

Tay Chin Seng v Syahirah bte Sa'ad and another
[2019] SGHC 193

Case Number : District Court Appeal No 10 of 2019
Decision Date : 23 August 2019
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Anthony Wee (United Legal Alliance LLC) for the appellant; Arulchelvan Sivagnasundram and Tan Jun Hao, Don (Chia S Arul LLC) for the first respondent; Tan Seng Chew Richard and Peh Siqi, Michelle (Tan Chin Hoe & Co) for the second respondent.
Parties : Tay Chin Seng — Syahirah bte Sa'ad — Muhammad Hedir bin Mahmood

Damages – Apportionment

Road Traffic – Third party liability

23 August 2019

Judgment reserved.

Chan Seng Onn J:

Introduction

1 This is an appeal against part of the decision of the District Judge (“DJ”) in *Syahirah binte Sa’ad v Tay Chin Seng (Muhammad Hedir bin Mahmood, third party)* [2019] SGDC 14 on the apportionment of liability between two parties for causing an accident.

2 The accident occurred in a bay area along Simei Avenue (“Bay Area”) between the appellant (“Driver”) who was a taxi driver and the second respondent (“Motorcyclist”) who was a motorcyclist. When the Driver’s taxi (“Taxi”) was filtering left and entering the Bay Area to pick up a passenger (“independent witness”), the Motorcyclist accelerated from behind to overtake the Taxi from the left and the Motorcyclist’s motorcycle (“Motorcycle”) collided with the Taxi. As a result of the accident, the first respondent, who was the pillion passenger (“Pillion Rider”) on the Motorcycle driven by the Motorcyclist, suffered injuries and brought an action under District Court Suit No 1435 of 2016.

3 The DJ held that both parties were equally liable for the damages caused in the accident. The Driver appealed against part of the DJ’s decision, submitting that the DJ erred in principle and that the Motorcyclist should have been found more liable, with liability apportioned 90:10 in favour of the Driver. [\[note: 1\]](#) On the other hand, the Motorcyclist averred that the DJ correctly apportioned liability at 50:50 between both parties. [\[note: 2\]](#)

Facts

4 The material facts have been established in the DJ’s findings in his Grounds of Decision (“GD”). The accident occurred in the Bay Area on 29 January 2015 at or about 5.15pm, when the bus lane was operational along Simei Avenue (GD at [16(a)]). Simei Avenue is a three-lane road with the Bay Area located on the left of the leftmost lane (GD at [2]). A screenshot of Simei Avenue taken from the Taxi’s front-view camera (“Taxi’s Front-View Recording”) before the accident is set out in the

Annex at A.1, depicting the Bay Area and the left, centre and right lanes of Simei Avenue.

5 The Driver was travelling in the centre lane of Simei Avenue. The Motorcycle was also travelling behind the Taxi in the centre lane (GD at [16(b)]). The DJ did not specify the exact position of the Motorcycle at this point. The independent witness who was then standing on the cement footpath beside the Bay Area and flagging the Taxi, testified that when he first saw the Taxi, "the Taxi was in the centre lane and the Motorcycle was at least 4 to 5 car-lengths behind the Taxi and to the right of the Taxi" and his attention was drawn to the Motorcycle's loud noise from its exhaust pipe (GD at [21(a)]). The DJ rightly gave "significant weight" to the independent witness' evidence as he had nothing to gain by coming forward to testify (GD at [21]).

6 As could be seen from the video footage taken from the Taxi's Front-View Recording, the Taxi attempted to filter into the left lane after turning right into Simei Avenue but veered slightly back towards the centre lane as the left lane turned into a bus lane (*ie*, the line separating the left and centre lanes changed from a dotted yellow line to a continuous yellow line). [\[note: 3\]](#) From the Taxi's Front-View Recording, it appears to me that the Taxi was not travelling in the *middle* of the centre lane but more towards the *left side* of the centre lane with the *left* wheels of the Taxi probably on or very near the continuous yellow line marking the bus lane.

