

Poongothai Kuppusamy v Huationg Contractor Pte Ltd and another (Motor Insurers' Bureau of Singapore, intervener)

[2021] SGHC 108

Case Number : Suit No 808 of 2020
Decision Date : 03 May 2021
Tribunal/Court : General Division of the High Court
Coram : Kwek Mean Luck JC
Counsel Name(s) : Ramasamy s/o Karuppan Chettiar, Simone Bamapriya Chettiar (Central Chambers Law Corporation) for the plaintiff; Gokulamurali s/o Haridas, Ng Si Xuan Sancia (Tito Isaac & Co LLP) for the first defendant; The second defendant in person; Lim Hui Ying (Legal Solutions LLC) for the intervener.
Parties : Poongothai Kuppusamy — Huationg Contractor Pte Ltd — Guru Murti a/l Maheshrou — Motor Insurers' Bureau of Singapore

Tort – Negligence – Liability

3 May 2021

Judgment Reserved.

Kwek Mean Luck JC:

Introduction

1 The main issue in this case is the tortious liability of the first defendant, Huationg Contractor Pte Ltd (“1st defendant”), and the second defendant, Guru Murti a/l Maheshrou (“2nd defendant”), for a road traffic accident where the plaintiff, Poongothai Kuppusamy (“the plaintiff”) suffered injury. After going through the evidence and submissions, I find the 1st defendant 100% liable to the plaintiff. I set out my reasons below.

2 The plaintiff was a pillion rider on motorcycle JQG 7071 (“the Motorcycle”) ridden by the 2nd defendant. On 23 September 2017 at about 7.30am, the Motorcycle was involved in a road traffic accident (“the Accident”) with motor lorry XE 1886T (“the Lorry”) driven by Amirthalingam Kanmani (“the Lorry Driver”), the authorised driver of the 1st defendant. The plaintiff was injured and brought a claim against the 1st defendant and the 2nd defendant. The matter was fixed for trial to determine liability with damages to be assessed separately.

3 The following facts are undisputed:

- (a) The Accident occurred at the cross junction of Tuas Crescent and Tuas Bay Drive (“the Cross Junction”).
- (b) The Cross Junction is not controlled by traffic lights.
- (c) Tuas Crescent is a major road and Tuas Bay Drive is a minor road.
- (d) The Lorry Driver was travelling along the minor road (Tuas Bay Drive), moving across the major road to enter Tuas Avenue 20, while the Motorcycle was travelling along the major road (Tuas Crescent) starting from Tuas Viaduct. [\[note: 1\]](#)

(e) There is a stop sign at the minor road where the Lorry was. The Motorcycle thus had the right of way.

(f) Visibility was good, the weather was clear, and the road surface was dry.[\[note: 2\]](#)

(g) The traffic along the Cross Junction was light. The 2nd defendant and the Lorry Driver testified that there were no other vehicles in the immediate vicinity at the time of the Accident.[\[note: 3\]](#)

(h) The distance from the Tuas Viaduct, where the 2nd defendant and the plaintiff were travelling from, to the Cross Junction, is 200m.[\[note: 4\]](#)

4 Both the 1st defendant and 2nd defendant did not plead contributory negligence against the plaintiff.[\[note: 5\]](#)

5 Given that the 2nd defendant's Motorcycle had the right of way, it was accepted by parties that the primary liability lay with the 1st defendant, who is vicariously liable for the Lorry Driver's negligence, as the Lorry Driver was the employee of the 1st defendant at the material time.[\[note: 6\]](#)

6 Hence, the main issue at the trial was the respective liability of the 1st defendant and the 2nd defendant, and the extent of such liability.

