## DCPI 1861/2009

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1861 OF 2009

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| BETWEEN | MAK HOI CHU (麥海珠),  the personal representative of  the estate of TAM MO HO (譚毛好), deceased | Plaintiff |
|  | and |  |
|  | LUI CHI YIN | 1st Defendant |
|  | THE KOWLOON MOTOR BUS CO. (1933) LIMITED | 2nd Defendant |

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 30 & 31 August, 2010

Date of handing down Judgment : 5 October, 2010

# JUDGMENT

**Background**

1. Mdm. Tam was crossing a light-controlled pedestrian crossing at Lai Chi Kok Road in Kowloon on 17 April 2007, when she was hit by a public light bus driven by the 1st Defendant ("**Mr. Lui**"). She died as a result of the accident, and these proceedings are instituted by her husband and the personal representative of Mdm. Tam's estate for damages.
2. The matters set out in this and the following 3 paragraphs are not in dispute. The accident occurred at about 1:35 pm on 17 April 2007. Mdm. Tam was at the material time at a crossing referred to in the Road Users' Code as a "Green Man Crossing", i.e. a crossing marked by two rows of studs which have traffic lights for vehicles and pedestrian lights for pedestrians. The Green Man Crossing was at a Junction of Lai Chi Kok Road and Nam Cheong Street, just after a yellow junction box. There were three southbound lanes along Lai Chi Kok Road. At the material time, there were road works on the first southbound lane of Lai Chi Kok Road, on both sides of the Green Man Crossing.
3. Mr. Leung was employed by the 2nd Defendant ("**KMB**") and was driving a double decker bus along the second southbound lane of Lai Chi Kok Road at the relevant time. The vehicular traffic light was green as Mr. Leung drove past the junction of Lai Chi Kok Road and Nam Cheong Street ("**Junction**"), which had a yellow box marking. There were 3 other buses in front of Mr. Leung's bus, and these buses stopped after they went past the Junction in order to let passengers alight at a bus stop beyond the Green Man Crossing. As Mr. Leung's bus was already within the yellow box marking at the Junction, he proceeded into the Green Man Crossing, and stopped his bus with the front of the bus on the Green Man Crossing. According to Mr. Leung, there was a gap of 3 to 4 ft. between the front of his bus and the edge of the Green Man Crossing, for pedestrians to walk onto the Green Man Crossing.
4. When Mr. Lui's public light bus approached the Junction and the Green Man Crossing, the vehicular traffic light was green in his favor. The public light bus was traveling on the third southbound lane of Lai Chi Kok Road.
5. When Mdm. Tam started to cross the Green Man Crossing, the pedestrian light was red. She stepped onto the Green Man Crossing in front of the bus driven by Mr. Leung, and crossed the Green Man Crossing in quick steps. As she stepped into the path of Mr. Lui's public light bus on the third lane, she was knocked down by the public light bus.
6. Mdm. Tam's view of the traffic light for pedestrians may have been obstructed by Mr. Leung's bus which had stopped on the Green Man Crossing. According to Mr. Lui’s evidence to the police, his view of the pavement was obstructed by the bus, and when he first saw Mdm. Tam, she had already emerged from the front of the bus and he could not stop the public light bus in time to avoid hitting her.

**The issues**

1. The issues for determination at trial are :
   1. whether the accident was caused by Mr. Lui's negligence;
   2. whether the accident was caused by Mr. Leung's negligence;
   3. whether the accident was caused by Mdm. Tam's own negligence; and
   4. the amount of damages payable to Mdm. Tam's estate.

