DCPI 1720/2009

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE 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: 11-13 August 2010

Date of handing down judgment: 4 May 2011

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**JUDGMENT**

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**I. Background**

1. The plaintiff’s claim against the defendants is for personal injuries sustained by her in a traffic accident on 28 February 2008 at about 9:05am. At the time, the plaintiff was a passenger in a public bus bearing the registration number CX 7321. She was 23 years old at the time of the accident and sustained injuries to her neck, back and chin.
2. The defendants are drivers or registered owners of vehicles involved in the accident. They all deny liability and dispute quantum claimed. Further, the 1st, 2nd and 5th defendants have issued Third Party claims against the 1st and 2nd Third Parties being the driver and registered owner of CX 7321 for contribution or indemnity.
3. In addition, contribution notices were served by the: (i) 1st, 2nd and 5th defendants; and (ii) 3rd and 4th defendants on the opposite party.
   * 1. The Vehicles
4. The accident in question involved a total of 7 vehicles. Ignoring the vehicle bearing registration number FX 8584 which was on another lane, the relative position of the 6 other vehicles traveling along the 2nd left lane on the Tuen Mun Road heading towards Kowloon (the “**Lane**”) at the material time require careful consideration. It is not in dispute that they were traveling in the following order:
   1. A light goods vehicle bearing registration number LR 6924 (“**1st Vehicle**”) was the vehicle in the front of the other 5.
   2. Immediately behind was the 1st Defendant driving a medium goods vehicle bearing the registration number KE 8236 (“**2nd Vehicle**”).
   3. The 3rd vehicle in question was a medium goods vehicle bearing registration number KF6576 (“**3rd Vehicle**”).
   4. The 3rd Vehicle was followed by the 3rd defendant who was driving a medium goods vehicle owned by the 4th defendant bearing registration number KX 8860 (“**4th Vehicle**”).
   5. The 5th vehicle was CX 7321 (“**5th Vehicle**”). The bus was driven by the 1st Third Party and the 2rd Third Party was the registered owner.
   6. The last vehicle involved was a medium goods vehicle bearing registration number LS 6808 (“**6th Vehicle**”). The 5th defendant was the registered owner and driver at the material time.

(b) The Collisions

1. The plaintiff alleged that upon reaching near chainage 61.2 (Sham Tseng), the 1st Vehicle slowed down to cope with the road condition ahead. There was suggestion that it was because a dog was running across the road.
2. The 1st defendant failed to stop in time causing the front part of 2nd Vehicle to hit the rear of 1st Vehicle (“**1st Collision**”). The 2 vehicles stopped on the Lane after the 1st Collision.
3. The 3rd Vehicle was immediately behind the 2 vehicles and it had stopped in time to avoid any collision with the 2nd Vehicle. However, for reasons that are in dispute, the 3rd defendant did not manage to avoid the collision between the 3rd and 4th Vehicles. (“**2nd Collision**”).
4. The last 2 vehicles involved also failed to avoid collisions. It is common ground that: (i) 4th Vehicle collided with the 3rd Vehicle (“**3rd Collision**”); and (ii) the 6th Vehicle collided with the 5th Vehicle (“**4th Collision**”).
5. It should be noted that the abbreviations “2nd Collision”, “3rd Collision” and “4th Collision” are used for convenience only as the causes and sequences of the collisions are in dispute. Both the 3rd defendant and the 1st Third Party claimed that they managed to stop their vehicle in time to avoid hitting the vehicle in front. However, as a result of being hit by the vehicle from the back, their respective vehicle was pushed forward which resulted in a further collision with the vehicle in front.
6. On the other hand, the 5th defendant argued that although he had failed to stop the 6th Vehicle in time to avoid hitting the 5th Vehicle, the impact of the collision was mild and he had almost managed to stop in time. In any event, the 5th Vehicle had already collided with the 4th Vehicle before it was hit by the 6th Vehicle from the back. In other words, the 4th Collision had nothing to do with the 3rd Collision.

(c) Criminal Convictions

1. It is common ground that the 1st, 3rd and 5th defendants were charged with and convicted of careless driving. The 1st and 5th defendants pleaded guilty to the charge and the 3rd defendant was convicted after trial.

**II. Issues**

1. Save where I have indicated disagreement between the parties, I am satisfied that the accident took place as summarized in Section I of this Judgment.
2. The parties have managed to reach agreement on quantum in the sum of HK$140,000 inclusive of interest but the issue of liability requires determination.
3. The core issues that need to be decided are:
   1. How did the accident occur?
   2. In the way it occurred, was it caused by the negligence on the part of the defendants or the third parties?
   3. The apportionment of the liability.

