IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 311

Suit No 1000 of 2021

Between

(1) CXN (a minor suing by her father and litigation representative)

… *Plaintiff*

And

(1) CXO
(2) Chui Jin Hua Vincent

… *Defendants*

JUDGMENT

[Tort — Negligence — Duty of care]
[Tort — Negligence — Breach of duty]
[Tort — Negligence — Apportionment of liability]

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v
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19–23 September, 18 November 2022

13 December 2022 Judgment reserved.

Teh Hwee Hwee JC:

Introduction

1 This matter concerns a collision between the panel van (the "first defendant's van" or the "van") driven by the first defendant, and the motor car (the "second defendant's car" or the "car") driven by the second defendant, which occurred on 23 October 2020 at about 8.10pm along Woodlands Avenue 12 towards Seletar Expressway ("SLE"). The plaintiff, who was then 8 years of age, was on board the van in the rear cargo compartment, which had neither seats nor seat belts. Upon collision, the plaintiff and another passenger travelling in the rear cargo compartment of the van were ejected from the van. The plaintiff sustained multiple and severe injuries and seeks damages against both defendants for negligence. Neither of the defendants allege contributory negligence on the part of the plaintiff. Each defendant alleges negligence on the part of the other, and consequently, a liability by the other to contribute to the

plaintiff's damage in the event that the defendant concerned is found to be liable to the plaintiff. The trial before me was on the issue of liability only, and the key issue for determination is the apportionment of liability between the defendants.

Background

2 The first defendant is the plaintiff's uncle. On the night of the accident, the first defendant was driving the plaintiff and other passengers from a temple event near Woodlands back to the plaintiff's home.[1] The van had capacity for two passengers in the front (next to the driver)[2] and a rear cargo compartment. The seating arrangement on board the van was as follows:[3]

(a) the first defendant in the driver seat;

(b) the plaintiff's sister in the front middle passenger seat;

(c) the first defendant's daughter, [J], in the front left passenger seat; and

(d) the plaintiff and the first defendant's son, [K], in the rear cargo compartment.

3 The collision was captured in video footage[4] (the "video footage") by a non-party vehicle that was travelling behind the second defendant's car, which

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1 AEIC of the plaintiff's father, [L], dated 12 May 2022 ("[L]'s AEIC") at para 5 (Plaintiff's Bundle of AEICs ("PAEIC") at p 29).

2 [L]'s AEIC at p 29 (PAEIC at p 56); 20 Sept Notes of Evidence ("NE") at p 7, lines 7–8.

3 [L]'s AEIC at para 6 (PAEIC at pp 29–30); AEIC of the First Defendant dated 28 July 2022 (the "First Defendant's AEIC") at para 5 (First Defendant's Bundle of AEICs ("1DAEIC") at pp 4–5).

4 Agreed Bundle of Documents ("ABD") at p 191.

was travelling straight along Woodlands Avenue 12 towards SLE. Traffic that evening was described variously as moderate or light.[5] The first defendant's van was originally travelling in the opposite direction to the second defendant's car. Just before the collision, the first defendant's van was executing an authorised U-turn along Woodlands Avenue 12, to travel towards the SLE. Before the U-turn could be completed, the second defendant's car, which could be seen in the video footage to be racing down the road, collided with the first defendant's van with a tremendous force. The van was thrown into a spin,[6] eventually causing the van to mount the nearby kerb and land with the front half of the van on the grass patch next to the kerb.[7] The passengers in the rear cargo compartment, namely the plaintiff and [K], who were seated on the floor of the rear cargo compartment and not secured by seat belts, were flung out of the van,[8] onto the grass patch next to the kerb and onto the road respectively.[9] The impact of the collision was also evident from the post-accident photographs of the second defendant's car. It was badly damaged; the front of the car was wrecked and crushed to such a degree that what was left of the hood was mangled metal. [10]

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5 AEIC of [K] dated 21 April 2022 at p 5 (PAEIC at p 8); AEIC of [J] dated 21 April 2022 ("[J]'s AEIC") at p 7 (PAEIC at p 18); Supplementary AEIC of [L] dated 5 August 2022 ("[L]'s Supplementary AEIC") at p 14 (PAEIC at p 316); the First Defendant's AEIC at para 8, pp 18, 50 and 72 (1DAEIC at pp 5, 20, 52 and 74); 21 Sept NE at p 10, line 31 to p 11, line 1; AEIC of the Second Defendant dated 9 June 2022 (the "Second Defendant's AEIC") at para 4 (Second Defendant's Bundle of AEICs ("2DAEIC") at p 2); 23 Sept NE at p 22, lines 3–8.

6 22 Sept NE at p 83, lines 26–28 and p 84, lines 17–25.

7 The First Defendant's AEIC at para 11 and pp 26–30 (1DAEIC at pp 6 and 28–32).

8 [L]'s AEIC at para 9 (PAEIC at p 30); The First Defendant's AEIC at para 17 (1DAEIC at p 8).

9 The First Defendant's AEIC at para 12 (1DAEIC at p 6); [J]'s AEIC at para 11 (PAEIC at p 14).

10 The Second Defendant's AEIC at p 15 (2DAEIC at p 15).

4 The first defendant pleaded guilty to one charge of driving without reasonable consideration for other persons using the road by failing to keep a proper look-out while performing an authorised U-turn, resulting in a collision and causing hurt, which was an offence under s 65(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (the "RTA") punishable under s 65(4)(*a*) of the RTA. Another similar charge was taken into consideration for the purposes of sentencing. The first defendant was fined $2,500 and disqualified from holding or obtaining all classes of driving licences for a period of 12 months with effect from 1 August 2022.[11]

5 The second defendant pleaded guilty to one charge of speeding for travelling at a speed of 124km/h, such speed being in excess of the imposed speed limit of 70km/h, which was an offence under s 63(4) of the RTA. His offence was punishable under s 131(2)(*a*) of the RTA, given that it was his first such offence. He was fined $800.[12]

6 The plaintiff pleaded the following particulars in respect of her claim against the first defendant for his negligence in causing the collision:[13]

(a) failing to give way to oncoming straight-going traffic, especially the second defendant's car, before executing the U-turn;

(b) failing to keep any look-out or any proper look-out for oncoming straight-going traffic on the said road (along which the second defendant's car was travelling);

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11 [L]'s Supplementary AEIC at paras 4–6 and pp 7–16 (PAEIC at pp 304 and 309–318).

12 [L]'s AEIC at para 13 and pp 34–37 (PAEIC at pp 31 and 61–64).

13 Plaintiff's Statement of Claim ("Plaintiff's SOC") at paras 8(a)–(j).

(c) failing to wait for the oncoming straight-going traffic to clear before executing the U-turn;

(d) failing to observe the second defendant's car in time or at all so as to avoid the collision;

(e) obstructing the path of travel of the second defendant's car;

(f) failing to give way to the second defendant's car which was going straight and which therefore had the right of way;

(g) failing to exercise due care and attention for other road users when executing the U-turn;

(h) failing to stop, slow down or swerve or otherwise so as to manage and/or control the first defendant's van in order to avoid the collision;

(i) failing to ensure that the plaintiff was wearing a seat belt or approved child restraint; and

(j) allowing the plaintiff to be seated in the rear of the first defendant's van when it was inappropriate and/or unsafe to do so.

7 In respect of the second defendant's negligence in causing the collision, the plaintiff pleaded the following particulars:[14]

(a) travelling at an excessive speed in the circumstances;

(b) failing to apply his brakes in time or at all so as to avoid the collision;

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[14] Plaintiff's SOC at paras 8(k)–(p).

(c) failing to observe the first defendant's van in time or at all so as to avoid the collision;

(d) failing to keep any look-out or any proper look-out for vehicles in front, in particular, vehicles that were executing a U-turn;

(e) failing to exercise due care and attention for other road users when driving along the road, in particular, the first defendant's van;

(f) failing to stop, slow down or swerve or otherwise so as to manage and/or control the second defendant's car in order to avoid the collision.