7 As the Taxi approached the Bay Area, the Driver noticed the independent witness in the Bay Area flagging the Taxi (GD at [16(c)]). The Driver turned on the Taxi's left indicator light upon noticing that the independent witness was flagging the Taxi (GD at [21(b)]). Just before the bus lane ended (*ie*, just before the line separating the left and centre lanes changed from a continuous yellow line to a dotted yellow line), the Taxi swerved from the centre lane to the left lane ("First Lane Switch"), and thereafter into the Bay Area ("Second Lane Switch") in the span of 2 to 2.5 seconds (GD at [16(d)]). The Taxi's Front-View Recording shows that the Taxi started swerving from the left side of the centre lane, thereafter travelled in a straight path across the left lane at about a 30 degree angle, and entered the Bay Area. [\[note: 4\]](#) When the *front* of the Taxi was inside the Bay Area, the collision occurred. [\[note: 5\]](#) The Driver then moved slightly forward to straighten the position of the Taxi to be parallel to the road, with the final position of the Taxi resting about half inside the Bay Area and half outside the Bay Area on the leftmost lane of Simei Avenue.

8 *Before* conducting the First Lane Switch, the Driver looked at the Taxi's rear and left wing mirrors. However, the Driver failed to check again for oncoming traffic in his left blind spot: by turning his head across his left shoulder when switching from the centre lane to the left lane and then into the Bay Area (GD at [40]). When the Taxi was moving from the centre lane to the left lane, the Motorcycle was only 1 to 2 car lengths behind the Taxi and was travelling on the line separating the left lane and the centre lane (GD at [16(g)]). As the Taxi was travelling *not* in the middle but more to the *left side* of the centre lane (as can be seen from the Taxi's Front-View Recording), that would put the Motorcycle near the left blind spot of the Driver *before* the Driver swerved at an angle of about 30 degrees to cross the left lane and enter the Bay Area. As the Taxi moved from the centre lane to the left lane, the Motorcycle (that was travelling on the line separating the left lane and centre lane) followed suit and moved left, but accelerated and attempted to overtake the Taxi from the left (GD at [16(h)]). The Motorcycle attempted to squeeze through the gap between the left of the Taxi and the left roadside kerb. [\[note: 6\]](#) However, as the Taxi continued to move left into the Bay Area, the Motorcycle failed to overtake the Taxi and this resulted in a collision between the Taxi and the Motorcycle inside the Bay Area. The point of impact between both vehicles was at the Taxi's left side mirror, which was damaged as a result of the accident. [\[note: 7\]](#)

Decision below

9 In his GD, the DJ found that the Driver and the Motorcyclist were equally liable for causing the accident (GD at [42]). Interlocutory judgment was entered for the Pillion Rider with damages to be assessed on a later date (GD at [55]).

10 In his assessment of the Driver's liability, the DJ explained that the Driver's swerving of his Taxi from the centre lane and into the Bay Area within 2.5 seconds was a dangerous and reckless act. Further, this was exacerbated by the Driver's failure to check his left blind spot when switching lanes, due to his eagerness to pick up the passenger waiting at the Bay Area (GD at [43]).

11 In his assessment of the Motorcyclist's liability, the DJ explained that the Motorcyclist had failed to keep his Motorcycle at a safe distance from the Taxi (GD at [44]). When the Taxi swerved from the centre lane to the left lane, the Motorcycle was only about 1 to 2 car lengths behind the Taxi and was travelling on the line separating the left lane and the centre lane. The DJ considered that this was not a safe distance. Instead of slowing down his Motorcycle when the Taxi swerved, the Motorcyclist accelerated and attempted to overtake the Taxi from the left without success and this resulted in the collision.

