

Siah Eng Hock v Tan Cheng Huat and Another
[2006] SGHC 32

Case Number : Suit 349/2005
Decision Date : 27 February 2006
Tribunal/Court : High Court
Coram : Andrew Phang Boon Leong J
Counsel Name(s) : Sherain Tan Ai Seok (Tan Lee and Partners) for the plaintiff; Anparasan s/o Kamachi (KhattarWong) for the first and second defendants
Parties : Siah Eng Hock — Tan Cheng Huat; Smrt Buses Ltd (formerly known as Trans-Island Bus Services (Pte) Ltd)

Tort – Negligence – Breach of duty – Collision between plaintiff's car and second defendant's bus – Whether accident resulting from first defendant's negligent driving of bus – Whether traffic lights in plaintiff's or defendant's favour

27 February 2006

Andrew Phang Boon Leong J:

Introduction

1 Traffic accident cases rarely entail clear-cut situations – particularly when analysed from a factual perspective. This is one of the rare exceptions. In my view, there could not be a plainer case of negligence on the part of the plaintiff.

2 By way of a brief factual background, the present case involved a collision on 3 January 2004 between a car driven by the plaintiff and a bus driven by the first defendant at a traffic junction (at the intersection of Choa Chu Kang Way and Choa Chu Kang North 5). The weather at the material time was both sunny and fair.

3 The first defendant was at the material time an employee of the second defendant. The bus driven by the first defendant – and this is an important fact – was a bendy bus, which is much longer and heavier than the usual buses which ply the roads.

4 As a result of the collision, the bus was damaged *in its rear*. This, too, as we shall see, is an important fact – indeed, a vitally important one. The plaintiff suffered injuries, as did at least one of the bus passengers.

5 The plaintiff's case is based on the fact that the lights were green in his favour and that he therefore maintained his speed. He stated that he was travelling along Choa Chu Kang Way in the middle lane of a three-lane road, whilst the bus driven by the first defendant was waiting at the said traffic junction in the opposite direction, preparing to make a right turn into Choa Chu Kang North 5. The plaintiff further stated that the bus in question suddenly swerved into his path. In order to avoid a collision with the bus, he swerved to the right lane and braked but nevertheless was unable to avoid a collision with the said bus.

6 The defendants' case was equally straightforward. The first defendant stated that he was waiting to make a right turn from Choa Chu Kang Way into Choa Chu Kang North 5 at the material time. He only made the right turn when the green filter arrow was showing in his favour. If that is so, then the traffic lights could not possibly have been in the plaintiff's favour, as he (the plaintiff) had

claimed. The first defendant was adamant that, given the length and size of his bus, he would always execute such a turn only when the green filter arrow was in his favour; in his view, to do otherwise would have courted unnecessary danger.

7 Having set out the basic arguments of both the plaintiff as well as the defendants, let me now turn to what seems to me to be the crucial aspect of this decision – an analysis of the objective evidence in the light of the testimony given by the witnesses (in particular, that given by the plaintiff and the first defendant, as well as by an independent witness).

Analysis of the evidence

The plaintiff's testimony

8 I found a great many difficulties with the plaintiff's testimony. These were significant difficulties. In particular, the responses he gave, especially under cross-examination, served only to contradict his argument to the effect that the traffic lights were in his favour and that he therefore had the right of way.

9 In the first instance, the distance of the plaintiff's car from the said junction when the bus (according to the plaintiff) allegedly turned out at high speed was stated in no uncertain terms by the plaintiff. However, the distance given [\[note: 1\]](#) clearly contradicted the plaintiff's own version of what had happened – in particular, that the traffic lights were green in his favour. As it turned out, both sets of counsel [\[note: 2\]](#) as well as (significantly) the plaintiff himself [\[note: 3\]](#) were all of the unanimous view that the said distance was some two to two and a half car lengths. It must be noted that the plaintiff was travelling at a speed of approximately 50km/h to 60km/h. This much was admitted by the plaintiff in both his affidavit of evidence-in-chief ("AEIC") [\[note: 4\]](#) as well as under cross-examination. [\[note: 5\]](#) In addition, the plaintiff had also admitted that he had *maintained his speed*. [\[note: 6\]](#)

10 If the plaintiff's own evidence is accepted, then it seems to me to be clear that, even if he had jammed his brakes immediately, given the relatively high speed which the plaintiff had maintained *and* the *very short* distance between his (the plaintiff's) vehicle and the bus driven by the first defendant, the plaintiff's vehicle would, taking into account the *plaintiff's* own account of his estimated distance from the traffic junction, have collided into the bus somewhere towards the front or in the middle, *and not the rear*, which was in fact what had happened (see [4] above).

