# Ting Jun Heng *v* Yap Kok Hua and another
# [2021] SGHC 44

**Case Number** : Suit No 307 of 2019

**Decision Date** : 25 February 2021

**Tribunal/Court** : High Court

**Coram** : Aedit Abdullah J

**Counsel Name(s)** : Ramasamy s/o Karuppan Chettiar (Central Chambers Law Corporation) for the plaintiff; Teo Weng Kie, Shahira Binte Mohd Anuar (Tan Kok Quan Partnership) for the first defendant; Wee Anthony and Fendrick Koh (United Legal Alliance LLC) for the second defendant.

**Parties** : Ting Jun Heng — Yap Kok Hua — Ng Li Ning

*Tort – Negligence – Contributory negligence*

*Damages – Computation*

*Damages – Contributory negligence*

25 February 2021

**Aedit Abdullah J:**

**Introduction**

1 The second defendant in this case has appealed against my decision in the liability phase of the proceedings, where I found that the second defendant was 35% liable for the harm caused to the plaintiff.

2 The plaintiff was a passenger, with others, aboard a taxi driven by the first defendant. While the first defendant was executing a right turn at a junction, the vehicle driven by the second defendant, who had priority as the lights were in his favour, collided with the taxi, causing injury to the plaintiff and some other passengers, and unfortunately, the death of one of them.

3 Brief remarks were conveyed earlier. These are my full grounds.

**The background**

4 In the evening of 19 April 2018, the plaintiff, together with three fellow passengers, took a taxi driven by the first defendant, from Clementi Mall to the National University of Singapore ("NUS"). [note: 1] The taxi stopped at the junction between Commonwealth Avenue West and Clementi Road to turn right onto Clementi Road in the direction of the Ayer Rajah Expressway. [note: 2] A discretionary right turn could be made at the junction at the material time. [note: 3]

5 The taxi was in one of two right-turning lanes at the junction, [note: 4] before moving into its respective turning pocket. [note: 5] When the vehicle to the taxi's left ("Unknown Vehicle") moved to execute the discretionary right turn, the first defendant also chose to make the turn. [note: 6]

Tragically, the first defendant's taxi was hit by the second defendant's vehicle, [note: 7] which was going straight through the junction above the speed limit of 70 km/h. [note: 8] The traffic lights were in the second defendant's favour, [note: 9] and he had seen the Unknown Vehicle making the turn, [note: 10] but apparently did not see the taxi next to that Unknown Vehicle until it was too late. [note: 11]

6 One of the passengers in the first defendant's taxi died. [note: 12] The plaintiff and two other passengers were injured. [note: 13] The first defendant was charged with a number of offences, [note: 14] including a charge under Rule 5 of the Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules 2011 (S 688/2011) for failing to ensure that his rear seat passengers were belted up ("Seat Belt Offence"). [note: 15] He pleaded guilty to two of the charges, with other charges, including the Seat Belt Offence, taken into consideration for sentencing. [note: 16] The second defendant's criminal matters were still ongoing at the time of the trial before me.

7 The plaintiff claimed damages against the first and second defendants for negligence in the driving of their vehicles. [note: 17] The trial before me was on liability only, with the precise quantum of damages to be determined subsequently.

8 At trial, reliance was placed on the testimony of the various witnesses, but particularly also on video evidence which came from various sources. The primary dispute was on the care which had to be exercised by the second defendant, who was the driver going straight. It was not disputed by the first defendant that he had been negligent in executing the turn. [note: 18] The key issue was the apportionment of liability as between him and the second defendant, and a secondary issue was whether the plaintiff had indeed used his seatbelt.

**The parties' cases**

***Summary of the plaintiff's case***

9 The plaintiff argued that in respect of the apportionment between the defendants, the second defendant bore some substantial responsibility, albeit to a lesser extent than the first defendant, as he did not slow down when he approached the junction, and failed to keep a proper lookout. [note: 19] The focus of the plaintiff's arguments was on refuting any contributory negligence; in particular, it was argued that it had not been proven that the plaintiff was not wearing a seatbelt when the accident occurred. [note: 20]

***Summary of the first defendant's case***

10 Broadly, the first defendant's counsel argued that the second defendant was proceeding at an exceedingly high speed in the circumstances. [note: 21] Between the two defendants, it was argued by the first defendant that the apportionment, leaving aside the plaintiff's contributory negligence, would be 55 to 60% on the first defendant, and 40 to 45% on the second defendant. [note: 22]

***Summary of the second defendant's case***

11 On the other hand, the second defendant argued that after taking into account contributory negligence on the part of the plaintiff (if any), the apportionment should be 85% on the first

defendant and 15% on the second defendant. [note: 23] Even though he was speeding, the first defendant was much more blameworthy because the latter blindly followed the Unknown Vehicle in making the right turn, [note: 24] thereby causing an unavoidable collision between the first and second defendants' vehicles. [note: 25]

12 The two defendants both argued that there was contributory negligence by the plaintiff as he had failed to wear his seatbelt. [note: 26]

**The Decision**

13 There was no controversy that the primary liability lay with the defendants. [note: 27] There was, I found, no contributory negligence on the part of the plaintiff, as on what was before me, the plaintiff had worn his seatbelt.

