

Mohamed Iskandar bin Jumari v Tan Seng Poh
[2008] SGHC 71

Case Number : Suit 133/2007
Decision Date : 14 May 2008
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Benedict Chan (Benedict Chan & Co) for the plaintiff; Tan Ky Won Terence and Liu Simin Sharon (Rodyk & Davidson LLC) for the defendant
Parties : Mohamed Iskandar bin Jumari — Tan Seng Poh

Civil Procedure

14 May 2008

Judith Prakash J:

Introduction

1 On 24 January 2006, the plaintiff who was riding his motorcycle was involved in a collision with a motor car driven by the defendant. The plaintiff was badly injured in the accident and subsequently his right leg had to be amputated below the knee. The plaintiff brought this action to recover damages from the defendant.

2 The plaintiff and the defendant gave very different accounts of how the accident had taken place. The plaintiff said that he was riding his motorcycle along the left lane of Depot Road, in the direction of Alexandra Road, when the defendant who was attempting to overtake him from the right collided into the plaintiff's motorcycle. The defendant on the other hand asserted that he had been travelling along the right-hand lane of Depot Road when the plaintiff's motorcycle suddenly appeared from the left without warning and cut across the defendant's car, thus causing the collision.

3 At the conclusion of the trial I found the defendant's version of the accident to be the more credible one in light of the physical evidence as well as the difficulties that had appeared in relation to the plaintiff's credibility. Whilst there had been contradictions in the defendant's evidence as well, I found that these did not materially impact his account of the accident and did not detract from the physical evidence. Having so found, I also found that the defendant should have paid more attention to the road and should have been aware of the plaintiff's presence and possible intentions. Whilst I found the plaintiff to be mainly to blame for the accident, I apportioned liability to the defendant to the extent of 10%. The plaintiff has appealed against these findings and I now give my detailed reasons for them.

The parties' stories

4 Before I recount the parties' stories, I should set the scene. Depot Road runs between Alexandra Road on the west and Henderson Road on the east. It is, very roughly, parallel to the Ayer Rajah Expressway. It is a four-lane bi-directional roadway with two lanes of traffic in each direction. Opposing traffic is separated by a concrete medium with openings to allow traffic to turn into opposite sides of the road. If one turns into Depot Road from Henderson Road there is an uphill slope which peaks just as one reaches the entrance to a building on the left which is known as the old CMPB. Thereafter, the road descends gradually towards Alexandra Road. Just after the old CMPB building there is an entrance-way to the left (the parties sometimes referred to it as a slip road, but it

is not a road, only an access-way leading to a small building which was variously referred to as a substation and a garbage dump). Opposite the access-way there is a gap in the concrete medium which divides Depot Road and therefore it is possible for a vehicle to move right across Depot Road from the entrance-way to the opposite side of the road. A vehicle which is proceeding down Depot Road towards Alexandra Road could also make a U-turn in that vicinity so as to turn back and travel in the opposite direction towards Henderson Road.

5 The plaintiff told the court that on the day in question he was travelling along Depot Road in the course of his employment. The plaintiff was then employed as a despatch rider for a travel company. His employer's premises were in Robinson Road. That morning the plaintiff was sent to Tuas to collect a passport from a client who needed to apply for a visa. The accident occurred during his return journey when he was travelling along Depot Road towards Alexandra Road. This was shortly after 10am.

6 As the plaintiff was riding along, motor car number SFT 562T, which was driven by the defendant, suddenly collided into his right leg. The plaintiff said that he believed the defendant was passing or trying to overtake him but came too close to him. As a result of the impact on his right leg, the plaintiff lost control of the motorcycle and was thrown off. He was not certain of how and in what manner he fell and could only recall the impact and his lying on the road with his motorcycle close to him, on his left. Subsequently someone asked him to move his leg because it was in the way of cars in the outside lane. When he tried to do so, he felt excruciating pain. Shortly thereafter the ambulance arrived and after he was lifted into the ambulance he lost consciousness.