11 More importantly, and buttressing the observation made in the preceding paragraph by looking at the situation from the perspective of the motion of the bus itself, one must, in this regard, *also* bear in mind the fact that the bus driven by the first defendant was a long and heavy bendy vehicle. If, as the plaintiff had testified, the said bus had only begun accelerating when the plaintiff's own vehicle was only two to two and half car lengths away from the junction, it was not possible, in my view, for the bus to have almost completely executed a right turn, given its weight and length. We must bear in mind that the bus is alleged to have accelerated from a fairly stationary position. Indeed, according to the plaintiff himself, the bus was edging out slowly at the time the plaintiff saw the bus. [\[note: 7\]](#) Once again, taking into account the *plaintiff's* own acknowledgment of the estimated distance of his car from the traffic junction at this time, the plaintiff's car ought to have collided with the bus either towards the latter's front or middle. And this is so even if we accept the plaintiff's statement that he had attempted to take evasive action by swerving to the right, as the distance between the middle and right-most lanes was not significant – not, at least, in the light of the speed at which the plaintiff admitted he was travelling at (and which he stated he had maintained) as well as the extremely short distance between his car and the bus at the time he

alleged he first noticed the bus *beginning* to accelerate and make the right turn. In the final analysis, the fact of the matter is that the plaintiff's car had collided with the *rear* section of the bus. In other words, the objective evidence contradicted the plaintiff's testimony in what, in my view, was a wholly conclusive manner. Indeed, the objective evidence suggested the complete opposite – in particular, that the traffic lights were in the first defendant's favour at the material time, given (as we shall see below) his (the first defendant's) testimony to the effect that he had made a right turn when the traffic lights were in his favour. At the very least, it was clear to me that the plaintiff's testimony was not credible and was not to be believed.

12 If, however, the plaintiff's testimony is not to be accepted and I find, as a result, that the traffic lights were not in fact in the plaintiff's favour, they must (as I have already alluded to above) have been in the first defendant's favour. This is simple – indeed, unimpeachable – logic.

13 Finally, I note that it was revealed by Staff Sergeant Jason Ho Kee Loo of the Traffic Police Investigation Department that a summons had been issued against the plaintiff for dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed).[\[note: 8\]](#) However, because the matter was still ongoing and, hence, the result not known, I did not take this matter into account in arriving at my decision. Indeed, in order for s 45A of the Evidence Act (Cap 97, 1997 Rev Ed) to apply, the result of the criminal prosecution has first to be known. And even if there were a conviction, that would not necessarily be conclusive. I have attempted to state the general principles in this regard in *Ong Bee Nah v Won Siew Wan* [2005] 2 SLR 455. However, as I have already mentioned, s 45A of the Evidence Act was clearly not even potentially applicable – not, at least, at the time these proceedings were heard. Nevertheless, as I have already stated above, there is overwhelming objective evidence that points to the fact that the plaintiff's version in this – the civil – sphere is wholly unpersuasive.

The first defendant's testimony

14 The first defendant was brief and to the point. He struck me as being a witness of truth. There was a reference by counsel for the plaintiff in her closing submissions that the first defendant had worked for the second defendant for three years and that he was now conducting his own business.[\[note: 9\]](#) However, counsel for the plaintiff did admit that the circumstances surrounding the first defendant leaving the employ of the second defendant were not explored and the reason she gave was that "we did not want to detract too much [from] Court time".[\[note: 10\]](#) In point of fact, however, if this issue was in fact crucial to the plaintiff's case, I am sure that it would have been explored. The fact of the matter is that employees join and leave a particular employer for a variety of reasons and many after only a short period of time at the organisation concerned. Indeed, three years is not a short period of employment by any means.

15 I should add that the first defendant had considerable experience in driving large vehicles such as bendy buses. This required a Class 5 licence, which the first defendant had held for some 30 years. More specifically, it is significant, in my view, that after the accident that is the subject matter of the present proceedings, the first defendant in fact continued to be in the employment of the second defendant for slightly over another calendar year (until 25 January 2005).

16 The first defendant was cross-examined, more than once, about the status of the lights at the material time. What came across clearly was the witness's steadfast concern for safety. This is not surprising in view of the exceptional dimensions of the vehicle he was driving.

17 For example, when asked by counsel for the plaintiff whether he could make a turn at the junction concerned even before the green filter arrow came on, the first defendant stated

thus:[\[note: 11\]](#) "It is not possible because my bus is a long one."

