorcycle did the bus move forward some more?

A: Yes.

Q: How far more?

A: It was going forward at a constant speed.

Q: How far more?

A: I cannot really estimate, it is still moving forward.

Q: Then the accident happened?

A: Yes.

Q: The bus inched forward till the accident happened?

A: At a certain point of time, I saw the bus hesitated, it slowed down, then it decided to complete the right turn.

Q: Between the time you double-checked the traffic light to the time the accident happened, did you checked the traffic light again?

A: It was still green.

Q: My instructions are the traffic lights have turned red?

A: That was not what I saw.

Q: The accident happened quite quickly?

A: Yes.

Q: Did you notice whether the motorcyclist slowed down?

A: No.

Counsel did not dispute Low's evidence that the deceased was travelling along the left-most lane of the road.

21 Low's evidence was corroborated by a report on the traffic light system at the intersection. Counsel for both parties agreed and confirmed that:

(a) Low's description in para 7 of his affidavit of stopping his car at the red lights corresponded to the phase of the traffic lights when the lights for all lanes along Clementi Road in both directions showed red.

(b) Low's description in para 8 of his car and the bus moving into the right-turn pockets corresponded to the phase of the traffic lights, when the traffic lights turned green for traffic

along Clementi Road, but before the right-turn green arrow lights came on.

(c) Low's description of the bus turning right while the traffic lights were still showing green corresponded to the same phase of the traffic lights as in (b).

It was common ground that in the next phase, the traffic lights facing Clementi Road showed red, and the right-turn green arrows came on. Counsel for the second defendant took care to state that while he accepted that to be the effect of Low's evidence, he did not accept Low's account of the events.

22 Counsel was constrained to take that position as the defence was that the deceased had entered into the intersection against red traffic lights, when the green right-turn arrows had come on for the bus driver. As Low's evidence was that the traffic lights were green, neither of that could have happened.

23 Notwithstanding counsel's reservation, there was little reason to doubt Low's evidence. He was there at the intersection in his car, next to the bus, waiting to turn right, watching the traffic lights. He had come forward as an eye witness during the police investigations, and he struck me as a careful witness whose evidence can be relied on. In contradistinction to that, the bus driver admitted in para 5 of his affidavit of evidence-in-chief that he was not sure if the green arrow had appeared when he turned right, retracting the unqualified assertion in his police report that the green arrow was showing.

24 On the evidence before me, I find that the bus driver had made the right turn whilst the traffic lights were green in the deceased's favour and before the green arrow came on.

25 There was no direct evidence of any of the allegations of negligent riding alleged against the deceased. At the trial, each party had called a witness to give evidence on the speed which the motorcycle was travelling at the time of impact based on the formation derived from the positions that the vehicles were in after the accident. However, it was apparent that there were shortcomings in the opinions rendered. When I brought that to the attention of counsel, they agreed that they would not rely on the evidence of the two witnesses.

26 It was argued by counsel for the second defendant that even if the bus had turned when the traffic lights were green in favour of the deceased, the deceased should still bear a portion of the liability for the accident. This submission was founded on contributory negligence, where a party fails to take reasonable care of himself and thereby contributes to his own injury through the acts or omissions of others.

27 When one travels on the roads, one cannot assume perfect road manners from the other road users. The reasonable road user must act on the basis that there may be negligence and incompetence on the part of others, and he has to make allowance for them. However, this duty cannot be overstated; he is not required to regard other road users as threats to him against whom he must protect himself, and he must be allowed to go about with a degree of calm and confidence necessary for the orderly movement of traffic. With reference to a person in the position of the deceased, I only need to quote and concur with the statement that:

[T]here is – in the absence of clear and compelling circumstances to the contrary – *no* legal duty on a driver to slow down *automatically* each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present. [emphasis in original]

per Andrew Phang Boon Leong JC (as he then was) in *Ong Bee Nah v Wong Siew Wan* [2005] 2 SLR 455 at [95].

28 Was the deceased guilty of contributory negligence? There are the photographs, the sketch plan, the investigation officer's evidence and Low's evidence to go on. Low's evidence was that the bus had stopped in the turning pocket, but when it moved further into the intersection when the lights were still in favour of the deceased, the accident happened.

29 The deceased had proceeded into the intersection along the left-most lane. He was entitled to assume that the bus which had stopped in the turning pocket will not move on again while the lights remained green in his favour. The photographs and sketch plan showed that the bus had cut into his path, and save for the uncorroborated and untested accounts given by the bus driver, there was no indication that he was riding at an excessive speed, or riding without due care, or had failed to do anything to avoid the collision. Unless it can be inferred from the fact that a collision had taken place in such circumstances that the deceased was somehow negligent, and there is no basis for that in law or on the facts, there was no evidence of negligence on the part of the deceased.

30 The second defendant asserted that there was relevant evidence of that, in that the blood of the deceased had a blood alcohol concentration of 68mg/100ml.

