## DCPI 335/2005

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 335 OF 2005

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

LAM WAH LIN Plaintiff

and

SECRETARY FOR JUSTICE 1st Defendant

LEUNG MAN KUEN 2nd Defendant

TSANG WOON PIU 3rd Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

DCCJ 2292/2004

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

CIVIL ACTION NO. 2292 OF 2004

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

ETERNAL LOYAL LIMITED Plaintiff

and

SECRETARY FOR JUSTICE 1st Defendant

LEUNG MAN KUEN 2nd Defendant

TSANG WOON PIU Third Party

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Deputy District Judge Wong in Court

Dates of Hearing: 5 – 7 June 2006

Date of Handing Down Judgment: 19 June 2006

JUDGMENT

1. These two actions arose out of a traffic accident in which a public light bus registration No. KM8071 and an ambulance registration No. AM 5288 collided at the junction of Ma Tau Wai Road and Bailey Street at about 2.20 a.m. on 11 June 2003. As a result passengers on board the public light bus were injured and both vehicles were damaged. The driver of the ambulance was also injured.
2. In action No. DCPI 335/2005 the Plaintiff was one of the injured passengers in the public light bus. She claims against the Secretary for Justice and both drivers i.e. the 2nd and 3rd Defendants. The Secretary for Justice made the 3rd Defendant i.e. the public light bus driver the 3rd party for indemnity and/or contribution. Payment into court has been accepted by the Plaintiff.
3. In action No. DCCJ 2292/2004 the Plaintiff was the registered owner of the public light bus and it claims against the Secretary for Justice (1st Defendant) and the ambulance driver (2nd Defendant) for damage to its public light bus in the sum of $54,125.50. Both Defendants put up a defence that the driver of the public light bus now the 3rd party was negligent and at fault. The reason why the driver of the public light bus was made a 3rd party is because the 3rd party hired the public light bus from the Plaintiff hence he did not drive the public light bus as servant or agent of the Plaintiff. The 1st and 2nd Defendants also claimed damages against the 3rd party for damages to the ambulance and for personal injury of the 2nd Defendant.
4. The parties have now agreed to the Plaintiff’s claim of $54,125.50 and the damages to the ambulance in the sum of $116,834.62 and the compensation to the 2nd Defendant in the sum of $22,525.57.
5. The issues before me are therefore 1) who is liable for the collision and 2) if both parties were at fault the contribution by the parties to this accident and 3) apportionment of damages if any.

Facts

1. On about 2.20 a.m. on 11 June 2003 the 2nd Defendant picked up a patient in Sung Kit Street and drove the ambulance along Bailey Street. As the ambulance was about to cross the junction of Bailey Street and Ma Tau Wai Road the traffic light turned red. The 2nd Defendant drove the ambulance cross the junction and in the middle of the junction collided with the public light bus driven by the 3rd party. As a result the front part of the ambulance and the part of the public light bus behind the driver’s compartment were damaged. The public light bus swerved and hit a taxi parked on the side of Ma Tau Wai Road and the left part of the public light bus was also damaged.

Evidence

1. Leung Man Kuen the ambulance driver said that he drove the ambulance and parked by the side of Bailey Street near Sung Kit Street to pick up someone who had lost consciousness at Sung Kit Street. His supervisor ordered him to flash the blue beacon light and quickly send the patient to hospital. It was raining heavily at that time and the Observatory had issued the amber rainstorm warning. The road surface was slippery. The street lights were on and the sky was dark. He drove along the 2nd lane of Bailey Street towards Ma Tau Wai Road.
2. At the junction of the Ma Tau Wai Road was a signal controlled junction. When he was about 2 cars’ length from the traffic light it turned amber he switched on the siren and proceeded to the junction when the traffic light was red and at a speed of 5-10 km per hour. He looked to the right and saw no traffic along that stretch of the road. Then he proceeded to cross and looked to the left. He saw a vehicle stopped in the 1st lane from the left and no vehicle on the other 2 lanes.
3. Noticing that there was no traffic on his right he drove onto the carriageway of Ma Tau Wai Road at the speed of about 5 km per hour. At that time he intended to check again the traffic condition on his left when he reached near the central of the junction. He saw no vehicle approaching in the middle and right lane except a vehicle stopped on the left lane he kept driving at about 5-10 km per hour. After the front of his vehicle had passed more than half of the 3rd lane in Ma Tau Wai Road, a public light bus in the middle lane suddenly ran towards him at high speed, he applied his brake but the public light bus kept going and crashed into the left part of the ambulance.
4. Wong Kit On the taxi driver of JP8639 on 11 June 2003 at about 2.20 a.m. picked up a passenger and drove along Ma Tau Wai Road towards To Kwa Wan. As there was a taxi on the 1st lane he drove to the middle lane. He saw 2 taxis pulling up in front and he stopped behind those 2 taxis. He was unaware of the situation in the right most lane. When the taxis in front started to move they slowed down and came to a halt. He saw flashes of blue light coming from Bailey Street on the right and saw an ambulance coming from Bailey Street to the yellow box off the safety island in the middle of Ma Tau Wai Road. It was not travelling fast. Meanwhile the public light bus suddenly drove past him on the right at a speed faster than normal and went straight into the junction and its right bodywork collided with the front of the ambulance.
5. After the collision the public light bus veered off to the left and hit a taxi parked outside Mei Moon Club on the other side of the junction and then slipped to the right and came to stop in the 3rd lane of Ma Tau Wai Road on the other side of the junction.
6. As to the ambulance it slid forward and came to a halt when its front hit the metal railing.
7. Cheung Kam Chuen another taxi driver stopped his taxi registration No. DD2682 at the other side of Ma Tau Wai Road junction on the 1st lane. He suddenly heard a couple of wails from a siren, he looked around and saw at the back to his right an ambulance pulling out of Bailey Street into the yellow box at the road junction. He did not notice whether the beacon was on. A few seconds later he heard a bang behind him and saw the public light bus had already hit the offside rear of his taxi with its nearside front and moved on until it stopped on the right most lane near Shek Tong Street. At that time he also heard another bang behind as if something had been hit. As he concentrated on the public light bus he did not look behind to see what happened.
8. The 3rd party Tsang Woon Pui was the driver of the public light bus he said that at the material time he was driving his vehicle on the middle lane in 4th gear at about 20-40 km per hour. It was raining heavily, traffic was light. There was a private car about 2 vehicles’ length in front travelling at about the same speed.
9. At the junction he noticed the traffic light was green and proceeded straight ahead. When the public light bus reached the junction at Bailey Street he felt a strong impact on the right side of the public light bus. As a result his public light bus was pushed to the left, although he tried to steer the vehicle to the right the front of the public light bus still collided with a stationery taxi and eventually his public light bus came to a halt about 6 to 7 vehicles’ length further away.
10. Ng Chun Tung a passenger on board the public light bus originally told police that he heard the siren but then he said he made a mistake. He meant he heard the siren from the ambulance which took him to hospital.
11. Another public light bus passenger Lam Wah Lin (Plaintiff in DCPI 335/2005) told police she did not hear the siren and she did not notice the beacon flashing.