**Whether the accident was caused by Mr. Lui’s negligence**

1. Mr. Lui did not give evidence at the trial, but Mr. Lim who appears for Mr. Lui relies on the cautioned statements which Mr. Lui had given to the police after the accident. According to these statements, Mr. Lui had first estimated that he was driving the public light bus at a speed of 20 to 30 km just before the collision. In a later statement, he said that the speed of the public light bus was 30 to 40 km when he crossed the Junction. According to Mr. Lui's statement, he had reduced the speed of the public light bus when the bus on the 2nd lane slowed down upon approaching the Green Man Crossing. The bus then stopped, but as there were no vehicles in front of the public light bus on the 3rd lane, Mr. Lui had continued on, and just as the public light bus was at the same level as the front of the bus, he saw Mdm. Tam emerge from the right side of the bus, as she rushed across the Green Man Crossing. Mr. Lui's evidence is that he had immediately applied his brakes, but could not avoid hitting Mdm. Tam, who was only about 3 feet away when she first emerged.
2. Mr. Lim relies on the police statements of other witnesses who were either on the public light bus or waiting to cross the Green Man Crossing at the material time, to show that the public light bus was not travelling very fast at the material time just before the accident, that Mr. Lui had applied his brakes, and that the public light bus had stopped immediately after the accident. There was no evidence of brake marks on the road, and the public light bus only suffered a slight dent over the left front of the bus just above the nearside headlights. In the light of all the evidence, including the fact that the force of the impact was not great, it was submitted on behalf of Mr. Lui that he could only have been travelling at a speed of about 20 to 30 km, that even at the speed of 40 km, it was not excessive, and that it was not reasonably foreseeable that Mdm. Tam would dash out suddenly onto the Green Man Crossing from the front of the bus, when the vehicular traffic light was green at the material time. It was further argued on behalf of Mr. Lui that given the close distance between the public light bus and Mdm. Tam when she first emerged, no reasonable driver could have been able to stop the public light bus in time to avoid hitting Mdm. Tam.
3. According to the Road Users' Code, drivers should drive carefully and slowly when pedestrians are about, particularly in crowded streets, or when a bus stop is near. Drivers should also be on the lookout for pedestrians entering the road suddenly, from behind a parked or stopped vehicle, and be cautious for pedestrians crossing the road using gaps between parked vehicles. Drivers should also give way to any pedestrians on crossings. According to the Road Users' Code, drivers may go forward if there are no pedestrians on the Green Man Crossings and when the green light shows and there is room for the driver's vehicle to go forward, such that the Green Man Crossing is not blocked.
4. Even if I should accept that Mr. Lui's public light bus was travelling at a speed of between 20 to 30 km at the material time before the accident, he knew that the bus on the 2nd lane had first slowed down, and then stopped on the 2nd lane to his left. He was crossing the Junction (a common place for pedestrians to cross the road) on a busy road and was also approaching a Green Man Crossing. It should have been reasonably foreseeable to Mr. Lui that pedestrians were likely to appear on and near the Green Man Crossing, even if the vehicular traffic light was green, particularly because the bus had slowed down and had come to a complete stop on the Green Man Crossing. Pedestrians stepping onto the Green Man Crossing was, in my judgment, a reasonable probability at the location and in the circumstances, and Mr. Lui should have been more vigilant as he crossed the Green Man Crossing. He could have further reduced his speed, and should have been on a lookout for pedestrians who might emerge from the front of the bus as he approached the bus. If he had done so, he could have seen Mdm. Tam and might have been able to alert her or avoid hitting her.
5. The cases cited by Counsel for both Mr. Lui and Mr. Leung (*Moore v. Poyner* [1975] RTR 127 ; *Ng Shing Yan Vincent v. Poon Kin Pong* HCPI 83 of 2004, 24 June 2009 (unreported) ; *Lai Ho Chuen v. Hung Ling Yung* DCPI 1127 of 2006, 30 April 2008 (unreported); *Ho Hing Yuen v. Lee Wai Kai* HCPI 58 of 2003, 31 May 2004 (unreported)) are distinguishable from the present case, where the accident occurs at a Green Man Crossing right after a Junction with a yellow box marking. I consider that in busy and crowded streets in Hong Kong, drivers should be more vigilant of pedestrians at busy road junctions, and at Green Man Crossings when other vehicles had stopped within the Crossings.
6. I consider that the accident was caused partly by Mr. Lui's negligence.

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

1. Mr. Leung accepts that there was a yellow box marking at the Junction just before the Green Man Crossing. He accepts that he cannot stop the bus on the yellow box marking. However, as the buses travelling in front of Mr. Leung's bus had stopped on the 2nd lane in order to let passengers alight and board at the bus stop, and Mr. Leung likewise had to proceed to the bus stop, he drove his bus into the Green Man Crossing and stopped the bus there, with part of the bus on the Green Man Crossing, and a part of the bus in the yellow box marking at the Junction. Mr. Leung admits that he knew that the bus would block pedestrians' view of the 3rd lane of Lai Chi Kok Road. According to the evidence of Mr. Tam Kwun Fai, a pedestrian also waiting to cross Lai Chi Kok Road, Mr. Leung's bus had obstructed pedestrians' view of the lights facing the pedestrians on the pavement.
2. According to the Road Users' Code, drivers should drive carefully and slowly when pedestrians are about, particularly in crowded streets, or near a bus stop. They should look out for pedestrians entering the road suddenly, for example from behind parked or stopped vehicles, and for pedestrians crossing the road using gaps between parked vehicles. Drivers should be vigilant at junctions, which are common places for pedestrians to cross the road. They should give way to pedestrians on Green Man Crossings, going forward when the green light shows if there are no pedestrians on the Green Man Crossings and when there is room for the driver's vehicle to do so. Drivers should not stop on the yellow box marking, on Green Man Crossings, near traffic lights, or where danger may be caused to other road users.
3. I agree with Counsel for the Plaintiff that Mr. Leung was not only in breach of the Road Users' Code and hence negligent, but had also created a dangerous condition on the road by stopping the bus on the Green Man Crossing at a busy road junction. Pedestrians' view of the traffic lights and of the condition of the road (the 3rd lane in particular) and the Green Man Crossing was obstructed as a result. Other drivers are also hampered in their view of pedestrians standing on the pavement or on the first lane of Lai Chi Kok Road and of any pedestrians who may have ventured out onto the Green Man Crossing.
4. Having thus created a dangerous condition for road users and pedestrians, in breach of the Road Users' Code, Mr. Leung should have been extra vigilant of pedestrians stepping out onto the Green Man Crossing in this dangerous condition which he had created. In my judgment, Mr. Leung was further negligent in failing to observe that Mdm. Tam had stepped out from the pavement or the 1st lane onto the Green Man Crossing, and to warn her or other drivers of Mdm. Tam's presence when she did so. According to Mr. Leung, just before he had completely stopped the bus, he had checked the condition of the 3rd lane of Lai Chi Kok Road behind him, and he had seen the public light bus.
5. Mr. Leung's breach of the Road Users' Code in stopping the bus on the Green Man Crossing and the yellow box marking, and his failure to heed the presence of Mdm. Tam when she crossed the 2nd lane in front of his bus, had contributed to the accident.