The parties' cases

Summary of the plaintiff's case

7 The plaintiff stated that she was unable to give evidence on how the Accident occurred as she was not paying attention.[\[note: 7\]](#) Parties agreed to dispense with the plaintiff's attendance at the trial on liability for this matter.[\[note: 8\]](#)

8 The plaintiff's case against the Lorry Driver is that he failed to keep a proper lookout and give way to the Motorcycle who had the right of way. Given the clear weather conditions, visibility and lack of traffic, the presence of the Motorcycle at the material time should have been spotted if the Lorry Driver did keep a proper lookout. The plaintiff submitted that the Lorry Driver's testimony, that he did not see the Motorcycle approaching at all, means either that: (a) the Lorry Driver did not look to his left at all, or (b) he did not keep a proper lookout. In either case, he would be negligent for failing to keep a proper lookout.[\[note: 9\]](#)

9 The plaintiff submitted that on the evidence, it was reasonable for the 2nd defendant to anticipate that the Lorry Driver had seen the Motorcycle and would give way to him, and for the 2nd defendant to proceed into the Cross Junction.[\[note: 10\]](#) The 2nd defendant also took evasive action by pressing on the brake in the agony of the moment, as he had little time to react to the Lorry driving into the Cross Junction.[\[note: 11\]](#) The 1st defendant did not provide evidence that the 2nd defendant failed to take the appropriate evasive action.[\[note: 12\]](#)

Summary of the 1st defendant's case

10 The 1st defendant's case is that the 2nd defendant should be held jointly liable for the Accident. This is because the 2nd defendant was contributorily negligent in failing to keep a proper lookout and riding at an excessive speed.[\[note: 13\]](#)

11 The 1st defendant relied on Part III(A)(ii)(6) of Carolyn Woo *et al*, *Motor Accident Guide: A guide on the assessment of liability in motor accident cases* (Mighty Minds Publishing, 1st Ed, 2014) ("MAG") for the starting point that the 1st defendant bears 80% of the liability, and the 2nd defendant bears 20% of the liability.[\[note: 14\]](#) Part III(A)(ii)(6) of the MAG indicates that at an uncontrolled cross-junction involving a vehicle travelling on a minor road and a vehicle travelling on a major road, the vehicle travelling on the minor road bears 80% of the liability, while the vehicle travelling on the major road bears the remaining 20%, as a starting point. While the driver on the major road has the right of way, he should keep a lookout for vehicles entering the major road from an adjoining minor road. The driver on the major road should also take evasive action to avoid a collision.[\[note: 15\]](#)

12 The 1st defendant also cited *Ng Swee Eng (administrator of the estate of Tan Chee Wee, deceased) v Ang Oh Chuan* [2002] 2 SLR(R) 321 ("*Ng Swee Eng*"), where the High Court held that the defendant travelling on the minor road had failed to give way to the plaintiff travelling on the main road, and thus apportioned liability at 80-20 in respect of the defendant and plaintiff respectively.[\[note: 16\]](#)

13 The 1st defendant's case is that the Lorry Driver came to a complete stop and proceeded to check his side, front and rear views before he moved off from the Tuas Bay Drive junction:[\[note: 17\]](#)

(a) The Lorry Driver stated in his affidavit of evidence-in-chief that he had checked both the left and right lanes through both wing mirrors to ensure that traffic was clear and saw that there were no oncoming vehicles at that time.[\[note: 18\]](#)

(b) During cross-examination, the Lorry Driver clarified that besides checking the wing mirrors, he also looked through the windows of the Lorry to check that there were no incoming vehicles from both lanes on Tuas Crescent. He testified that he could see as far as the green sign on Tuas Crescent in Figure B of 2AB and that he did not see any vehicles.

(c) After ascertaining that it was safe, the Lorry Driver proceeded to drive towards Tuas Avenue 20.

(d) He testified that he looked left and right again as he was driving into the Cross Junction and he did not see any vehicles.

14 The Lorry Driver gave evidence that he travelled at a very slow speed of 7km/h into the junction:

(a) Under cross-examination, he stated that this speed was what his company had told him based on GPS.

(b) He was unable to produce this GPS evidence. He said it could only be seen for a specific period of time. The information about the speed he was travelling at was also not mentioned in both the police report and his affidavit.

15 When the Lorry Driver was in the Cross Junction, he heard a noise and thought that his tyre had exploded. He claimed that he stopped the Lorry the moment he heard the noise. As such, he claimed that the photos indicating the position of the Lorry are reflective of where the impact took place. He then went down to check. He saw the plaintiff's left leg under the rear wheels on the left side of the Lorry and the 2nd defendant lying flat on the ground. According to the Lorry Driver, at the time of the collision, the Lorry's cabin was already in Tuas Avenue 20, and the back of the Lorry had passed the yellow box at the junction.[\[note: 19\]](#) The 1st defendant thus submits that this means that the Lorry had crossed or substantially crossed the junction when the collision occurred.

