

Kong Chok Wai v Ha Siew Sen and Another
[2002] SGHC 265

Case Number : Suit 313/2002
Decision Date : 11 November 2002
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Karuppan Chettiar with Raji Naidu (Mohan Das Naidu & Partners) for the plaintiff;
R Narayanan (Hilborne & Co) for the 1st defendant; Lee Yuk Lan (Goh Poh & Partners) for the 2nd defendants
Parties : Kong Chok Wai — Ha Siew Sen; Singapore Bus Service Ltd

Judgment

GROUND OF DECISION

Background

1. On the morning of 23 February 1998, the plaintiff, a Malaysian in his late teens, was riding pillion on motorcycle no. ADG 207 ridden by the first defendant, a friend from Malaysia, who was working in Singapore. They were proceeding along Woodlands Road in the direction of the city. In front of them was a motor bus no. SBS 1806L belonging to the second defendants and driven by their employee one Mr Irusan A/L Rajoo ('the bus driver').
2. Woodlands Road is a one way road consisting of two lanes. The bus was travelling along the left lane of the road. The first defendant was also travelling along the inner lane. He wanted to overtake the bus and he therefore changed lane into the right hand lane and speeded up. As his motorcycle was about to overtake the bus, it collided with the bus and both he and the plaintiff were knocked off the motorcycle.
3. As a result of the accident, the plaintiff was seriously injured. He was not aware of whose negligence had caused the accident and he therefore commenced this action against both defendants. Both denied that they were negligent. The first defendant stated that just as he was about to overtake the bus it suddenly slowed down and moved into his lane and thereby cut into his path, causing the accident. The bus driver denied that he had changed lane and asserted that the first defendant had attempted to overtake the bus in an unsafe and dangerous manner and that this had caused the accident.
4. After hearing the evidence, I decided that the first defendant was solely to blame for the accident. I therefore entered judgment against him and dismissed the claim against the second defendants. The first defendant has appealed.

The evidence

(i) *Ha Siew Sen, the first defendant*

5. In his affidavit, the first defendant stated that when he decided to overtake the bus, he ensured there was no vehicle on the lane next to him and also looked into the mirror to ensure there was no vehicle behind him. He then signalled to change lane. He was travelling at about 50 kmph at this juncture. He had changed lane and was just about to overtake the bus when the bus suddenly slowed down and moved into his lane and thereby cut into his path. He could not slow down or stop in time. As a result, the back of the bus hit his motorcycle and both he and the plaintiff fell.
6. The first defendant asserted that the bus driver did not signal or indicate at any time his intention to change lane or slow down. He changed lane recklessly and was solely to blame for causing the accident. If the bus driver had stayed in his lane, the accident would not have happened. The bus emerged onto the lane on which he was riding without ascertaining that it was safe to do so.
7. Under cross-examination, the first defendant said that when he first saw the bus, he was about nine car lengths away from it. At that

time, his speed was between 80 and 90 kmph and he was in the left lane. When he was four or five car lengths away from the bus, he decided to overtake it and at that stage, he increased his speed to between 90 and 100 kmph. When he entered the right lane, he was travelling at this faster speed and at that time, the bus was only about a foot away from him. The bus was then in the left lane and the first defendant was in the right lane about ten inches away from the white line on his left. He then proceeded to try and overtake the bus but it suddenly entered his lane and the collision took place. He said that the rear corner of the bus collided with his motorcycle.

(ii) *Rashitha Bibi*

8. Madam Rashitha was a passenger on the bus at the time of the accident. She was sitting in the third seat behind the driver on the right side of the bus. Suddenly she heard a thud. She turned to her right and saw a motorcycle swerve across the lane and the pillion rider's neck was in between the bushes. The motorcycle went on and dragged the pillion rider for some distance. The bus was in the left lane. There was a bus stop a short distance away. The driver stopped at the bus stop and all the passengers alighted. The witness went forward to the driver who was looking lost and gave him her name and telephone number and offered to be a witness as she considered he was not to blame for the accident.

9. Madam Rashitha confirmed that the bus was definitely in the left lane at the time of the thud because just a while later, the driver stopped at the bus stop and the motorcycle went right across to go into the bushes beside the right lane. She did not feel the bus swerve to the right at any time. It was a gentle steady ride until suddenly the bus stopped. She thought that the speed of the bus was moderate.

(iii) *Senior Staff Sergeant Kasmawati Samian*

10. Sergeant Kasmawati was the officer in charge of investigating this accident. She interviewed the first defendant on the day of the accident at the A&E department of the National University Hospital. The first defendant told her how the accident took place. At that time, he did not tell her that it was the bus that had changed lane and caused the accident. He did not say that the sole cause of the accident was the changing of lane by the bus.

11. Subsequently, action was taken by the traffic police against the first defendant for inconsiderate riding under s 25 of the Road Traffic Act. A summons was issued charging him that on 23 February 1998 he rode his motorcycle without reasonable consideration for other users, to wit by failing to keep a proper lookout resulting in collision with SBS bus 1806L. The decision to prosecute was based on the investigations which disclosed that the first defendant was travelling directly behind the bus on the left lane of Woodlands Road and when he decided to overtake the bus, the left handle of the motorcycle hit the rear left hand side of the bus causing him to lose control of the motorcycle. During the interview, the first defendant had mentioned that he had misjudged the situation when he was in the process of changing the lane and overtaking the bus. The first defendant settled the traffic summons by paying the composition fine.