8 As a result of the injuries sustained, the plaintiff was on medical leave for 277 days[15] and suffered the following disabilities:[16]

(a) right third cranial nerve palsy;

(b) dysarthria with reduced breath support and articulation;

(c) higher executive function/cognitive deficits and reduced higher order language skills;

(d) long term weakness and spasticity on the right upper and lower limbs;

(e) inability to use right hand functionally;

(f) bilateral equinovarus deformities over left and right ankles; and

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15 [L]'s AEIC at para 17 (PAEIC at p 34).

16 Plaintiff's SOC at para 10.

(g) 31% permanent disability under the Workmen Compensation Guidelines (for eye injuries only).

The parties' arguments

9 The plaintiff submitted that the first defendant was negligent in allowing the plaintiff to travel in the rear cargo compartment, which was designed for cargo and not passengers, and allowing her to travel without seat belts or even a seat.[17] The plaintiff further submitted that the first defendant failed to keep a proper look-out for oncoming traffic and, in connection with this, that the first defendant's view of the second defendant's car was not obstructed, unlike what the first defendant claimed.[18] As for the second defendant, the plaintiff submitted that he had driven far in excess of the speed limit of 70km/h, which contributed to the collision.[19]

10 The first defendant argued that the second defendant's excessive speed played a major part in causing the collision. His submission was that the expert evidence showed that the second defendant's car was travelling at a speed greater than 140km/h in the six seconds prior to emergency braking, or at least greater than 99km/h, and that the first defendant would have completed the U-turn safely if the second defendant had not been speeding.[20] Further, the collision could have been avoided if the second defendant had travelled at the speed limit of 70km/h or even up to 99km/h.[21] In addition, the first defendant

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17 Plaintiff's Closing Submissions dated 28 October 2022 ("PCS") at paras 33 and 36.

18 PCS at paras 12 and 29–30.

19 PCS at para 45.

20 First Defendant's Closing Submissions dated 28 October 2022 ("1DCS") at paras 84–85.

21 1DCS at para 93(d).

emphasised his expert's evidence that the severity of the collision, the force of the impact and the points of the impact upon collision were attributable to the second defendant's speed.[22] The first defendant also submitted that the second defendant's speed hindered the second defendant's ability to take evasive actions to avoid the collision.[23] In the circumstances, the first defendant sought a 55% to 45% apportionment against himself and the second defendant respectively.[24]

11 The second defendant submitted that the first defendant was substantially (if not fully) liable for the collision and causing the plaintiff's injuries because the first defendant failed to give way to the second defendant's car, which had the right of way, and failed to keep a proper look-out for the second defendant's car before executing the U-turn.[25] In addition, the first defendant negligently exposed the plaintiff to a higher risk of injury by allowing her to travel as an unbelted passenger in the rear cargo compartment of the van.[26] He thus submitted that the first defendant should be fully liable for the collision. In the alternative, the second defendant submitted that his liability should not exceed 10 to 20%.[27]

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22 1DCS at para 89.

23 1DCS at para 93(g).

24 1DCS at para 126.

25 Second Defendant's Closing Submissions dated 28 October 2022 ("2DCS") at paras 7(a)–(b).

26 2DCS at para 7(c).

27 2DCS at para 49.

Issues to be determined

12 Given that the plaintiff's claim is in negligence, the following must be established (*Halsbury's Laws of Singapore* vol 18 (LexisNexis, 2020) ("*Halsbury's*") at para 240.222):

(a) the existence of a duty of care;

(b) breach of the duty of care;

(c) a causal connection between the breach and the plaintiff's damage; and

(d) the plaintiff's damage was not so unforeseeable as to be too remote.

13 Neither the first defendant nor the second defendant disputed that they owed the plaintiff a duty of care. Similarly, neither disputed the causal connection between the collision and the plaintiff's injuries, nor did they allege that the plaintiff's injuries were too remote or that the plaintiff was contributorily negligent. The only issues to be determined are as follows:

(a) whether either or both of the defendants breached the duty of care owed to the plaintiff; and

(b) if both defendants breached that duty of care, the apportionment of liability between the two.

Decision on liability

The first defendant's liability

Failure to keep a proper look-out and failure to give way to oncoming traffic and exercise due care

14 The law imposes an obligation on the first defendant, who was executing a U-turn, to keep a proper look-out and to give way to oncoming traffic, and to exercise prudent judgment in executing the turn. This is clear from rule 13(2)(*b*)–(*c*) of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed), which states:

> (2) A driver or rider of any vehicle making a U-turn under paragraph (1) shall —
>
> …
>
> (*b*) give way to any on-coming vehicle; and
>
> (*c*) wait for a safe opportunity to complete the turn.

15 As the driver of the right-turning vehicle, the first defendant had a duty to give way to oncoming traffic and to make sure that the road was clear before making the turn (*Chai Yew Cian v Yeoh Yeow Yee and others* [2015] SGHC 124 ("*Chai Yew Cian*") at [20]). It has been observed that in accidents with this fact pattern, namely, where there is a collision between a turning vehicle and an oncoming straight-moving vehicle, the turning vehicle is *prima facie* more likely to be the primary cause of the accident (*Chai Yew Cian* at [20]).

16 Although the first defendant had pleaded guilty to one charge of driving without reasonable consideration for other persons using the road (by failing to keep a proper look-out while performing an authorised U-turn, resulting in a collision and causing hurt), with a similar charge taken into consideration for the purposes of sentencing, the first defendant maintained during the trial that

he had kept a proper look-out for oncoming traffic before performing the U-turn.[28] During his cross-examination, he testified that he had stopped for "about 2 second[s]" to check for oncoming traffic before executing the U-turn.[29] According to him, he had given way to a bus that was travelling along Woodlands Avenue 12 in the opposite direction (*ie*, the direction that the second defendant's car was travelling in) and had proceeded to make the U-turn when there were no other oncoming vehicles.[30] He claimed that he did not see the second defendant's car, despite having checked.[31] When asked why he did not see the second defendant's car even though he claimed to have checked for oncoming traffic, the first defendant offered two explanations. The first was that the second defendant's car was on the curved portion of the road along Woodlands Avenue 12 and was not visible to him.[32] The second was that he could not see the second defendant's car because of the position of his van when he was making the U-turn.[33]

17 [J], who was seated in the front left passenger seat, testified that she personally witnessed her father, the first defendant, stopping to look for oncoming vehicles before making the U-turn. Her evidence was that the first defendant had allowed the bus to pass, and that both she and the first defendant had confirmed thereafter that there were no other oncoming vehicles before the first defendant made the U-turn.[34] According to her, even when the first

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28 The First Defendant's AEIC at paras 9–10 (1DAEIC at pp 5–6).

29 21 Sept NE at p 10, lines 24–26.

30 21 Sept NE at p 43, lines 8–13.

31 21 Sept NE at p 44, lines 1–10.

32 21 Sept NE at p 25, lines 19–22.

33 21 Sept NE at p 43, lines 23–31.

34 20 Sept NE at p 30, lines 12–13.

defendant started to make the U-turn, she looked to the left and did not see any car coming towards them.[35] Counsel for the second defendant pointed out that [J] had not previously stated that she had personally checked for oncoming traffic, whether in her affidavit of evidence-in-chief ("AEIC") or her police report.[36] [J] accepted this but denied that it was an afterthought.[37]

18 Counsel for the second defendant challenged [J]'s version of events by pointing out that the time interval, from the point when the bus passed the U-turn intersection and the point when the second defendant's car reached the U-turn intersection, was very short.[38] He put to [J] that she and the first defendant would have been able to see the second defendant's car, but were focused on the leftmost lane, which the bus was on, and the first defendant thereby failed to keep a proper look-out for oncoming traffic from the rightmost lane, which the second defendant's car was on.[39] [J] was adamant that she and her father had kept a proper look-out, but were unable to see the second defendant's car. She stated that they were unable to see the second defendant's car due to the curve in the road along Woodlands Avenue 12.[40] She also stated that they were unable to see the second defendant's car because it was "far away".[41]

19 The charge to which the first defendant pleaded guilty stated that the first defendant "[on] the 23 October 2020, at or about 8.08 P.M., along Woodlands Ave 12 towards SLE, lamp post 17/1, Singapore, did drive a motor

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35 20 Sept NE at p 37, lines 7–12.

36 20 Sept NE at p 42, lines 20–29.

37 20 Sept NE at p 42, line 30 to p 43, line 3.