12 The DJ also found that the stern warning issued to the Motorcyclist by the Traffic Police for the traffic offence of inconsiderate driving was a neutral factor in coming to his decision since the warning is not a legally binding pronouncement of guilt or a finding of fact. It is no more than an expression of the relevant authority that the recipient has committed an offence: *Wham Kwok Han Jolovan v Attorney-General* [2016] 1 SLR 1370 at [33]–[34]. The Court is entitled to make its own considered decision regarding the parties' respective liabilities after hearing the evidence from the parties, independent of the traffic police officers' assessment of the evidence obtained from their investigations: *Rajamanikam Ramachandran v Chan Teck Yuen and Another* [1998] SGHC 259 at [41].

My decision

13 In the apportionment of liability, the relative causative potency of the parties' conduct and the relative moral blameworthiness of parties are considerations to be taken into account: *Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944 at [118]. Having reviewed the evidence and the Taxi's Front-View Recording, I find that the DJ erred in principle in his decision to find the Driver and the Motorcyclist equally liable for causing the accident. On the facts of the present case, it is inconceivable that the relative causative potency of both parties' conduct and their relative moral blameworthiness could be equal. I agree with the submissions of counsel for the Driver and find the Motorcyclist to be 90% liable and the Driver to be 10% liable for the accident.

Motorcyclist's liability

Safe distance

14 The DJ was correct in finding that the Motorcyclist had failed to keep a safe distance behind the Taxi, by maintaining only 1 to 2 car lengths directly behind the left side of the Taxi when he was travelling on the line separating the left lane and the centre lane. In my assessment of the relative causative potency of this conduct, the Motorcycle's unsafe distance from the Taxi set the stage for the accident before the Taxi made the First Lane Switch followed by the Second Lane Switch. It was dangerous of the Motorcyclist to be tailing so close behind the Taxi before the Taxi made the First Lane Switch from the left side of the centre lane to the left lane.

Overtaking on the left side

15 Further, the main cause of the accident was the Motorcyclist's overtaking of the Taxi on the left side. According to the DJ, instead of slowing down his Motorcycle upon seeing the Taxi in front swerving from the centre lane to the left lane, the Motorcyclist also moved left, accelerated and attempted to overtake the Taxi from the left unsuccessfully, resulting in the accident. In my assessment, this conduct has substantial relative causative potency and relative moral blameworthiness in causing the accident.

16 As rightly submitted by counsel for the Driver, the Motorcyclist breached the Highway Code (Cap 276, R 11, 1990 Rev Ed) ("Highway Code") by overtaking from the left.

17 Rules 60 and 61 of the Highway Code are enumerated as follows:

Overtaking

60. Never overtake unless you can do so without danger to yourself or others. ...

Overtaking on the Right

61. This rule does not apply —

- (a) when the driver in front has signalled his intention to turn right, in which case you can overtake him on his left;
- (b) when you are filtering to the left before a junction; or
- (c) when there is slow-moving congested traffic and the vehicles on your right are moving more slowly than your vehicle.

Not only had the Motorcyclist kept an unsafe distance from the Taxi, he had also seen that the Taxi had its left indicator light on, signalling the Driver's intention to enter the left lane. Despite that, the Motorcyclist decided to accelerate and overtake the Taxi on the left after the Taxi had made the First Lane Switch. None of the exceptions enumerated in r 61 of the Highway Code applied and the Motorcyclist's overtaking on the left was a clear contravention of the traffic rules. Further, the Motorcyclist contravened r 60 of the Highway Code by overtaking the Taxi while putting all parties in the Taxi and on the Motorcycle in danger.

18 The importance of the Highway Code was expounded in *Cheong Ghim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR(R) ("*Cheong Ghim Fah*") at [58]:

The [Highway Code] in Singapore has been promulgated to apprise all road users of standards that they ought to observe when they use our roads. ... The [Highway Code] is an important statement of practice, usage and responsibility that ought to be respected by all road users, save in limited exigencies. Failure to observe the [Highway Code] can be perilous to other road users.

