#### DCPI984/2008

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 984 OF 2008

BETWEEN

LEE KAM WING Plaintiff

and

CHOI WAI LAM Defendant

##### Before: Her Honour Judge H C Wong in Court

Date of Hearing: 17-18 February 2009

Date of Delivery of Judgment: 25 February 2009

## J U D G M E N T

1. The plaintiff claimed against the defendant for compensation suffered by him at an accident at 5.20 am on 17 January 2007 on Texaco Road involving New Territories taxis Nos. KD 7548 and JV 7814 and urban taxi No. JT 9500. The plaintiff denied liability.

Background

1. The plaintiff and the defendant are and were New Territories taxi drivers on the night shift. They were both driving in the direction of Shek Kong on Texaco Road in Tsuen Wan, close to lamp post No. FB3179-3 on 17 January 2007 when a collision involving urban taxi No. JT 9500 with JV 7814 and between JV 7814 with KD 7548 took place.
2. The plaintiff was the driver of vehicle No. KD 7548 and the defendant JV 7814. As a result of the collision, the defendant was prosecuted for dangerous driving at the Tsuen Wan Magistracy. After the trial on 8 August 2007, he was found not guilty by the special magistrate.
3. The part of Texaco Road where the accident took place was a three-lane road with two lanes travelling in the direction of Sek Kong and one lane in the opposite direction to Tsing Yi.

The Plaintiff’s Case

1. The plaintiff, Mr Lee, claimed he was driving his New Territories taxi, registration No. KD 7548, on Tsuen Wan Texaco Road in the direction of Shek Kong shortly before 5.20 am on the second left lane of the road when he noticed another New Territories taxi, registration No. JV 7814 travelling in the same direction towards Shek Kong but on the lane to his right. As the lane to Mr Lee’s right is a lane designated for traffic going to the direction of Tsing Yi, when an urban taxi appeared in front of the plaintiff’s taxi on the opposite lane towards Tsing Yi, Mr Lee claimed the other N.T. taxi to his right, JV 7814, collided head-on with the urban taxi JT 9500 some 20 metres in front of Mr Lee’s car. He claimed that JV 7814 had bounced back at the impact and collided with his taxi.
2. Mr Lee claimed he was travelling at 40 kilometres per hour at the time, he was not able to stop his car in time to avoid colliding with JV 7814 even though he was only 20 metres from it when he first noticed the collision. As a result of the collision with JV 7814, Mr Lee claimed he sprained his neck and hurt his chest. He is claiming against the defendant for compensation for the injuries sustained and the loss and damage to his person and to his vehicle due to the negligence of the defendant.

The Defence Case

1. The defendant, Mr Choi, claimed he was driving on the second left lane on Texaco Road in Tsuen Wan in the direction of Shek Kong at the time of the accident on 17 January 2007. When the road began on a downward stretch, the two lanes going to Shek Kong direction were separated with the lane going to Tsing Yi direction by rubber cone barriers. At the time, the sky was dark and drizzling, the road surface was wet. He claimed he saw in the opposite direction a vehicle coming towards him from the Sek Kong direction towards Tsing Yi when it was about 4-5 bus lengths from his car. He noticed when the vehicle was about three bus lengths away that it had its full headlights on, and the driver had blinked the headlights several times. He said he then suddenly found a car colliding with his car on the driver’s side, causing his car to swerve to the right or causing him to swerve to the right in response to the collision. His car then collided with the oncoming car, the urban taxi JT 9500, travelling in the Tsing Yi direction. JT 9500 had collided with the front of his vehicle.
2. Mr Choi denied he was driving too fast or that he was driving on the wrong lane on the wrong side of the road on Texaco Road. He further claimed that it was the plaintiff, Mr Lee, who was driving his N.T. taxi on the opposite side of the road but travelling in the same direction as he was towards Shek Kong. He also claimed that it was the plaintiff’s car which was travelling too fast and failing to avoid the collision with his car.

Liability

1. The issues on liability are:

(1) How did the accident happen and who caused the accident?

(2) Is the defendant liable to compensate the plaintiff?

How did the accident happen and who caused the accident?