16 The 1st defendant submitted that the 2nd defendant was an inconsistent and unreliable witness. The 2nd defendant stated in his affidavit that he tried to brake but was not able to stop in time. At trial, the 2nd defendant conceded that he panicked when he first saw the Lorry in the cross junction, and only applied his brakes. This, according to the 1st defendant, suggested that the 2nd defendant only tried to brake, and did not actually brake in time or at all.[\[note: 20\]](#)

17 The 1st defendant sought an uplift of the apportionment of liability against the 2nd defendant from the starting position of 20% liability provided for in MAG. This is for two reasons:

(a) First, the 1st defendant asserted that the Lorry could not have covered a distance of about 15m (from the stop line of the Tuas Bay Drive to the second lane of Tuas Crescent where the 2nd defendant was) at such a high speed that the 2nd defendant only noticed the Lorry moments before the collision. This the 1st defendant submitted, must mean that the 2nd defendant was travelling at an excessive speed such that he could not keep a proper lookout.[\[note: 21\]](#)

(b) Second, the 1st defendant submitted, in reliance on the MAG, that as the Lorry Driver had proceeded to drive across the Cross Junction and was substantially able to cross the cross junction, when the 2nd defendant suddenly appeared and collided with the left of the Lorry, the liability of the 2nd defendant should be increased by 5-10%.[\[note: 22\]](#)

Summary of the 2nd defendant's case

18 The 2nd defendant is unrepresented. His case is that he was not negligent, as he did keep a proper lookout and did not ride at an excessive speed:

(a) The 2nd defendant testified that he did not see the speedometer when he was riding along Tuas Crescent, but thought that he was riding at about 50–55km/h, which is his usual speed at fourth gear, before he braked on seeing the Lorry move into the Cross Junction.

(b) As his Motorcycle neared the Cross Junction, he saw that the Lorry was stationary at the stop line. As such, he was under the impression that the Lorry Driver had seen his Motorcycle and would give way to him.

(c) However, when the Motorcycle was about to enter into the Cross Junction, the Lorry suddenly entered the Cross Junction as well.

- (d) The 2nd defendant applied his brakes as soon as he saw the Lorry move.
- (e) But he was not able to stop the Motorcycle in time and collided with the left side of the Lorry, near the diesel fuel tank, which is closer to the front of the left side of the Lorry.
- (f) He stated that he had about 2–3 seconds to react. Due to shock, he took no other evasive action besides pressing on the brake, as he wanted to stop the Motorcycle as soon as possible.

19 His Motorcycle landed on the road, on its left side. The left handle of the Motorcycle was dented and the plastic piece covering the front wheel was scratched, but the Motorcycle was otherwise undamaged. The 2nd defendant had some scratches on the toes of his left leg but was otherwise uninjured. The plaintiff suffered more severe injuries, as her left leg was under the wheel of the Lorry.

Summary of the Intervener's case

20 The 2nd defendant is uninsured against the plaintiff's claim, as the 2nd defendant's Motorcycle did not have the requisite insurance coverage to cover pillion riders. As such, any potential liability on his part would have to be satisfied by the Motor Insurers' Bureau of Singapore ("MIB") pursuant to their agreement with the Minister of Finance. The MIB thus sought and was granted leave to be added as intervener to this action ("the Intervener").