38 20 Sept NE at p 31, lines 1–17.

39 20 Sept NE at p 38, lines 12–22.

40 20 Sept NE at p 34, line 5.

41 20 Sept NE at p 32, line 18; p 34, lines 1–3.

van … on a road, without reasonable consideration for other persons using the road, to wit, *by failing to have a proper lookout while performing an authorized U-turn*, resulting in a collision with a motorcar … which was travelling on the opposite direction from [the first defendant's] left to right and hurt was caused to [the first defendant's] passengers …, by such driving, [the first defendant had] thereby committed an offence under Section 65(1)(b) of the Road Traffic Act, Chapter 276 an offence punishable under Section 65(4)(a) of the same Act".[42] [emphasis in original removed and emphasis added]

20 Paragraph 10 of the statement of facts for the first defendant's charge stated that "[on] the 23 October 2020, at or about 8.08 P.M., the [first defendant] was driving a motor van … along Woodlands Ave 12 towards Seletar Expressway (SLE), lamp post 17/1, Singapore, on a road, without reasonable consideration for other persons using the road, *by failing to have a proper lookout while performing an authorized U-turn*, resulting in a collision with a motorcar … which was travelling on the opposite direction from the [first defendant's] left to right and hurt was caused the fourth and fifth victims, by such driving".[43] [emphasis added]

21 Pursuant to ss 45A(1) and (5) of the Evidence Act 1893 (2020 Rev Ed) (the "EA"), the first defendant's conviction upon a plea of guilty, the charge he was convicted of, and the statement of facts, are admissible in evidence, given that they are relevant. Although such matters are not conclusive in and of themselves, they constitute "extremely significant pieces of evidence" that "weighed very heavily" against the first defendant in the context of these proceedings (*Ong Bee Nah v Won Siew Wan (Yong Tian Choy, third party)*

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42 PAEIC at p 309.

43 PAEIC at p 314.

[2005] 2 SLR(R) 455 ("*Ong Bee Nah*") at [42]). By virtue of the first defendant's conviction, he is to be taken to have committed the acts and to have possessed the state of mind which at law constitute the offence that he had been charged with and pleaded guilty to. The onus was on the first defendant to prove the contrary (see s 45A(3) of the EA and *Ong Bee Nah* at [58]). The first defendant's claim at the trial that he had kept a proper look-out for oncoming traffic before performing the U-turn is directly contradicted by his conviction, the charge he was convicted of and the statement of facts for the charge. The position that he took at trial was undermined, in particular, by the fact that he had pleaded guilty to, *inter alia*, failing to keep a proper look-out.

22 The first defendant's own expert, Dr Shane Richardson ("Dr Richardson"), a principal forensic engineer and the managing director and owner of Delta V Experts[44] who has expertise in vehicle crash reconstruction, testified that at the time when the first defendant started to execute the U-turn at the intersection, the first defendant could have or ought to have seen the oncoming approach of the second defendant's car as it was in the first defendant's line of sight:[45]

> Q: … [the first defendant] told this Court many, many times that he did check but he did not see [the second defendant's car] … would it be fair for me to suggest to you that … [the first defendant] had failed to keep a proper lookout?
>
> A: I think it's evident that it's within the line of sight.
>
> Q: So---
>
> A: And the video illustrates that that is the case. But it's within the line of sight.
>
> …

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44 ABD at p 137.

45 22 Sept NE at p 50, lines 6–29 and p 51, lines 26–29.

> Q: … [the first defendant] insisted that he did check and he did not see any vehicle coming on the extreme right lane …
>
> …
>
> A: I disagree if that is the premise.
>
> Q: That's his premise. He told the Court that.
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> A: I disagree with that and I think the evidence illustrates that that's not the case, that *the vehicle was there and it was within a line of sight.*
>
> …
>
> A: … *I think it is evident from the video and from the analysis that there is a line of sight between the driver if [sic] the Nissan and the Audi that's approaching him …*
>
> [emphasis added]

23 The claim that the second defendant's car was on the curved portion of the road along Woodlands Avenue 12 and was not visible to the first defendant was also not consistent with the first defendant's own evidence. When shown, during cross-examination, the screenshot that showed the position of the van just before he made the U-turn, the first defendant admitted that the second defendant's car was already on the straight portion of the road:[46]

> Q: … Do you agree that this screenshot represents the instant just before you made the U-turn?
>
> A: Yes, I was *about* to make the U-turn.
>
> …
>
> Q: … My question was: Do you agree with me that the screenshot on page 126 shows that … the road here was already straight; it was not curved?
>
> A: *Yes, the road was straight*. That is why the Audi was speeding.
>
> [emphasis added]

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46 21 Sept NE at p 27, lines 9–11 and lines 15–18.

24 It is evident that the first defendant contradicted his own position while he was on the stand, and his own expert did not support his claim that he could not see the second defendant's car. I have also earlier explained the weighty nature of the evidence flowing from the first defendant's conviction upon a plea of guilty to the charge he faced, the charge itself and the statement of facts for the charge (see [21] above). I do not find the bare assertions of the first defendant and [J] that were made for the first time at trial reliable or credible, let alone sufficient to prove that the first defendant had not committed the offence he had been charged with and pleaded guilty to. I therefore do not accept the first defendant's evidence that he had kept a proper look-out and that he could not see the second defendant's car because it was on the curved portion of the road along Woodlands Avenue 12 towards the SLE or because of the position of the first defendant's van. Despite their obvious relevance, those assertions had not been raised in the first defendant's affidavit and had only emerged for the first time at trial. For the same reasons, I give little weight to [J]'s evidence that she, as a passenger, personally checked for oncoming traffic and that she and the first defendant could not see the second defendant's car because it was on the curved portion of the road or because it was too far away. From the way that [J] testified, it appeared that what she claimed had happened was not something that she would have attached little significance to or that she had to try to recall. If, on the stand, [J] could recall clearly and was certain that she and the first defendant had kept a look-out but did not see the second defendant's car for the reasons that she had given, it begs the question of why she had only raised this for the first time at trial. I find her explanation that she brought it up for the first time at trial because she was responding to the questions posed to her at cross-examination[47] to be suspect. The lack of a proper

[47] 20 Sept NE at p 43, lines 23–24.

explanation for why she did not mention something that she was so insistent about at trial, even in her AEIC, was unsatisfactory. Taking the totality of the evidence into account, I find the first defendant negligent for failing to keep a proper look-out for oncoming vehicles and for failing to give way to the second defendant's car, which was going straight and had the right of way. In this regard, I note that counsel for the first defendant submitted in closing that the first defendant "accepts that he was to some extent, negligent" in view of Dr Richardson's opinion that the first defendant ought to have seen the approach of the second defendant's car as it was in his line of sight.[48] The first defendant's negligent driving, as described above, contributed to causing the collision, which led to the plaintiff's injuries.

Failure to ensure that the plaintiff was fastened into a seat with a seat belt

25 The first defendant had permitted the plaintiff to travel in the rear cargo compartment of his panel van without a seat and unsecured by a seat belt. I find him negligent, and in breach of the duty of care owed to the plaintiff as his passenger, for in doing so, he exposed the plaintiff to a higher risk of injury, and contributed to the extent and severity of the injuries suffered by the plaintiff. I will deal with this later in my judgment, together with how the second defendant was also responsible in this respect (see [47]–[53] below).

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[48] 1DCS at para 123.

The second defendant's liability

Failure to keep within the speed limit and failure to keep a proper look-out and exercise due care

(1) Legal principles

26 It is undisputed that the second defendant's straight-moving vehicle had the right of way. This means that other road users, such as those in the first defendant's position, should yield or give way. However, a right of way is not unfettered. The Court of Appeal held in *Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944 ("*Asnah*") at [64] that "a pedestrian, whilst enjoying a statutory right of way over motorists, cannot disregard attendant traffic perils arising from human lapses". While *Asnah* concerned a different fact situation, namely, an accident between a pedestrian and a taxi, the principles as to the fetters on one's right of way set out there apply to the present case with the same, if not greater, force. This is so considering the potential danger that may be caused by a motorist.

