

Ng Swee Eng (administrator of the estate of Tan Chee Wee, deceased) v Ang Oh Chuan
[2002] SGHC 137

Case Number : Suit 1545/2001
Decision Date : 02 July 2002
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean JC
Counsel Name(s) : Siaw Kheng Boon (Siaw Kheng Boon & Co) for the plaintiff; James Yu (Yu & Co) for the defendant
Parties : Ng Swee Eng (administrator of the estate of Tan Chee Wee, deceased) — Ang Oh Chuan

Evidence – Admissibility of evidence – Charge against accused – Conviction of accused – Certified notes of evidence – Whether admissible in evidence – s 45A(5) Evidence Act (Cap 97, 1997 Ed)

Tort – Negligence – Breach of duty – Road users owe duty of care to others – Extent of duty

Tort – Negligence – Breach of duty – Defendant causing death of deceased by failing to keep proper lookout when turning onto major road from minor road – Whether defendant checking for on-coming traffic – Whether obstruction of defendant's vision of road – Whether deceased rides through red light without stopping

Tort – Negligence – Breach of duty – Contributory negligence – Onus of proof – Whether deceased contributorily negligent for failing to keep proper lookout – Whether defendant can be contributorily negligent even though traffic lights in his favour – Whether defendant under duty to consider carelessness of other road users – Appropriate apportionment of liability

Judgment

GROUND OF DECISION

1. Tan Chee Wee was killed when a motorcycle (FM 1247J) he was riding and a lorry (YJ 9208K) driven by the Defendant, Ang Oh Chuan, collided at about 6.40 in the morning of 17 January 2000 along Hougang Avenue 10 outside of the driveway which leads to and from the car park of Blocks 435 to 458 of a HDB estate. The deceased was then 22 years of age.
2. Hougang Avenue 10 is a dual carriageway with two lanes on each side. Traffic flow, nearest to the driveway, is towards the direction of Tampines Expressway. Across the driveway and going in the opposite direction, is traffic heading towards Hougang Central. At the material time, vehicles exiting the driveway could either turn left or right into Hougang Avenue 10. Directly opposite the driveway in the direction of Hougang Central, was a yellow box for vehicles turning right.
3. On the fateful day, the motorcyclist was on the second lane of Hougang Avenue 10 proceeding in the direction of Tampines Expressway. The Defendant had entered Hougang Avenue 10 to turn right. The motorcyclist collided into the front offside of the lorry in the vicinity of the driver's door. The accident happened before the lorry entered the yellow box. From the sketch plan (AB10), the lorry was a short distance away from the left-hand corner of the yellow box. That corner is indicated on the sketch plan by the letter "N".
4. The Plaintiff, as administratrix of the estate of Tan Chee Wee ("Tan"), deceased, commenced this action for the benefit of herself and Tan Tong Heng as parents and dependants of the deceased. Only the question of liability is to be decided at this trial.

Liability

5. The Defendant, at the trial, gave his address as Block 451, #13-557, Hougang Avenue 10. At the time of the accident, he had lived there for the past nine years. The Defendant was undoubtedly familiar with the driveway, T-junction, pedestrian crossing and the traffic lights nearby. For the past nine years, he would have used the T-junction to turn right on numerous occasions (see NE 33/34).

6. On the morning in question, the Defendant together with his wife left home at about 6.30am for work. As with most mornings, the Defendant would first drop off his wife at her workplace at Tai Seng Drive before making his way to Kranji.

7. That morning, Hougang Avenue 10 was still lit by street lights. The weather was clear, the road surface was dry and visibility was good. The traffic volume was moderate.

8. Along Hougang Avenue 10, in the vicinity of the driveway, are six traffic lights. There are four traffic lights at the pedestrian crossing to the right of the driveway. The other two are overhead traffic lights. It is common ground that the traffic lights are push button controlled lights operated by pedestrians. Notably, these traffic lights do not control traffic emerging from the driveway into Hougang Avenue 10.