14 Between the first and second defendant, I found, weighing their respective actions and omissions, that the first defendant bore the greater part of responsibility, at 65% liability, and the second defendant at 35%.

**Analysis**

15 The primary issues were:

(a) the respective liabilities of the two defendants, considering in particular the experts' opinions concerning the speed of the second defendant's vehicle up to and at the point of collision; and

(b) whether there was contributory negligence by the plaintiff in not wearing his seatbelt.

***The first defendant's liability***

16 A greater degree of responsibility certainly lay on the first defendant, which was not disputed by his counsel. [note: 28] The first defendant was executing a discretionary right turn, [note: 29] with the traffic lights in favour of oncoming traffic. [note: 30] Priority lay with those vehicles going straight. Accordingly, it was incumbent upon the first defendant to keep a proper lookout, and exercise prudent judgment in executing the turn. If there was any doubt about whether it was safe to turn, the first defendant should have either waited for oncoming traffic to clear, or waited for it to stop and the right turn green arrow traffic lights to come on. He, however, failed to do so. He simply followed the Unknown Vehicle next to him, [note: 31] which turned, but fortunately did not collide with any oncoming traffic.

17 The second defendant referred to the first defendant's changing position as to what the first defendant allegedly saw and did at the junction. [note: 32] It is sufficient to note at this point that the inference to be drawn from the video evidence showing the movement of the relevant vehicles is that there was want of due care on the part of the first defendant, and that the first defendant failed to keep a proper lookout. The primary responsibility for the collision could not be laid at the door of the second defendant's speeding.

***The second defendant's liability***

18 The level of responsibility to be ascribed to the second defendant was consequent on, primarily, the degree to which he exercised a proper lookout, as well as the speed at which he was travelling. In respect of the latter, while the two experts agreed that the second defendant was speeding, [note: 33] and it was not disputed by the second defendant himself that he had been travelling over the speed limit, [note: 34] a finding should nonetheless be made by the Court.

*The speed at which the second defendant was travelling*

19 In determining the second defendant's speed up to and at the point of collision, I considered the views of the two experts. I accept that each of the experts was well-qualified to testify in respect of the collision between the vehicles. While the second defendant took issue with the expertise of the first defendant's expert, [note: 35] I found, having examined his formal qualifications and experience, that he was qualified within the meaning of Section 47(2) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") to give an expert opinion.

(1) The first defendant's arguments

20 The first defendant's expert witness gave his opinion that the second defendant was driving at 88 to 93 km/h, [note: 36] in excess of the speed limit. [note: 37] This was derived from momentum exchange calculations, which the first defendant argued was to be preferred to an analysis of the video footages. [note: 38] The videos' low frame rate, poor contrast and fish-eye effect, coupled with how small the second defendant's vehicle seemed at some parts of the video, [note: 39] made it difficult to assess the precise time at which the impact occurred, [note: 40] thereby compromising the accuracy of speed calculations that relied on video analyses. [note: 41]

(2) The second defendant's arguments

21 The second defendant's expert analysed video footage from one source to derive the speed of the second defendant's vehicle, which in his opinion was between 74 and 87 km/h. [note: 42] When the second defendant's expert was subsequently given a video recorded by cameras maintained by the Land Transport Authority, this video led him to conclude that the average speed up to impact was 82 km/h. [note: 43]

22 The second defendant submitted that the court need not choose between the differing expert opinions in determining the appropriate apportionment, [note: 44] because the difference was not large and there was no dispute that the second defendant was driving above the speed limit. [note: 45] However, should the court have to do so, the second defendant's expert opinion should be preferred. [note: 46] In his momentum exchange calculations, the first defendant's expert made assumptions about multiple variables, [note: 47] and relied on a forensic map which was created by a third party who was not called to give evidence. [note: 48] The first defendant's expert also relied on third party data to verify the accuracy of this forensic map. [note: 49] Additionally, there were concerns about the coefficient of friction employed by the first defendant's expert, [note: 50] as well as uncertainty over which tyre marks had been deposited by which vehicle, and the latter would in turn affect the vehicles' post-impact departure angles in the first defendant's expert's calculations. [note: 51]

(3) Determination of the second defendant's speed

23 The expert witnesses used different methods to analyse the collision and the events leading up to it, arriving at different speeds for the vehicle driven by the second defendant. As shown above, that difference was not substantial, and the second defendant submitted that the finding on the actual speed of the second defendant's car would not affect the findings on relative liability. [note: 52] Nonetheless, for the record, I made an express finding on the opinions expressed.

24 I accepted that either method adopted might give a credible and reliable opinion. The first defendant's expert used calculations based on the momentum and relative positions of the vehicles to derive that the likely speed at which the second defendant's vehicle was travelling at, up to and at the point of collision, was in the range of 88 to 93 km/h. [note: 53] In contrast, the second defendant's expert analysed the video footages and assessed that the speed of the second defendant's vehicle was between 74 to 87 km/h, [note: 54] with an average speed determined to be at 82 km/h. [note: 55] Video analysis was also used by the Health Sciences Authority ("HSA"), but while its report was before the Court, that evidence was not tested through a cross-examination of its maker, and I thus was reluctant to place much weight on it. For what it is worth, the speed determined by the HSA was about 92 to 97 km/h. [note: 56]

25 The second defendant pointed out several errors made by the first defendant's expert, namely the direction of traffic for one of the roads at the junction, [note: 57] as well as the figure for the coefficient of friction, [note: 58] which would influence the braking distance of the second defendant's vehicle. The errors were not, however, such as to lead me to reject the first defendant's expert's opinion. These were relatively minor and did not affect his credibility as a whole.