21 The Intervener's case is that the Lorry Driver should be found fully liable for the Accident. [\[note: 23\]](#) The Lorry Driver failed to properly check for oncoming traffic along the main road:

- (a) From the scene photographs, it is clear that visibility from both the perspectives of the Lorry Driver and the 2nd defendant were good. From the Lorry Driver's perspective, the road to his left at the stop line is a straight road with no obstructions. [\[note: 24\]](#)

- (b) It is therefore inconceivable that the Lorry Driver did not notice the presence of the 2nd defendant's Motorcycle approaching the Cross Junction when he had purportedly stopped and checked for oncoming traffic at the stop line. This is especially given that the Lorry Driver had a clear view of the road on his left all the way to the green signboard near the entrance into Tuas Crescent, [\[note: 25\]](#) and he had allegedly checked for oncoming traffic while crossing the Cross-Junction. [\[note: 26\]](#)

- (c) This means that the Lorry Driver completely failed to keep a proper lookout, which is why he failed to notice the Motorcycle. [\[note: 27\]](#)

22 The Intervener also submitted that the Lorry Driver was prone to embellishment and prevarication in the course of the trial, such that his evidence had to be treated with circumspection. The Intervener provided three instances of this:

- (a) His evidence on his checks for oncoming traffic was incrementally extensive.

- (i) While the Lorry Driver mentioned in his affidavit of evidence-in-chief that he had come to a stop at the stop line to check for oncoming traffic along the main road, he stated there that he done so through checking his wing mirrors only. Neither of the side mirrors

would have enabled him to adequately check for oncoming traffic along the main road, since the mirrors were angled more towards the back view of the Lorry. [\[note: 28\]](#)

(ii) During cross-examination by the Intervener on this, the Lorry Driver clarified that he was referring to windows of his car in his affidavit, and not the mirrors.

(iii) He further added that he had checked his blind spots before moving off.

(iv) When subsequently asked by the court on this, his checks for oncoming traffic became more extensive, as he additionally asserted that he continued to check for traffic even while he was driving into the junction. [\[note: 29\]](#)

(b) The Lorry Driver only mentioned that he was travelling at 7km/h and that there was a GPS record during cross-examination. But it is surprising that he had not mentioned this in his affidavit of evidence-in-chief when it was the 2nd defendant's allegation all along that the Lorry Driver was speeding. [\[note: 30\]](#)

(c) The photograph of the position of the Lorry at the time of collision shows the final resting position of the rear tyre of the Lorry near a square drain cover on the road. During trial, when asked to mark the location of the Lorry, his marking was nowhere near the said drain cover. This shows that he was merely trying to show that the Lorry had substantially crossed the Cross-Junction. [\[note: 31\]](#)

23 The Intervener submitted that the 2nd defendant's evidence is, in contrast, consistent and clear:

(a) His oral testimony is consistent that he saw the Lorry stationary at the stop line as he was approaching the Cross-Junction.

(b) While he could not recall exactly how fast he was travelling at, he was able to provide a good estimate of his speed, and he was able to mark out exactly where he first saw the Lorry and when the Lorry started to move.

24 The Intervener submitted that the 2nd defendant was not negligent:

(a) There is no basis to suggest that he was speeding, or that he did not brake at all. [\[note: 32\]](#) Given the minor damage to the 2nd defendant's Motorcycle and his minor injuries, the 1st defendant could not have been travelling at a high speed. The only reason why the plaintiff's injuries were much more serious was because the rear tyre of the Lorry rolled over her left leg. [\[note: 33\]](#)

(b) It was also reasonable that the 2nd defendant maintained the same speed in crossing the Cross-Junction. [\[note: 34\]](#) The 2nd defendant had in fact noticed the Lorry stationary at the stop line while he was nearing the junction. It was reasonable for the 2nd defendant to infer that the Lorry Driver had seen his approach and was stopping to give way to his Motorcycle. As such, 2nd defendant could not have reasonably anticipated that the Lorry would suddenly move off and enter into the junction as the 2nd defendant was entering into the same. [\[note: 35\]](#)

(c) Further, there was no other evasive action the 2nd defendant could have taken to avoid the Accident. As the Lorry had moved into the path of the Motorcycle, there was no way the 2nd defendant could have stopped in time. [\[note: 36\]](#) At the speed of 50–55km/h, the stopping distance would have been 35–45m, as set out in the Highway Code.