9. The Defendant contended that at the time he proceeded to turn right, it was safe to do so; it was only due to the fact that the motorcyclist had gone through the red light at an excessive speed that the collision occurred. According to the Defendant, his speed was about 5kmph. He estimated the motorcyclist's speed to be about 100kmph.

10. The Defendant submitted that he was not negligent; the accident was entirely due to the negligence of the deceased. Alternatively, it was said that if the Defendant was negligent, there was nevertheless contributory negligence on the part of the deceased. It was put forward on behalf of the Defendant that the deceased was 70% to blame for the collision.

11. At this juncture, I should mention that the Defendant was charged and convicted under s 304A of the Penal Code (Cap. 224). The charge reads as follows:

".. on the 17th day of January 2000 at about 6.37am, at the T-junction of Hougang Avenue 10 and the driveway to the car park of Blks 435 – 458, Singapore, while driving motor lorry, YJ 9208K, [you] did cause the death of a motor cyclist one, Tan Chee Wee, male 22, by doing a negligent act not amounting to culpable homicide to wit, by failing to give way to oncoming traffic from your right whilst making a right turn from the driveway of the said car park into the main road, Hougang Avenue 10, thus causing a collision between your vehicle and a motor cycle, FM 1247J, ridden by the deceased, Tan Chee Wee, who was travelling along Hougang Avenue 10 in the direction of TPE, and consequently causing his death and you have thereby committed an offence punishable under Section 304A of the Penal Code, Chapter 224."

12. S 304A provides:

"Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both."

13. The Defendant claimed trial. At the end of the trial, the Defendant was found guilty of failing to give way to the deceased who was travelling on a main road whereas the Defendant was turning right from a minor road. The Defendant was fined \$6,000 and in default a term of three months' imprisonment. He was further disqualified from driving all classes of vehicles for a period of five years. He did not appeal against the conviction.

14. Under s 45A (5) of the Evidence Act (Cap 97), the charge and conviction are admissible in evidence.

15. The Plaintiff contended that the accident was solely caused by the negligence of the Defendant. The particulars of negligence pleaded in 7 of her Statement of Claim are:

"(1) Failing to notice or to keep any or any proper look out or to observe or heed the deceased;

(2) Driving out of the driveway into Hougang Avenue 10 too fast or at an excessive speed in the circumstances;

(3) Failing to give any or any sufficient signal or warning of his approach to the deceased;

(4) Failing to stop in time or at all so as to steer or control the said lorry as to avoid the deceased striking the said lorry;

(5) Driving into the path of the deceased and colliding with the deceased;

(6) Failing to accord precedence to the deceased who had the right of way;

(7) Failing to exercise reasonable care, skill and prudence in the driving, use and management of the said lorry at the material time;

(8) Failing to stop, slow down, swerve or in any other way avoid the said collision. "

16. Although many particulars of negligence were pleaded against the Defendant, the crux of the plea comes down to really one issue: would a reasonable driver in the position of the Defendant, have seen the deceased earlier than the Defendant did and been able to avoid the collision.

17. Lord Macmillan in **Fardon v Harcourt-Rivington**, 146 Law Times 391 at p.392 observed:

"Members of the public, motor owners, and pedestrians alike, in their use of the highway, owe to each other a duty

to take care that they do not injure each other. The mere circumstance of their being on a highway brings them into a relationship with each other from which relationship arises the duty to have regard for each other's safety. In each case the question is whether there is any evidence of such carelessness in fact as amounts to negligence in law- that is to breach of the duty to take care. To fulfil this duty the user of the road is not bound to guard against every conceivable eventuality, but only against such eventualities as a reasonable man ought to foresee as being within the ordinary range of human experience."

18. Lord Macmillian's statement is applicable generally to actions in which the negligence alleged is founded on an omission to take due care for the safety of others.