27 Having the right of way does not absolve a road user of the need to exercise due care (*Ting Jun Heng v Yap Kok Hua and another* [2021] SGHC 44 ("*Ting Jun Heng*") at [36]). The law requires a motorist to act on the basis that there could 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). The degree and nature of the care required will vary according to the circumstances. Hence, road users with traffic lights in their favour must still keep a proper look-out and maintain a speed that enables them to take appropriate actions as and when necessary (*SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] 2 SLR(R) 211 ("*Stafford*") at [33] and [37]; *Chai Yew Cian* at [21]). They must be mindful that other road users may not observe the rules and must

ensure that they are able to react to avoid a collision by driving in such a fashion that they would be able to avoid or mitigate a dangerous situation that might be created by other road users (*Chai Yew Cian* at [22]).

28 Motorists have a related duty to take reasonable care to avoid harm to other road users, and driving at an excessive speed in the circumstances may constitute negligence (*Halsbury's* at paras 240.255 and 240.257). It is incumbent on motorists to drive at a speed that would enable them to react appropriately (*Stafford* at [37]). A finding of speeding is a strong indication of driving in a dangerous or negligent manner (*Cheong Ghim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 ("*Cheong Ghim Fah*") at [53]).

29 Further, the duty to travel at a reasonable speed is necessarily linked to the duty to keep a proper look-out. This is encapsulated in the observations of Rowlatt J in *Page v Richards and Draper* (unreported), cited with approval in *Cheong Ghim Fah* at [51]:

> It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and *he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it* … where a man is struck without the driver seeing him … either [the driver] was not keeping a sufficient look-out, or *if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept.* [emphasis added]

30 In the same vein, the Court of Appeal noted in *Ng Li Ning v Ting Jun Heng and another* [2021] 2 SLR 1267 ("*Ng Li Ning*") at [29] that the high speed of 74 to 87km/h reached by the straight-moving vehicle in the collision there was "not a speed at which the driver could take reactive action if some other turning vehicle also started to cross [its] path".

31 A finding on the speed at which the second defendant was travelling at the material time is therefore important for the fair and proper determination of the question of liability and how it should be apportioned in this case. I therefore turn now to consider the evidence and make a finding on the speed at which the second defendant was travelling at the material time, and to consider the issue of liability and its apportionment on the basis of that finding.

(2) The second defendant's position on the speed at which he was travelling

32 The second defendant had maintained consistently throughout the trial that he was travelling between 70 to 79km/h.[49] In fact, he initially testified that the last time he checked his speedometer before the collision, he saw that "it was still 70, 70 plus".[50] When pressed, he tried to explain that he was unsure of his actual speed, but was certain that the first number on his speedometer was "7" at the point when he last checked his speedometer.[51] This is despite the fact that the second defendant had pleaded guilty to one charge of speeding for travelling at a speed of 124km/h.[52]

(3) The speed stated in the criminal charge

33 The charge to which the second defendant pleaded guilty stated that the second defendant, "[on] the 23rd day of October 2020 at about 8.08 P.M., along Woodlands Ave 12 towards SLE, Singapore, did drive a motor car, bearing registration … at a speed of 124 Kmph, such speed being excess of the imposed speed limit of 70 Kmph of the road and [the second defendant had] thereby

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49 22 Sept NE at p 81, lines 14–15.

50 22 Sept NE at p 72, line 5.

51 22 Sept NE at p 81, lines 14–15.

52 [L]'s AEIC at para 13 and pp 34–37 (PAEIC at pp 31 and 61–64).

committed an office under Section 63(4) and punishable under Section 131(2)(a) of the Road Traffic Act, Chapter 276".[53]

34 Paragraph 3 of the statement of facts for the second defendant's charge stated that "[on] the 23rd day of October 2020 at about 8.08 p.m., along Woodlands Ave 12 towards SLE, Singapore, the [second defendant] did drive a motor car, bearing registration … at a speed of 124 kmph, such speed being excess of the imposed speed limit of 70 kmph of the road. The speed was calculated through Health Sciences Authority, Forensic Science Division".[54] The speed stated in the charge was based on a report (the "first HSA report") prepared by Ms Leong Wai Ying ("Ms Leong"), a senior forensic scientist with the forensic chemistry and physics laboratory of the Health Sciences Authority ("the HSA"). As none of the parties sought to tender the first HSA report as evidence, the report itself was not before this Court. However, during cross-examination, Ms Leong stated that she prepared the first HSA report and calculated the speed in that report.[55] She could not remember the speed that she had calculated in the first HSA report but she was able to say that the speed stated in the first HSA report was an average speed and not a maximum speed.[56] She also clarified that average speed refers to "the speed that the car was travelling over … a certain distance" and "not the instantaneous speed at each point in time".[57]

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53 PAEIC at p 61.

54 PAEIC at p 64.

55 19 Sept NE at p 14, lines 11–27.

56 19 Sept NE at p 25, lines 11–14; p 40, lines 24–30; p 41, lines 5–7.

57 19 Sept NE at p 41, lines 10–17.

(4) The expert evidence

35 In addition to being inconsistent with the charge which he pleaded guilty to, the second defendant's evidence is contradicted by the experts, namely Ms Leong and Dr Richardson.

36 Ms Leong prepared a report dated 17 March 2022 titled "Report under Section 263 of the Criminal Procedure Code 2010" that was disclosed by the Prosecution during the criminal proceedings against the first defendant (the "second HSA report").[58] The second HSA report was admitted into evidence at the trial of this matter. The purpose of her second report was to, *inter alia*, "[d]etermine the maximum travel speed of [the second defendant's car] that would allow it to brake to a stop to avoid the collision, from where the brake lamps of the car lit up" and "[e]valuate the visibility of the car to the first defendant prior to the collision".[59]

37 Ms Leong visited the site of the accident to examine and record laser scans of the site.[60] Based on these scans, she created a scaled diagram of the road along Woodlands Avenue 12 towards the SLE.[61] She marked points along the road based on the broken white lines that made up the lane markings on the road. The laser scans allowed her to measure the distance between the lane markings.[62] Ms Leong also referred to the video footage for her analysis, noting the time at which the second defendant's car's brake lamps first lit up. She estimated that at that point, when the second defendant presumably first braked,

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58 The First Defendant's AEIC at para 22 and pp 58–65 (1DAEIC at pp 9 and 60–67).

59 1DAEIC at p 61.

60 1DAEIC at p 60.

61 1DAEIC at p 61.

62 19 Sept NE at p 5, lines 20–27.

the rear of the second defendant's car was about 71.4m from the start of the U-turn junction.[63] Taking into account the length of the second defendant's car, there was an available distance of about 54.7 to 67.7m for the second defendant's car to decelerate and avoid the collision.[64] Ms Leong then went on to calculate the maximum speed at which the second defendant could still avoid a collision by braking. In so doing, she assumed that the deceleration rate of the car was around 0.70g to 0.92g (g refers to gravitational acceleration of 9.8m/s^2). This range represents emergency deceleration rates (*ie*, rates reached by hard braking).[65] Ms Leong concluded that if the available braking distance was 54.7m, and the second defendant's car had travelled at a speed of between 99 and 113km/h, the second defendant would have been able to stop in time to avoid the collision. If the available braking distance was 67.7m, and the second defendant's car had travelled at a speed of between 110 and 126km/h, the second defendant would have been able to come to a stop to avoid the collision.[66] Ms Leong therefore opined that if the second defendant's car had been travelling at the speed limit of 70km/h, the collision would have been avoided.

38 Dr Richardson was instructed by the first defendant's insurers to provide his views on the "cause of the [collision]", with particular consideration to "[t]he speed at which [the first defendant's van] was travelling at prior to the impact", "[t]he speed at which [the second defendant's car] was travelling at prior to the impact" and "[w]hether the speed at which [the second defendant's car] was travelling could have caused the two rear passengers travelling on board [the

63 1DAEIC at p 62.

64 1DAEIC at p 63.

65 19 Sept NE at p 11, lines 2–3 and lines 16–21.