25 The Intervener relied on *Ong Sim Moy and others v Ong Sim Hoe* [1968-1970] SLR(R) 363 ("*Ong Sim Moy v Ong Sim Hoe*"), *Yap Yew Yee v Subramaniam & Anor* [1972] 2 MLJ 53 ("*Yap Yew Yee v Subramaniam*"), and *Cheung Fung (a patient) (suing by his litigation representative Goh Fun Cheng) v Shanmugam Thanabal* [2014] SGHC 271 ("*Cheung Fung v Shanmugam*"), to submit that the Lorry Driver should be found fully liable for the Accident with the 2nd Defendant's Motorcycle. In all three cases, the motorist entering the junction from a minor road failed to stop and collided with a vehicle traveling along a major road. The motorist in all three cases were found fully liable for the accident. In *Ong Sim Moy v Ong Sim Hoe* (at [5]), the court held that the lorry driver on the major road was not at fault, as he had done all he could to avoid a collision by applying his brakes and swerving to his right. In *Yap Yew Yee v Subramaniam*, the Malaysian court held that the taxi driver travelling on the major road was entitled to assume that the motorcyclist coming from the minor road would have stopped at the junction, and there was nothing the taxi driver could have done to avoid the accident.

26 The Intervener submitted that the 1st defendant's reliance on the MAG is misconceived. The suggestion provided in the MAG on the apportionment of liability presupposes that the driver along the main road was in a position to take evasive action. But in this case, there was nothing the 2nd defendant could have done. [\[note: 37\]](#)

27 The Intervener also distinguished *Ng Swee Eng*:

(a) The defendant there was making a right turn across a junction when he collided with the motorcyclist who was proceeding straight into the junction (with the right of way).

(b) The apportionment there appears to be based on the consideration that after turning, the lorry had driven across 1.75 lanes of the opposite side of the road before the collision occurred. The deceased thus ought to have had sufficient time to notice the lorry and take precautions.

(c) In the present case, it would not have taken the Lorry much time to enter the Cross-Junction and encroach onto the 2nd defendant's path. Hence, there was not sufficient time for the 2nd defendant to notice the Lorry in this case and for the 2nd defendant to take precautions.

My Decision

28 After going through the evidence and the submissions, I find that the 1st Defendant should bear 100% of the liability:

(a) It is undisputed that there was a stop sign at Tuas Bay Drive, the minor road where the Lorry Driver was.

(b) The Motorcycle travelling on the major road, clearly had the right of way as per para 70 of the *Highway Code* (Cap 276, R 11, 1990 Rev Ed).

(c) The onus was on the Lorry Driver to stop and check for oncoming vehicles before entering the Cross Junction. I find that he did not do so before entering the Cross Junction.

29 I also find that there is no evidence that the 2nd defendant was negligent and thus liable to contribute:

- (a) I accept the 2nd Defendant's version of the event, that he saw the Lorry stop behind the stop line, and so he continued to move into the Cross Junction;
- (b) I also accept that the 2nd defendant was not speeding;
- (c) I find that it was the Lorry that moved suddenly into the Cross Junction as the Motorcycle was nearing it; and
- (d) the 2nd defendant did what he could in the circumstances, which was to pull the brakes on his Motorcycle.

The Lorry Driver's evidence

30 I did not find the Lorry Driver to be a credible witness. He made exaggerated allegations on several occasions during his cross-examination, which on questioning were found to be wholly unsubstantiated:

- (a) One example is his allegation that the Motorcycle was speeding. He later acknowledged that he would not have known this, since his evidence is that he did not even see the Motorcycle.
- (b) A second example is his evidence that the pillion rider was thrown off the Motorcycle because of the high speed it was travelling at. He later acknowledged that he would not have known this because he did not see the Accident take place. In fact, his evidence is that he initially thought that the sound of the impact was that of a burst tyre.
- (c) A third example is the Lorry Driver's claim that the 2nd defendant's Motorcycle had skidded, which was denied by the 2nd defendant. The Lorry Driver admitted that he did not hear or see any skidding. Neither did he see any marks on the road that showed that the Motorcycle skidded.
- (d) A fourth example is his evidence in court that he was only traveling at a very slow speed of 7km/h into the junction. This was not in his police report or affidavit. He was unable to produce any objective record to substantiate this claim. It is also an incredibly slow speed which most vehicles normally do not travel at. Yet, his evidence was that this is the speed that he usually entered into cross junctions.
- (e) A fifth example is his evidence in court that the front of the Lorry cabin was already in Tuas Avenue 20, and that he had substantially passed the Cross Junction at the time of the Accident. This is contradicted by the accident photograph enclosed in his own affidavit, which showed that the Lorry was still in the Cross Junction after the Accident. [\[note: 38\]](#) He also testified that the photograph reflects exactly where the Lorry was positioned at the time of the impact.

