

Tan Yee Zhen (by his litigation representative Tan Seow Thiang) v Yeo Cheng Khoy
[2010] SGHC 207

Case Number : Suit No 922 of 2009
Decision Date : 23 July 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Peter Ezekiel (instructed counsel) (Peter Ezekiel & Co) and Riaz Ali Bin Abdul Qayyum (Riaz LLC) for the plaintiff; Edwin Chua (Lawrence Chua & Partners) for the defendant.
Parties : Tan Yee Zhen (by his litigation representative Tan Seow Thiang) — Yeo Cheng Khoy

Tort

23 July 2010

Judgment reserved.

Philip Pillai J:

1 At around 10.20am on 12 December 2008, the defendant was driving the van GT 3199C along Bedok North Avenue 1. This is a 4-lane dual carriageway with 2 lanes running in each direction and separated by a road divider. The defendant was travelling on one side of this road, on the sidemost lane. The plaintiff, who was 13 years old at that time, was diagonally crossing the road from the other side. He was trying to reach the bus stop on the opposite side. There was light traffic on both sides. The defendant's van collided with the plaintiff just before it reached the bus stop. The plaintiff sustained severe head injuries. The right windscreen of the defendant's van was damaged, and there was a dent on its right side.

2 The defendant was subsequently charged and convicted of the offence of careless driving and fined \$800 and disqualified from driving for four months. He filed a notice of appeal but did not proceed further with the appeal on this conviction and sentence.

3 In this action, the plaintiff's litigation representative is his father. The plaintiff did not himself give any evidence in court as the plaintiff's representative avers that the plaintiff could not remember any details of the accident because of his head injuries. According to the medical reports submitted, the plaintiff suffered traumatic brain injury as a result of the accident. His cognitive functions have been severely impaired, and he has mobility problems on his right side which may be permanent. He is also being considered for cranioplasty to repair the damage to his skull.

4 The plaintiff's case is that the accident was caused either solely or substantially by the defendant's negligence in failing to keep an adequate and proper lookout for pedestrians and driving at an excessive speed in the circumstances, resulting in him being unable to brake in time to avoid the collision with the plaintiff. The plaintiff relies on the road traffic police investigations which resulted in the charge and conviction of the defendant for careless driving and on the doctrine of *res ipsa loquitur* insofar as the facts of the case disclose the negligence of the defendant and consequent loss suffered by the plaintiff.

5 The defendant avers that the accident arose solely or substantially because of the negligence

of the plaintiff and accordingly that any loss suffered by the plaintiff as a result of the accident should be borne solely or substantially by the plaintiff.

6 The defendant's oral evidence in court is that he had seen the plaintiff commence diagonally crossing from the opposite side of the road in the direction of the bus stop. He had seen the defendant running across three lanes and the road divider before colliding with his van. He gave evidence that the plaintiff was running with a bag and wearing earphones. He also said that he was driving in third gear and at a speed of about 30 km/h. He noticed the plaintiff running from the opposite side of the road, but because this was abrupt, he had no time to brake or swerve his van to avoid the plaintiff or to sound his van's horn.

7 The accident sketch plan drawn up by the Road Traffic Police Sketch Plan was produced in court and the investigating officer, Station Inspector Chew Sook Yeng, gave evidence on the same. Station Inspector Chew's evidence was that she observed brake or skid marks of the van at the accident site and these were correctly recorded and marked in the accident sketch plan, which showed skid marks measuring 8.1 m and a distance of 2.8 m between the end of the skid marks and the final position of the defendant's van. It was also her evidence that the road was a normal road and not a highway. She added that the damage to the side mirror and front body of the defendant's van, which were captured in photographs produced before me, suggested that the impact of the collision was considerable.

8 The defendant's counsel submits, relying on *Bingham's Motor Claims Cases*, (Butterworths, 8th Ed, 1980) at pp 112-113, that at a speed of 30 km/h the braking distance would be 6.1 m which is consistent with the skid marks. This, he submits, is consistent with the defendant's evidence and is not a high speed. A higher speed of 48 km/h would have meant a braking distance of 13.7m with longer skid marks. In any case, the speed would be well within the road's limit of 60 km/h. The stationary van veered to the left which indicates that the defendant took some evasive action to avoid colliding with the plaintiff. Next he draws attention to the damage to the side of the defendant's van which, he submits indicates that the plaintiff collided into the side of the van. Thirdly he draws attention to the evidence that the collision caused no serious bodily injury or fracture to the plaintiff. He states that the injury was caused by the running speed of the plaintiff and not the van colliding with the plaintiff. He submits that the criminal conviction for careless driving does not preclude the defendant from denying liability and submits in the alternative that the defendant should only bear 20% responsibility for the accident.

9 Since traffic conditions were light on all lanes and since the defendant had seen the plaintiff commencing and running diagonally across three lanes before colliding with him, it is curious why the defendant was not able to avoid the collision with the plaintiff if indeed he was not driving at an excessive speed and was paying care and attention. Having seen the plaintiff commence running diagonally across the street from the opposite side, in the direction of the bus stop, the defendant was aware of the plaintiff's action, speed and purpose. In the light of all these circumstances, and the fact that a 13-year old was running across the street in the direction of the bus stop, I find that the collision could have been avoided had he taken due care and attention. The 8.1m skid marks indicate that the van was moving so fast that an application of brakes while the van was moving still caused it to skid some distance. The dent marks and damage to the windscreen suggest considerable force of the van against the plaintiff's head and body. The incidence of side damage to the van as opposed to frontal damage to the van in my view does not, in these circumstances, diminish his responsibility. Had the defendant been paying due care and attention he would in my view, have been able to avoid the collision. Whilst the criminal conviction for careless driving does not *per se* preclude the defendant's defence raised in these proceedings, it is not totally irrelevant or to be excluded.

10 In the light of all the evidence and relevant circumstances, I find the defendant to be negligent in failing to keep an adequate and proper lookout for the plaintiff, and in failing to drive his van with sufficient care. The accident was, I find, substantially caused by his negligence.

11 Taking into account that the plaintiff was rushing across the 4-lane road in the direction of the bus stop and wearing headphones at the time, I also find the plaintiff to have been distracted and thus contributed to the collision.

12 I would apportion 80% of the responsibility for the accident to the defendant, and 20% to the plaintiff. Damages are to be assessed by the registrar in accordance with this apportionment.

13 The plaintiff is entitled to his costs of the trial.

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