**III. Evidence**

* + 1. The Plaintiff

1. The plaintiff gave evidence on her recollection of the accident. One important point emerged from her evidence and it is this: In the Statement of Claim, the pleaded case of the plaintiff was that the 5th defendant’s failure to cause the 6th Vehicle to stop in time had caused the 5th Vehicle to be pushed forward to hit the 4th Vehicle. In other words, her pleaded case is consistent with the position of the Third Parties. This explains why proceedings were commenced by her against the 5th defendant but not the Third Parties in the first place.
2. In a statement given by her to the Police about 2 hours after the accident, she suggested that the bus she was in had collided with the vehicle in front before it was then hit from the back. During examination-in-chief, she suggested that she was still unwell when the statement was taken and the sequence of events contained in the statement was something suggested to her by the police officer responsible for taking the statement. She explained in her evidence that the situation back then was chaotic and she was dosing off when the accident occurred. She recalled 2 collisions that took place almost simultaneously but cannot remember the proper sequence.

(b) The 1st Defendant

1. The 1st defendant did not give evidence and there was no witness statement from him before the court. My attention was however drawn to the brief facts which he admitted when he was prosecuted for careless driving. In the document, it was recorded that he had failed to keep a safe distance with the vehicle in front and had failed to stop in time resulting in the collision.

(c) The 3rd Defendant

1. The 3rd defendant confirmed that he was driving the 4th Vehicle at the material times and he was traveling at 60 to 70 km per hour. He claimed that he was about 13 meters behind the 3rd Vehicle until the vehicle in front stopped abruptly. He claimed that he managed to stop about 2 meters behind the 3rd Vehicle until it was hit by the vehicle behind causing his vehicle to move forward resulting in the 2nd Collision.

(d) The 5th Defendant

1. The 5th defendant confirmed that he was the driver of the 6th Vehicle and suggested that he was traveling about 20 meters behind the 5th Vehicle just before the accident. He was traveling at about 60km per hour. He admitted that he had failed to stop in time resulting in the collision with the 5th Vehicle. However, he maintained that the impact was minor and that he almost managed to stop in time. He also referred to the photographs of his vehicle taken after the accident and pointed to the fact that his vehicle was hardly damaged.
2. In the brief facts which he admitted to when he was prosecuted for careless driving, he admitted that: (i) he had failed to keep a safe distance with the vehicle in front and to avoid the collision; (ii) as a result the 5th Vehicle was pushed forward and further collided with the 4th Vehicle.

(e) The 1st Third Party

1. The 1st Third Party claimed that he was driving the 5th Vehicle at about 70 km per hour in the Lane and the vehicle was about 30 meters behind the 4th Vehicle immediately before the accident. He maintained that he managed to stop the bus he was driving in time to avoid the collision with the 4th Vehicle (they were 2-3 feet apart) and the collision with it was caused by the vehicle behind pushing the bus forward to hit the 4th Vehicle.

**IV. Discussion**

1. I cannot see any basis to disbelief or reject the evidence of the plaintiff. Although the version of events given in her statement to the police is inconsistent with her pleaded case, she frankly acknowledged that it is not possible for her to recall the correct sequence in respect of the 2 collisions in question. Although she did mention when cross-examined by Mr. Szeto (for the Third Parties) that her pleaded case is probably closer to the truth, she subsequently reiterated that she was really unsure about this issue. All in all, her evidence is of no assistance on the correct sequence of the 3rd and 4th Collisions.
   * 1. Liability of the 1st and 2nd Defendants
2. The fact that the 1st defendant was convicted of careless driving is not conclusive. There remains the issue of causation. There is no dispute that the 1st defendant attempted to stop his vehicle and he failed to do so in time and had thereby caused the 1st Collision. This is the reason why he was charged and convicted.
3. It is well established that if a driver negligently obstructed a highway and created a danger to other road users, then his negligence contributed to the causation of an accident and he may be responsible for the accident together with any other driver who was subsequently negligent: See *Rouse v. Squires* [1973] QB 889 at 898C-E and 899H.
4. It is common ground that the 2nd Vehicle was not the vehicle which started the multiple collisions. It can be argued that even if the 1st defendant managed to stop his vehicle in time, it would still be stationary in the middle of the Lane and the other vehicles following it had to come to an abrupt stop anyway. Whether it collided with the vehicle in front is neither here nor there.
5. However, what is unclear is whether the dangerous situation caused by the stopping of the first two vehicles was avoidance. Although it was pleaded in the Defence of the 1st, 2nd and 5th defendants that the 1st Vehicle “pulled up abruptly, thereby causing a dangerous situation”, it is not entirely clear as to whether the 1st Vehicle had come to a complete stop necessitating the other vehicles behind to stop. I say this because in the brief facts that the 1st defendant had admitted to when he was charged with careless driving, it was said that the 1st Vehicle had merely slowed down to avoid hitting a dog running across the road. That would mean that had the 1st defendant been keeping a safe braking distance, the 1st Collision could have been avoided as it does not follow that the 1st and 2nd Vehicles had to come to a complete stop if the 1st defendant had managed to slow down in time and to avoid the 1st Collision.
6. As the 1st defendant did not give evidence, there is no reason to reject what is contained in the brief facts admitted by him. In other words, there is admission on his part that the vehicle in front (i.e. the 1st Vehicle) merely slowed down and did not come to a complete stop and the problem was caused by the 1st Collision. In the circumstances, I find 1st defendant negligent in failing to keep a safe breaking distance with the preceding vehicle which result in the 1st Collision. It is not disputed that the 2nd defendant is also liable by reason of my finding on the 1st defendant’s liability and I so find.