31 Importantly, the nub of the Lorry Driver's evidence, that he kept a proper lookout before he entered the Cross Junction, lacks credibility:

- (a) He maintained that he kept a lookout for oncoming vehicles, and in fact checked again

even as he moved into the junction, and that he saw no vehicles.

(b) This was despite the fact that he had clear vision of any vehicles approaching. In fact, his evidence was that he could see up to the distance of the green sign in Exhibit B in 2AB, which is quite far away.

(c) Even if a vehicle was speeding, it would have taken several seconds to traverse the distance down Tuas Crescent towards the Cross Junction.

(d) Hence, it is highly implausible that if the Lorry Driver had kept a lookout, twice as he alleged, he would not see any vehicle.

(e) I therefore find that he did not see the Motorcycle because he did not keep a proper lookout before he moved into the Cross Junction.

32 There is also no evidence to support the Lorry Driver's allegation that the Motorcycle was speeding. Given that the 2nd defendant did not sustain significant injuries, and given the lack of major damage to his Motorcycle from impact with the Lorry (the left handle was dented from falling onto the road and the plastic piece covering the front wheel was scratched), it is highly unlikely that the Motorcycle was traveling at a high speed when it neared the Cross Junction.

The 2nd defendant's evidence

33 In contrast, I found the 2nd defendant to be a forthright and honest witness:

(a) His evidence that he was not speeding was supported by the objective evidence which showed that neither he nor his Motorcycle sustained any major injury or damage.

(b) When he was asked about the Lorry Driver's evidence that he was driving into the junction at 7km/h, he was candid in admitting that he could not tell what speed the Lorry was moving at, but only added that as the Lorry was much larger, it covered the space before him quickly. He said that to him it was moving at a normal speed.

(c) He was measured and did not take the position of blaming the Lorry Driver wherever possible. When asked whether he agreed with the Lorry Driver's evidence that he stopped immediately upon impact, he testified that it was important for him to say that the Lorry Driver was right in saying that he braked. He said that if the Lorry Driver had not, the Lorry would have gone over more of the plaintiff's body.

34 On the facts, I find that there was nothing more that the 2nd defendant could have done to avoid the Accident:

(a) The law only requires a road user to anticipate an act which is reasonably foreseeable as being within the ordinary range of human experience. This duty is not an overly onerous one such that the road user has to guard against every conceivable eventuality (see *SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] SLR(R) 211 at [33]).

(b) Further, there is no legal duty on a driver to slow down automatically each time when the driver approaches a junction where there is no stop sign (see *Ong Bee Nah v Won Siew Wan*

(*Yong Tian Choy, third party*) [2005] 2 SLR(R) 455 at [95]).

(c) The 2nd defendant could not have reasonably foreseen that the Lorry Driver would suddenly enter into the junction and collide with his Motorcycle.

(d) In fact, he had done what he reasonably could by pressing on the brakes of the Motorcycle and avoided further damage to the vehicles and himself. Unfortunately, the plaintiff was injured. But that was not due to the 2nd defendant's negligence.

35 In line with this, the MAG's starting point of 20% liability for the motorist traveling on the major road, which the 1st defendant relied on (at [11] above), would not apply here. The MAG is a helpful guide, but its suggestions on apportionment of liability require the court to further take into account the facts of each case. The MAG's suggestion of 20% liability as a starting point, presupposes that the motorist along the main road is in a position to take evasive action to avoid the collision. Here, I have found that there was nothing that the 2nd defendant could have done to avoid the collision. The apportionment of liability is premised upon the finding of liability. As I have found that the 2nd defendant is not liable, the issue of apportionment does not arise.