26 The choice between the two opinions came down to an assessment of which was more reliable in the specific circumstances of this case, particularly given the constraints on the real and objective evidence used in the respective analyses, as well as the assumptions made.

27 On the facts, I found that the momentum exchange analysis was less reliable, and that the video analysis, while suffering from some shortcomings, was to be preferred. Some of the assumptions underlying the momentum exchange analysis, which rendered it less reliable, were as follows:

(a) The forensic mapping was assumed to be accurate. The momentum exchange analysis required an accurate determination of the vehicles' positions, [note: 59] so that speed and momentum could be reliably calculated. There were, however, concerns about the forensic mapping here. [note: 60]

(b) The relative weights of the vehicles were assumed. [note: 61] This was a function of the weight of the persons in the vehicles at the material time, other baggage or loads, and even the fuel carried. Although the variation might not be that great, it would seem that on the facts of this case, the figures derived might be subject to too many contingencies for the momentum exchange analysis to be preferred.

28 The video evidence suffered from some deficiencies too. The resolution of the images was not that high. The frame rate was also not ideal. [note: 62] Nonetheless, upon comparing the concerns surrounding the video analysis and momentum exchange analysis, I concluded that the video evidence here was more reliable, and thus the video analysis was to be preferred.

29 I therefore accepted the evidence of the second defendant's expert, who concluded that the

speed of the second defendant's vehicle was 74 to 87 km/h, with an average speed of 82 km/h. Even taking the lower speed within the range, the second defendant was above the speed limit of 70 km/h, and certainly was so in terms of his average speed.

*The second defendant's driving*

30 Aside from the question of the second defendant's speed, I found that the second defendant failed to keep a proper lookout and otherwise drive with proper care at the junction.

(1) The first defendant's arguments

31 The second defendant had driven so fast that both the first defendant and second defendant could not have taken evasive actions to avoid the collision. [note: 63] To recap, the first defendant's expert witness gave his opinion that the second defendant was driving at 88 to 93 km/h, [note: 64] in excess of the speed limit. [note: 65] The second defendant should have travelled at a slower speed to perceive the vehicles crossing his path, especially since he had an obstructed view of the large and busy junction due to other turning vehicles. [note: 66] It was also harder for the second defendant to see the traffic ahead due to an interplay of lights from various sources. [note: 67]

32 Given that the second defendant was approaching a large and busy junction and the likelihood that there would be two turning lanes on the first defendant's side of the road, the second defendant should have braked upon seeing the Unknown Vehicle turning, in anticipation that there will be other turning vehicles. [note: 68] Instead, the second defendant chose to take his chances and maintained his excessive speed, [note: 69] narrowly missing the Unknown Vehicle. [note: 70] In this regard, the first defendant disagreed with the second defendant's expert evidence that the second defendant undertook heavy braking as it entered the junction. [note: 71]

33 Furthermore, as the second defendant approached the junction, he did not horn or flash, which would have alerted the first defendant to his presence. [note: 72]

34 Even though the second defendant had the right of way, he should still exercise care as he approached the junction: [note: 73] *Asnah Binte Ab Rahman v Li Jian Lin* [2016] SGCA 16 ("*Asnah*"). [note: 74]

(2) The second defendant's arguments

35 The second defendant decided to maintain his speed as he entered the junction because he had accurately assessed that the Unknown Vehicle would clear his path in time. [note: 75] However, the first defendant, who was lurking behind the Unknown Vehicle, suddenly appeared in front of him such that a collision was inevitable. [note: 76]

(3) Determination of the second defendant's responsibility in driving

36 Having the right of way essentially means that other users should yield or give way. However, having the right of way does not absolve that particular road user of the need to exercise due care. All driving occurs, particularly in urban Singapore, within an environment where there are risks to be managed, and dangers to be aware of. Even a road user with lights in his or her favour must still ensure that a proper lookout is kept, and enough reaction time worked in so that accidents can be

avoided with some reasonable effort. This underlies various cases such as *SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] 2 SLR(R) 211 ("*Stafford*"). I do not understand *Ong Bee Nah v Won Siew Wan (Yong Tian Choy, Third Party)* [2005] 2 SLR(R) 455 to differ from this conclusion; much will depend on the specific facts of each case, as was emphasised in *Stafford* itself.

37 In exercising such care, a driver must take heed of other road users, and adjust his speed lower if needed in the circumstances to reduce the risk of an accident occurring. The degree and nature of attention will vary according to the circumstances. A driver in the fastest lane on an expressway can usually go at or close to the speed limit, but must, in particular, maintain a sufficiently safe distance from the vehicle in front to slow down or stop if something impedes traffic ahead of him. A driver in an area with crowds of pedestrians or near a school would need to exercise caution to allow enough reaction time should a pedestrian or cyclist cross into his path suddenly.