66 1DAEIC at p 63; 19 Sept NE at p 26, lines 7–27.

first defendant's van] to be flung out of [the van]".[67] Dr Richardson provided a report dated 24 February 2022.[68]

39 Dr Richardson visited the site of the collision and surveyed the location using "photographic and software technique which stitches multiple images together to create a 3d point cloud".[69] In addition, he reviewed the video footage and developed a computer model of the collision circumstances and evaluated that model, among other things.[70] Dr Richardson relied on the broken white lines that make up the lane markings on the road to estimate distance.[71] He also relied on the video footage, which he believed to be an accurate representation of the timing of events, given that the audio of the video did not appear to have been sped up.[72]

40 Using the video footage, Dr Richardson took screenshots at various time intervals from the start of the video leading up to the time of the collision. Relying on the time and the distance travelled, as indicated by the lane markings on the road, Dr Richardson estimated the separation speed of the second defendant's car at those intervals, as reflected in Figure 1 below:[73]

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67 ABD at p 66.

68 ABD at pp 68–136.

69 ABD at p 75.

70 ABD at p 76.

71 ABD at p 100; 22 Sept NE at p 34, lines 15–20.

72 ABD at p 100.

73 ABD at p 106.

Vehicle	Image	Time (s)	Separation		Speed	
			Distance (m)	Time (s)	m/s	km/h
1	Figure 27	0.00				
			27.59	0.72	38.3	138
2	Figure 28	0.72				
			19.26	0.48	40.1	144
3	Figure 29	1.20				
			20.49	0.52	39.4	142
4	Figure 30	1.72				
			19.34	0.48	40.3	145
5	Figure 31	2.20				
			19.87	0.48	41.4	149
6	Figure 32	2.68				
			11.85	0.28	42.3	152
7	Figure 33	2.96				
			19.77	0.48	41.2	148
8	Figure 34	3.44				
			19.85	0.48	41.4	149
9	Figure 35	3.92				
			19.81	0.48	41.3	149
10	Figure 36	4.40				
			28.94	0.68	42.6	153
11	Figure 37	5.08				
			28.13	0.68	41.4	149
12	Figure 38	5.76				
			16.02	0.40	40.1	144
13	Figure 39	6.16				
			11.48	0.40	28.7	103
14	Figure 40	6.56				
			7.21	0.32	22.5	81
15	Figure 41	6.88				
			8.06	0.64	12.6	45
16	Figure 43	7.52				
			19.89	2.40	8.3	30
17	Figure 45	9.92				

Figure 1

41 "Figure 37" referenced in Figure 1 is a screenshot of the video footage at the 5.08s mark. It can be seen from the screenshot that this was the point when the second defendant's car's brake lights first lit up.[74] At the screenshot labelled "Figure 40", which is of the 6.56s mark of the video footage,[75] the second defendant's car had collided with the first defendant's van.[76] Based on this tabulation in Figure 1, Dr Richardson opined in his report that the second

[74] ABD at p 127.

[75] ABD at p 130.

[76] ABD at p 107.

defendant's car was travelling at a speed greater than 140km/h in the six seconds prior to emergency braking and at a speed greater than 100km/h at the point of impact.[77] To better understand Dr Richardson's evidence on the second defendant's speed as set out in Figure 1, I refer to his explanation during cross-examination. Counsel for the plaintiff queried if it would be accurate to, per the numbers stated in Figure 1, approximate the speed of the second defendant's car when it was the position "Figure 28" to have been 138km/h.[78] Dr Richardson answered in the negative. He explained that it would be incorrect to refer to the individual speeds tabulated in Figure 1 as the second defendant's speed at those points. Instead, these numbers represent "small segments of speed" which, viewed holistically, gave rise to Dr Richardson's assessment that the second defendant's car was travelling at above 140km/h in the six seconds prior to emergency braking. In his words:[79]

> Q: … So at the car where it was in figure 28, its corresponding speed was 138km per hour?
>
> A: No. Not at that point. I've used two those points [between figures 27 and 28] as starting main points for an estimate of the speed over that range and then I've done segment. Substantially small segments of speed. I've made estimates of the speed of the vehicle. I have a segment and then I have used that to make an estimate of the speed of the vehicle, over the overall passage. So *I'm not trying to say that the car is doing 138, 144, 142, 145[km/h]. They are my measurements for segments of the vehicle speed.* I think what I've said in closing is that I estimate that the speed of the vehicle is greater than 140 kilometres an hour across that range pre-braking.
>
> …
>
> A: … I was confident enough that my speed variation that I was giving across the vehicle as it's approaching it was not---*it wasn't one value but it was consistent and it was consistently above 140 kilometres an hour to come and present to the Court*

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77 ABD at p 106.

78 22 Sept NE at p 10, lines 13–14.

79 22 Sept NE at p 10, line 13 to p 11 line 4.

> *that I believe the speed of the vehicle is greater than 140 kilometres an hour as you are watching it go round the bend, then come---before you see the brake lights come on.*
>
> [emphasis added]

(5) My findings on the speed at which the second defendant was travelling

42 I do not accept the second defendant's evidence that he was travelling between 70 to 79km/h. His evidence is inconsistent with the charge to which he pleaded guilty. The legal principles mentioned at [21] in respect of the evidentiary value of the charge against the first defendant, the statement of facts, and the first defendant's plea of guilty and conviction apply equally to the second defendant. Under s 45A(3) of the EA, the burden has shifted to the second defendant to prove that he had not been travelling at a speed of at least 124km/h. The second defendant did not lead any evidence to substantiate his assertions that he was travelling at 70 to 79km/h. I find that the second defendant has failed to discharge his burden by his bare assertions. His evidence is also unbelievable when considered against the evidence of Ms Leong and Dr Richardson, whose evidence I turn now to analyse.

43 Ms Leong and Dr Richardson were given different mandates (set out at [36] and [38] above). Ms Leong approached the analysis from the perspective of collision analysis and was calculating the maximum speed of travel that would allow the second defendant's car to brake in time to avoid the collision. Dr Richardson was tasked to determine the speed at which the second defendant's car was travelling prior to the impact. The experts also used different methods, as set out above at [37] and [39]–[40]. Ms Leong started with the available distance for the second defendant's car to decelerate and come to a stop, and then set parameters for the likely deceleration rate, in order to arrive at the maximum speed of travel at which the collision could still be avoided. Dr

Richardson used what he described as "photogrammetry"[80] to reconstruct the position of the second defendant's car, based on the video footage and the distance indicated by the broken white lines that make up the lane markings on the road. Using the positions of the second defendant's car at various time intervals, he calculated the separation speed between those intervals. He then arrived at his conclusion as to the speed of travel of the second defendant's car. Yet, their conclusions point unequivocally to the mendacity of the second defendant's evidence. Read together, it shows that regardless of the approach taken, the speed of the second defendant's car was far in excess of the speed limit of 70km/h and of the speed range of 70 to 79km/h that the second defendant insisted he was travelling at.

44 I find both Ms Leong and Dr Richardson to be credible witnesses. They were objective and balanced in giving their testimony. Their respective analyses were carefully reasoned and stood the test of cross-examination. As mentioned earlier at [42], the second defendant did not lead any evidence to substantiate his assertions that he was travelling at 70 to 79km/h. He also did not lead evidence to rebut the expert evidence of Ms Leong and Dr Richardson. Further, none of the parties challenged the correctness or reliability of the experts' evidence, nor raised any apparent inconsistencies or contradictions in the testimony of the two experts, in their closing submissions. I accept Ms Leong's evidence that the second defendant was travelling at a speed higher than 99km/h. I also accept Dr Richardson's evidence that the second defendant was travelling at a speed of more than 140km/h in the six seconds prior to emergency braking and at a speed greater than 100km/h at the point of impact. Based on the evidence, I find the second defendant's travelling speed to be around 140km/h in the six seconds prior to emergency braking. For completeness, I add

[80] 22 Sept NE at p 40, line 5.

that the speed of 124km/h stated in the speeding charge against the second defendant, which the second defendant's counsel appeared to be advocating that the Court should take as the second defendant's average speed of travel,[81] is not preferred since none of the parties sought to admit into evidence the first HSA report. There is no evidence before the Court as to how the charge of speeding at 124km/h was made out, and if 124km/h was an average speed, how it was derived and which segment of the second defendant's travel it related to. Ms Leong was also not cross-examined on the calculations that were made by her for the purposes of preparing that report. In any event, if the speed of 124km/h was the second defendant's average travelling speed, the second defendant must have travelled in excess of 124km/h at certain points in time before the collision. There was no evidence that controverted Dr Richardson's evidence that the second defendant's travelling speed exceeded 140km/h in the six seconds before emergency braking. Indeed, the second defendant's counsel did not raise any argument in his closing submissions that there were any errors in Dr Richardson's calculation, or that Dr Richardson's calculation was in any way unreliable, when considered and compared with the speed of 124km/h that was stated in the charge against the second defendant.