(iv) *Irusan A/L Rajoo*

12. The driver stated that on the day in question at about 8.30am he was driving the bus along Woodlands Road and at all times was travelling along the left lane of the road. Traffic volume was light and there were no motor vehicles travelling in front of his bus. Suddenly he heard a shout at the right rear side of the bus and he then looked at his right wing mirror and saw a motorcycle wobbling. The motorcycle thereafter veered to the right and collided into the centre divider. When he saw the motorcycle wobbling he brought the bus to a halt. He asserted that at all times he was travelling at a straight course along the left lane. As there were no vehicles in front of him at the material time, it was not necessary for him to change lane nor did he at any time intend to do so.

13. Under cross-examination, the bus driver stated that there were some vehicles at his rear prior to the accident. There were no vehicles on the right lane. The only vehicle he remembered seeing behind him was a white oil tanker. He checked his rear view mirror from time to time but did not see the motorcycle prior to the accident. He only noticed it after he heard the thud coming from the rear of his bus. After he stopped his bus, he checked its rear and noticed a scratch mark there, slightly above the rear bumper. He believed the handle of the motorcycle caused it. The bus driver denied that he had changed lane because he had been intending to turn right at the T-junction at the end of the road. He asserted that there was no need to change lane to make a right turn at the T-junction because he could make this turn from the left lane.

Findings

14. The plaintiff gave evidence but was unable to remember anything about the accident because of the severe head injuries that he sustained. As he was an innocent party, it was clear that he was entitled to his damages. The only issue was whether one or both the defendants were to blame for the accident.

15. The stretch of road along which the accident happened was a straight road and had a 50-kmph limit. The first defendant had originally stated in his affidavit that he was travelling at 50 kmph but in court he testified that his speed was 80 to 90 kmph originally and it increased by another ten kmph when he entered the right lane. He also admitted that he was only a foot away from the bus when it cut into his lane. It was quite clear from this evidence that the first defendant was negligent as he was attempting to overtake the bus at that excessive speed without having created a wide berth first between him and the bus. Thus, the main issue before me was whether the bus driver had in any way contributed to the accident by cutting across the path of the first defendant as he had claimed.

16. It was clear also from the bus driver's testimony that he had not kept a good lookout, as he had not seen the motorcycle behind him before the accident. Although his evidence that he had kept a straight course all along was supported by Madam Rashitha's testimony, certain parts of that evidence were not satisfactory as she had stated that after the accident, he had not swerved before stopping at the bus stop at the left. The bus driver had stated that the bus came to a stop about 30 feet away from the accident and the bus stop was also about 30 feet away. This would mean that the bus must have made a swerve to the left before it came to a stop. Also, Madam Rashitha admitted that at the time of the accident, she was talking to the passenger sitting next to her on the bus and carrying her baby as well. Her observation of events may therefore have been impaired.

17. Notwithstanding some difficulties with the evidence of the bus driver and Madam Rashitha, I was satisfied that the bus driver's version of events was essentially true. On the whole, the bus driver was a reliable witness. I accepted that he had not swerved into the path of the motorcycle and therefore had not been guilty of contributory negligence. There was no evidence to support the first defendant's contention that the bus had cut into his path without any signal or warning.

18. Although it had been suggested that the bus driver might have tried to move into the right lane so that the bus could turn right at the T junction ahead, the evidence was that he did not need to do this as the right turn could also have been made from the left lane of Woodlands Road. There was thus no reason for the driver to have left his lane at all.

19. The first defendant was not a reliable witness. As pointed out, he changed his evidence on the speed at which he was travelling. He also vacillated in his evidence regarding the volume of traffic at the time of the accident but finally admitted, when shown the police report he had made at that time, that the volume of traffic had been light. Further, his testimony in court was inconsistent with the statement he had given to Sergeant Kasmawati just after the accident. He admitted under cross-examination that his allegation of the bus suddenly changing lanes and thereby causing the collision with his motorcycle was an important fact which he would have told the investigating officer when describing the accident to her a few hours after the accident. The investigating officer's testimony, however, was that he had made no such allegation against the bus driver but had instead admitted to her that it was his misjudgement when he was in the process of changing lanes and overtaking the bus that had caused the left handle of his motorcycle to collide with the rear of the bus. Although the first defendant had an early opportunity to put forward his assertion that the bus driver had been negligent, he did not take it. It was not until his police report was made some five days later that he asserted that the bus driver had cut into his path. This seemed to be an afterthought.

20. The first defendant also gave evasive and inconsistent testimony in respect of the action taken against him by the police and his payment of the composition fine. Initially he denied that he was aware of any action taken against him by the police and that he had paid any composition fine. In his affidavit, he had alleged that the negligence of the bus driver was the sole cause of the accident. However, when it was put to him that he paid the composition fine because he was at fault and caused the accident, he stated that he admitted that he was at fault but that he was not entirely at fault.

21. On the evidence I was satisfied that, on the balance of probabilities, the first defendant was wholly to blame for the accident.

Sgd:

JUDITH PRAKASH

JUDGE

SINGAPORE

This does not merit reporting

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