7 The plaintiff was taken to National University Hospital. He was hospitalised for a lengthy period. One day while in hospital he found a note telling him he was required to make a police report. He did not do so, however, as the doctors advised him not to do so then as they did not want him to leave the ward because of the risk of infections. As a consequence, the plaintiff made his report only on the 25th March 2006 which was after he was discharged from the hospital.

8 The defendant is a businessman who lives in Telok Blangah and has his office in Henderson Road. Accordingly, he travelled along Depot Road very frequently in order to get to work. On 24 January 2006 at about 10.05am, the defendant said he was driving motorcar SFT 562T along the right lane of Depot Road towards Alexandra Road. He was travelling at about 50 – 60 km/h. The weather was clear and the traffic was light and there were no vehicles travelling in front of his car. Suddenly the plaintiff's motorcycle emerged from a small slip road on the left side of Depot Road and cut across the path of the defendant's car. The defendant braked immediately but could not stop in time to avoid a collision with the motorcycle.

9 The defendant then alighted from his car and saw that the plaintiff and his motorcycle were lying on the left lane of the road. The storage box located at the back of the plaintiff's motorcycle had been dislodged and lay near the motorcycle. The plaintiff was conscious but his right leg was bleeding. The defendant called for an ambulance. While the defendant was waiting for the ambulance to arrive, he saw someone come to help the plaintiff. This person came from the small slip road that the plaintiff's motorcycle had emerged from and the defendant saw another motorcycle parked at this slip road. This person talked to the plaintiff and it appeared to defendant that they were friends. Subsequently the third party picked up some of the plaintiff's belongings and accompanied the plaintiff to the hospital. Shortly thereafter the police arrived at the accident scene and the defendant made his report. His motorcar was then towed to the workshop.

10 Each of the parties called an expert witness. The plaintiff's expert Mr Liaw Leong San holds a diploma in Mechanical Engineering and worked, inter alia, as an automotive mechanic in the police

force as well as an automotive appraiser in the private sector before taking on his current profession in 2001. He described himself as a Motor Vehicle Appraiser/Accident Investigator & Reconstructionist/Specialist Mechanical Inspection/Vehicle fault diagnostic and analyst engineer.

11 Mr Liaw made his report on the basis of information obtained from the traffic accident reports lodged by the plaintiff and the defendant, from the vehicle damage reports of the motorcycle and the motor car put up by the traffic police and from the sketch plan of the accident drawn by the traffic police. In addition he made a visit on 16 August 2007 to the area where the accident occurred in order to gather physical evidence and information.

12 Mr Liaw noted that the motor car had damage mainly on its front left-hand-side portion. The left-hand side of its front bumper was damaged, its front left-hand fender was dented, its front bonnet was dented and the front windscreen was cracked in the vicinity of the left-hand portion. Additionally, the front left tyre of the car was punctured. Judging from the damage sustained by the motor car and the fact that there was no frontal damage, Mr Liaw opined that the car had most probably collided into the motorcycle with its front left-hand-side portion.

13 Regarding the motorcycle, Mr Liaw noted from the vehicle damage report that it had sustained damage to its right-hand side, left-hand front footrest and rear box. In addition the exhaust pipe on the right was dented out of shape, the engine cover on the right was scratched, the front left footrest was broken and its rear box was also broken. Mr Liaw opined that from this damage it was likely the right hand side of the motorcycle had come into contact with the motor car before it fell and landed on its left side. The degree of damage to the exhaust pipe suggested that the exhaust pipe had been struck with great force. The absence of any damage to the front portion of the motorcycle meant that it had not been hit, or hit head-on, by the car.

14 Mr Liaw analysed the two versions of the accident given by the drivers involved. First he dealt with what he termed "scenario 1". This was the defendant's version of the accident. On this basis, Mr Liaw said, the two vehicles would have been perpendicular to each other during the collision. The damage expected on the motorcycle would be at the front and the motor car would be damaged at the front left-hand side. However, there was no recorded damage to the front of the motorcycle. Additionally the final resting position of the motorcycle should have been somewhere around the entrance of CMPB and not about 30 meters down the slope near the entrance to the CMPB garbage dump. Hence, Mr Liaw concluded, scenario 1 could not be substantiated.