(b) Liability of the 3rd and 4th Defendants

1. In contrast, the 3rd defendant was in a very different situation. As a result of the 1st Collision, the vehicles behind had to come to a complete stop. There is a dispute as to whether the 2nd Collision was caused by the failure of the 4th Vehicle to stop in time or whether it was the result of the 4th Vehicle being hit by the 5th Vehicle from the back driven by the 1st Third Party. However, this is of little significance to the issue before the Court. No matter what happened between the 4th and 5th Vehicles, the 3rd defendant had no alternative but to bring the 4th Vehicle to a complete stop because the vehicles in front had come to a complete stop.
2. In other words, whether the 4th Vehicle hit the 3rd Vehicle is neither here nor there. I find that there was no causal link between the 2nd Collision (and the conviction of the 3rd defendant) with the so-called 3rd Collision. The causation issue should be resolved in favour of the 3rd and 4th defendants. There was nothing that the 3rd defendant could reasonably have done to avoid the 3rd Collision in light of the situation caused by the vehicles in front. I therefore reject the plaintiff’s claim against the 3rd and 4th defendants.

(c) Liability of the 5th Defendant

1. The issue between the plaintiff and the 5th defendant is also relatively straightforward. There is no dispute that the 4th Collision was caused by the 5th defendant’s failure to stop the 6th Vehicle in time. Whether the 3rd Collision was caused by the 4th Collision is irrelevant for this purpose. There is no dispute that the 5th Vehicle was involved in two collisions. The 5th defendant’s negligence in failing to keep a safe breaking distance and to stop his vehicle in time had clearly contributed to the injuries suffered by the plaintiff. In the circumstances, I find the 5th defendant liable for the plaintiff’s claim.

(d) Liabilities of the Third Parties

1. Although it was emphasized by the 5th defendant that the damage sustained by his vehicle was not significant, no satisfactory explanation was given as to why he admitted to the brief facts which contained the suggestion that by reason of the 4th Collision, the vehicle in front was pushed forward thereby causing the 3rd Collision. He also admitted during cross-examination by Ms. To (for the plaintiff) that he was not sure if the 5th Vehicle had collided with the 4th Vehicle before the 4th Collision and the suggestion made by him was based on what he heard from some of the passengers on the 5th Vehicle.
2. In addition, I also find his evidence unsatisfactory in a number of respects. A clear example is contained in the transcript of evidence recording the conversation with the magistrate that he appeared before on 19 August 2008 when he pleaded guilty to careless driving. When asked if the brief facts were admitted, he claimed that his vehicle collided with the vehicle in front of him because he was in turn hit from the back by another vehicle. There is no evidence in support of this assertion in this trial and he frankly admitted in cross-examination that this was not the case.
3. All in all, I find him to be an unreliable witness. His suggestion that the 3rd Collision had already occurred before the 4th Collision is rejected. I also find that the 1st Third Party had managed to stop the 5th Vehicle in time and the 3rd Collision was the result of it being hit from the back by the 6th Vehicle because the 5th defendant had failed to stop in time.

(e) Apportionment of Liability

1. As between the 1st and 2nd defendants on one part and the 5th defendant on the other, I find the 5th defendant slightly more culpable. Although the dangerous situation originated from the 1st defendant’s negligence, the failure of the 5th defendant to stop resulted in a direct collision with the bus that the plaintiff was in.
2. Further, in light of my finding above, the 1st Third Party could have avoided the 3rd Collision if it was not hit by the 6th Vehicle from the back. I therefore apportion liability between the: (i) 1st and 2nd defendants and (ii) 5th defendant as 30% and 70%.

**V. Conclusion**

1. For the above reasons, I find the 1st, 2nd and 5th defendants liable to the plaintiff in the total sum of HK$140,000 (in the proportion set out above) inclusive of all pre-trial interest from the date of the accident to today. Interest thereafter is to accrue at judgment rate until full payment.
2. I see no reason why costs should not follow the event. Given my findings and rulings above, I make an order *nisi* that:
   1. The 1st, 2nd and 5th defendants shall pay the costs of the plaintiff’s claim.
   2. The plaintiff shall pay the costs of the 3rd and 4th defendants.
   3. The 1st, 2nd and 5th defendants shall also pay for costs of the 1st and 2nd Third Parties.
3. The aforesaid orders shall include all costs reserved (if any) and are to be taxed if not agreed with certificate for counsel. In the absence of any application to vary within 14 days, this costs order *nisi* shall become absolute.

(Victor Dawes)

Deputy District Judge

Ms. Doris To instructed by 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