19. At the exit of the driveway is a stop line. This stop line is indicated on the sketch plan as "C1" (see AB10). The Defendant said he halted at the stop line, "C1", for a short while waiting for an opportunity to turn right. That opportunity came when traffic came to a stop at the pedestrian crossing. He noticed two cars. One vehicle was to his left on the opposite side of the road in the direction of Hougang Central. The other vehicle was to his right on the lane nearest him heading in the direction of Tampines Expressway. The traffic light was on red. Both vehicles had stopped. He then entered the main road to turn right. At the mouth of the driveway, he looked right once more to make sure that his passage was clear. The mouth of the driveway is the imaginary line joining the letters "e" and "b" on the sketch plan.

20. It is clear that after one last and final turn to his right at the mouth of the driveway to check for traffic, the Defendant continued his passage across the T-juncture to turn right into Hougang Avenue 10 without keeping a look out for other users of the road. Having already checked twice, he did not see the need to continue to do so or take any other precaution.

21. The Defendant was asked during cross-examination (NE 42-43, 50):

Q: Did you at any point in time before [you] turn[ed] into Hougang Avenue 10 look for traffic on second lane "T-V"?

A: When I was proceeding slowly I did check whether there was any vehicles.

Q: You did that as you were moving?

A: Yes. When my vehicle was moving I turn to my right to check again.

Q: Would it not be safe to stop and look if [the] second lane was clear before turning?

A: Because I had already stopped and checked once. I found that there was no vehicle.

Q: That was when you were at "C1"?

A: I checked at "C1". When I moved to "e-b", I checked again.

Q: Did you stop at "e-b" to check or was you lorry still moving?

A: I moved slowly.

Q: Going by your evidence, traffic already stopped. 2 cars already stopped. It would have been safe for you to stop [the] lorry to check before continuing. Why did you not stop?

A: When I moved to "e-b" I already looked again. At that time I was moving slowly.

....

Q: Do you agree with me that if you had stopped your lorry just before passing into path of second lane at "T-V" and looked at the second lane of "T-V" you would have seen the deceased?

A: I had already checked twice. I did not expect him to beat the red light.

Q: Assuming the light was red, if you had stopped your lorry and looked at "T-V" the deceased would have passed in front of you instead of hitting your lorry?

A: It was not necessary to stop because I have checked twice.

Q: First time checked was at "C1"?

A: Yes.

Q: [Second] time you checked where was that?

A: When I reached "e-b". "

22. The T-juncture at the driveway was not controlled by any traffic lights. Having proceeded forward to turn right into Hougang Avenue 10, the Defendant would have to take care. He was under a duty coming from a minor road to a major one to watch out and give way to traffic on Hougang Avenue10.

23. Even if the traffic light was on red as he claimed (I shall deal with this point below), that fact did not entitle him to drive without paying sufficient attention to oncoming traffic; especially, when he was alive to the possibility of motorists proceeding without stopping. This is borne out by his answers to Counsel for the Plaintiff (NE 45):

"Q: Supposing the lights are green and you are turning right into Hougang Avenue 10, do you still drive slowly and look at the same time for traffic?

A: I would still see if there are any oncoming vehicles even if vehicles on my left and right have stopped."

24. Earlier he had said (NE 40):

"Q: You assumed that because there was a red light, you

could go across the junction without looking at [the] second lane "T – V". That is what you are saying?
A: No."

25. The Defendant, an experienced lorry driver of 25 years, was aware and conscious that motorists could suddenly drive through a red light when it was not wise to do so. He was therefore under a duty to take some precautions to guard against the occurrence of an accident as a result of such a possibility becoming a reality. This is not a case where the Defendant was entitled to assume as a matter of common sense that the T-juncture would remain clear and he could cut across the main road without watching out for oncoming traffic.

26. Prior to impact, from the corner of his eye the Defendant caught a glimpse of the motorcyclist about 10 m or two lorry-lengths away. By which time, even though he had stepped on the footbrake, it was too late to avoid the accident. By his own admission, the Defendant did not, as he approached the second lane, look to see if there was oncoming traffic. If he had kept watch and been vigilant, he could have stopped in time to allow the motorcyclist to cross in front of him.