15 Moving to the second version, this was based on the report of the plaintiff that he was travelling along the left lane of Depot Road towards Alexandra Road when he was collided into by the defendant's motor car which was overtaking him on the right. The damage expected from such an accident would be to the right side of the motorcycle and the front left-hand portion of the car. From the damage report, the exhaust pipe located at the right-hand side of the motorcycle and the right leg of the rider were hit by the car. The car had also sustained damage to its left-hand portion. Therefore, Mr Liaw concluded, it would be safe to say that the car had side-spiked into the motorcycle when it was attempting to overtake the latter. He opined that the second version was the more likely version of the collision between the two parties.

16 The defendant's expert was Mr Leo Chi Yung who is an engineering executive at LKK Auto Consultants Pte Ltd. Mr Leo holds a bachelor's degree in mechanical and production engineering which he obtained from the Nanyang Technological University of Singapore. He has worked in the automotive engineering field since his graduation and has been an engineering executive in the LKK group since July 1993. He has also undergone the Technical Accident Investigation & Reconstruction Course organised by the Society of Automotive Engineers, Australia. His job scope covers the

surveying, valuing and investigation of vehicles involved in accidents.

17 In his report, Mr Leo first did an analysis of the damage to the motorcar. He stated that from the vehicle damage report and the photographs, it appeared that the car had sustained an accident impact on its front left-hand portion. From the damage profile of the front left-hand portion, the direction of impact was from the front. The front bumper was observed to be punctured and dented and slight grazes were observed on the front bumper area. The left of the front bonnet and the left of the front fender were dented. The front windscreen was smashed. Analysing the damage to the motorcycle, he stated that the damage report and photographs showed that it had sustained damage mainly on the right portion. The exhaust pipe was dented and there were scratches on the right side. The rear box was dislodged from the motorcycle. He then recounted the two versions of the accident, that given by the defendant and that given by the plaintiff.

18 Analysing the plaintiff's version of the accident, Mr Leo said that according to the plaintiff's account of the motorcar having overtaken the motorcycle on the right, the impact of the accident would have been on the left front portion of the motorcar and the damage should have consisted of grazes and dents on the left-hand portion of the front fender. The damage profile of the car did not fit this version although the damage profile of the motorcycle showed that it had been hit on the right. With respect to the version given by the defendant, one would expect the motorcycle to have sustained the type of damage that it did sustain *ie* scratch marks and dents on its right-hand side. As far as the car was concerned, if the motorcycle was travelling from left to right while the car was travelling straight, then the impact would be on the car's front left-hand portion and its damage would comprise graze marks and dents on the left-hand side of the front bumper and the left-hand side of the front fender. In this case, the damage sustained by the car matched the version given.

19 Mr Leo therefore concluded that the version of the accident given by the defendant was more probable than the version given by the plaintiff.

Analysis of the evidence

20 Cross-examination of the plaintiff revealed that there were several areas where the credibility of his evidence was in doubt.

21 The first, and most important, area of his testimony that was not satisfactory related to his reason for being in the location where the accident took place. All he said in his affidavit of evidence-in-chief was that he was driving along the left lane of Depot Road in the direction of Alexandra Road when the defendant's car collided into him. It was only in court when he was asked about his movements that morning that it was revealed that at the time of the accident, the plaintiff was supposed to be returning to his office in Robinson Road from his client's office in Tuas. That revelation immediately provoked further questions. If the plaintiff was on his way to Robinson Road, why was he travelling in the opposite direction? The story that came out from the plaintiff both on the first day of the hearing and on the second day when I recalled him to clarify his testimony as to his movements was as follows.