The fact that the Motorcyclist's conduct breached the Highway Code increases the relative moral blameworthiness and the causal potency of his conduct. As the Highway Code creates standards expected of all road users, the Driver would not have expected the Motorcyclist to overtake from the left in breach of the Highway Code, especially when the Driver was making the Second Lane Switch to enter the Bay Area after leaving the Taxi's left indicator light on continuously since his First Lane Switch. I will elaborate on how this mitigates the Driver's liability below at [25].

Acceleration

19 On top of breaching rr 60 and 61 of the Highway Code, I find that the Motorcyclist's act of filtering left in contravention of the Highway Code and accelerating into the rapidly narrowing gap between the left side of the Taxi and the left roadside kerb to be highly reckless and dangerous.

[\[note: 8\]](#)

20 I now summarise the established positions of the Motorcycle. When the independent witness first saw the Taxi, the Taxi was in the centre lane (travelling off-centre and more towards the left side of the centre lane as seen from the Taxi's Front-View Recording) and the Motorcycle was at least 4 to 5 car lengths behind the Taxi and to the right of the Taxi. When the Taxi made the First Lane Switch, the Motorcycle was travelling on the line between the left and centre lane about 1 to 2 car lengths directly *behind* the left rear of the Taxi since the Taxi was at that time travelling off-centre towards the left side of the centre lane. Finally, the collision occurred inside the Bay Area when the Motorcycle was in the process of overtaking the Taxi. The Motorcycle hit the Taxi's left side mirror after the front of the Taxi had already entered the Bay Area. This meant that the collision occurred after the Taxi had completed making its Second Lane Switch to enter the Bay Area.

21 The DJ made no finding of fact in relation to the acceleration and velocity of the Motorcycle. I make the logical inference that the Motorcyclist must have accelerated at a rapid rate to increase its relative velocity (difference between the velocity of the Motorcycle and the velocity of the Taxi) to catch up with the moving Taxi that was 1 to 2 car lengths ahead in 2 to 2.5 seconds before trying to overtake it on the left. This is corroborated by the independent witness' testimony that the acceleration sound of the Motorcycle was "louder than usual" at that time (GD at [21(d)]).

22 Further, the Motorcyclist was directly behind the Driver, with a full view of the Taxi in front and the ongoing traffic ahead. The Motorcyclist would have been privy to the Driver's intention to filter left, given that the Driver had turned on the left indicator light of the Taxi before he made the First Lane Switch. At that point, two reasonable alternative courses of action were available to the Motorcyclist. First, it would have been far safer and more expedient for the Motorcyclist to overtake the Taxi from the right side (after making sure that it was safe to do so) since the Taxi was already moving leftwards. Second, the Motorcyclist could have slowed down and waited for the Second Lane Switch to be completed by the Taxi or he could have at least slowed down and waited for the rear of the Taxi to clear the centre of the left lane, thereby giving the Motorcyclist sufficient space to pass through whilst still travelling on the line between the left and centre lanes. He chose neither of these two options. Instead, the Motorcyclist elected to perform a dangerous manoeuvre from a position behind the Taxi: despite having notice of the Taxi's left indicator light, he filtered left and accelerated into the rapidly narrowing gap between the left side of the Taxi and the left roadside kerb in the hope of overtaking the Taxi on the left and in the leftmost lane in breach of the Highway Code. His moral blameworthiness and causal potency of his conduct is on the whole far higher than that of the Driver, as I will now further explain.

Driver's liability

Failure to check his left blind spot

23 The DJ attributed liability to the Driver for his failure to "check his [blind spot] on the left when he swerved from the centre lane to the left lane and into the Bay Area" (GD at [16(f)]). In my view, a driver should check his mirrors and his blind spot before every lane shift.