45 At the speed which the second defendant was found to be travelling, the second defendant's ability to keep a proper look-out and to exercise due care would have been compromised. His ability to deal with exigencies on the road, and to avoid or mitigate the consequences of the mistakes of other motorists, would also have been significantly limited. The time for him to notice the hazard and to take reactive actions, as well as the distance left between his car and the first defendant's van by the time he perceived and reacted to the hazard, were all drastically reduced. I therefore find the second defendant to be in breach of

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[81] Second Defendant's Reply Submissions ("2DRS") at paras 5–7.

the duty of care owed to the plaintiff, to have contributed to causing the collision, and the second defendant to be liable in negligence for the plaintiff's injuries.

46 Beyond contributing to the occurrence of the accident, the second defendant's speed also contributed to the extent and severity of the injuries suffered by the plaintiff. I will turn next to consider the first defendant's and the second defendant's respective contributions in this regard.

The first defendant's and the second defendant's negligence contributed to the extent of the plaintiff's injuries

47 In considering the first defendant's and the second defendant's negligence that contributed to the extent and severity of the plaintiff's injuries, I start by setting out Dr Richardson's testimony on the role that being ejected from a vehicle plays in injury outcomes:[82]

> … it's the---the ejection, the passing through components of the vehicle being thrown out of the vehicle lying on the ground is where the injury mechanisms come from. So as you are separated, you have a velocity in---in this direction. The vehicle is rotating around, you go through components of the vehicle, the potential to be injured while striking it, the potential to then hit the ground at the speed that you are being ejected out, that's where the injury mechanisms come from and that's why *you have a much higher chance of sustaining lower injuries or lesser injuries by being retained in the vehicle.* [emphasis added]

48 Dr Richardson also testified that, generally speaking, a person would have what he estimated to be an 80% chance of a better outcome if the person is retained in the vehicle as opposed to being ejected.[83]

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82 22 Sept NE at p 16, lines 11–19.

83 22 Sept NE at p 16, lines 6–9.

49 I consider next the evidence as to what caused the plaintiff to be ejected from the van. In his report, Dr Richardson stated:[84]

> The impact speed of [the second defendant's car] combined with the points of impact … caused [the first defendant's van] to rotate rapidly. The rapid rotation of [the first defendant's van] is what would have caused the two rear occupants [of the van] to be flung out of the [van]."

50 During cross-examination, counsel for the second defendant suggested to Dr Richardson that the reason the plaintiff was ejected from the van was because she was not properly or safely secured in a seat with a seat belt. Dr Richardson responded that this was not a fair statement[85] because the severity of the collision, how hard the van was impacted and where the van was impacted were all related to the speed of the second defendant's car.[86] He agreed, however, that if the plaintiff were seated and wearing a seat belt, there would be a greater chance she would have been retained within the van.[87] He estimated that the chances of the plaintiff being flung out of the van would have been between 10 to 50% had she been belted.[88] He also agreed that it was not the speed of the second defendant's car alone that caused the plaintiff to be flung out of the van.[89] Further, when asked whether he agreed that had the plaintiff been properly secured with a seat belt, she would not have been flung out of the van, since the plaintiff's then 6-year-old sister, who had been secured in a seat

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84 ABD at p 109.

85 22 Sept NE at p 23, lines 22–30.

86 22 Sept NE at p 24, lines 1–3.

87 22 Sept NE at p 15, lines 28–30.

88 22 Sept NE at p 17, lines 29–32 and p 18, lines 1–25.

89 22 Sept NE at p 24, lines 4–10.

with a seat belt in the front of the van was not flung out of the vehicle, he agreed "with the logic" of that statement.[90]

51 In my judgment, the first defendant was in breach of the duty of care he owed to the plaintiff and negligent when he allowed the plaintiff to travel in the rear cargo compartment without safety restraints. Under cross-examination, the first defendant himself accepted that he should not have allowed the plaintiff to sit in the rear cargo compartment of the van, because it was intended for goods and not passengers.[91] The first defendant also accepted that it was probable that the cartons and trolley in the rear cargo compartment would have moved and hit the plaintiff while the van was rotating from the impact of the collision.[92]

52 In view of Dr Richardson's evidence, and the fact that the first defendant and the other two persons seated in the front of the van who were properly restrained by seat belts were not ejected from the van, while the two unsecured passengers in the rear cargo compartment, including the plaintiff, were ejected from the van, I come to the conclusion that the first defendant's failure to ensure that the plaintiff was properly seated and secured with a seat belt is a key contributing factor to the extent and severity of the plaintiff's injuries.

53 I accept Dr Richardson's evidence that the impact speed of the second defendant's car and the points of impact had caused the first defendant's van to rotate rapidly, and that the rapid rotation was what would have caused the plaintiff and [K], who were travelling without proper seats and unsecured by seat belts, to be flung out of the van. Further, I accept that the severity of the

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90 22 Sept NE at p 23, lines 13–19.

91 21 Sept NE at p 8, lines 19–22.

92 21 Sept NE at p 8, lines 13–16.

collision and how hard the van was impacted were related to the speed of the second defendant's car.[93] If the second defendant had not travelled at the speed that the second defendant was found to be travelling, then the impact of the collision would not have been as forceful, and the injuries suffered by the plaintiff would not have been as devastating. Accordingly, I find that the second defendant also contributed significantly to the extent and severity of the plaintiff's injuries.

Decision on apportionment of liability

54 Having found that both the first defendant and the second defendant were negligent and liable to compensate the plaintiff, I turn now to determine the apportionment of liability. In making this determination, regard must be had to the extent of the first defendant's and the second defendant's individual responsibility for the plaintiff's injuries so as to arrive at a just and equitable apportionment (s 16(1) of the Civil Law Act 1909 (2020 Rev Ed)). This is an exercise involving the comparison of the relative significance of the acts or omissions of the parties in causing the plaintiff's injuries, and of the relative culpability of the parties (*Cheng William v Allister Lim & Thrumurgan and another and another appeal* [2015] 3 SLR 201 ("*Cheng William*") at [45]).

55 Counsel for the first defendant submitted that liability should be apportioned at 55% and 45% to the first defendant and the second defendant respectively.[94] He submitted that the liability contribution of the second defendant should underscore his moral blameworthiness, and take into account the excessive speed at which the second defendant was travelling at the material

93 22 Sept NE at p 24, lines 1–3.

94 1DCS at para 126.

time.[95] He emphasised, in particular, that the first defendant would have had sufficient time and space to complete the U-turn safely based on the expectations of speeds of vehicles travelling on the road if the second defendant had not been travelling at the speed that he was travelling at. The cause of the accident was therefore the second defendant's excessive speed.[96]

56 Counsel for the first defendant conceded that the first defendant's negligence, while momentary, remains a larger contributing factor. Although Dr Richardson was of the opinion that the first defendant ought to have seen the approach of the second defendant's car as the second defendant's car was in his line of sight, that has to be countenanced against Dr Richardson's evidence that the U-turn could have been completed safely had the second defendant not been travelling at an excessive speed.[97] In addition, counsel for the first defendant submitted that while the first defendant had permitted the plaintiff to travel in the rear cargo compartment of his van without being secured in a proper seat with a seat belt, that was irrelevant to the occurrence of the accident or collision itself and that it was only relevant insofar as the extent of injury is concerned.[98]

57 Counsel for the second defendant submitted that speeding in and of itself does not establish negligence[99] and that the speed at which the second defendant was travelling at the material time should be of little relevance to the Court's apportionment of liability.[100] According to him, as there was "no general duty for [the second defendant], who had the right of way at the material time, to

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95 1DCS at para 121.

96 First Defendant's Reply Submissions dated 11 November 2022 at paras 11–12.

97 1DCS at para 123.

98 1DCS at para 124.

99 2DCS at para 42.