38 Generally, a driver having priority or right of way can exercise it, but must be mindful that other users may not observe the rules and be able to react to such other users accordingly. Having the right of way does not equate to a licence to collide with another road user in exercising that right.

39 At a busy junction, a vehicle going straight with the traffic lights in its favour can continue to move forward, but the driver should still exercise a proper lookout and take steps to reasonably reduce the risk of collision. Where the drivers of the turning vehicles are over-optimistic, the driver going straight should exercise caution, slow down to allow for appropriate reaction(s), and sound the horn as appropriate. He should make sure that it is safe to continue straight before proceeding. The driver travelling straight should not proceed as if the vehicles ahead at the junction were incapable of turning into his path.

40 Here, the second defendant did not dispute that he was above the speed limit. [note: 77] Based on the expert opinion which I accepted, he was going at a speed of at least 74 km/h, with an average speed of 82 km/h. Given that it was a large and busy junction, the second defendant ought to have proceeded slower than the speed limit so as to keep a proper lookout and respond to the turning traffic.

41 Further, upon seeing vehicles turning, or at least one vehicle doing so, the appropriate reaction would have been to slow down, sound the horn if need be, and make sure no other vehicle was following suit in turning, either from behind or next to the one that took its chances. Yet, the second defendant maintained his excessive speed even after seeing the Unknown Vehicle, because he assessed that it would clear his path of travel. [note: 78] The second defendant should have considered that there could be other turning vehicles behind the Unknown Vehicle, especially since his view of vehicles at the large and busy junction was obstructed, [note: 79] and slowed down accordingly to ensure that no other vehicles was following suit.

**Apportioning liability between the defendants**

42 In determining the respective apportionment, regard would have to be had to the breaches by the respective parties, in particular: (a) the relative causative potency and (b) the relative moral blameworthiness of parties' breaches. Causative potency is the extent to which each party's conduct contributed to the damage in question, whereas the assessment of blameworthiness entails a consideration of a wide range of conduct to arrive at a just and equitable result on the facts (*Cheng Williams v Allister Lim and Thrumurugan* [2015] SGCA 15 ("*Cheng Williams*") at [45] – [46]). These were two major factors considered in the apportionment of damages in the context of contributory

negligence under Section 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed) (*Asnah* ([34] *supra*) at [118]), as well as in the determination of the amount of contribution recoverable under Section 16(1) of the Civil Law Act (Cap. 43, 1999 Rev Ed) from one tortfeasor by another (*Cheng Williams* at [45]). These two factors should, in principle, also be considered when apportioning liability between two tortfeasors who were both sued for negligence by the same plaintiff in the same suit.

***The plaintiff's arguments***

43 Regarding the issue of apportionment, the plaintiff argued that the second defendant bore substantial responsibility, albeit to a lesser extent than the first defendant. [note: 80] A driver travelling above the speed limit should slow down when approaching a junction even if the traffic lights were in his/her favour, [note: 81] but the second defendant, who was exceeding the speed limit, did not. [note: 82] As a result, he did not keep a proper lookout and failed to appreciate the dangers at the junction. [note: 83]

***The first defendant's arguments***

44 Between the two defendants, it was argued by the first defendant that the apportionment, leaving aside the plaintiff's contributory negligence, should be 55 to 60% on the first defendant, and 40 to 45% on the second defendant. [note: 84] The first defendant was willing to bear a greater share of the liability because he admitted that his negligence was a larger contributing factor to the accident, he only had a discretionary right to make a right turn, he failed to keep a proper lookout, misjudged the dangers that the second defendant posed, and simply followed the Unknown Vehicle when it executed the right turn. [note: 85]

45 Nonetheless, the first defendant sought substantial contribution from the second defendant as the latter's negligence was particularly egregious: [note: 86] the second defendant was driving too fast in the circumstances, [note: 87] failed to slow down even after witnessing the Unknown Vehicle turning, [note: 88] and did not horn or flash as he approached the junction. [note: 89]

***The second defendant's arguments***

46 The second defendant, on the other hand, argued that after taking into account contributory negligence on the part of the plaintiff (if any), the first and second defendant should bear 85% and 15% of the liability respectively. [note: 90] It was submitted that the apportionment of liability between the two defendants should be guided by the relative causative potency and moral blameworthiness of the parties' conduct. [note: 91]

47 Even though the second defendant admitted that he was driving at an excessive speed, he contended that the first defendant was more blameworthy for blindly following the Unknown Vehicle in making the right turn without satisfying himself that there was no oncoming traffic. [note: 92] Furthermore, the second defendant had accurately estimated that the Unknown Vehicle would clear his path in time, but the first defendant lurked behind the Unknown Vehicle, and suddenly appeared in front of the second defendant as the Unknown Vehicle picked up speed to cross the junction, leaving the second defendant with no opportunity to take evasive actions to avoid a collision with the first defendant's taxi. [note: 93]

48 The second defendant also contended that the first defendant's conduct was more causatively potent because if the first defendant's taxi had not encroached into his path, there would have been no collision regardless of whether the second defendant was speeding. [note: 94]