Was the ambulance driver negligent?

1. Road Traffic (Traffic Control) Regulation 17(2) provides, “a driver of a vehicle on a road passing any light signals in accordance with sub regulation (1) shall proceed with due regard to the safety of other drivers and users of the road……”
2. Regulation 18 provides, “subject to ……. Regulation 60 ….. no driver of a vehicle on a road shall fail to comply with the indication given by a red light …….. when shown by light signals in accordance with regulations 16 or 17.”
3. Regulation 60 provides that Regulation 18 does not apply to a person engaged in the driving of any vehicle for any, inter alia, ambulance service if compliance is likely to “hinder the use of that vehicle for that purpose”.
4. So the ambulance driver is not subject to the strict prohibition under Regulation 17(1)(a). Be that as it may it does not mean that he could have complete disregard to the traffic lights. He still has to proceed with care and in a manner so as not to endanger any person or vehicle which proceeded in accordance with the indications of the light signals.
5. He agreed that when he proceeded when the red signal was on, the signal in Ma Tau Wai Road was green. In his words he said that he did not stop but drove slowly at about 5 to 10 km per hour. He looked at the right and saw no vehicle coming and proceeded to the middle of the road before he looked onto his left. He saw just a taxi parked on the inner most lane, so he continued. In other words he did not stop or slow down in the middle of the road. The taxi driver of JP8639 Wong Kit On said that there were at least 2 vehicles in front of him. Had he really looked to the left he would definitely have seen some vehicles on that side of the road. I am of the view that he did not look to his left in the middle of the road as he suggested. I am also of the view that he was driving at a speed in excess of 5 to 10 km per hour as he suggested because after the collision his ambulance did not stop but continued to go forward and hit the railing on the other side of the road before or the ambulance came to a halt. Had he been driving at 5 to 10 km per hour he could have braked and stopped immediately. In any event in the middle of the night the traffic was light just a brief stop when the signal was red before he proceeded to cross the junction could not have “hindered the use of that vehicle for the purpose” as stated in Regulation 60. Further the point of impact was behind the driver’s cabin of the public light bus and not in front nor did the public light bus hit any part of the ambulance except its front, and that the public light bus driver drove at 20–40 km per hour tends to show that the public light bus was already crossing the junction before the ambulance emerged.
6. For those reasons I find that the ambulance driver had been negligent in that he failed to have regard to the safety of other road users and that he proceeded to cross the junction without stopping even momentarily to observe the traffic before he proceeded to cross the junction. Further he proceeded at a speed which was too fast in the circumstances.

Was the public light bus driver negligent?

1. He drove at 20 to 40 km per hour which was not excessive. In the middle of the night he had a legitimate expectation that no traffic would be coming onto the junction in Bailey Road when the signal was green on his side. Further at that speed it was just a matter of seconds for him to pass that junction. He did not hear the siren nor the beacon light. Lam Wah Lin said the same. He could not have seen the beacon light at a distance. As for the siren the ambulance driver said that he only turned on the siren when he saw the light was about to turn red. It was just a matter of a few seconds before the collision. He could not have avoided the accident. In the circumstances I do not find the public light bus driver had been negligent.
2. As the public light bus driver had not infringed any traffic regulations nor was he driving at an excessive speed I do not find that he had contributed to the accident. In the circumstances I need not make any apportionment.
3. For reasons above the 3rd party notice is dismissed.
4. Order nisi: In DCPI 335/2005 costs to the Plaintiff against the 1st and 2nd Defendants.

In DCCJ 2292/2004 costs to the Plaintiff against the 1st and 2nd Defendants.

Costs of the 3rd party proceedings to the 3rd party. Certificate for Counsel.

(Wesley Wong)

Deputy District Judge

DCPI 335/2005

Mr. Mike So of Messrs. Mike So, Joseph Lau & Co. for Plaintiff.

Ms. Jennifer Tsui instructed by Department of Justice for D1 & D2.

Mr. Andrew Li instructed by Messrs. W. K. To & Co. for D3.

DCCJ 2292/2004

Mr. Andrew Li instructed by Messrs. W. K. To & Co. for Plaintiff.

Ms. Jennifer Tsui instructed by Department of Justice for D1 & D2.

Mr. Andrew Li instructed by Messrs. W. K. To & Co. for 3rd Party.