**Whether the accident was caused by Mdm. Tam's own negligence**

1. It is not disputed that Mdm. Tam crossed the Green Man Crossing when the light for pedestrians was red and the vehicular traffic light was green. Whether or not Mdm. Tam had crossed the road because she was "mistaken" by the traffic light on the other side of Lai Chi Kok Road is mere speculation. From all accounts, her view of the lights facing the pedestrians standing on the pavement or on the 1st lane of the road was obstructed by the bus. She was the only pedestrian who was crossing at the material time. I have to agree that pedestrians who choose to cross the road, running or otherwise, without checking the traffic lights and the condition of the road, do so at the risk of their own lives (per Rogers VP in *Ho Hing Yuen v. Lee Wai Kai* CACV 258 of 2004). This is particularly so when they cross at dangerous locations, such as between vehicles or running out from the front of a bus. Mdm. Tam's own negligence had partly caused the unfortunate accident.

**Apportionment of liability**

1. I consider that Mdm. Tam was 40% to be blamed for the accident. As between Mr. Lui and KMB vicariously liable for Mr. Leung's negligence, I apportion 60% liability to Mr. Lui and 40% liability to KMB.

**The amount of damages payable to Mdm. Tam's estate**

1. Mdm. Tam was 82 years old at the time of her death. She suffered from a fractured skull, fractured third to fifth right ribs and bruising and abrasions on her face and limbs as a result of the accident. She was retired.

1. Damages have been agreed save for the claim of PSLA and funeral expenses.

***PSLA***

1. Mdm. Tam was sent by ambulance to the Accident and Emergency Department of the Caritas Medical Centre ("**CMC**") at 1:58 pm on 17 April 2007. She was recorded to be unconscious upon arrival at CMC. The prognosis was considered to be extremely poor and no surgical intervention was indicated. She remained unconscious and was certified dead at 9:53 pm on 17 April 2007.
2. Considering the decisions in *Wong King Tai v. Lau Ka Kui* HCPI 488 of 1996, 24 November 1998 (unreported) and *Wang Chin Ying v. Lam Ping Fung* [1993] 3 HKLRD 190, I will make an award of **$30,000** to reflect the loss of amenities and the possibility that there might have been some time when pain was felt immediately after the accident.
3. With regard to the funeral expenses, I have considered the submissions made by Counsel for KMB, but I cannot see the duplication in the expenses covered by the receipts shown on page 100 and page 102 of the trial bundle. I accept the evidence of Mr. Mak and will allow the total sum of $84,170 claimed.

**Award**

1. The damages awarded include:
   1. Bereavement (agreed) : $150,000
   2. PSLA : $30,000
   3. Funeral Expenses: $84,170
   4. Medical Expenses (agreed): $200
2. The total award accordingly comes to **$264,370**. Taking into account Mdm. Tam's contributory negligence, the damages payable by Mr. Lui and KMB to the estate are **$158,622**.
3. There will be interest on general damages at 2% per annum from the date of the service of the Writ to the date of judgment. In relation to the amount of bereavement, Ms. Tjia has asked for interest at the rate of interest on suitors’ funds from the date of death (following *Kwan Lai Kuen v. National Insurance Co. Ltd* [1998] 1 HKC 98). However, the rate of interest on suitors’ funds is currently much lower than the judgment rate of interest. Accordingly, I will allow interest on bereavement at judgment rate from the date of death, and interest on special damages at half the judgment rate from the date of the accident to the date of judgment.

1. I will further make an order nisi that the costs of the action are to be paid by Mr. Lui and KMB, to be taxed if not agreed, with certificate for counsel. The costs of the personal representative of Mdm. Tam’s estate are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan)

District Judge

*Ms. Josephine Tjia, instructed by Messrs. Yip, Tse & Tang (assigned by D.L.A.) for the Plaintiff*

*Mr. Patrick D. Lim, instructed by Messrs. Y.T. Chan & Co. for the 1st Defendant*

*Mr. Dennis Law, instructed by Messrs. Tsangs for the 2nd Defendant*