49 As for the amount of liability that the second defendant should bear, the second defendant argued that this Court is bound by the Court of Appeal's decision in *Joo Yong Co (Pte) Ltd and another v Gajentheran Marimuthu (by his mother and next friend Parai a/p Palaniappan) and others* [2015] SGCA 38 ("*Joo Yong*"), and should therefore apportion 15% of the liability to the second defendant. [note: 95] The second defendant buttressed his position by noting that other local and foreign decisions involving similar facts did not apportion more than 20% of the liability to the straight-going vehicle. [note: 96]

***Weighing the defendants' respective responsibilities***

50 Upon considering the evidence and arguments put forward by the parties, I found that the first and seconddefendants' conduct were equally causatively potent. There, however, should be a difference in how much liability they each should bear due to the different degree of blameworthiness attached to their conduct. The first defendant would have to bear the bulk of the responsibility for turning without properly checking for oncoming traffic. Accordingly, the first defendant's liability was certainly greater than 50%. The question was whether it would go all the way up to 85% or more. To my mind, a 15 to 25% finding against the second defendant would be too low, as the second defendant should also bear a substantial portion of responsibility for exceeding the speed limit and failing to keep a proper lookout for other road users. Yet, a 40 to 50% finding against the second defendant would be too high. In the circumstances, I am of the view that the appropriate measure would be 35% responsibility on the part of the second defendant.

*Causative potency*

51 To recap, the first defendant turned without properly checking for oncoming traffic. He simply followed the Unknown Vehicle next to him, [note: 97] which was a little bit ahead, and seemed, from the video footage, to had narrowly missed a collision with the second defendant's vehicle. The first defendant should not have moved just because the Unknown Vehicle did. Instead, he should have kept a proper look out, checked if any traffic was coming on, gauged the speed of such traffic, and take the appropriate precautions. Had the first defendant done so, the collision could have been avoided.

52 But while the first defendant could have avoided the collision if he had exercised due care, this did not mean that the second defendant was wholly without blame. As it was, counsel for the second defendant did not wholly deny liability, but argued that the second defendant should bear 15% of the liability. [note: 98] Following from the discussion above, the second defendant should have slowed down, and kept an eye out for traffic that might be turning. The second defendant contended that the collision was unavoidable because the first defendant lurked behind the Unknown Vehicle, and suddenly appeared in front of him while he was travelling across the junction. [note: 99] However, had the second defendant lowered his speed and kept a proper look out, the second defendant would have had more time to respond and stop his car even if the first defendant turned the way he did.

53 Consequently, the two defendants' conduct were equally causatively potent – each of their acts and omissions was equally important in forming a continuous causal link leading to the plaintiff's eventual injuries. In this regard, I disagreed with the second defendant's submission that the accident

would have been avoided altogether if the first defendant's taxi did not encroach into second defendant's path, and that the first defendant's conduct was therefore more causatively potent. The relative causative potency of parties' conduct should not be assessed solely based on who first triggered the chain of events; regard must be had to how each party contributed to the continuous causal link resulting in the eventual damage.

*Blameworthiness*

54 Taking into account the parties' respective breaches, however, it is clear that there could not be equal apportionment even if their conduct were equally causatively potent – the first defendant's conduct was clearly more blameworthy. Greater blameworthiness lay on the party executing the turn, as the signal light was in favour of oncoming traffic. The second defendant could not be made to assume the same degree of liability as the first defendant, even if the second defendant was speeding. Indeed, it would be hard to contemplate a situation where such an apportionment would occur though one may not rule it out entirely, given that reality often surprises.

55 While the first defendant's conduct was more reproachable, the percentage liability argued for by the second defendant was too low. It was recognised by the Court of Appeal in *Stafford* ([36] *supra*) at [31] and [33] that oncoming traffic had obligations, despite having priority going straight at the junction. In particular, the Court of Appeal said at [33]:

> We fully agree with the learned judge that the law requires the motorist to act on the basis that there may be negligence and incompetence on the part of other road users and to make allowance for them, but without having to contemplate possibilities that are remote. …

This emphasised that it is necessary to be aware of and to be ready to react to other road users, even if the driver has priority at the junction. The Court of Appeal also emphasised the need to consider speed at [34]:

> The crux of the issue is what a reasonable person would apprehend in a particular set of circumstances. At one extreme is a driver of a car on an open road in dry weather and perfect visibility. He may drive at whatever speed his car can permit him safely to attain – subject to the legal speed limit – if he does not see any vehicle, person or animal that may obstruct his path. However, once there is other traffic on the road, or there are pedestrians or animals at the roadside, or there are obstructions to his view, he must contemplate the possibility that any of these may impinge on this path and must adjust his speed accordingly to one at which he can effectively stop or otherwise avoid a collision. …

In that same passage, the Court of Appeal had also noted that the legal speed limit restricts what speed should be pursued.

56 Given these considerations, namely caution in the presence of other road users, and the need to keep to the speed limit, it is clear that there was substantial breach by the second defendant. Pitching it at the level of 15% as advocated by the second defendant would not sufficiently reflect the operation of these factors, particularly the responsibility of the driver with priority. Indeed, any proportion less than 35% would not to my mind have been appropriate. The range of 20 to 30% gave insufficient weight to the speed and the need to keep a look out. Had there been a proper look out and lower speed, I found that the second defendant would have been able to stop even if the first defendant turned the way he did. 40% liability would have been too high, as it would have been too close to equal responsibility, which as noted above, was not suitable since the primary responsibility should lie on the driver of the turning vehicle.

