Li Jianlin *v* Asnah bte AB Rahman
[2014] SGHC 198

Case Number : Suit No 720 of 2013

Decision Date : 08 October 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Eric Liew Hwee Tong and Rebecca Chia Wei Lin (Gabriel Law Corporation) for the plaintiff; Anthony Wee (United Legal Alliance LLC) for the defendant.

Parties : Li Jianlin — Asnah bte AB Rahman

Tort – Negligence – Contributory negligence

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 175 of 2014 was allowed by the Court of Appeal on 17 March 2016. See [2016] SGCA 16.]

8 October 2014 Judgment Reserved.

Choo Han Teck J:

1 Not that very long ago, it was considered rude not to take one's sunglasses off when talking to another person. Not long ago, pedestrians were taught to "look left, look right, and then left again" before crossing the road. Nowadays, people do not remove their sunglasses in conversation, and pedestrians often cross the road diagonally with their backs to oncoming vehicular traffic, or with heads down, looking at electronic devices of one kind or other. Times and practices have changed, but road etiquette is not mere social etiquette. Proper observance of safety precautions can be a difference between safety and injury, or even life and death. Such is the issue before me in this trial.

2 The plaintiff was 21 years old and was in full time National Service in June 2011. On 2 June 2011 about 10pm, he was crossing Bukit Batok West Avenue 5 at a pedestrian crossing with the crossing lights in his favour. He was walking from right to left in front of traffic going in the direction of Brickland Road when he was knocked down by a taxi driven by the defendant. Bukit Batok West Avenue 5 was a two way road with dual lanes on each side and a road-divider with low metal fence separating the two sides. It is a well-lit road. The pedestrian crossing in question was a break in the road-divider. The plaintiff was hit after he had crossed the two lanes of traffic going in the opposite direction (coming from the direction of Brickland Road).

3 He was about two or three steps into the right lane (as one faces Brickland Road) when he was knocked down and suffered injuries to his head and hips, including fractures in those areas. The impact of the collision was caused by the front right side of the taxi. The defendant driver pleaded guilty to a charge under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) for dangerous driving. Under s 45A of the Evidence Act (Cap 97, 1997 Rev Ed), the defendant's conviction in admissible in evidence to prove that she knocked the plaintiff down with her taxi. In any case, none of the facts were in dispute. The defendant's counsel, Mr Anthony Wee, conceded that the only issue concerning liability was whether the plaintiff was liable for contributory negligence. Mr Eric Liew, counsel for the plaintiff submitted that there should be no finding of any contributory negligence.

4 Mr Wee attempted to elicit from the plaintiff in cross-examination that the plaintiff might be

wearing clothing that made him (the plaintiff) poorly visible. The plaintiff was unable to recall what he wore. Even if the plaintiff did not wear high visibility clothing, contributory negligence is not made out. Wearing high visibility clothing may be ideal. Rule 8 of the Highway Code (Cap 276, R 11, 1990 Rev Ed) goes as far as to suggest that pedestrians should wear white, or at the very least, carry items (such as newspapers and handkerchiefs) that would make them more visible in unlighted roads at night. However, to insist that he has to wear high visibility clothing is not the law (*Powell v Phillips* [1972] 3 All ER 864; *Probert v Moore* [2012] EWHC 2324), nor does it accord with common sense – the courts cannot direct what pedestrians must wear.

5 Although Mr Wee submitted that the plaintiff ought to look left and right before crossing, I find that there was no evidence whether the plaintiff or did not do so. In any event, it is more important to note that in this case, the plaintiff was hit after he had crossed more than half the breadth of the road with the pedestrian controlled traffic lights in his favour. There are two important implications arising from this situation. First, the pedestrian can hardly be blamed for assuming that the vehicular traffic had already stopped, and those that have not would surely have done so. The second implication is that since the traffic light had been red against the defendant for such a long time, the defendant had no excuse for not having enough time to react.

6 The defendant was either deliberately running the red light, or was so oblivious of the light for so long that in either case it afforded her no excuse whatsoever. Under these circumstances, there can be no doubt that the defendant was negligent and through her negligence she had caused injury to the plaintiff for which she must be held liable. The only issue is whether the plaintiff had contributed to the accident. I am of the view that in the circumstances of this case, the plaintiff had not contributed to the accident. This is not a case in which the plaintiff pedestrian was jaywalking or crossing at a place in which he ought to have a heightened sense of caution. If that were the case, the plaintiff may be said to have contributed to the accident.

7 I note that the defendant's lawyers submitted a report by an expert. This report states that: (1) the defendant's view of incoming pedestrians is blocked by the railings on the road divider; and (2) the curve of Bukit Batok West Avenue 5 created a "stroboscopic effect" on the defendant's vision at the time of the incident. Even if these were true, they are red herrings. The defendant should have stopped as the lights were against her favour for a long time. She cannot beat the red light even if no pedestrian was crossing.

8 Parties in road accidents are increasingly reliant on 'reconstruction experts'. That may be on the advice of lawyers. However, when using such experts, the lawyers must appreciate the kind of evidence and advice the experts provide so that the costs of engaging them can properly be reduced or saved. First, photographs and sketch plans of the scene of the accident are relevant but these can be obtained from the traffic police. If a party disputes the photographs or plan he is entitled to adduce evidence of his version. This kind of evidence is evidence of fact and may not require an expensive 'reconstructionist' expert to produce. The second type of evidence is the opinion of the 'expert' witness as to how, in his view, the accident occurred and who was at fault. With respect, this is precisely the issue for the court to determine, and unlike specialist medical cases, the court in traffic accident cases will be relying on the same evidence the expert relies on in determining how the accident occurred.

9 Finally, the defendant here was a taxi driver and like drivers of commercial vehicles, especially heavy vehicles, a taxi driver is a professional driver. She drives for a living. I think that it is not requiring much for professional drivers such as the defendant to lead the way in safe and courteous driving. There is no reason why they cannot be the role models for other drivers to follow.

10 For the reasons above, I find that the accident was caused solely by the negligence of the defendant. I will hear parties as to costs if they are unable to agree costs.