

Bernice Amelia Tan v Loh Chee Song
[2000] SGHC 197

Case Number : Suit 46/2000C
Decision Date : 27 September 2000
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Foo Yuk Lin (Foo Chia Partnership) for the plaintiff; Ganesh Ramanathan with Colin Kang (Hilborne & Company) for the defendant
Parties : Bernice Amelia Tan — Loh Chee Song

JUDGMENT:

Grounds of Decision

1. On 18 July 1999, the plaintiff, who was riding a motorcycle, was involved in a collision with a pick-up driven by the defendant. She suffered severe injuries to her right leg and sought compensation from the defendant. I gave judgment in her favour, finding the defendant wholly to blame for the accident. The defendant has now appealed.

The plaintiff's version

2. At the time of the accident, the plaintiff was a 23 year old undergraduate at the National University of Singapore.

3. According to her affidavit, at about 7.10pm on 18 July 1999, the plaintiff was riding her motorcycle FP 7202 U along East Coast Road in the direction of Still Road. As she approached the junction of East Coast Road and Still Road/Still Road South, she could see that the traffic light was showing red against her and she slowed her speed to about 20 to 30 kmph with a view to stopping. As the plaintiff came closer to the junction, the traffic light changed to green and she picked up speed to enter the junction.

4. As she approached the junction, the plaintiff noticed pick-up JFE 9877 (driven by the defendant) coming from the opposite direction and occupying the turning lane, also entering the junction. It was slowing down as if to make a right turn. The plaintiff flicked her high beam and pressed the horn. This was her usual practice when crossing a junction with on-coming turning traffic. She continued to move forward as she saw no reason to slow down and she had the right of way. She was travelling in the centre lane at a speed of about 40 kmph.

5. When the plaintiff was about to reach the centre of the junction, the traffic light was still green in her favour. Suddenly, she realised that the pick-up was accelerating and the next moment it collided onto the right side of her motorcycle. She did not have time to slow down or evade it.

6. Under cross-examination, the plaintiff said that when she first saw the defendant, he was 20 metres away from her and that at that time, her traffic light was green. As she entered the junction, she saw the pick-up moving slowly and she was able to see it all the time that she was traversing the junction. She did not slow down or take any evasive action because she expected the defendant to stop. She denied that she had failed to exhibit due regard for her own safety as she crossed the junction. She reasserted that she had sounded her horn and high beamed as she entered the junction to let on-coming traffic know that she was passing through.

7. The plaintiff agreed that despite the fact that she had sounded her horn and flashed her high beam, the defendant had not stopped his vehicle. Instead he had moved faster. She reiterated that he was moving very slowly at first and she thought he would stop but just when he was near her, he sped up trying to overtake her from the front and she was caught by surprise.

The defendant's version

8. In his affidavit, the defendant stated that at the material time, he was travelling along East Coast Road from Bedok. As he reached the junction of East Coast Road and Still Road, he intended to turn right into Still Road and therefore joined the queue of vehicles waiting to turn right at the junction. There were about five vehicles ahead of him in the queue.

9. The cars ahead of him had turned right into Still Road without incident even though the green arrow for them to turn right was not showing. As he reached ahead of the queue to turn right, he noticed the plaintiff's motorcycle on the other side of East Coast Road heading towards Bedok. She was about ten car lengths away from him and was travelling at a fast speed. It was at this time that the green arrow for him to turn right came on and he thus turned right into Still Road. As the defendant turned right, the plaintiff's motorcycle collided into his pick-up.

10. The defendant went on to state that he verily believed that the plaintiff had ignored the red light that ought to have been showing to her and had sped across the junction which resulted in her being flung some distance away from the point of collision. He did not hear the plaintiff sounding the motorcycle horn, neither did he see her flashing the lights of her motorcycle.

11. The defendant referred to the report of the accident which he had made on the same day as he wished to clarify a discrepancy in the report. He stated that his version of events was as stated in the affidavit as the road names in the report were not accurate. The report was written in English by a traffic police officer and the discrepancy may have occurred as a result of some miscommunication in the translation.

12. After the accident, the defendant was charged with an offence of inconsiderate driving. He explained that he had pleaded guilty to this charge as he had been told that the maximum fine for pleading guilty was \$1,000. For him it was cheaper to plead guilty than to engage a lawyer to defend him. He is a Malaysian and he did this purely out of convenience.

Other evidence

13. Each of the parties had a second witness. The plaintiff called Staff Sergeant Govindharajoo R. who is attached to the Traffic Investigation Branch. Sergeant Govindharajoo testified that he had been assigned to investigate this accident and he had arrived at the scene at about 8.55pm on 18 July and inspected it. He found the front right side of the pick-up to be damaged and the right side of the motorcycle to be damaged.

14. Sergeant Govindharajoo did not find any brake marks, skid marks, blood stains, or remnants of broken parts of either vehicle at the site of the accident.

15. Sergeant Govindharajoo interviewed both the plaintiff and the defendant. He took a formal statement from the defendant at the police station. The defendant and his friend, Mr Soh Tien Chye, were present at the interview and Mr Soh acted as translator.