18 In a similar vein, the following exchange between counsel for the plaintiff and the first defendant during cross-examination of the latter by the former is instructive:[\[note: 12\]](#)

Q: Are you able to estimate the speed at which you entered the junction?

A : *At a very slow speed because I was then driving a bendy bus so I have to take into consideration the safety of the passengers.*

Q: Bandy bus is, correct me if I am wrong, you used automatic gear, is it?

A: It's fully automatic gear.

Q: So you don't have to shift gear, manually speaking, you just have to press the accelerator when you want to move?

A: Yes.

Q: Mr Tan, is it possible that once all oncoming traffic has cleared, you can negotiate a turn even without the green arrow?

A: *But I don't do that. I'd never done that.*

Q: I am asking you if it's possible. I didn't ask whether you did it.

A: *If you ask me, I say it's not possible because there is a camp nearby and there are also army vehicles plying along the road.*

[emphasis added]

19 I also noted that he did not try to embellish his testimony. When he was not sure, he simply said so. This was clear, for example, from the exchange above with regard to the automatic gear of the bus (which, incidentally, would not, in my view, furnish the extra momentum to enable the bus to complete the turn at the phenomenal speed that would be required if the plaintiff's version of the accident is to be believed). To take another example, when he was asked, under cross-examination, as to how long the green arrow would last at that particular point in the day when the accident occurred,[\[note: 13\]](#) he did not attempt to commit to a precise figure – although he stated clearly that he would negotiate the right turn concerned only when the green filter arrow came on and that this particular traffic light would still be blinking after he had completed the turn.[\[note: 14\]](#) Incidentally, this underscored, once again, the first defendant's concern for safety, which I have already referred to above.

20 I also note that the first defendant also confirmed that the bus was almost full at the time – at least in so far as seated passengers were concerned.[\[note: 15\]](#) This would add considerably to the overall weight of the bus and is thus material to the conclusion I arrived at earlier in this judgment in so far as the plaintiff's version of the accident was concerned, especially his allegation with respect to the sudden movement of the first defendant's bus.

21 The fact of the matter was that when the first defendant entered the traffic junction, the traffic lights were green in his favour. He was therefore under no obligation to assume that there would be another vehicle entering the junction and crossing his path in disobedience to the red light:

see the English Court of Appeal decision of *Joseph Eva, Limited v Reeves* [1938] 2 KB 393.

The testimony of the independent witness

22 It was amply clear to me that the plaintiff was the sole cause of the accident. This conclusion was driven home by the testimony of the independent witness, Mr Boominathan. I found him to be a truly independent witness who was interested in telling the court the truth and I commend him for his public-spiritedness. He was an earnest witness who attempted his level best to assist the court in these proceedings. Indeed, I should add that I would go so far as to state that, based on Mr Boominathan's testimony *alone*, I would have been prepared to find in favour of the defendants.

23 The gist of Mr Boominathan's testimony was that he was seated with his wife towards the rear of the bendy bus, in the second last seat to be precise. It will be recalled that the bus was in fact collided into by the plaintiff's car at the rear. Thus, other things being equal, Mr Boominathan would have had a good view of the plaintiff's car. But I am running a little ahead of the story. Mr Boominathan testified that the bus had come to a full stop and, perhaps more importantly, the bus had been stationary at the traffic junction concerned for more than 30 seconds.[\[note: 16\]](#) This is significant because it corroborates the first defendant's testimony to the effect that he had always observed the highest standards of safety and would not make a right turn without the green filter arrow coming on. It also means that the bus made the right turn from a *stationary* position. This, again, is relevant to a consideration of the plaintiff's allegation that the bus had managed to virtually clear the traffic junction in the time he (the plaintiff) took to travel approximately two and a half car lengths at a speed of 50km/h to 60km/h – which allegation I have in fact rejected.

24 More importantly, Mr Boominathan testified that as the bus turned, he had a clear view of the green filter arrow. I had in fact taken pains to clarify that what the witness saw was the green filter arrow and not merely a green light.[\[note: 17\]](#) He also clarified that the green filter arrow was *not* flashing at the material time.[\[note: 18\]](#) All this corroborates the first defendant's statement that when he turned, the traffic lights were in his favour. If so, it must follow that the traffic lights were *not* in the plaintiff's favour.