27. The Defendant submitted that he could not see the motorcyclist as his view to the right was obstructed by a variety of things: a bend in the road, bus stop, a tree and a stationary vehicle at the stop line before the pedestrian crossing and marked "W" on the sketch plan. At the stop line "C1", he could see to his right vehicles on the first lane but not those on the second lane unless they were close to the stop line "W". At the mouth of the driveway, he still could not see traffic further back along the second lane other than for vehicles that are nearer the stop line "W" (see NE 38-40).

28. The Plaintiff disputes the Defendant's contention that his view was blocked or restricted. Even on the Defendant's contention, the obstructions that confronted the Defendant, would in my view have served as a warning to the Defendant to proceed and execute the manoeuvre with the utmost care and caution. A. reasonable driver in the circumstances of the Defendant whose vision was restricted as alleged, would have taken care during the passage through the T-junction to look out for vehicles on the second lane coming from Hougang Central. If the Defendant had done so, he would have seen the deceased earlier than he did and in time to avoid the collision.

29. Further, if it is true that his view was blocked, a reasonable driver in the circumstances of the Defendant would have as he approached the second lane either paused for a moment to check for oncoming traffic (and it is clear from the Defendant's testimony that he did not think it was necessary) or warned road users on the second lane of his approach or presence.

30. In my view, the obstruction alleged was nothing more than an excuse for his omission to keep a look out and for not seeing the motorcyclist earlier. There was no mention in the police report and in the Defendant's affidavit of evidence-in-chief that his vision was obstructed, that he had signaled his intention to turn right into Hougang Avenue 10, warned or alerted road users on the second lane of his presence when approaching it, for example, by either flicking his headlights or sounding his horn. Moreover, the alleged obstruction was not pleaded. The bend in Hougang Avenue 10 was not pleaded. It was the same with the bus stop and tree. In any case, the investigating officer's evidence, which I accept, is that the bus stop was not an obstruction and that was his reason for omitting it from the sketch plan. For that matter, the tree was also left out of the sketch plan.

31. On the evidence, after the second look to the right at the mouth of driveway, the Defendant did not keep a look out for other road users. He was not vigilant, observant and did not warn road users on the second lane of his approach or presence. He took the risk of executing the manoeuvre

when it was unsafe to do so and did not perceive until it was too late to react in time that the motorcyclist was moving into his path. I find the Defendant's failure to keep a look out was causative of the accident. The failure to see the deceased and take steps to avoid the collision was a breach of his duty to take care. The Defendant was driving without sufficient regard to other users of the road. I find that he failed to take reasonable care for the safety of other traffic on the road, and was therefore negligent.

32. The Defendant had alleged that the motorcyclist was travelling at an excessive speed of about 100kmph. I do not accept the Defendant's evidence. He was in no position to form an estimate of the speed of the motorcyclist given that he only caught a glimpse of the deceased from the corner of his eye. Very shortly thereafter, the collision occurred. He could not then have observed the speed the motorcyclist was travelling at.

33. Zulkepli Bin Buniran (PW 2) the investigating officer, Traffic Police gave evidence at the trial. At the material time, the investigating officer was a Staff Sergeant. In year 2000, he has had three years experience investigating some 200 motor vehicle collision cases at accident scenes of which 20-25 cases were fatal accidents. The accidents he had investigated included collision between lorries and motorcycles.

34. The collision damage to the lorry was minor (see 2AB 7 & 8). The repair costs together with replacement of damaged parts was adjusted at \$1,850.00 (see 2AB 4-6). I accept the opinion evidence of the investigating officer drawn from his observations that the damage to the lorry was not indicative of excessive speed by the motorcyclist. He had examined the damage sustained by the lorry and deduced from there that the deceased was travelling at a speed of 50-60kmph. He testified that the speed limit along Hougang Avenue 10 was 50kmph. I thus find that the motorcyclist's speed prior to impact was between 50-60kmph.

