## DCPI 2315/2008

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 2315 OF 2008

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| BETWEEN | O’BRIEN TSE SHUK CHUN SANDRA | Plaintiff |
|  | and |  |
|  | LO HOI YIN | 1st Defendant |
|  | LEE CHI MING | 2nd Defendant |
|  | THE MOTOR INSURERS’ BUREAU OF HONG KONG | 3rd Defendant |

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 17 & 18 June, 2010

Date of handing down Judgment : 24 June, 2010

# JUDGMENT

**Background**

1. At about 8:30 pm, on 30 September 2007, several vehicles were travelling in line along the 3rd lane of Princess Margaret Road. The driver of the first vehicle, EL 7585 ("**Vehicle 1**"), saw an object in the middle of the lane, and stopped Vehicle 1. The drivers of the two vehicles behind Vehicle 1 followed suit, and were able to stop their respective vehicles behind Vehicle 1 without mishap initially. The 2nd Defendant ("**Mr. Lee** ") was the driver of the fourth vehicle in line, GH 8432 ("**Vehicle 4**"). He was not able to stop Vehicle 4 in time. Vehicle 4 collided into Vehicle 3 in front, pushing it forward to hit Vehicle 2 in the process. The driver of KP 293 ("**Vehicle 5**") behind Vehicle 4 swerved left into the 2nd lane in order to avoid hitting Vehicle 4. In the process, the right rear part of Vehicle 5 was hit by the nearside front part of the taxi KM 910 ("**Vehicle 6**") which was driven by the 1st Defendant ("**Mr. Lo**"), and travelling behind Vehicle 5.
2. Mrs. O'Brien was a passenger sitting on the left in the backseat of Vehicle 6. She was injured as a result of Vehicle 6 hitting Vehicle 5 in front. These proceedings were instituted by Mrs. O'Brien against Mr. Lee, the driver of Vehicle 4, and Mr. Lo, the driver of Vehicle 6, to recover damages sustained by her as a result of the motor accident. She claims that both Mr. Lo and Mr. Lee were negligent and that their negligence had led to her injuries.
3. On 24 February 2009, interlocutory judgment on liability was entered in favor of Mrs. O'Brien and against Mr. Lo. On 19 January 2009, Mr. Lee had issued a Contribution Notice against Mr. Lo, seeking an indemnity from Mr. Lo in respect of any liability which may be found against him. On 9 March 2009, judgment was entered by consent in the contribution/indemnity proceedings issued by Mr. Lee, whereby Mr. Lo agreed to be bound by any judgment that may be entered against Mr. Lee in relation to Mrs. O'Brien's claim, and to indemnify Mr. Lee in respect thereof.

**The issues**

1. By the time of the commencement of trial, the parties had agreed on the amount of the damages payable to Mrs. O'Brien. In view of the interlocutory judgment that had been entered against Mr. Lo, and Mr. Lo's concession of liability to indemnify Mr. Lee under the Contribution Notice, the only remaining issues relate to Mr. Lee's liability towards Mrs. O'Brien in negligence, and the costs of Mrs. O'Brien's action against Mr. Lee.