22 He said that he had originally been travelling along the AYE towards the city. The expressway was, however, jammed and he therefore decided to turn into Alexandra Road and make his way to Telok Blangah Road. Once on Alexandra Road, he had turned left into Depot Road with the idea of turning right into Henderson Road and then proceeding to Telok Blangah Road. However, when he came to the junction of Depot Road and Henderson Road, he was unable to make a right turn into Henderson Road because of the presence of a motor vehicle and he was then forced to make a U-turn back into Depot Road. At that juncture, he decided to drive all the way back to Alexandra Road

and then turn left into Alexandra Road and take that road to Telok Blangah Road. I should state here that the evidence did not come out in the concise form in which I have summarised it. The plaintiff was not very coherent in his explanations especially in regard to why he had to make a U-turn back into Depot Road and had to be asked to repeat himself. The following exchanges are taken from the evidence given on the second day of the trial when the plaintiff was recalled to further explain his route:

Witness: Straight all the way to the junction of, er ---turning right to Henderson Road---

Court : Right.

Witness: --- which I going back --- going back to --- going back straight to Henderson Road, I was accelerating, as the car was accelerating, I got no chance to overtake him. So I make a U-turn there to turn back to Depot Road.

Court : Now, "I was heading to Henderson Road. As I went towards Henderson Road", what happened?

Witness: I cannot --- I --- I'm accelerating my car ---

Court : Right. Yes.

Witness: --- my motorbike. As I accelerating, I noticed a car on my left ---

...

--- also do accelerating. I got no chance to overtake him.

...

So I decided to make the U-turn.

23 Later the plaintiff explained that he could not overtake the car because the road which had originally had three lanes narrowed to two lanes near the junction and he had to make a U-turn because there was no way for him to go straight. I asked the plaintiff why he could not have let the car that was blocking him precede him and then follow behind it in order to make the turn. His answer was:

Because my intention is --- I was thinking how am I to take the Keppel --- er, Keppel Way viaduct to --- back to my office, so I got no choice. I make a U-turn back to Depot Road.

The plaintiff maintained that if he had not made the U-turn and had gone straight, he was sure he would have been hit by the curb. So he had no choice but to make the U-turn to go back by the same route by which he had come. I also asked him why he had had to turn into Depot Road from Alexandra Road in the first place because if he had driven straight along Alexandra Road he would have reached Keppel Way in any case. His answer was:

Witness: In my thinking that moment, your Honour, usually in that hour, the Pasir Panjang Road is a lot of big vehicle. Nearby, I mean, at the Pasir --- PSA building, you know, it's somewhere around there, so I decided to take that route, the smallest route. It's the safest way for me to go.

Court: Which route?

Witness: The Depot Road.

Court: But then you changed your mind, you made a U-turn back to Alexandra Road which would take you to Pasir Panjang?

Witness: That's why it's like I said earlier on, your Honour, I got no choice. As I want to turn in to the Alexandra Road, as a car moving with me together, the moment I --- on the road, I got no chance to go to my left, which is the centre of the road, so I said to myself, no choice, I got to make on my --- make U-turn, have to go back to Depot Road again.

24 The defendant's evidence was that he thought that the plaintiff had met a friend along Depot Road and that was why he had emerged from the small access road. It was suggested to the plaintiff that he went to Depot Road because he wanted to meet with someone and after having his chat there, he had come out of the access road and wanted to go straight across Depot Road in order to turn right towards Henderson Road. The plaintiff denied that this was the case.