35. I will now turn to the allegation that the traffic light on Hougang Avenue 10 was on red and the motorcyclist rode through the red light without stopping.

36. The Defendant was adamant on this subject (NE 46 & 48):

"Put: Not telling the truth about traffic lights being red at the time of accident.

A: Disagree."

.....

"Put: You are not telling the truth when you say motorcyclist did not stop at the red traffic light.

A: I disagree.

Put: The traffic light was not red against the motorcyclist at the time of the accident.

A: Disagree."

37. In his police report (AB 9) the Defendant had stated:

"On 17/1/00 at 6:40am I was driving lorry YJ 9208K along the unnamed road towards Hougang Ave 10. I stopped at the T-junction joining Hougang Ave 10. When the red light

appeared against the vehicle along both sides of Hougang Avenue 10 to allow pedestrian to cross I proceeded to turn right into Hougang Ave 10. As soon as the front part of my lorry reached the yellow box on the other side of the road a motor cycle at fast speed coming from my right side on the outer lane and knocked into the right side door of my lorry. The rider fell on the center of the road. I immediately called the police ."

38. That portion of the police report was typewritten. The following additional information was handwritten:

" The said rider had passed away at scene. My right side of the door was damaged. That's all."

39. The Defendant ended his report with the words "That's all.". Nothing was specifically said in his police report about the motorcyclist going through the red light. That fact if true, would have been vivid in his memory. After all, it was an important and material piece of evidence to place on record in his police report.

40. On the day of the trial, the Defendant applied for leave to amend his Defence to include a plea that the motorcyclist had gone through the red light. The omission in the police report coupled with this late amendment undermined the credibility of the Defendant's testimony.

41. Further doubt I had about the Defendant's assertion on this point, stemmed from his rather unsatisfactory answers to questions from Counsel for the Plaintiffs. He said that two cars had stopped at the pedestrian crossing. One vehicle was to his left on the opposite side of the road in the direction of Hougang Central. The other vehicle was to his right on the lane nearest him heading in the direction of Tampines Expressway. When questioned, he was not able to testify to the make and colour of the vehicles (see NE 46/47):

"Q: Car that stopped on [your] right, what car was it?

A: It is a car. Ordinary car.

Q: Do you remember the colour?

A: I can't remember because the street lamp was orange in colour."

42. I find his evidence unbelievable. Even if the street lights had affected his ability to make out the colour of the vehicles, he should still have been able to tell the court whether the cars were light or dark in colour.

43. The Defendant in closing submissions sought to rely on the presence of pedestrian(s) at the traffic light to support his contention that the traffic light was on red. Counsel referred me to the certified notes of evidence in the criminal case. Those certified notes of evidence do form part of the record of proceedings and are admissible in evidence under s 45(A)(5) of the Evidence Act. However, in deciding the weight (if any) to be attached to evidence, regard should be had, for instance, to whether the person whose testimony is being relied upon was or was not a witness in the civil proceedings; whether the accuracy and veracity of the evidence was tested before the trial judge for the purpose of destroying or supporting his or her credibility.

44. The Defendant's testimony before the criminal court on that point appeared inconsistent and confused. The Defendant in his affidavit of evidence-in-chief said nothing at all about pedestrian(s) at the crossing; that in executing the turn he was mindful of pedestrian(s) using the crossing or had to wait for them to cross the road before turning right. Before me, no question was asked about that. I accordingly attached no weight to the evidence in the criminal case on that subject.

45. The investigating officer had also testified that in the course of his investigations, he was not able to confirm the Defendant's story that the vehicles that had stopped at the pedestrian crossing (see NE 24/25).

46. In 6 and 7 of the Defendant's written testimony, he stated that the traffic light was green when he stopped at C1. It later changed to red. I agree with Counsel for the Plaintiff that the change of traffic light was not corroborated by his wife Neo Pheck Luan ("Neo"). She had closed her eyes when the lorry halted at the stop line.