24 For the First Lane Switch (*ie*, from the centre lane to the left lane), I find that no liability should have been attributed to the Driver for his failure to check his blind spot by turning his head across his left shoulder. The Motorcycle was directly *behind* the Taxi with a distance of 1 to 2 car lengths, travelling on the line separating the left lane and the centre lane. The Motorcycle was therefore *not* travelling *inside* the left lane at that time, and hence the left lane was clear when the Driver started to make his move to enter the left lane after having switched on his left indicator light. Further, the DJ accepted that the Driver had at that time "looked at the Taxi's rear and left wing mirrors" (GD at [40]). Given the location of the Taxi being off-centre and on the left side of the centre lane, and the Motorcycle being on the line separating the left lane and the centre lane at a distance of 1 to 2 car lengths *behind* the Taxi at that time, I am of the view that the Taxi was already **blocking** the forward path ahead of the Motorcycle. Therefore, the Taxi did not cut across the path of the Motorcycle when it made the First Lane Switch. Although I find that the Driver should have seen the Motorcycle when he checked the rear mirror, however, I attribute no liability to the Driver at this point even if he had been negligent in not seeing from his rear view mirror that the Motorcycle was 1 to 2 car lengths behind him. This is because he had not cut into the Motorcyclist's path when he made his First Lane Switch. The Driver could not be faulted for filtering into the left lane *after* ascertaining that the whole of the left lane (which was at that time a fully operational bus lane) was clear from his rear and in particular, his left wing mirrors, and then switching on his left indicator light. The Driver could not be expecting someone coming from behind his Taxi, and accelerating to overtake him from his left especially after having made clear his intention to filter to the left lane. As such, the Driver's initial failure to check his left blind spot more carefully by turning his head across his left shoulder before the First Lane Switch had no causative potency in causing the accident. In fact, the accident did not take place on the left lane at his First Lane Switch but well inside the Bay Area *after* he had completed making the Second Lane Switch.

25 Instead, I attribute some liability to the Driver's negligence *before* the Second Lane Shift: when he failed to conduct a check of his left blind spot *before* finally manoeuvring his Taxi from the left lane into the Bay Area. Had the Driver checked his left blind spot by glancing at his left wing mirror or turning his head across his left shoulder *before* making the Second Lane Shift into the Bay Area, he might have spotted the accelerating Motorcycle that was trying to squeeze through the gap between the left side of his Taxi and the left roadside kerb. Given that the Taxi was moving at an angle of about 30 degrees at this point of time, I appreciate that the Driver might not notice the Motorcycle through his left wing mirror if the Motorcycle was at that time outside the limited field of vision of the left lane provided by his left wing mirror. The Driver would therefore need to turn his head over his left shoulder to further check his view of the rear left lane behind the Taxi beyond what could readily be covered by the left wing mirror. This is to see, for example, if there were any cyclists travelling along the leftmost side of the road who were going to cycle straight past the Bay Area. If he had turned his head over his left shoulder, he could perhaps also have spotted the Motorcyclist trying to squeeze through the gap between the Taxi's left side and the roadside kerb. The Driver could then take some evasive action to swerve slightly to the right quickly to avoid a collision. However, the relative moral blameworthiness of the Driver's failure to turn his head over his left shoulder to check his blind spot at that point (*ie* just before entering the Bay Area) is substantially mitigated by the fact that an illegal overtaking by the Motorcyclist could not be reasonably expected from the left when there was no more road lane to the left of the leftmost lane of Simei Avenue for any overtaking whatsoever except for the small Bay Area. It was reasonable for the Driver to expect that a vehicle intending to overtake the Taxi, who was at that time already on the leftmost lane, would legally overtake from the right (according to r 61 of the Highway Code) where there was ample lane space to do so. This is especially so since the Driver had turned on the Taxi's left indicator light before the First Lane Switch and had not switched off his left indicator light thereby giving the Motorcyclist behind him ample notice about his intention to continue to filter left for the Second Lane Switch. Moreover, it is not the case that the Motorcyclist had the right of way. The Driver's relative blameworthiness is minimal: he

merely failed to take safety precautions against a rare occurrence that a motorcyclist would make an illegal overtaking from the left, after he had indicated his intention to continue filtering left into the Bay Area after successfully completing his switch to the left lane. How was he to expect that a Motorcyclist would try to overtake his Taxi on the left of the leftmost lane, using perhaps the Bay Area space for the overtaking? It is important to note that the collision took place inside the Bay Area and the accident happened after the front of the Taxi had already entered the Bay Area, as can be seen from the Taxi's Front-View Recording.