36 The 1st defendant also relied on *Ng Swee Eng*. But that case turns on different considerations. In that case, a lorry was making a right turn at a junction into the main road. A motorcycle was traveling on the main road, coming from the right side of the junction, towards the junction. The court held that the motorcyclist was 20% liable for the accident when the motorcycle collided with the lorry. On the facts there, the court found that a reasonable motorcyclist would have seen the lorry and yet there was no tyre mark, indicating that the motorcyclist either did not see the impending collision in time, or had misjudged the lorry's speed (see *Ng Swee Eng* at [65]).

37 But here, the 2nd defendant could not have reasonably foreseen that the Lorry would move off from its stationary position behind the stop line. The 2nd defendant also pulled on the brake as soon as he saw the Lorry enter the Cross Junction. At this point, the Motorcycle was already very close to the junction. The 2nd defendant could not have safely taken any other evasive action.

Intervener's late submission on the 1st defendant's lack of notice of contribution

38 After the trial and after parties had filed their closing submissions, the Intervener filed a supplementary submission dated 23 April 2021, relying on *Hwa Aik Engineering Pte Ltd v Munshi Mohammad Faiz and another* [2021] SGHC(A) 1 ("*Hwa Aik*") to submit that the 1st defendant should not be permitted to ask the court to apportion liability between the 1st and 2nd defendants since the 1st defendant had not served the 2nd defendant with any formal notice of contribution under O 16 r 8 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). Order 16 r 8 refers to a notice "containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined". In *Hwa Aik* (at [33]), the Appellate Division of the High Court had advised that:

We hope that, in future, solicitors will not assume that there is such a power [for the court to order contribution] and will make the appropriate submissions before the court of first instance but, as mentioned, it would be preferable if the situation were simply avoided by the filing of a formal claim for contribution.

39 The 1st defendant subsequently filed their reply through supplementary closing submissions. The 1st defendant submitted that in the present case, the notice to seek contribution from the 2nd defendant was already given in the form of the 1st defendant's pleadings, where the 1st defendant had expressly served on the 2nd defendant "a statement of the nature and ground of his claim". [\[note: 39\]](#) In addition, the 1st defendant had at the close of the 1st defendant's case, informed the Court through their solicitors that the 1st defendant would, for the avoidance of doubt, be seeking contribution from the 2nd defendant. Thus, there is no doubt that the 1st defendant had given notice of his claim for contribution against the 2nd defendant.

40 In light of my finding that the 1st defendant is 100% liable, this issue is not germane. I have thus not asked for further submissions from parties on whether the lack of an O 16 r 8 notice constrains the power of the court in apportioning liability in the circumstances of this case. I note that in *Singapore Civil Procedure 2020, vol 1* (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th ed, 2019) at [16/8/1], it is stated, in relation to O 16 r 8, that:

Except where the two defendants are sued as tortfeasors liable in respect of the same damage, it is necessary for a defendant who claims against his co-defendant relief of any of the kinds mentioned in the rule to issue and serve upon him a third party notice under this rule and a summons for third party directions under r.4.

[emphasis added]

41 Here, the two defendants are sued as tortfeasors liable in respect of the same damage. I also note that in *Hwa Aik*, the defendants had only focused on their liability *vis-à-vis* the plaintiff at the trial. The third defendant (who was seeking leave to appeal in *Hwa Aik*) made no argument for contribution from the other defendants at the trial. But in this case, it was known to the 2nd defendant and the Intervener that the 1st defendant was looking to make the 2nd defendant jointly liable. This was clear from the start of the proceedings, where the 1st defendant stated in their defence that the collision was caused or contributed by the negligence of the 2nd defendant. The trial and cross-examination of witnesses proceeded on that basis, as had the closing submissions of the plaintiff, the 1st defendant and the Intervener.

Conclusion

42 In conclusion, taking into consideration the evidence in its entirety and the submissions, I find that the 1st defendant is 100% liable for the plaintiff's claim.

43 I will hear parties on costs.

[\[note: 1\]](#) Poongothai Kuppusamy's Affidavit of Evidence-in-Chief dated 12 March 2021 at [3]-[4]; Amirthalingam Kanmani's Affidavit of Evidence-in-Chief dated 14 January 2021 at [2]; Plaintiff's Closing Submissions dated 12 April 2021 at [4].