25 I was not satisfied with the plaintiff's account of why he was at the site of the accident. On the first day of the trial, the plaintiff had said that he had made a U-turn at Telok Blangah Road to get back into Depot Road and thereby reach Alexandra Road in order to return to his office via West Coast Road. This explanation made no sense in view of the road map. On the second day of the trial (this was some four months after the first day of the trial) the plaintiff gave a different story. He had obviously had some time to think about the inconsistencies in his earlier evidence. He then dropped the story of making a U-turn at Telok Blangah Road and instead gave a detailed explanation of how he was forced to make a U-turn back into Depot Road at its junction with Henderson Road. He said that there was a car next to him, the car accelerated, he accelerated and he had no choice but to make the U-turn. The plaintiff did not explain why he could not have let the car pass him by, and then proceeded to make a right turn instead of the U-turn. Even if the traffic was rather heavy that day, the plaintiff who was riding a manoeuvrable motorcycle could surely have found a way to get himself into the correct lane. In any case, there was no reason for the plaintiff to proceed along the entire length of Depot Road and turn into Alexandra Road as he said he intended to when there were several breaks in the road divider and he could have made a U-turn back into the other side of Depot Road and then driven to Henderson Road. The only reason, to my mind, that he said he wanted to go back to Alexandra Road was to substantiate his story that he had been riding along the left lane of Depot Road when the accident occurred. If he had been intending to make a U-turn at the earliest possible opportunity so that he could get back to Henderson Road, he would have been travelling on the right-hand side. I also noted from the road map produced that Depot Road is a fairly long road and the place where the accident occurred is only about a quarter (or less) of the way along Depot Road between its junctions with Henderson Road and Alexandra Road. It seemed to me that if the plaintiff had really been intent on returning to his office as fast as possible (and this must have been his reason for wanting to avoid the jam on the AYE), he would not have decided to go back to Alexandra Road but would have made the U-turn to the other side of Depot Road as quickly as he could.

26 Further, the plaintiff's reason for leaving the AYE in the first place was equally suspect. The accident happened just after 10am so when the plaintiff was travelling along the AYE, it would have been shortly before 10am and by that time the morning traffic would have cleared somewhat. Even if it was still heavy, the plaintiff on his motorcycle would not have been very badly affected by the traffic conditions. The AYE represented the fastest route for the plaintiff to take back to his office with his client's important document and his reason for departing from that route was thin. As counsel for the defendant pointed out, even the plaintiff's intended route (which he proclaimed in court) could

be challenged. His plan to go to Telok Blangah Road via Depot Road meant that he would have to make a left turn from Alexandra Road into Depot Road, followed by a right turn into Henderson Road and a second left turn into Telok Blangah Road which would then lead him to Robinson Road. That meant three turns. If he, in fact, wanted to get to Telok Blangah Road once he was on Alexandra Road, he really need not have turned into Depot Road at all but could have proceeded along Alexandra Road itself to its junction with Telok Blangah Road. That would have meant only one more turn (left into Telok Blangah Road) instead of the three turns he needed once he went via Depot Road. As for the plaintiff's explanation that if he had stayed on Alexandra Road he would have encountered a lot of traffic in the Pasir Panjang area, that was not convincing as Alexandra Road is a major road, much bigger and wider than Depot Road, and therefore it would have been easier for him to deal with the traffic on that road.

27 The second area in which the plaintiff's evidence was difficult to believe related to what happened after the accident. The defendant's version was that someone emerged from the slip road and went up to the plaintiff while the latter was lying on the road and spoke to him. The defendant had the impression that this person was a friend of the plaintiff. The plaintiff, however, denied this. All he said was that someone had asked him to move his leg. When he was cross-examined, he asserted that that person was a helpful stranger. He elaborated that that person had pushed his leg because his foot was blocking on-coming vehicles. At that moment, the plaintiff felt a lot of pain and said to the stranger "Hey, please help me". He remembered at that point that he had the client's passport with him and that this had to be taken to the office urgently. The plaintiff felt responsible for the client's visa application, so he asked the stranger to help him call his office. After the stranger dialled the number, he passed the telephone to the plaintiff and the plaintiff said "then I talked to my bosses, said 'I got a really serious, serious accident, I got a passport with me, please come and take', then I passed [the phone] back to him". The plaintiff's subsequent testimony was that he had handed over his bag with the passport in it to the stranger. The stranger had then accompanied him to the hospital and, at the hospital, had met the plaintiff's colleague and passed the passport over to the colleague. Under cross-examination, the plaintiff admitted that his evidence was that a stranger took his belongings containing a passport, and he did not know exactly when and how this stranger had passed this passport to one of his colleagues.