25 Mr Boominathan further testified that after having seen the green filter arrow, he immediately saw the plaintiff's car and that it was approaching at a very fast speed. Significantly, the witness stated that the car was approximately 50m away when he first saw it approaching the bus. He was also of the view that approximately five to seven seconds had elapsed between his first seeing the plaintiff's car and its collision with the bus.[\[note: 19\]](#) This is significant inasmuch as it entailed a distance of at least four to five car lengths and must have been the minimum distance from which the plaintiff must, as a reasonable person, have seen the bus which was already turning across the junction. To all intents and purposes, he ought to have reduced its speed. As I pointed out in *Ong Bee Nah v Won Siew Wan* ([13] *supra* at [95]):

[T]here is – in the absence of clear and compelling circumstances to the contrary – *no* legal duty on a driver to slow down *automatically* each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present. [emphasis in original].

In *contrast*, it will be noticed that, on the facts of the *present* proceedings, there *was*, indeed, a duty on the part of the plaintiff to slow down as "clear and compelling circumstances" requiring this existed. Indeed, there is *no need to even invoke* this particular principle. The traffic lights were *clearly against* the plaintiff. *He was under a duty to slow down by that fact alone.* Looked at from

any and every perspective, the plaintiff ought to have slowed down, *but he did not*. The fear that was invoked in Mr Boominathan was both very real and vivid. He testified thus:[\[note: 20\]](#)

And I was holding the seat. I was looking at the car approaching until it bangs. I was actually looking at the car, you know, approaching the bus — approach towards the bus. *I'm holding the beam, you know, metal beam, and it was — I just look at it. I was looking at the car rushing and banging against the bus behind. I could exactly see it, you know, it was so close.* [emphasis added]

26 And a little later on, the witness's fear came forth even more vividly (also in response to cross-examination by counsel for the plaintiff):[\[note: 21\]](#)

Q: ... I'm not sure if you actually saw his car, Mr Boominathan?

A: No, I saw a car. His car was already approaching because I — where I was sitting, *I've already started holding the beam when after seeing his car, you know. That means he's already speeding, you know.* I don't know why. I just hold it, you know.

Q: Right.

A: *But when he came very close, my hands gripped harder.* That's all. I couldn't even tell my wife that, "Ay, somebody's approaching", you know.

[emphasis added]

27 The fear and anxiety the witness felt is not surprising in the least. Any reasonable person of ordinary courage would have felt the same way. It was shocking. Such testimony could be disregarded only if the witness were not one of truth. But that is not the case here. It bears re-emphasising that Mr Boominathan was a witness of truth. He told it as he saw it. He did not seek to embellish, let alone twist, his testimony. There were things he admitted he could not recall. For example, he admitted that he could not remember the colour of the plaintiff's car. However, if one were in his shoes (or seat, rather), that would be entirely understandable in the circumstances.

28 To summarise, two crucial facts arise from Mr Boominathan's testimony, both of which contradicted the plaintiff's version of the accident and supported the first defendant's version instead. The first is that the green filter arrow was clearly showing at the time the first defendant executed the right turn from Choa Chu Kang Way to Choa Chu Kang North 5. The second fact is that the plaintiff's car did not slow down in any way, despite the fact that the traffic lights were clearly against it. On the contrary, and to Mr Boominathan's great surprise and horror, it continued to hurtle towards and (not surprisingly, therefore) ultimately collided with the bus.

29 The only possible reason that might have cast a shadow of a doubt on Mr Boominathan's testimony was the fact that his wife had been slightly injured in the accident. When I queried him briefly about this potential blemish on his testimony, he was not agitated at all. His earnest manner remained and he met my questions directly and without evasion. I found this to be significant, in and of itself. Given the fact that there was no way the witness could have anticipated these few clarificatory questions (not, especially, from the court itself), the manner in which Mr Boominathan responded was particularly compelling, fortifying my overall impression (already mentioned above) that he was a public-spirited witness of truth. The witness was very candid as to why he chose to testify in the present proceedings, although he did not choose to ignore the fact that his wife had indeed been injured. The following exchange might be usefully noted:[\[note: 22\]](#)

Witness: It is not the main reason [to testify] in the sense that it's first thing, I was upset, I mean, my wife injured. Secondly, it's that I saw this, I say why not, you know, somebody has — I mean, I have to save somebody, you know. And those people there, they asked me. Even those people there, they asked me, "Hey, did you saw?" Yah, yah, I said I saw. I saw the car speeding and everybody talking about the speeding car, you know, then it spread, the news spread. So I said okay. Then the bus driver was there, then he asked me "You saw or not?" I said yah, I saw the green light. I said okay lah.

Court: But was it because you are just upset, you know. Sometimes you are upset and you say "I want to —"?

Witness: Oh, no, no, it's not that.

Court: I mean, I'm putting it very crudely.

Witness: Yah, okay.

Court: Don't take this in a wrong way.

Witness: Yah, of course.

Court: "I'm upset therefore we better fix the driver, whether he's in the right or not."