1. I have heard evidence from both the plaintiff and the defendant. Each gave their own versions of what happened at the time of the accident. Their versions are very different from each other. In order to ascertain how the accident had happened, I have been urged by counsel to refer to the circumstantial evidence, the documentary evidence adduced, including the police statements of the plaintiff and the defendant and of other witnesses to the accident such as: the driver of the urban taxi and his passenger, the statement of the police officer who arrived at the scene soon after the accident, the different sketches drawn of the scene after the accident, and photographs taken by the police after the accident as well as the transcript of the magistrate court proceedings on 8 August 2007.
2. Defence counsel, Mr Wong, submitted that the defence case is supported by the police statements of the witnesses to the accident and Exhibit D-1a and b, photographs taken by the police after the accident. He placed reliance on Exhibit D-1a the position of Mr Lee’s car after the accident which was found on the Tsing Yi-bound lane of Texaco Road with the front of the car facing Shek Kong. As Mr Lee claimed he did not move his car after the collision, he was clearly on the wrong side of the road when the accident took place.
3. Mr Wong further pointed out that Mr Choi’s car was found with its right front portion protruding onto the Tsing Yi-bound lane while the rest of the car remained on the second left lane in the Shek Kong-bound direction, this indicated he was travelling on the Sek Kong-bound lane before the accident.
4. Mr Chan, counsel for the plaintiff, submitted, on the other hand, that the police statement of the urban taxi driver and his magistrate court evidence were consistent, these supported the plaintiff’s case. It shows that it was the defendant’s N.T. taxi that was travelling on the wrong side of Texaco Road in the direction of Shek Kong. Furthermore, the urban taxi passenger’s police statement and magistrate court evidence also pointed out that it was the defendant’s car which was travelling on the wrong side of Texaco Road. He further pointed out the inconsistencies in the defendant’s evidence in court which indicated the defendant’s version to be inherently implausible.

Findings

1. Having considered all the evidence before me, I found there are a number of inconsistencies in the plaintiff’s version of the accident which Mr Lee could not explain when he was cross-examined at the hearing. The most glaring inconsistency is the position of Mr Lee’s N.T. taxi KD 7548 after the accident. As he claimed he did not move his car after the accident, why was his taxi found on the Tsing Yi-bound lane with the front of the car pointing towards Shek Kong as shown in Exhibit D-1a? Even if he had moved the car after the accident, which may be possible because according to the passenger of the urban taxi’s police statement, one of the NT taxi was moved after the accident, could Mr Lee have moved his car from the second left lane on the Shek Kong-bound side of the road to the Tsing Yi-bound lane before the police arrived at the scene? Mr Lee had definitely denied moving the vehicle after the accident in his evidence in court.
2. The second glaring inconsistency is the fact that the point of impact between the defendant and the plaintiff’s car, it was between the front of the plaintiff’s car and the right driver’s door of the defendant’s car. If the defendant was driving on the wrong side of the road with the plaintiff on his left, and the plaintiff was on the second left lane heading towards Shek Kong direction, why is it that the dent on the defendant’s car created by the collision between the plaintiff and the defendant appeared on the right driver’s side door of the defendant’s vehicle instead of the passenger’s side on the left?
3. These are the two major discrepancies in the plaintiff’s case that I find to be unresolved in Mr Lee’s version of the accident. The position of the plaintiff’s car after the accident, as shown in photograph Exhibit D-1a, cannot lie. The dent on the right driver’s door on Mr Choi’s taxi is also incontrovertible, these are good indications that the vehicle that had collided with his car had come from the right lane, not from the left lane.
4. These circumstantial evidence pointed to the conclusion that the defendant’s version is closer to the truth, that Mr Lee was travelling on the wrong side of Texaco Road when the accident happened. He saw the urban taxi coming in his direction. He swerved to his left to avoid the collision with the urban taxi. However, as Mr Choi’s car was travelling on the second left lane, Mr Lee collided with Mr Choi’s car in an effort to avoid collision with the urban taxi, and due to the impact of the collision, it had caused Mr Choi’s car or caused Mr Choi to swerve right, leading to the collision with the urban taxi in front.
5. I found Mr Lee’s version inherently implausible and not capable of belief. I accept Mr Choi’s evidence that he was travelling on the second left lane towards Shek Kong, and it was the plaintiff, Mr Lee, who collided with his car, hitting the right front door, causing Mr Choi to swerve right, resulting in the collision between his car and the urban taxi.
6. The urban taxi driver and the passenger had failed to identify which N.T. taxi was coming towards them on the wrong lane or the wrong side of the road before the collision. The police had apparently mistakenly pointed the finger at the defendant. That was why he was prosecuted. The trial magistrate, quite rightly, did not accept the plaintiff’s version of the accident because it was quite clear to the magistrate that the plaintiff’s version did not make sense at all.

Is the defendant liable to the plaintiff?

1. Based on my findings above, the defendant was not negligent and did not cause the collision. He is therefore clearly not liable to the plaintiff. I therefore dismiss the plaintiff’s claim against the defendant because he has failed to prove that the defendant was negligent in any way or had caused the accident.
2. Costs to follow the event, the plaintiff shall bear the costs and pay the defendant’s costs, with certificate for counsel, to be taxed if not agreed.

# (H C Wong)

# District Court Judge

Mr Chan Pak-kong, instructed by Eric Yu & Co., for the Plaintiff

Mr Martin Wong, instructed by Kenneth C C Man & Co., for the Defendant