*The precedents*

57 The apportionment of liability between defendants is a fact-sensitive exercise, just like the apportionment of damages in the context of contributory negligence (*Asnah* ([34] *supra*) at [118] and [119]). Accordingly, the court is not bound by the local and foreign precedents which the second defendant relied upon in contending that the second defendant should only bear 15% of the liability.

58 The main case which the second defendant relied upon, *Joo Yong* ([49] *supra*), can also be distinguished from the present facts. There, the respondent was proceeding into the junction when the appellant made a right turn into the junction from the opposite direction and collided with the respondent. The traffic lights were in favour of the respondent. The Court of Appeal reduced the appellants' liability by 15% to take into account the respondent's contributory negligence for approaching a junction in a heavy traffic situation at an unsafe speed (*Joo Yong* at [23] – [24]). In so finding, the Court of Appeal noted that the respondent was travelling within the speed limit (*Joo Yong* at [23]), but did not mention the respondent's line of sight. In contrast, the second defendant in the present case not only travelled above the speed limit but also maintained this excessive speed even after seeing the Unknown Vehicle turning, despite having an obstructed view of vehicles at the large and busy junction. These factors rendered the second defendant's excessive speed and failure to keep a proper lookout even more egregious than the respondent's conduct in *Joo Yong*, thereby justifying the apportionment of a higher proportion of liability to the second defendant.

*Conclusion on apportionment*

59 Based on the foregoing analysis, I am of the view that the first defendant should be responsible for 65% of the liability whilst the second defendant bear the remaining 35%.

**Contributory negligence by the plaintiff**

60 The issue of whether the plaintiff was contributorily negligent turned on whether the plaintiff was wearing a seat belt at the time of the accident.

***The plaintiff's arguments***

61 The plaintiff argued that the first and second defendants had not proven that the plaintiff was not wearing a seatbelt when the accident occurred. Even though the first defendant was charged under Rule 5 of the Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules 2011 for failing to ensure that his rear seat passengers wore a seat belt, the plaintiff noted that the elements of this charge were not established because the Prosecution did not proceed with this charge. [note: 100] Further, the first defendant did not have personal knowledge that the plaintiff did not wear his seatbelt. [note: 101] While the plaintiff could not recall whether he had worn a seat belt, he claimed that it was his normal practice to wear a seat belt when he sits in a car or taxi, and that there was no reason why he would not have worn a seat belt. [note: 102]

***The first defendant's arguments***

62 The first defendant contended that the plaintiff was contributorily negligent because he was not wearing a seat belt at the time of the accident. [note: 103] The first defendant relied primarily on the fact that a charge was preferred against him for the Seat Belt Offence. [note: 104] The plaintiff also conceded that he did not remember whether he wore a seat belt, and simply believed that he

was wearing one because this was his practice. [note: 105]

***The second defendant's arguments***

63 The second defendant's submissions were largely similar to that of the first defendant's. [note: 106] An additional argument raised was that the plaintiff admitted that he had sustained head injuries because he was flung about in the accident, and since he was flung about, it was likely that he was not wearing a seat belt. [note: 107]

***Determination of whether the plaintiff wore a seat belt***

64 It bears noting that the defendants have the burden of proving that the plaintiff was contributorily negligent (*Asnah* ([34] *supra*) at [113]).

65 However, the only evidence which suggests that the plaintiff had not been wearing his seatbelt at the material time was the fact that the first defendant was charged with not having ensured that his passengers had in fact worn seatbelts. [note: 108] Yet, the first defendant himself was not sure about whether the plaintiff had done so. [note: 109] In the circumstances, little weight could be placed on the charge against the first defendant.

66 The plaintiff maintained that he had indeed worn the seatbelt. [note: 110] There was no other evidence on this issue, such as from biomechanical or other experts, that the injuries suffered could only have been caused by the plaintiff not wearing his seatbelt. There was also no evidence that the plaintiff's injuries pointed to the likelihood or probability that the plaintiff had in fact not worn the seatbelt. The plaintiff himself testified that it was his usual practice to wear a seatbelt. [note: 111] There was no reason to find on the balance of the probabilities that he had not.

67 As for the effect of the first defendant's plea of guilt and the reference in the Statement of Facts to the first defendant not ensuring that his rear passengers were wearing seatbelts (to which he had admitted), [note: 112] this was of little effect against the plaintiff. The plaintiff was not party to the criminal proceedings, nor was he convicted of any offence of not wearing a seatbelt. Section 45A of the Evidence Act did not assist the defendants here in ascribing contributory negligence since it did not affect the position of the plaintiff.

68 If the plaintiff had not worn a seatbelt, then there would have been contributory negligence. It is true that whether the seatbelt was worn would have been irrelevant to the occurrence of the accident. However, what matters in a claim for negligence is not just the accident or collision itself, but the damage that flows from it – the relevant question is whether the plaintiff is responsible for the injury suffered by him. That was laid down in *Froom v Butcher* [1976] 1 QB 286 at 292 and approved by the Court of Appeal in *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377 at [59]. I was satisfied that as a matter of principle, this position should be applied on the instant facts.