28 As counsel for the defendant submitted, if the plaintiff was so worried about the passport at a time when he was in great pain and had the presence of mind to request the stranger to call his employers about the passport, he could easily have taken his bag with him onto the ambulance and kept it with him until someone from the office came to collect it. It was submitted that the plaintiff would not have entrusted such an important document to a complete stranger whom he had no details of. In any case, how would the stranger have known how to identify the plaintiff's colleague who turned up at the hospital to collect the passport? If the stranger had been the plaintiff's friend, he would have known the name of the plaintiff's employers and would have been able to contact them to make arrangements for the handover of the document. I agreed with counsel's submission that the plaintiff's story about the helpful stranger was not true and that it was probable that the person who came to help him was his friend. The plaintiff handed his belongings and the passport to this friend who had emerged from the slip road and it was the friend who accompanied him to the hospital and took care that the passport was delivered into the right hands.

29 The plaintiff explained in his affidavit of evidence-in-chief why he had taken two months to make his police report about the accident. He claimed that he did not do so because he was not allowed to leave the hospital room from the time he was admitted until the day he was discharged. When asked further about this in court, he asserted that he had not thought of telephoning the police post at the hospital or asking any of his relatives to ask one of the police officers there to come to his room and take his report. Yet, the plaintiff admitted that he had been angry with the defendant for causing his

serious injury. He was at pains, however, to state that this anger had lasted for only two days because it was thereafter replaced by his concern to make a fast recovery. The plaintiff was well aware of the necessity of making a police report. He stated that the day after the accident he woke up to find a note on his stomach advising him to make the report. He also had a lawyer whom he consulted two days after the accident. Yet, the report was not made until his discharge from hospital two months later. His feeble explanation for this was that doctors in the hospital would not allow him to leave his room at all until the date of the discharge. At one point, rather contradictorily, the plaintiff said that he did ask about the possibility of a policeman coming to see him but was told by someone he described as his "personal doctor" that the police would not go up to his room for him to make the report. The plaintiff was not able to remember the name of the "personal doctor" who told him this. In these circumstances, the defence submitted that the plaintiff's story to the police, when he finally made his report, that he was hit while travelling along Depot Road, was clearly an afterthought. The plaintiff did not make the police report earlier because he knew he was the cause of the accident and responsible for his own injury. These submissions carried weight.

30 Apart from his own testimony, the plaintiff had in his possession one other critical piece of evidence which could, perhaps, have supported his case. This was his motorcycle. After the accident, the motorcycle was kept by the traffic police for investigation. When the investigations were completed, however, the plaintiff was able to retrieve the motorcycle from the police at his convenience. Once he was discharged from hospital, the plaintiff arranged for his own mechanic to take the motorcycle away from the traffic police and thereafter to scrap it for him. By this time, the plaintiff had already spoken to his lawyer and made his police report. He did not, however, consider having the motorcycle photographed before it was scrapped. The plaintiff could easily have asked his mechanic to take a photograph before scrapping the motorcycle. When asked why he did not do this, the plaintiff's response was that it had never crossed his mind to do so. As a result the only photograph of the motorcycle after the accident was that taken by the defendant using the camera in his mobile phone. If the defendant had not done so, this evidence would have been lost.

31 I then had to consider whether the physical evidence corroborated the plaintiff's story or that of the defendant. The condition of the two vehicles after the accident was established by the traffic police damage reports and by photographs taken of the vehicles. As stated, there was only one photograph of the plaintiff's motorcycle. There were, however, 18 photographs of the defendant's car which had been taken in his repairer's workshop shortly after the accident. It was these reports and photographs that the two experts relied on in relation to their analyses of the cause of the accident. The experts were cross-examined extensively and, in my opinion, the defendant's expert's evidence was unshaken whilst the plaintiff's expert was forced to concede certain points.