Abrupt swerve

26 Further, the DJ found that the fact that the Driver had "abruptly swerved" his Taxi from the centre lane into the Bay Area within a short span of 2 to 2.5 seconds was a dangerous and reckless act (GD at [43]). While I agree that the swerve was completed in that short period of time, I take into account the fact that the Driver had signalled early, turned on his left indicator light once he saw the independent witness flagging the Taxi and left the left indicator light on throughout. This gave ample notice to the Motorcyclist who was travelling *behind* the Taxi. The Driver had also ascertained that the left lane was clear by looking at his rear and left wing mirror before making his First Lane Shift. At this time, the Taxi was almost *parallel* to the road and the left wing mirror alone (assuming it was properly adjusted) would have given the Driver a clear view of the *whole* of the left lane behind the Taxi. Contrast this with the position of the Taxi after it had swerved to an angle of about 30 degrees to the road and crossed the left lane, when the left wing mirror would no longer provide a complete view of the left lane behind the Taxi (see [25]) which would then require the Driver to turn his head over his left shoulder to get a better view of the remaining part of the left lane not covered by the field of vision of the left wing mirror.

27 Moreover, I also take into consideration that the Driver only had a limited distance to manoeuvre his Taxi from the left side of the centre lane, cross the left lane and then enter the Bay Area. Having viewed the Taxi's Front-View Recording, I observe that the Driver made the First Lane Shift immediately once the continuous yellow line between the left and centre lanes became a dotted yellow line (*ie*, when the bus lane on the leftmost lane ended). [\[note: 9\]](#) The Driver used the maximum distance that was legally available to him to make the First Lane Shift and the Second Lane Shift, whilst avoiding the bus lane that was operational at that time. The filtering was done at an angle of about 30 degrees, which is not a particularly sharp angle. It is not the case that the Driver had remained in the centre lane and had only swerved sharply into the Bay Area as a last-minute decision. The Driver intended to pick up the independent witness at the Bay Area but could only filter at the *earliest* to the left lane when the bus lane ended. If he had filtered any later, the swerve would have been even more abrupt. If he had filtered any earlier, he would have entered the bus lane that was operational at that time and committed a traffic offence. To my mind, this reduces his blameworthiness for his "abrupt swerve" as described by the DJ.

28 Having viewed the Taxi's Front-View Recording, I further note that the Taxi was not travelling at a high speed when the Driver made the First Lane Shift and the Second Lane Shift. That said, I do acknowledge that the Driver could have travelled at a slower speed while crossing the left lane and entering the Bay Area at an angle of about 30 degrees. This would have taken the Driver more time to make the First Lane Shift and the Second Lane Shift and the Motorcyclist could perhaps have successfully completed his illegal and dangerous overtaking on the left of the left-moving Taxi. Had the Driver been travelling at a slower speed, this might also have given him more reaction time to jam the brakes of the Taxi upon seeing the Motorcyclist if the Driver had checked his left blind spot. As the DJ noted, the Driver "may have been too eager to pick up the people waiting at the Bay Area" (GD at [43]).