**Whether the accident was caused by Mr. Lee's negligence**

1. At the commencement of trial, submissions had been made by Counsel for Mr. Lee that the trial on Mr. Lee's liability in negligence is academic and unnecessary by virtue of the judgment entered against Mr. Lo and Mr. Lo's concession that he is liable to fully indemnify Mr. Lee in relation to Mrs. O'Brien's claim against Mr. Lee. Counsel referred to the evidence in support of his submissions that there was no case against Mr. Lee, but I ruled that in the absence of a striking out at the interlocutory stage, it was inappropriate at trial to find summarily, before hearing the evidence from the witnesses, that Mr. Lee was not negligent. Any question of the unnecessary joinder of Mr. Lee, or the unreasonable conduct of these proceedings can and should be dealt with when costs are determined.
2. Both Counsel for Mrs. O'Brien and Counsel for Mr. Lee rely on the case of *Rouse v. Squires* (1973) 1 QB 889, which was considered in *Mak Kit Ching Kitty v. Tsang Yiu Wing* HCPI 811/2009, 18 October 2006. It was held in *Rouse v. Squires* that if a driver negligently obstructed a highway and created a danger to other road users, including those driving too fast and not keeping a proper lookout but not those who deliberately or recklessly drove into the obstruction, then his negligence contributed to the causation of an accident of which the immediate cause was the negligent driving of another driver but which would not have occurred but for the continuing danger from the obstruction he had caused.
3. Whereas Mr. Yip who appeared for Mrs. O'Brien claims that Mr. Lee had negligently created an obstruction and danger by failing to stop his vehicle in time and causing a collision between Mr. Lee's Vehicle 4 and Vehicle 3, and then a collision between Vehicle 5 and Mr. Lo's Vehicle 6, Mr. Wong who appeared for Mr. Lee sought to argue that the dangerous situation and obstruction on the highway was caused by the driver of Vehicle 1, Vehicle 2 and /or Vehicle 3, and that the obstruction no longer constituted a danger at the time of the second collision between Vehicle 5 and Mr. Lo's Vehicle 6 which led to Mrs. O'Brien's injuries. Mr. Wong argued that there was ample opportunity for Mr. Lo to appreciate the condition then posed on the road, that the chain of causation between any negligence on Mr. Lee's part and Mrs. O'Brien's injury was broken, and that the accident was caused solely by Mr. Lo's negligence in driving Vehicle 6.
4. The following passage in the judgment of MacKenna J in *Rouse v. Squires* has been referred to:

"Where the party guilty of the prior negligence has created a dangerous situation, and the danger is still continuing to a substantial degree at the time of the accident, and the accident would not have happened but for this continuing danger, he is responsible for the accident as well as the party who was subsequently negligent."