100 2DCS at para 44.

reduce speed as he approached the U-turn junction", the material cause of the accident was the first defendant's failure to keep a proper look-out before making the U-turn,[101] and that based on the authority of *Ong Bee Nah* and *Stafford*, the first defendant should be made fully liable.[102]

58 He further submitted that if the Court is minded to take into consideration the speed of the second defendant's car, liability should be apportioned at 80 to 90% to the first defendant and 10 to 20% to the second defendant. He referred to the guidelines set out in the Motor Accident Guide (2nd Edition) issued by the State Courts (the "MAG"), which provides that liability should be apportioned at 80% against the vehicle making the U-turn and 20% against the straight-going vehicle.[103] He also referred to *Ng Li Ning*, where the Court imposed an additional 15% on the indicative 20% liability against the speeding straight-going vehicle that had the right of way, and contended that it is distinguishable.[104] He submitted that if, however, the Court takes the view that *Ng Li Ning* is instructive, the case should be taken only as a starting point, as "an uplift" of 15 to 25% liability must be applied against the first defendant to account for his neglect in allowing the plaintiff to travel in the rear cargo compartment of his van without being secured in a proper seat with a seat belt.[105] The apportionment would then be 80 to 90% to the first defendant and 10 to 20% to the second defendant,[106] which is the same apportionment as the one that does not take the speed of the second defendant's car into account.

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101 2DCS at paras 43–47.

102 2DCS at para 48.

103 2DCS at para 50.

104 2DCS at para 51.

105 2DCS at paras 53–54.

106 2DCS at para 55.

59 I considered the breaches by the first defendant and the second defendant, in particular, the relative causative potency and relative moral blameworthiness of their respective breaches (*Cheng William* at [45]–[46]), and find that the first defendant should be held responsible for a higher percentage of the plaintiff's injuries.

60 As explained by the Court of Appeal in *Cheng William* (at [43]–[45]), there is a need for the Court to regard both causative potency and relative moral blameworthiness of the tortfeasors when determining each tortfeasor's contribution. The Court observed (at [43]) that:

> Each tortfeasor's causal responsibility will commonly be the same because each of their acts/omissions will be equally important forming one part of the continuous causal link resulting in the eventual loss.

61 On blameworthiness, the Court in *Cheng William* observed (at [46]) that:

> The term 'blameworthiness' is broad and it gives the court the flexibility to take into account a wide range of conduct to arrive at a just and equitable result in a myriad of situations. This inevitably necessitates a value judgment … [internal citations omitted]

62 Counsel for the first defendant and the second defendant took diametrically opposed positions in relation to how the second defendant's speed should feature in the apportionment of liability. On the one hand, counsel for the first defendant argued that whether the first defendant had kept a proper look-out for the second defendant's car is not the issue as there is evidence that the first defendant would have had sufficient space and time to complete the U-turn based on expectations of speeds of vehicles travelling on the road. On the other hand, counsel for the second defendant argued that the second defendant's

travelling speed is a "red herring"[107] and "irrelevant",[108] and that the first defendant's argument unfairly places the burden on the second defendant to avoid the first defendant's van and ignores the fact that the first defendant has a duty to keep a proper look-out and give way to the second defendant's car.

63 I start by making the observation that the concession made by the first defendant's counsel, that the first defendant's negligence remains a larger contributing factor, is a proper and fair one. The law requires the first defendant, as the driver of the vehicle making a U-turn, to keep a proper look-out for vehicles travelling straight and to give way to oncoming vehicles. The first defendant's failure to do so was negligent, and was significant both in causative potency and moral blameworthiness. His omission was particularly blameworthy as it created a hazard, and put the second defendant in a position where the second defendant had to avoid the collision. The first defendant should therefore bear a greater share of the liability.

64 I deal now with the arguments of the second defendant. In *Ong Bee Nah*, the defendant argued that the driver who had the right of way should have slowed down as he approached the junction even though the lights were in his favour. The Court rejected the defendant's argument and held that in the absence of clear and compelling circumstances to the contrary, there is generally no duty on a driver with the right of way to slow down each time he or she approaches a junction if there is no stop sign or the lights are in his or her favour (*Ong Bee Nah* at [109]). In that case, the driver was driving along the extreme left lane and he was not found to be speeding. It is unclear how the case of *Ong Bee Nah* assists the second defendant since it is not in dispute that the second defendant

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107 2DRS at para 9.

108 2DRS at para 8.

here had not been travelling within the speed limit.[109] There was no issue raised on whether the second defendant should have slowed down as he was approaching the intersection for the U-turn. That question simply did not arise since the case against the second defendant was that he was travelling far beyond the speed limit.

65 In my view, the argument that the second defendant's travelling speed should be of little relevance to the apportionment of liability is misconceived and against the weight of the authorities. Indeed, the Court of Appeal in *Stafford*, which the second defendant's counsel relied on[110] in support of his argument that the first defendant should be wholly responsible for the plaintiff's injuries despite the speed at which the second defendant was travelling, observed (at [38]) that speed would be a factor in determining whether there was contributory negligence.

66 In that case, the deceased was proceeding across an intersection and the defendant bus driver was making a discretionary right turn when only the green light (but not the green right-turn arrow light) was showing. As it was not proved that the speed at which the deceased entered into the intersection was too fast, the Court of Appeal found the defendant bus driver to be wholly liable. The Court of Appeal unequivocally stated at [38] that:

> … *if the Deceased had ridden into the Intersection at a speed that did not countenance the possibility that the bus would make the turn before he could clear the Intersection, we would have no hesitation in holding that the Deceased was contributorily negligent*. [emphasis added]

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109 2DCS at para 42.

110 2DCS at para 48.

Based on the holdings in *Stafford*, the speed at which the second defendant was travelling is, contrary to the second defendant's argument, a relevant factor for consideration. While *Stafford* is concerned with contributory negligence, the same principle should apply to the apportionment of liability between tortfeasors. After all, the same considerations (of relative causative potency and relative moral blameworthiness) underpin the apportionment of liability in cases concerning contributory negligence and cases on apportionment of liability between tortfeasors (*Asnah* at [118]; *Cheng William* at [45]).

67 Further, in the recent case of *Ng Li Ning*, the Court of Appeal upheld an apportionment of liability at 65% against the driver of a right-turning vehicle and 35% against the driver of a straight-going vehicle who had the right of way after taking into account that the latter was driving above the speed limit.

68 There is no question that the travelling speed of the second defendant is relevant in the apportionment of liability. Based on the evidence, the travelling speed of the second defendant is significant both in causative potency and moral blameworthiness. There is evidence that if the second defendant had not exceeded the speed limit to the extent that he did, the accident could have been avoided. In fact, had the second defendant travelled even up to 99km/h, the accident would not have taken place. According to Dr Richardson, it was a split-second difference between a collision and a near miss. In his words:[111]

> If [the second defendant's car] had been travelling at the speed limit, the manoeuvre would have been completed … it's the fact that [the second defendant's car] is travelling at that speed that the manoeuvre was not able to be completed. *We are probably talking about point 1 or maybe point 2 of a second difference.* [emphasis added]

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111 22 Sept NE at p 50, lines 17–20.

69 In this case, the speed at which the second defendant was charging into the intersection for the U-turn sealed the parties' fates; there would not be a near miss, but instead a violent collision that sent the first defendant's van into a spin. In the circumstances of this case, even a driver who was keeping a proper look-out would have had little time and opportunity to register and respond to the second defendant's oncoming car because of the second defendant's excessive speed. This is especially because the second defendant's car would only come within such a driver's line of sight after it emerged from the curvature of the road onto the straight portion of the road that leads to the U-turn intersection in question. For the same reason, the second defendant's own ability to see what was ahead and respond to any perceived hazards would be very limited at the speed he was racing down that road. The second defendant's culpability must also be seen in light of the fact that he confirmed that he had previously driven along that section of the road in both directions before, since his office is situated near Woodlands Avenue 12.[112] He would therefore be aware of the speed limit and the risks of speeding along that road. Further, the evidence is that the "impact speed" of his car was one of the factors that caused the van to spin, leading to the plaintiff and [K] being ejected from the van. The second defendant must bear responsibility for his recklessness and total disregard for the life and safety of himself and other road users. The question is simply of how much.