47. Neo, DW2, gave evidence of events shortly before and shortly after impact.

48. In my view, it would be unreasonable to rely upon the Defendant's wife as an accurate witness. She did not see the accident at all. She did not see the traffic light turn red before the Defendant entered the main road. She had shut her eyes to rest when the lorry was at the stop line of the driveway. She opened her eyes after she was abruptly thrust forward when the Defendant's applied the footbrake. At that stage, she claimed that the traffic light was on red.

49. In 6 of her written testimony, Neo said:

"when the lorry was approaching the car park exit, it stopped. I felt tired and I just closed my eyes, but I did not fall asleep."

50. Neo, during cross-examination, clarified that she closed her eyes after the lorry approached C1 and stopped there.

51. In 12 of her written testimony she said "*when the lorry was moving out into the junction, the traffic lights along Hougang Avenue 10 were red*". I find her testimony untruthful. By that time, she had already closed her eyes. She was therefore in no position to make such a statement in 12.

52. Neo was reluctant to identify the particular traffic light she saw that was on red when she opened her eyes. She said (NE 64 to 67):

"Q: When opened [your] eyes, you were facing forward?

A: Yes.

....

Q: You could see in front of the lorry at eye level?

A: I saw the red traffic light because it was shinning at me.

Q: Where was the traffic light? Was it in front of you?

A: I can't describe it. There is no photo for me to see.

Q: Did you turn your head to see [the] traffic light?

A: No.

Q: Look at sketch plan. Indicate where is the traffic light.

A: I'm not sure. I'm afraid that I might draw at the wrong place

...

Q: In order for you to notice [the] car on your left and traffic light, you would have to turn your head?

A: My body moved forward. I saw traffic light shining red. There was a vehicle stopped at "K". There were 2 vehicles stopped at "K".

Q: One behind the other or side by side?

A: Side by side.

Q: After that you turned to [your] husband and asked him what [had] happened?

A: I did not turn. I leaned forward and asked him what [had] happened. I opened my eyes I saw red light. I asked him what happened and then heard the bang.

Q: Put: what you saw is not possible.

A: Disagree. I can tell you what I saw.

Q: Do you agree that you may have been mistaken about the red light?

A: When I opened my eyes the red light was shining at me.

Q: You could be mistaken because you were tired and sleepy?

A: No

Q: Put: You are not telling the truth.

A: Disagree. "

53. Her reluctance is telling. I would have expected her to be able to without hesitation point to the traffic light in question. I contrast that with her willingness and ability to identify the traffic light she had referred to in 12 of her affidavit of evidence-in-chief when in reality she ought not to be able to do so since by her own admission her eyes were closed at the time (see NE 66).

54. In my view, Neo is an unreliable witness. This can be further illustrated by her rather confused and inconsistent account of the sequence of events after she had opened her eyes on being abruptly thrust forward when the Defendant applied the footbrake. Her oral testimony on this point is also totally inconsistent with what she had said in her affidavit of evidence-in-chief.

55. In 7 to 10 of her written testimony, she said that her husband had suddenly stepped on the

brake. She then opened her eyes. After that she heard a loud bang to the right of the lorry. She asked her husband what had happened and was told that they have been involved in an accident. During cross-examination, she came up with inconsistent versions. The first is this (NE 63 -64 and 67):

"A: ..All I know was [he] suddenly jammed brakes. My body moved forward. I opened my eyes.

...

Q: Bang occurred after you asked him [Defendant] what [had] happened?

A: After I asked him what happened, I heard the bang."

...

She gave the same answer - she asked her husband what had happened and then heard the bang - several questions later (see NE 67).

56. However, towards the close of cross-examination, she said [see NE 70]:

"A: On that day he stopped at "CI". I shut my eyes. He moved slowly. I heard screeching sound. I saw red light. I saw vehicles. I heard a loud bang."