1. In my judgment, the first issue for determination is whether Mr. Lee had been negligent in any way. According to his own evidence, he was travelling at the relevant time at a speed of 60 to 65 km per hour, and he had observed that Vehicle 3 was about 4 or 5 car spaces away on the 3rd lane, with another vehicle ahead of it. Mr. Lee admitted that he had thought that Vehicle 3 was moving slowly, and that he had reduced the speed of Vehicle 4 as a result. It was only when he had approached Vehicle 3 that he realized that Vehicle 3 was in fact stationary. Mr. Lee had immediately braked, but he was not able to stop his own vehicle in time to avoid a collision. Mr. Lee accepted, in cross-examination, that he was negligent in failing to avoid the collision with Vehicle 3, although he denied that his negligence had led to Vehicle 6 hitting Vehicle 5.
2. Although only Mr. Lee and Mrs. O'Brien were called to give evidence at trial, they both relied on statements which were made by the drivers of Vehicle 2, Vehicle 3 and Vehicle 5 to the police after the accident. According to these statements as well as the statement of the police officer who investigated the accident, Vehicle 1, Vehicle 2 and Vehicle 3 had all stopped on the 3rd lane and were stationary when Vehicle 4 collided with Vehicle 3. Further, it was a question of seconds between the time of these vehicles stopping and their being hit from behind.
3. According to the police statement of the driver of Vehicle 5 ("**Miss Wong**"), Mr. Lee had suddenly stopped Vehicle 4, and although she had immediately braked, she thought that she might not be able to stop Vehicle 5 in time to avoid a collision. She therefore swerved left into the 2nd lane, but when only half of Vehicle 5 was in the 2nd lane, the back of her vehicle was hit by Mr. Lo's Vehicle 6.
4. At one stage, Mr. Lo sought to claim, in a statement which he made to the police 11 days after the accident, that after he had seen some vehicles ahead of him stopping on the 3rd lane, he had reduced his speed, but Vehicle 5 cut into his lane *from the left*, and that this led to Vehicle 6 hitting Vehicle 5 when Vehicle 5 was half-way into his lane. This version of events is at odds with the police statements of the other drivers involved. On the face of the statement made by the investigating police officer, Mr. Lo had not mentioned to the officer on the day of the accident that Vehicle 5 had in fact cut into Mr. Lo's lane *after* the obstruction ahead, and before the collision between Vehicles 5 and 6. Mr. Lo's account is illogical and in any event unreliable since he was not in court to be cross-examined, and I reject his version of Vehicle 5 cutting into the 3rd lane.
5. On the evidence, I accept that Mr. Lee had been negligent in failing to keep a proper lookout and failing to appreciate that Vehicle 3 in front of him had come to a halt. If he had paid sufficient attention, he would have been able to stop his vehicle in time to avoid hitting Vehicle 3, at a time when both Vehicle 2 and Vehicle 3 had stopped behind Vehicle 1.
6. Mr. Lee's negligence led to the collision between Vehicle 3 and Vehicle 4 and to the creation or continuation of a dangerous obstruction on the 3rd lane of the road. On the evidence, the sudden stopping of Vehicle 2 and Vehicle 3, the first collision which involved Vehicle 4 hitting Vehicle 3, and the second collision which involved Vehicle 5 swerving left and then being hit by Vehicle 6, all took place within a short span of time. To the extent that the dangerous obstruction was created initially by Vehicles 1, 2 and 3 stopping on the 3rd lane, the dangerous situation had not abated in the matter of seconds until Mr. Lee's collision, and was continued or aggravated by the presence of an additional vehicle, i.e. Vehicle 4 stopping behind Vehicles 1, 2 and 3. In my judgment, the dangerous situation of 4 vehicles being stationary on the 3rd lane of the road at 8:30 pm continued to a substantial degree at the time of the second collision, which occurred when Miss Wong had to swerve Vehicle 5 to the left to avoid hitting Vehicle 4.
7. Mr. Lo has accepted that he was negligent in failing to avoid the collision with Vehicle 5. Although Miss Wong had been able to see that Mr. Lee had stopped his vehicle and she was able to take some evasive action to avoid hitting Vehicle 4, that does not necessarily mean that the obstruction no longer constituted a danger, or that the danger had been removed to avoid risks to other road users, including negligent users not keeping a proper lookout such as Mr. Lo.
8. Although Mr. Lo was negligent, as admitted, the evidence does not suggest that he was reckless such that his conduct should be considered as a new or independent or the sole cause of Mrs. O'Brien's injuries, along the lines of *Wright v. Lodge* [1993] 4 All ER 299 and *Ma Kit Ching Kitty v. Tsang Yiu Wing* HCPI 811 of 1999, 18 October 2006. It was reasonably foreseeable that as a result of Mr. Lee's collision with Vehicle 3, and of his vehicle stopping on the 3rd lane, there was a risk of other following vehicles colliding and other road users suffering damage in seeking to avoid a collision with Vehicle 4. It cannot be said that the collision between Vehicle 5 and Vehicle 6 was "a new cause which can be described as either unreasonable or extraneous or extrinsic" (as used in the judgment of Lord Wright in *The* *Oropesa* [1943] 1 All ER 211 at 215, and cited in the judgment of Parker LJ in *Wright v. Lodge*), so as to break the chain of causation between Mr. Lee's negligence and the collision giving rise to Mrs. O'Brien's damage.
9. I find therefore that Mr. Lee was negligent, and that his negligence had contributed in part to Mrs. O'Brien's injuries which were sustained as a result of the accident. There is no evidence that Mrs. O'Brien was negligent in causing or contributing to her own injuries. I therefore find that Mr. Lo and Mr. Lee are both liable for Mrs. O'Brien's agreed damages of $50,000. The parties have informed the Court that apportionment of liability between Mr. Lee and Mr. Lo is not necessary in view of Mr. Lo's concession of liability.
10. The question of costs will be addressed by the parties separately.

(Mimmie Chan)

District Judge

*Mr. Samuel Yip, instructed by Messrs. K.Y. Woo & Co., for the Plaintiff*

*Mr. C.K. Wong, instructed by Messrs. Chu & Lau, for the 2nd Defendant*