DCPI 1720/2009

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISYTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1720 OF 2009

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BETWEEN

WONG KA MAN Plaintiff

and

TANG KA LUN 1st Defendant

FU KAM WING 2nd Defendant

NG MAN 3rd Defendant

WAH KEE SEA LAND TRANSPORTATION 4th Defendant

LIMITED

SIT TIM MAU 5th Defendant

and

CHEUNG TAK WAI 1st Third Party

NG KAM SHEUNG 2nd Third Party

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Before: Deputy District Judge Victor Dawes

Date of hearing: 11 July 2011

Date of handing down judgment: 29 July 2011

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**REASONS FOR DECISION**

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**I. Background**

1. On 4 May 2011, I gave judgment (“**Judgment**”) in this matter and found the 1st, 2nd and 5th defendants liable for the plaintiff’s claim. The claims against the 3rd and 4th defendants and the 1st and 2nd third parties were dismissed. In terms of costs, I made a costs order *nisi* that (i) the 1st, 2nd and 5th defendants shall pay costs of the plaintiff’s claim; (ii) the plaintiff shall pay the costs of the 3rd and 4th defendants; and (iii) the 1st, 2nd and 5th defendants shall pay for costs of the 1st and 2nd third parties.
2. This is an application for leave to appeal by the 1st, 2nd and 5th defendants (“**Applicants**”).
3. There is no dispute that leave to appeal should not be granted unless it is demonstrated that the appeal has a reasonable prospect of success. See *Wynn Resorts (Macau) SA v. Mong Henry* [2009] 5 HKC 515. The issue before me is therefore the merits of the intended appeal. The grounds are set out in the draft Notice of Appeal attached to the summons.
4. I shall adopt the abbreviations used in the Judgment.

**II. Grounds of Appeal**

1. The position taken by the Applicants at trial was that they were not liable. In the present application, they no longer dispute their liability but contended that: (i) the 3rd and 4th defendants; and (ii) the 1st and 2nd third parties should also be found liable and that the damages payable be apportioned between them “in a manner as deemed just by the Court of Appeal”.

*3rd and 4th defendants*

1. Mr. Vaughan for the Applicants submitted that in dismissing the claims against the 3rd and 4th defendants, I attached no or insufficient weight to the following matters: (i) the 3rd defendant’s conviction of careless driving; and (ii) the damage to the front of the 4th Vehicle was more significant compared to the rear of its trailer.
2. It is submitted that in light of the aforesaid matters and the duty of care of a high standard imposed on drivers following other vehicles in a line of traffic to prepare for foreseeable emergency, to avoid colliding with the vehicles in front and to avoid creating a situation of danger for other vehicles, I erred in finding that there was no causal link between the 2nd Collision (between the 3rd and 4th Vehicles) and the 3rd Collision (between the 4th and 5th Vehicles).
3. In making my findings in favour of the 3rd and 4th defendants, I have already considered and taken into account the fact that the 3rd defendant was charged with and convicted of careless driving. This is apparent from paragraph 11 of the Judgment. There is no dispute that the 2nd Collision had taken place and the 3rd defendant had failed to avoid hitting the vehicle in front (i.e. the 3rd Vehicle).
4. However, in the Judgment, I have found as a matter of fact that the 4th Collision was caused by the failure of the 5th defendant to stop the 6th Vehicle in time and the 5th Vehicle was in turn pushed from the back which resulted in the 3rd Collision. I also found that because of the 1st Collision, the 1st, 2nd and 3rd Vehicles had to come to a complete stop. No matter whether the 3rd defendant was able to avoid the 2nd Collision, he had to bring the 4th Vehicle to a complete stop as well.
5. As a result of the aforesaid findings of fact, I also formed the view that there was no causal link between the 2nd Collision and the injuries of the plaintiff. I see no basis in disturbing the finding of facts and I reject the Applicants’ argument in this regard.
6. Likewise, I also cannot see how the extent of damage to the front and the rear of the trailer have any effect on the aforesaid findings.
7. To sum up, the Applicants have been unable to advance any basis to challenge the findings of fact made by me and the weight I attach to the 2 matters highlighted is a matter for me as the trial judge. The grounds advanced by the Applicants in this regard are simply unarguable.

*1st and 2nd Third Parties*

1. In respect of the dismissal of the claim by the Applicants against the 1st and 2nd third parties, the Applicants are making a direct challenge on my finding that the 4th Collision had already occurred before the 3rd Collision. It is argued that I have failed to give any or sufficient weight to the following matters:
   1. The evidence of the other passengers on the 5th Vehicle as contained in the statements given to the Police.
   2. The damage to the rear of the 5th Vehicle was minimal whilst the damage to the front was comparatively serious.
2. In addition, it was also suggested that I have somehow misunderstood the contents of the brief facts which contained the suggestion that by reason of the 4th Collision, the 5th Vehicle was pushed forward, thereby causing the 3rd Collision.
3. I am not persuaded by the aforesaid grounds. None of the other passengers on the 5th Vehicle were called to give evidence. I can only attach very little weight to what is said in their statements given to the Police. Further, the severity of the damage to the front and rear of the 5th Vehicle is also something that I have taken into account. I have re-considered the transcript of the proceedings in the Magistrate’s Court and the relevant brief facts concerning the 5th defendant. Given my findings as contained in paragraphs 31 to 33 of the Judgment including my adverse finding on the credibility of the 5th defendant, I see no basis to disturb the finding of facts made by me.
4. By reason of the aforesaid, the application for leave to appeal is dismissed with costs and certificates for Counsel.

(Victor Dawes)

Deputy District Judge

Representations:

Mr. Desmond Lee of Messrs. Au-Yeung, Cheng, Ho & Tin for the Plaintiff

Mr. Joseph Vaughan instructed by Messrs. T. S. Tong & Co. for the 1st, 2nd and 5th Defendants

Mr. Victor Gidwani instructed by Messrs. Massie & Clement for the 3rd and 4th Defendants

Mr. Patrick Szeto instructed by Messrs. Tsang, Chan & Wong for the 1st and 2nd Third Parties