31 Dr Lim Yun Chin, consultant psychiatrist with the Raffles Hospital who was called by the second defendant, was of the view that with a blood alcohol concentration of 68mg/100ml, the deceased would have suffered a significant impairment of his driving ability at the time of the accident. He cited as authority for his conclusion, a paper by Dr Danny Lo Siaw Teck and Dr Rasiah Gunasegaram, "Alcohol facts you should know before your first drink" (1991) Scientific Review 3(2): 1-3 published by the Institute of Science and Forensic Medicine, where the authors stated at 3:

It must be emphasized that different people may be affected differently at the same blood alcohol level. As far as drinking and driving is concerned, two separate studies conducted on experienced drivers seem to suggest that there was no 'safe' blood alcohol level because even at very low levels (below 50 mg per cent), some impairment of judgment was noted.

32 Three observations can be made on this passage. Firstly, the authors have taken pains to emphasise that different people may react differently. Secondly, they were referring to "*some* impairment of judgment", not such impairment that renders a person unfit to drive. Thirdly, they did not state the blood alcohol concentration at which the impairment of judgment would be so severe as to render *all* persons unfit to drive, probably because different persons react differently.

33 Prof Edmund Lee, a clinical pharmacologist with the Department of Pharmacology of the National University of Singapore and witness for the plaintiff, was asked to explain the factors by which alcohol affects the ability to drive. His position was more nuanced than Dr Lim's:

A lot of these factors, I must say, are poorly defined or understood at this point in time. We do know that there is a lot of inter-individual variability, you know, in the response of specific individuals to --- at a certain blood level of alcohol. In general, there is a consensus that, within broad bands, there would be kind of broad bands of impairment of neurological skills and coordination and things like that. But it is very difficult to be very precise as to what level of 68 milligrams per 100 ml actually represent in terms of specific degree of impairment in any given individual.

and

I would say that any individual with a blood alcohol concentration of 68 milligrams per 100 mls would have significant degree of impairment of coordination and motor skills. But what precise level of impairment, I don't think anybody can actually measure specifically or determine specifically. So I would say that it's probably fairly speculative to know actually how much impairment there is for this person.

which was no more than Dr Lo and Dr Gunasegaram had explained in the first sentence of the passage of their article which I have set out.

34 No authority was presented before me which states that a blood alcohol concentration of 50mg/100ml, or 68mg/100ml will affect all persons such that they would not be able to drive properly.

35 It is safe to assume the question of a permissible blood alcohol concentration was given careful consideration when Parliament adopted 80mg/100ml as the prescribed limit in s 67 of the Road Traffic Act (Cap 276, 1997 Rev Ed) for a person to drive a motor vehicle. Section 67(1) provides:

Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —

(a) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or

(b) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,

shall be guilty of an offence ...

36 When a person drives with a blood alcohol concentration in excess of 80mg/100ml, he is guilty of an offence under s 67(1)(b) and faces the same punishment as he would if he was found to be unfit to drive from the influence of alcohol. If his blood alcohol concentration is below 80mg/100ml, however, he has committed no offence unless he is unfit to drive.

37 Dr Lim and the second defendant have come to the conclusion they did on the basis that as a 50mg/100ml blood alcohol concentration can affect the ability of some people to drive, a 68mg/100ml concentration must have affected the deceased's ability to drive.

38 This is not justified. Statutes can set standards where scientific certainty is lacking, and s 67 was enacted to make it an offence to drive when one's blood alcohol concentration exceeds 80mg/100ml. Where the blood alcohol concentration is below 80mg/100ml, the Road Traffic Act has refrained from taking any position on the person's right or ability to drive. There is no presumption that a person with a blood alcohol concentration of 80mg/100ml or more is unfit to drive. If he is to be guilty of any offence, it would be for an offence under s 67(1)(b) for driving with an excessive blood alcohol concentration. A person who drives when he is under the influence of drink and is unfit to drive is guilty of an offence under s 67(1)(a), whether his blood alcohol concentration is above or below the prescribed limit. Against this backdrop, there is no basis for treating a blood alcohol concentration of 68mg/100ml *per se* as evidence of unfitness to drive.

39 There was some evidence on the deceased's drinking and condition on that fateful day. This came from Michael Andrew Negus, his colleague and friend of more than 20 years. Negus' evidence was that the deceased was with him and his wife at a bar known as Handlebar at Alexandra Road at

about 7.15pm and that the deceased had two glasses of beer before he left at about 8.00pm. Negus added that:

I have known the Deceased for many years and I know the Deceased could assimilate alcohol very well. On many occasions, we were drinking together, both on social and more formal business occasions. Socially we attended barbeques at our respective homes, rode together on trips to Malaysia and Thailand and generally crossed paths at social events on frequent occasions. The Deceased is not someone who will be affected by 2 glasses of alcohol.

Counsel for the second defendant did not raise any questions on the last sentence.

40 What is the evidence on the deceased's fitness to ride his motorcycle? There is evidence that the blood alcohol concentration in his blood was at a level that could have affected some people's ability to drive, but there is no evidence that the alcohol had affected him so that he was unfit to ride, and no evidence that he was not riding properly when the accident took place.

41 I find that the bus driver was wholly to blame for the accident and that the second defendant had failed to make out any case of negligence against the deceased. Interlocutory judgment will be entered against the second defendant, with damages to be assessed by the Registrar. The plaintiff will have the costs of the action up to this stage.

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