**Conclusion**

69 Therefore, considering the evidence and arguments, I concluded that the liability for the plaintiff's injuries should rest as follows: (a) first defendant: 65%; and second defendant: 35%. The plaintiff was not contributorily negligent for his loss, and no further adjustment was needed.

70 Cost orders were made separately.

[note: 1] First Defendant's AEIC dated 30 September 2019, paragraphs 3 and 4.

[note: 2] First Defendant's AEIC dated 30 September 2019, paragraphs 7, 8 and 10.

[note: 3] Second Defendant's Written Submissions dated 21 August 2020, paragraph 8.

[note: 4] First Defendant's Closing Submissions dated 21 August 2020, paragraph 6; First Defendant's AEIC dated 30 September 2019, paragraph 8.

[note: 5] First Defendant's AEIC dated 30 September 2019, paragraph 11.

[note: 6] First Defendant's AEIC dated 30 September 2019, paragraph 12.

[note: 7] First Defendant's AEIC dated 30 September 2019, paragraph 13.

[note: 8] Second Defendant's AEIC dated 4 October 2019, paragraph 8; NE 17 June 2020, page 43 at lines 14 to 30, and page 44 at lines 24 to 30.

[note: 9] Second Defendant's AEIC dated 4 October 2019, paragraph 8.

[note: 10] Second Defendant's AEIC dated 4 October 2019, paragraph 9.

[note: 11] Second Defendant's AEIC dated 4 October 2019, paragraph 10.

[note: 12] Plaintiff's AEIC dated 27 September 2019, paragraph 5 and page 15.

[note: 13] Plaintiff's AEIC dated 27 September 2019, page 19.

[note: 14] Plaintiff's AEIC dated 27 September 2019, page 14 – 33.

[note: 15] Plaintiff's AEIC dated 27 September 2019, page 29.

[note: 16] First Defendant's AEIC dated 30 September 2019, paragraphs 17 – 18.

[note: 17] Plaintiff's Statement of Claim dated 21 March 2019, paragraphs 5 – 6.

[note: 18] First Defendant's Closing Submissions dated 21 August 2020, paragraph 147.

[note: 19] Plaintiff's Written Submissions dated 17 August 2020, paragraphs 26 – 27.

[note: 20] Plaintiff's Written Submissions dated 17 August 2020, paragraph 14.

[note: 21] First Defendant's Closing Submissions dated 21 August 2020, paragraph 21.

[note: 22] First Defendant's Closing Submissions dated 21 August 2020, paragraph 150.

[note: 23] Second Defendant's Written Submissions dated 21 August 2020, paragraph 168.

[note: 24] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 76 and 117(b).

[note: 25] Second Defendant's Written Submissions dated 21 August 2020, paragraph 126.

[note: 26] First Defendant's Closing Submissions dated 21 August 2020, paragraph 109; Second Defendant's Written Submissions dated 21 August 2020, paragraph 37.

[note: 27] First Defendant's Closing Submissions dated 21 August 2020, paragraph 149; Second Defendant's Closing Submissions dated 21 August 2020, paragraph 169.

[note: 28] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 147 and 150.

[note: 29] First Defendant's AEIC dated 30 September 2019, paragraph 12.

[note: 30] Second Defendant's AEIC dated 4 October 2019, paragraph 8.

[note: 31] NE 16 June 2020, page 78 at lines 23 to 24.

[note: 32] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 44 – 71.

[note: 33] Agreed Bundle of Documents dated 31 March 2020, page 151 at paragraph 167, page 268 at paragraphs [8.32] – [8.33] and page 315 at paragraph [19a].

[note: 34] NE 17 June 2020, page 43 at lines 14 to 30.

[note: 35] NE 18 June 2020, page 14 at line 7 to page 28 at line 10.

[note: 36] First Defendant's Closing Submissions dated 21 August 2020, paragraph 27.

[note: 37] First Defendant's Closing Submissions dated 21 August 2020, paragraph 121b.

[note: 38] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 90 – 91.

[note: 39] First Defendant's Closing Submissions dated 21 August 2020, paragraph 47.

[note: 40] First Defendant's Closing Submissions dated 21 August 2020, paragraph 50.

[note: 41] First Defendant's Closing Submissions dated 21 August 2020, paragraph 53.

[note: 42] Agreed Bundle of Documents dated 31 March 2020, page 268 at paragraphs [8.32] – [8.33].

[note: 43] Agreed Bundle of Documents dated 31 March 2020, page 315 at paragraph [19a].

[note: 44] Second Defendant's Written Submissions dated 21 August 2020, paragraph 91.

[note: 45] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 92 – 93.

[note: 46] Second Defendant's Written Submissions dated 21 August 2020, paragraph 96.

[note: 47] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 100 and 101(d).

[note: 48] Second Defendant's Written Submissions dated 21 August 2020, paragraph 101(a).

[note: 49] Second Defendant's Written Submissions dated 21 August 2020, paragraph 101(a).

[note: 50] Second Defendant's Written Submissions dated 21 August 2020, paragraph 101(b).

[note: 51] Second Defendant's Written Submissions dated 21 August 2020, paragraph 101(c).

[note: 52] Second Defendant's Written Submissions dated 21 August 2020, at paragraph 91.