32 The defendant submitted that the physical evidence did not support the plaintiff's version of events. I agreed. The most notable damage to the motorcycle as shown in the photograph was the dent near the middle portion of the exhaust pipe. This damage was described in the traffic police's vehicle damage report as "right pipe dented out of shape". The plaintiff agreed that it was the middle portion of the exhaust pipe that was damaged. The defendant's submission was that if the collision had been a side swipe and the car had collided into the plaintiff's right leg, the damage to the exhaust pipe on the right side would not have been localised at the middle but would have been more extensive. If the car had come from the right and tried to overtake or pass the plaintiff, then, it was submitted, the tail end or the rear portion of the exhaust pipe would have been at least as badly damaged as the middle portion. The defendant's expert Mr Leo testified that if there had been a side swipe type of collision he would have expected the rear portion of the exhaust pipe to have been damaged and to have been able to find more abrasions rather than just a dent on the middle portion of the exhaust pipe. On the other hand, the plaintiff's expert Mr Liaw gave evidence that the tail end of the motorcycle's exhaust pipe appeared to be a bit distorted due to the distortion of the bigger,

outer cylinder. Under cross-examination, Mr Liaw tried to reconcile the damage to the motorcycle with the side swipe scenario by stating that the entire exhaust pipe had been flattened. When asked to look at the tail end of the exhaust pipe, however, he had to agree that its circular rear end was not dented or flattened. In the circumstances, I considered that it had been established that there was no damage to the rear end of the exhaust pipe and, accordingly, what damage there was to that area of the motorcycle was not consistent with the plaintiff's story.

33 The photographs also did not support the plaintiff's version of the collision. The most notable damage to the car as seen in the photographs were the puncture hole below the front left headlamp and the inward dent on the bonnet above the left headlamp. Neither of these items of damage was consistent with a side swipe. Even Mr Liaw agreed that the puncture hole suggested that there had been a direct impact at that location. A direct impact would only have resulted if the defendant's version of the accident was correct. There was no way that there could have been direct impact between the motorcycle and the front of the car if there had been a side swipe collision.

34 Mr Liaw tried to reconcile the puncture with his opinion that the collision was a side swipe by testifying that the puncture could have been caused by the footrest of the motorcycle. Mr Leo agreed that the footrest had probably caused the puncture. Mr Liaw's theory of a side swipe collision was not, however, supported by the fact that the puncture hole was just a roundish hole and did not stretch to the left corner of the bumper. Mr Leo's testimony was that in a side swipe collision there would not have been just a localised puncture but there would have been a continuous tear from the puncture at the front of the car to the left side of the car. I accepted this evidence.

35 As I noted when I gave oral judgment in this case, there were some inconsistencies in the defendant's evidence. These inconsistencies were documentary in nature and sprang from the different ways that the accident was reported in various documents filed by or on behalf of the defendant. It turned out, however, that the defendant had only made his police report himself. His evidence was consistent with that police report. The inconsistencies related to reports made to the insurers of the motorcar and these reports were not made by the defendant but by his brother, the actual owner of the motorcar. I was satisfied that the inconsistencies in the documents and evidence produced by the defendant did not materially impact the credibility of his version of the accident.

36 It was for the plaintiff to prove that the accident had been caused primarily by the negligence of the defendant. His case was that the defendant was negligent in the way that the defendant's car overtook his motorcycle from the right. The plaintiff therefore had to establish on the balance of probabilities that he was travelling in the same direction as the defendant and that the defendant had attempted to overtake him. I was not satisfied with the plaintiff's evidence on this point for the reasons that I have given above. I did not find the plaintiff's account credible. I accepted the defendant's evidence that the plaintiff was assisted by a friend after the accident and that that friend emerged from the slip road close to the site of the accident. It was my judgment that the plaintiff cut across the defendant's path and that is how the accident happened. That version was consistent with the physical evidence and the various unsatisfactory aspects of the plaintiff's testimony meant that I could not accept his version as being true in all material particulars. I, however, considered that the defendant could have kept a better lookout and if he had done so, he might have noticed the plaintiff earlier and might have been able to take defensive action to reduce the impact of the accident. That is why I held that the defendant was ten percent to blame for the accident.