29 I also note that the Driver did glance at the Taxi's rear and left wing mirrors when he made the First Lane Switch to ensure that the left lane was clear. The left lane was clear at that point of time because the Motorcyclist was *not* inside the left lane but was travelling on the line between the left and centre lane, 1 to 2 car lengths *behind* the Taxi. The Taxi was travelling off-centre on the left side of the centre lane and therefore was already **blocking** the path ahead of the Motorcyclist. Had the Motorcycle already been travelling within the left lane itself (which meant that he would have been travelling illegally on the operational bus lane), the filtering of the Taxi at an angle of about 30 degrees would have rendered the Driver more liable since the Taxi would then have *cut* across the Motorcycle's path, giving the Motorcyclist less reaction time. However, this is not the case. At no time did the Taxi cut across the path of the Motorcyclist. The Motorcyclist was behind the Taxi all the time until the Motorcyclist overtook the Taxi on the left and collided with the Taxi's left wing mirror when the front of the Taxi was already inside the Bay Area.

30 Further, the Driver immediately made the First Lane Switch when the bus lane ended. The Driver had no reason to expect a non-bus vehicle to be travelling illegally on the left lane (which was an operational bus lane at that time), much less overtake him from the left. In my view, this also helps to mitigate the moral blameworthiness of the Driver's swerve at an angle of about 30 degrees from the centre lane to the left lane and finally into the Bay Area within 2 to 2.5 seconds.

Apportionment of liability

31 On the principle of equal apportionment, I compare the parties' respective liabilities to the examples of equal apportionment listed in Carolyn Woo *et al*, *Motor Accident Guide: A guide on the assessment of liability in motor accident cases* (Mighty Minds Publishing, 1st Ed, 2014): see scenarios 11(e), 19(b), 22(a) and 22(c) in the Annex at A.2 to A.5. In those examples, liability is apportioned equally when both parties have equal obligations towards each other which they both failed to discharge.

32 That is clearly not the case on the present facts. One party is far more reckless relative to the other. The Motorcyclist failed to keep a safe distance *behind* the Taxi, recklessly accelerated into the rapidly narrowing gap between the Taxi and the roadside kerb whilst trying to overtake from the left of the left-moving Taxi in breach of the Highway Code, despite having early notice of the Taxi's intention to filter left. On the other hand, the Driver failed to check his left blind spot by turning his head over his left shoulder just before making the Second Lane Shift and continued to veer straight from the left lane directly into the Bay Area at an angle of about 30 degrees. The Driver also could have travelled at a slower speed, giving himself more reaction time to jam the brakes of the Taxi upon seeing the Motorcyclist, if the Driver had checked his left blind spot. However, the Driver used the maximum distance legally available to him and signalled well in advance. He would not have reasonably expected the Motorcyclist to overtake him from behind and to the left of his Taxi after his Taxi had already entered the left lane and was in the process of entering the Bay Area. This is because there would not have been much room left on the left side of the left lane for any overtaking on the left side (even assuming that it was not in breach of the Highway Code), except for the space in the Bay Area. The Motorcyclist's conduct was clearly far more morally blameworthy and of much higher causative potency than the Driver's.

33 Hence, I find that the DJ erred in principle in finding both parties equally liable for the accident. The apportionment of liability is "more [of] an exercise in discretion than in clinical science" and the court exercises a general discretion, taking into account the causative potency and blameworthiness assigned to both parties: *Cheong Ghim Fah* at [87]. After carefully considering all the evidence before me, I assess the Motorcyclist to be 90% liable and the Driver to be 10% liable for the accident.

Conclusion

34 For the aforesaid reasons, I allow the appeal, finding that the DJ erred in principle in holding that the Motorcyclist and the Driver were equally responsible for the accident. For the extent of liability of both parties, I agree with the submissions of counsel for the Driver and hold that the Motorcyclist was 90% liable and the Driver was 10% liable for causing the accident.