57. In the circumstances, I am not satisfied that the Defendant has established on a balance of probabilities that the traffic light was on red at the material time.

I agree with Plaintiff's Counsel that the more likely version is that the Defendant had moved into the T- Junction without waiting for the light to turn red. As Counsel had submitted, the Defendant would not normally wait for the traffic lights along Hougang Avenue 10 to change since they are pedestrian controlled lights.

Contributory Negligence

58. The Defendant submitted in the alternative that the deceased was 70% to blame for the collision.

59. On the question of contributory negligence, the Defendant bears the onus. The question is whether the Defendant has made out a case of contributory negligence. If so the question then arises as to the extent to which it is just and equitable to reduce the Plaintiff's damages having regard to the contribution by the deceased to his own death.

60. The principles of contributory negligence are set out in Halsbury's Laws of Singapore Vol. 18 at 240.326 and 240. 327. 240.326 reads:

"The existence of contributory negligence does not depend on any duty owed by the plaintiff to the defendant and all that is necessary to establish a plea of contributory negligence is for the defendant to prove that the plaintiff did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury."

61. Further, at 240. 327:

"..The standard of care depends on foreseeability. .. [S]o contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent person, he might hurt himself. A plaintiff must take into account the possibility of others being careless. As with negligence, the standard of care is objective in that the plaintiff is assumed to be of normal intelligence and skill in the circumstances..."

62. The Defendant, in his Amended Defence, pleaded that the deceased had failed to keep a proper lookout for vehicles emerging from the slip road. I take reference to "slip road" there as the driveway. He also pleaded that the deceased had failed to slow down when approaching a traffic-controlled junction; failed to swerve or otherwise control and manage his motorcycle so as to avoid colliding into the lorry.

63. Even though the traffic light was, as I have found, in the motorcyclist's favour, there is no rule of law that the motorist cannot be guilty of contributory negligence; it all depends on the facts of each case: 240.330 of *Halsbury's Laws of Singapore, Vol 18*. The deceased must take into account the carelessness of others: *Jones v Linco Quarries Ltd* (1952) 2 QB 608 at 615; 240. 327 *Halsbury's Laws of Singapore Vol. 18*. A reasonable motorcyclist in the position of the deceased must anticipate that if he collides with a lorry he is likely to be injured more severely in a collision than the driver of a lorry. That imposes a duty on the motorcyclist to take care of his safety.

64. The Defendant said that he only caught a glimpse of the deceased from the corner of his eye when he was outside of the yellow box near the letter "N" on the sketch plan. The deceased was somewhere along the pedestrian crossing marked "X" on the sketch plan. The Defendant said that the motorcyclist was travelling along the middle of the second lane.

65. The Plaintiff said that from the sketch plan the lorry had traversed three-quarters of the width of the second lane prior to impact. By the Defendant's reckoning, the lorry had cut across half the width of the second lane. The length of the lorry is 5m 70cm. The width of the first lane "V – R" is 3m 70cm. Thus, I find that prior to the impact, 2m of the lorry was across the width of the second lane which is 3m 30cm. As such and given the fact that the vehicle in question was a lorry, a reasonable motorcyclist in the position of the deceased would have seen the lorry. The absence of tyre marks indicated that the deceased either did not see the impending collision in time or had misjudged the lorry's speed and distance from the point of impact. I therefore find that the deceased was at fault in failing to keep a proper look out. He had thereby contributed by his failure to take reasonable care of himself to his own death.

66. In my view, on the facts of this particular case the Defendant was far more at fault and is to bear a greater share of the responsibility for the damage, which flowed from his breach of duty towards other road users. I find him 80% to blame and the deceased 20% to blame for his own contributory negligence.

67. Accordingly, there be judgment for the Plaintiff with costs. I order that damages be assessed by the Registrar.

Sgd:

BELINDA ANG SAW EAN

JUDICIAL COMMISSIONER

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