70 In support of his contention that his liability should not exceed 10 to 20% if the first defendant were not held to be fully liable, the second defendant's counsel referred to scenario 15(b) of MAG that a vehicle making a U-turn (where a U-turn is permitted) should bear 80% liability, with 20% liability borne

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112 22 Sept NE at p 67, lines 5–7 and lines 18–28; p 68, lines 4–6.

by the straight-going vehicle.[113] In my view, the justice of this case requires me to depart from the guidelines. Although the MAG provides helpful guidance, as was held in *Ng Li Ning,* each case must be assessed on its own facts in the apportionment of liability.

71 In *Ng Li Ning*, the Court of Appeal upheld an apportionment of liability at 65% against the driver of the right-turning vehicle (the "taxi"), and 35% against the driver of the straight-going vehicle (the "Nissan") who had the right of way. The accident happened around 7.30pm at a traffic light-controlled junction with moderately heavy traffic. The taxi driver did not keep a proper look-out and made a permitted discretionary right turn while the Nissan, straight-moving and coming from the opposite direction, had the right of way. The Nissan was speeding and did not slow down as it approached the junction and collided with the taxi's left side.

72 The trial judge found that the Nissan driver was travelling at 74 to 87km/h, at an average speed of 82km/h, above the road's speed limit of 70km/h. The trial judge further held that the Nissan driver had failed to exercise due care when approaching the large and busy junction, and apportioned liability at 65% to 35%, with the taxi driver bearing the greater liability.

73 On appeal, the Nissan driver referred to various cases involving accidents between a straight-moving vehicle with the traffic light in its favour and a vehicle making a discretionary right turn into the path of the first vehicle and argued that the liability against the straight-moving vehicle was assessed consistently at 0% and 20% in almost 90% of the cases. The Nissan driver also pointed to the MAG, which recommends 15% liability against the straight-

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113 2DCS at para 50.

moving vehicle, as well as the Motor Accident Claims Online portal by the Courts of the Future Task Force (the "MACO outcome predictor"), which gives a predicted outcome of 20% liability against the straight-moving vehicle.

74 The Court of Appeal saw no merit in the Nissan driver's arguments on appeal. The Court pointed out (at [37]–[39]) that the MACO outcome predictor assumes that all parties are driving at normal speed in normal traffic conditions, and that in any event, the MAG and MACO outcome predictor were meant to provide only estimates; apportionment of liability is a highly fact-sensitive exercise (*Ng Li Ning* at [39]). In my view, the present case is another appropriate case to deviate from the guidance provided by the MAG as there is nothing to suggest that the guidelines have been drafted to deal with extreme cases of recklessness and cases where there is a total disregard for life and safety such as this one. Apportioning 10 to 20% of the liability to the second defendant would be an under-estimation of his responsibility for the accident.

75 As for the submission of counsel for the second defendant that *Ng Li Ning* is distinguishable because the accident in that case took place at a traffic light- controlled junction while the junction here is uncontrolled,[114] I accept that there are differences in the facts of this case and *Ng Li Ning*. Nonetheless, *Ng Li Ning* is instructive as it discussed how certain cases may warrant deviation from the MAG or MACO outcome predictor, to properly take into account the relevant factual circumstances. In terms of factual distinctions, other than what was pointed out by counsel for the second defendant, there are others, such as the traffic volume and conditions of the traffic junction in *Ng Li Ning*. Most pertinently, the speed of the Nissan there was nowhere near that of the second defendant's car. In *Ng Li Ning*, the Nissan was travelling at 74 to 87km/h, and

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114 2DCS at para 52.

at an average speed of 82km/h. Here, the second defendant's travelling speed was around 140km/h in the six seconds prior to emergency braking. The accident happened on a Friday evening at around 8.00pm when people would be returning home from work and families would be on the road at the beginning of the weekend. Although the traffic was light to moderate and the second defendant was not approaching a traffic light-controlled junction, he was not on the racetracks and had no excuse for driving at the speed that he had anywhere on our roads at any time of any day. The second defendant is highly blameworthy by virtue of the sheer speed of his car. The Court of Appeal in *Stafford* observed that a motor vehicle is, by reason of its mass and speed, a potentially dangerous weapon. The law therefore requires the driver to handle it with good sense and common decency (*Stafford* at [34]). The second defendant's car was indeed such a dangerous weapon when it travelled at the speed that it did at the material time.

76 On the facts of the present case, I find that the actions/omissions of the first defendant and the second defendant had equal causative potency insofar as the collision is concerned. If the first defendant had kept a proper look-out, the accident could have been avoided. Similarly, if the second defendant had not exceeded the speed limit to the outrageous extent that he did, the accident would not have happened. As for moral blameworthiness, balancing the first defendant's blameworthiness from failing to keep a proper look-out and to give way to the second defendant who had the right of way, against the second defendant's blameworthiness from the dangerous speed at which he was travelling, the first defendant is more blameworthy but not by a wide margin. If the analysis were to end here, I would have apportioned liability to the second defendant above the 35% that was apportioned to the Nissan driver in *Ng Li Ning*. But the analysis should also account for the impact of the first defendant permitting the plaintiff to travel in the rear cargo compartment of his van

without being secured in a proper seat with a seat belt on the extent of the injuries suffered by the plaintiff. In this regard, I do not think that it will be appropriate to simply apply an "uplift" against the first defendant as the effect which the second defendant's travelling speed had on the extent of the plaintiff's injuries has to be considered too.

77 The evidence before this Court is that the first defendant's failure to ensure that the plaintiff was properly seated and secured with a seat belt, as well as the impact speed of the second defendant's car and the points of impact, were factors that contributed to the extent and severity of the plaintiff's injuries. The first defendant's omission in this regard is a weighty factor against him, considering that the first defendant, [J] and the plaintiff's sister who were seated in the front of the van and properly restrained by seat belts were not ejected from the van while the plaintiff and [K], who were travelling in the rear cargo compartment without safety restraints, were flung out of the van.

78 The first defendant was irresponsible and reckless to place an 8-year-old child in the rear cargo compartment of his van that was not meant to carry passengers. He knew that was unsafe for the plaintiff since he was aware that the rear cargo compartment of his van was meant to carry goods, and not passengers.[115] He also knew that the rear cargo compartment of the van was not fitted with seat belts and that passengers travelling in his van are required to be belted.[116] Although he might not have intended to do so, he was in effect betting on a safe journey and placing the plaintiff at grave risk of serious injury, which unfortunately materialised. I therefore add this factor onto the scale to be weighed against the first defendant, to be considered together with the first

115 21 Sept NE at p 8, lines 19–22.

116 21 Sept NE at p 7, lines 16–18.

defendant's failure to keep a proper look-out and to give way to the second defendant, after also taking into account the impact of the collision which was contributed by the second defendant's travelling speed.

79 For completeness, I should mention that I did not consider the points of the impact as a factor weighing solely against either the first defendant or the second defendant. To my mind, it is a factor that would be more fairly attributed to both of them equally, given that their actions/omissions in causing the collision had equal causative potency.

Conclusion and orders made

80 Considering all the facts in the balance, and in particular, the first defendant's failure to keep a proper look-out and to give way to the second defendant, and in permitting the plaintiff to travel in the rear cargo compartment of his van without being secured in a proper seat with a seat belt, against the speed of the second defendant's car which significantly limited his ability to keep a proper look-out and to avoid the collision, and created the forceful impact that contributed to the severity of the accident, I conclude that a just and equitable apportionment of the liability for the plaintiff's injuries is as follows:

(a) the first defendant: 65%; and

(b) the second defendant: 35%.

Accordingly, interlocutory judgment is granted in favour of the plaintiff against the defendants at 100% with damages to be assessed and interest reserved, with the defendants to bear liability in the abovementioned proportion.

81 I will hear parties on the issue of costs separately.

Teh Hwee Hwee
Judicial Commissioner

Ng Kwong Loong (Leagle Sense LLC) for the plaintiff;
Pillai Remesha Chandran (M/s Jacob Mansur & Pillai) (instructed),
Fernandez Christopher and Low Huai Pin (Tan Kok Quan
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Yeo Kim Hai Patrick, Lim Hui Ying and Ooi Jingyu (Legal Solutions
LLC) for the second defendant.