Witness: No, no, no, it's not fixed the driver. It's — *I think I just want to tell the truth. It's the car was speeding. That's all I actually came to witness. That's all I can tell you. To me, the car was speeding.* If let's say, I mean, my opinion, if let's say, if the bus driver would have been wrong, it was turning, if he has braked, applied the brake, then the impact would not be that much and we can see the skidding of the car and all that. We can probably see that. But there was nothing done like that, you know. It was just moving on its own motion, that's all.

[emphasis added]

30 I also note the following confirmatory observations by counsel for the defendants in his closing submissions, which I had no reason to disbelieve or to believe were embellished or exaggerated:[\[note: 23\]](#)

True enough, Mr Boominathan is not a perfect witness. *He's candid.* He says "I don't know the colour of the car. I may not know the lane which he was travelling in". But the fact remains, your Honour, in that situation, a person is panicking, he sees a speeding vehicle, all he can think of, is this vehicle is speeding. And, your Honour, I think he could not have put on a show when we all could see how he demonstrated he held the seat, metal-seat [of the] bus. *And I am observing him for the first time and I felt that he was telling the truth.* [emphasis added]

31 I would like to conclude this part of my judgment by referring to the witness's reference (both in his AEIC as well as in his testimony) to an alleged admission by *the plaintiff's father* to the effect that the brakes on the plaintiff's car were in disrepair at the material time.[\[note: 24\]](#) I hasten to add that I did not take this into account in arriving at my decision, although this segment of Mr Boominathan's testimony might explain his own evidence tendered earlier (and as noted above) to the effect that the plaintiff's car appeared to be hurtling towards the bus without any apparent deceleration on its part. Be that as it may, I had earlier concluded that Mr Boominathan's version of the accident was not only truthful but also corroborated the views I had taken of the first

defendant's and (especially) the plaintiff's testimony.

Conclusion

32 As I mentioned at the outset of this judgment, this is one of the rare cases where the facts speak for themselves. In addition, it is made all the rarer by the fact that there is also clear testimony from a truly independent witness.

33 To recapitulate, I found the plaintiff's own testimony *contradicted* the *objective* facts before the court. In contrast, I found the first defendant to be a witness of truth and whose testimony was wholly consistent with what, in my view, had objectively transpired.

34 I also found the testimony of the independent witness to be utterly persuasive. Indeed, as I have already pointed out, I would have been prepared to find in favour of the defendants on this witness's testimony alone.

35 In the circumstances, I had no choice but to find in favour of the defendants. It was clear that the plaintiff was wholly responsible for the accident that occurred. I also ordered that costs be agreed or taxed if not agreed.

[\[note: 1\]](#) See generally Notes of Evidence ("NE") at pp 19–26.

[\[note: 2\]](#) See NE at p 24, lines 20 and 21.

[\[note: 3\]](#) See NE at p 26, lines 4–6.

[\[note: 4\]](#) At para 6.

[\[note: 5\]](#) See NE at p 7, lines 21–22.

[\[note: 6\]](#) See his AEIC at para 6 as well as NE at p 7, lines 18–28, p 10, lines 28–32 and p 11, line 1.

[\[note: 7\]](#) See NE at p 10, lines 11–27.

[\[note: 8\]](#) See generally, NE at p 43, line 30 to p 46, line 29.

[\[note: 9\]](#) See NE at p 119, lines 1–2.

[\[note: 10\]](#) See NE at p 119, lines 2–5.

[\[note: 11\]](#) See NE at p 57, line 1.

[\[note: 12\]](#) See NE at p 58, lines 5–18.

[\[note: 13\]](#) See NE at p 57, lines 12–18.

[\[note: 14\]](#) See NE at p 57, lines 9–11. See also *id* at lines 18–20.

[\[note: 15\]](#) See NE at p 55, lines 17–22.

[\[note: 16\]](#) See NE at p 71, line 24. See also *id* at p 74, lines 21–23.

[\[note: 17\]](#) See NE at p 88, lines 12–25.

[\[note: 18\]](#) See NE at p 88, lines 24–25.

[\[note: 19\]](#) See generally, NE at p 94, line 31 to p 95, line 11.

[\[note: 20\]](#) See NE at p 91, lines 1–7.

[\[note: 21\]](#) See NE at p 94.

[\[note: 22\]](#) See NE at p 97, lines 3–12.

[\[note: 23\]](#) See NE at p 122, lines 17–25.

[\[note: 24\]](#) See the witness’s AEIC at para 10. See also generally, NE at p 113, line 32 to p 115, line 27. See also para 10 of the witness’s AEIC in the Bundle of Affidavits.

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