[\[note: 2\]](#) Amirthalingam Kanmani's Affidavit of Evidence-in-Chief dated 14 January 2021 at [3].

[\[note: 3\]](#) Amirthalingam Kanmani's Affidavit of Evidence-in-Chief dated 14 January 2021 at [4];

[\[note: 4\]](#) Plaintiff's Closing Submissions dated 12 April 2021 at [4].

[\[note: 5\]](#) 1st Defendant's Opening Statement dated 6 April 2021 at [7].

[\[note: 6\]](#) 1st Defendant's Closing Submissions at [25].

[\[note: 7\]](#) Poongothai Kuppusamy's Affidavit of Evidence-in-Chief dated 12 March 2021 at [4].

[\[note: 8\]](#) 1st Defendant's Opening Statement dated 6 April 2021 at [4]; 2nd Defendant's Defence dated 16 December 2020.

[\[note: 9\]](#) Plaintiff's Closing Submissions dated 12 April 2021 at [11].

[\[note: 10\]](#) Plaintiff's Closing Submissions dated 12 April 2021 at [18].

[\[note: 11\]](#) Plaintiff's Closing Submissions dated 12 April 2021 at [24].

[\[note: 12\]](#) Plaintiff's Closing Submissions dated 12 April 2021 at [25].

[\[note: 13\]](#) 1st Defendant's Closing Submissions dated 23 April 2021 at [5], [19].

[\[note: 14\]](#) 1st Defendant's Closing Submissions dated 23 April 2021 at [7].

[\[note: 15\]](#) 1st Defendant's Closing Submissions dated 23 April 2021 at [8].

[\[note: 16\]](#) 1st Defendant's Closing Submissions dated 23 April 2021 at [10].

[\[note: 17\]](#) 1st Defendant's Closing Submissions dated 23 April 2021 at [12(a)]

[\[note: 18\]](#) Amirthalingam Kanmani's Affidavit of Evidence-Chief dated 14 January 2021 at [4].

[\[note: 19\]](#) 1st Defendant's Closing Submissions at [12(b)].

[\[note: 20\]](#) 1st Defendant's Closing Submissions at [15].

[\[note: 21\]](#) 1st Defendant's Closing Submissions at [17]–[19].

[\[note: 22\]](#) 1st Defendant's Opening Statement at [18].

[\[note: 23\]](#) Intervener's Closing Submissions dated 14 April 2021 at [46].

[\[note: 24\]](#) Intervener's Opening Statement dated 6 April 2021 at [13].

[\[note: 25\]](#) Intervener's Opening Statement dated 6 April 2021 at [19]; Intervener's Closing Submissions dated 14 April 2021 at [21].

[\[note: 26\]](#) Intervener's Closing Submissions dated 14 April 2021 at [26].

[\[note: 27\]](#) Intervener's Closing Submissions dated 14 April 2021 at [28].

[\[note: 28\]](#) Intervener Opening Statement dated 6 April 2021 at [15].

[\[note: 29\]](#) Intervener's Closing Submissions dated 14 April 2021 at [11].

[\[note: 30\]](#) Intervener's Closing Submissions dated 14 April 2021 at [11(ii)].

[\[note: 31\]](#) Intervener's Closing Submissions dated 14 April 2021 at [11(iii)].

[\[note: 32\]](#) Intervener's Closing Submissions dated 14 April 2021 at [29]–[30].

[\[note: 33\]](#) Intervener's Closing Submissions dated 14 April 2021 at [31].

[\[note: 34\]](#) Intervener's Closing Submissions dated 14 April 2021 at [34].

[\[note: 35\]](#) Intervener's Opening Statement dated 6 April 2021 at [21]–[22].

[\[note: 36\]](#) Intervener's Closing Submissions dated 14 April 2021 at [38].

[\[note: 37\]](#) Intervener's Closing Submissions dated 14 April 2021 at [42].

[\[note: 38\]](#) Amirthalingam Kanmani's Affidavit of Evidence-Chief dated 14 January 2021 at p 19.

[\[note: 39\]](#) 1st Defendant's Supplementary Closing Submissions at [9].