[note: 53] Agreed Bundle of Documents dated 31 March 2020, pages 133 and 151.

[note: 54] Second Defendant's Written Submissions dated 21 August 2020, paragraph 90(b).

[note: 55] Second Defendant's Written Submissions dated 21 August 2020, paragraph 90(c).

[note: 56] Agreed Bundle of Documents dated 31 March 2020, page 94 at paragraph 26b.

[note: 57] Second Defendant's Written Submissions dated 21 August 2020, paragraph 103(a).

[note: 58] Second Defendant's Written Submissions dated 21 August 2020, paragraph 101(b).

[note: 59] Agreed Bundle of Documents dated 31 March 2020, page 133 at paragraph 62.

[note: 60] NE 18 June 2020, page 29 at line 17 to page 31 at line 23.

[note: 61] NE 18 June 2020, page 49 at lines 4 to 8, page 53 at line 28 to page 54 at line 10; Agreed Bundle of Documents dated 31 March 2020, page 184 at paragraph 5.

[note: 62] Agreed Bundle of Documents dated 31 March 2020, page 139 at paragraph 99.

[note: 63] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 13 and 121d.

[note: 64] First Defendant's Closing Submissions dated 21 August 2020, paragraph 27.

[note: 65] First Defendant's Closing Submissions dated 21 August 2020, paragraph 121b.

[note: 66] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 107 – 108.

[note: 67] First Defendant's Closing Submissions dated 21 August 2020, paragraph 137.

[note: 68] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 97 and 100.

[note: 69] First Defendant's Closing Submissions dated 21 August 2020, paragraph 100.

[note: 70] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 101 – 105.

[note: 71] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 65 – 89.

[note: 72] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 118 and 121i.

[note: 73] First Defendant's Closing Submissions dated 21 August 2020, paragraph 119.

[note: 74] First Defendant's Closing Submissions dated 21 August 2020, paragraph 142.

[note: 75] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 125 – 126 and 164.

[note: 76] Second Defendant's Written Submissions dated 21 August 2020, paragraph 126.

[note: 77] Second Defendant's Written Submissions dated 21 August 2020, paragraph 93.

[note: 78] Second Defendant's AEIC dated 4 October 2019, at paragraph 9; NE 17 June 2020, page 73 at lines 3 – 21, page 55 at lines 16 – 29.

[note: 79] NE 17 June 2020, page 39 at line 19 to page 40 at line 15, page 42 at lines 10 to 15.

[note: 80] Plaintiff's Written Submissions dated 17 August 2020, paragraph 26.

[note: 81] Plaintiff's Written Submissions dated 17 August 2020, paragraphs 20 – 21.

[note: 82] Plaintiff's Written Submissions dated 17 August 2020, paragraphs 23 – 26.

[note: 83] Plaintiff's Written Submissions dated 17 August 2020, paragraph 27.

[note: 84] First Defendant's Closing Submissions dated 21 August 2020, paragraph 150.

[note: 85] First Defendant's Closing Submissions dated 21 August 2020, paragraph 147.

[note: 86] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 146 – 147.

[note: 87] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 13, 107 – 108, 121d and 137.

[note: 88] First Defendant's Closing Submissions dated 21 August 2020, paragraph 100.

[note: 89] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 118 and 121i.

[note: 90] Second Defendant's Written Submissions dated 21 August 2020, paragraph 168.

[note: 91] Second Defendant's Written Submissions dated 21 August 2020, paragraph 113.

[note: 92] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 76 and 117(b).

[note: 93] Second Defendant's Written Submissions dated 21 August 2020, paragraph 126.

[note: 94] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 134 – 135.

[note: 95] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 146 – 150 and 168.

[note: 96] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 151 – 153, 158 and 167.

[note: 97] NE 16 June 2020, page 78 at lines 23 to 24.

[note: 98] Second Defendant's Written Submissions dated 21 August 2020, paragraph 168(a).

[note: 99] Second Defendant's Written Submissions dated 21 August 2020, paragraph 126.

[note: 100] Plaintiff's Written Submissions dated 17 August 2020, paragraphs 8 – 9.

[note: 101] Plaintiff's Written Submissions dated 17 August 2020, paragraph 10.

[note: 102] Plaintiff's Written Submissions dated 17 August 2020, paragraph 14.

[note: 103] First Defendant's Closing Submissions dated 21 August 2020, paragraph 109.

[note: 104] First Defendant's Closing Submissions dated 21 August 2020, paragraphs 111 and 113.

[note: 105] First Defendant's Closing Submissions dated 21 August 2020, paragraph 110.

[note: 106] Second Defendant's Written Submissions dated 21 August 2020, paragraph 37.

[note: 107] Second Defendant's Written Submissions dated 21 August 2020, paragraphs 35 – 37.

[note: 108] Plaintiff's AEIC dated 27 September 2019, page 29.

[note: 109] NE 16 June 2020, page 83 at lines 1 – 2.

[note: 110] Plaintiff's AEIC dated 27 September 2019, paragraph 5.

[note: 111] NE 16 June 2020, page 12 at lines 27 to 30.

[note: 112] Agreed Bundle of Documents dated 31 March 2020, page 50 at paragraph 7.