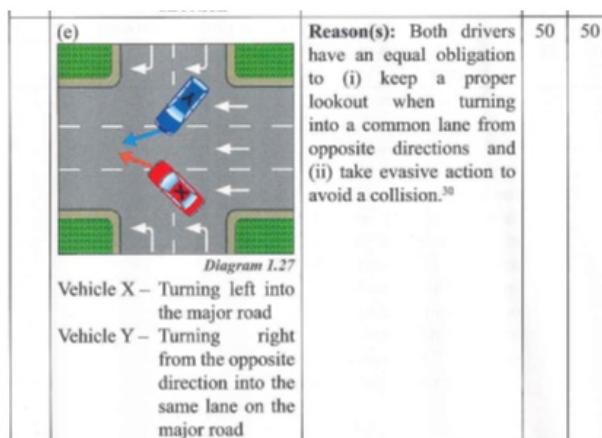
35 Prior to reserving this judgment, I had asked the parties to address me on what the indicative fixed costs should be for the appeal which took half a day. After taking into account their submissions on costs, I order the second respondent to pay costs to the appellant and the first respondent fixed at \$2,500 and \$1,800 respectively plus their reasonable disbursements.

Annex

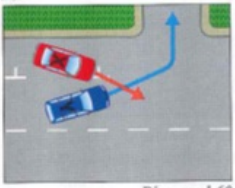
A.1 Screenshot of Simei Avenue taken from the Taxi’s front-view camera



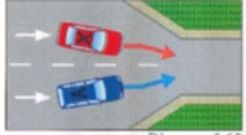
A.2 Scenario 11(e):





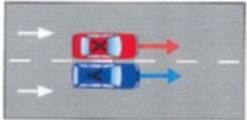
A.3 Scenario 19(b):

SCENARIO	REASON(S)	X %	Y %
(b)  <p>Diagram 1.60</p> <p>Vehicle X – Moving off from a stationary/parked position by the side of the road</p> <p>Vehicle Y – Making a left turn across the path of Vehicle X to enter a side road</p>	Reason(s): Both drivers have an equal obligation to keep a proper lookout when filtering into the adjacent lane and should do so only when (i) there is no passing/overtaking vehicle; (ii) they have given the proper signal; and (iii) it is safe to do so. ⁵⁶		
Where both drivers have/have not signalled their intention to enter the adjacent lane		50	50
Where Driver X gave the necessary signal; Driver Y did not do so		40	60
Where Driver Y gave the necessary signal; Driver X did not do so		60	40

A.4 Scenario 22(a):

SCENARIO	REASON(S)	X %	Y %
22. (a)  <p>Diagram 1.65</p> <p>Vehicle X – Converging into a single lane by steering towards the right</p> <p>Vehicle Y – Converging into the same single lane by steering towards the left</p>	Reason(s): Both drivers have an equal obligation to keep a proper lookout for vehicles in the adjacent lane when merging into a single lane road. They should proceed only when it is safe to do so and should take evasive action to avoid a collision. ⁶²	50	50

A.5 Scenario 22(c):

SCENARIO	REASON(S)	 X %	 Y %
<p>(c)</p>  <p style="text-align: center;"><i>Diagram 1.67</i></p> <p>Vehicle X – Travelling on lane marking</p> <p>Vehicle Y – Travelling on lane marking in the same direction, next to Vehicle X resulting in a side swipe</p>	<p>Reason(s): Both drivers have an equal obligation to travel within their own lanes and not on lane marking. They should keep a lookout for vehicles entering their path of travel and take evasive action to avoid a collision.</p>	50	50

[\[note: 1\]](#) Appellant’s Skeletal Submissions dated 18 July 2019 (“ASS”) at para 4

[\[note: 2\]](#) Second Respondent’s Case at para 72

[\[note: 3\]](#) Taxi’s Front-View Recording at 17:49:56

[\[note: 4\]](#) Taxi’s Front-View Recording at 17:50:02

[\[note: 5\]](#) Taxi’s Front-View Recording at 17:50:02

[\[note: 6\]](#) Taxi’s Front-View Recording at 17:50:01

[\[note: 7\]](#) Record of Appeal (“ROA”) at pp 316, 525

[\[note: 8\]](#) Taxi’s Front-View Recording at 17:50:01

[\[note: 9\]](#) Taxi’s Front-View Recording at 17:50:00