16. At the conclusion of the police investigation, action was taken against the defendant. He was charged under s 65 of the Road Traffic Act (Cap 276) for driving JFE 9877 without due consideration, to wit for failing to give way to the plaintiff when crossing the line of traffic. The defendant pleaded guilty to the charge on 21 October 1999 and was fined \$1,000 and disqualified from driving for three months.

17. In court, the sergeant was asked why he had charged the defendant and not the plaintiff. His explanation was that an offence had been disclosed and the defendant had admitted to the commission of the offence. The sergeant then pointed to para 2 of the defendant's statement to him where the defendant had stated that the traffic light was still green and he felt he was safe and he

executed the right turn and the collision occurred. The sergeant maintained that Mr Soh had been in the interview room throughout and had acted as interpreter. He denied that he had taken the statement from the defendant by speaking to him in Malay and had only asked Mr Soh to translate the completed statement.

18. The defendant called Mr Soh. Mr Soh testified that he had waited outside the interview room, at Sergeant Govindharajoo's direction, whilst the defendant was interrogated by the investigating officer. He could not hear what they were saying. Finally, the sergeant told him to enter the room. He then saw the statement written in English. The defendant could not understand it so Mr Soh translated it to him and then signed the statement as interpreter.

19. Under cross-examination, Mr Soh said that he had spoken to the defendant in Hokkien regarding the statement. The defendant had understood what he had said in Hokkien. After he explained the statement, the defendant did not make any comment or ask any question and he signed the statement without objection. I asked him whether the defendant had asked for any corrections to be made to the statement. Mr Soh's reply was '[the defendant] told me that the part about the traffic light going to turn colour when amber turned to arrow, Rajoo did not mention this in the statement'.

20. In answer to a question as to what he had done next, Mr Soh stated that he had mentioned the matter to Sergeant Govindharajoo who had said that the statement was just a statement and that he needed to investigate the whole case. He confirmed that the defendant had then signed the statement and that he himself had not asked Sergeant Govindharajoo to change the statement. In re-examination, Mr Soh said he had not translated the statement line by line to the defendant but had summarised it.

Reasoning

21. I accepted the plaintiff's submission that her version of the accident was to be preferred to that given by the defendant. The plaintiff herself was a clear and calm witness. She did not contradict herself and was able to give a coherent account of what had happened.

22. There was independent evidence which supported the plaintiff's account. She asserted that the front of the defendant's pick-up collided into the side of the motorcycle. The damage report produced by the police showed that only the right side of the motorcycle had sustained damage. Its front was unmarked. The defendant's account was that the front of the motorcycle had collided onto the front corner of his pick-up. If that had happened, then the front of the motorcycle would have shown some sign of the impact. The damage report therefore was consistent with the plaintiff's account.

23. Secondly, the plaintiff said that she was travelling at 40 kmph whereas the defendant asserted that she was travelling 'fast'. The traffic police did not find any debris or any marks on the road surface which would have suggested a violent collision. Further, if she had been travelling fast, then the impact would have been greater and the motorcycle and pick-up would have suffered greater damage than they in fact did. In respect of the motorcycle, only the exhaust and brake pedal were dented and the rear signal casing was missing, whilst the front cover of the pick-up's right hand signal light was cracked and the right corner of its front bumper was dented. This damage was not consistent with a violent collision.

24. The defendant's evidence as to the manner of the collision was not only inconsistent with the physical evidence, it was also inconsistent with his own original account of the accident. In the police report which he made a few hours after the accident, he had indicated by a tick against the appropriate box, that the collision had been a head to side one. When he was asked why he had ticked that box if the collision had actually been a front to front one, he claimed that he had no knowledge of how the tick had been made as it had been done by Mr Soh. Mr Soh's evidence was, however, that he had had no involvement with the reporting of the traffic accident and that the defendant had spoken in Malay to the Malay police officer who took down the report.

25. The most important dispute of fact in the case was the state of the traffic lights at the time of the accident. I found that the

plaintiff had been telling the truth when she asserted that the light was green in her favour and that the defendant was untruthful in maintaining that the green arrow had come on and that there was a red light against the plaintiff.

26. The plaintiff gave a clear account of the position. Her evidence on this point was not shaken at all. It was maintained from, at least, the time of her police report made about a month after the accident, right through the proceedings and up till the time she came to court. The defendant, on the other hand, changed his story. He made no mention of the state of the traffic lights in his police report on the night of the accident. A short time later, in the statement which he made to Sergeant Govindharajoo, he stated that the light was still showing green at the time that he had tried to turn right into Still Road. When he appeared in court to answer the charge of inconsiderate driving, he did not dispute the charge that he had been inconsiderate because he had failed to give way to the plaintiff's motorcycle. It was only when the amended defence was filed in this action on 20 June 2000 that the defendant asserted that there had been a red light against the plaintiff.

27. I did not believe the defendant's new story. If indeed the red light had been showing against the plaintiff, it would have been only natural for him to have said so immediately after the accident. Instead, he not only made no mention of it in his police report but in his statement to the investigating officer, he actually stated the opposite, ie, that the light was green. When I questioned him as to whom he held responsible for the accident, his reply was that there was no one he would want to blame for an accident like that, it was only hard luck. I then asked him whether he did not blame the plaintiff. This time he replied no, he did not blame anybody, who could he blame for an accident like that. It was then suggested that he could blame the plaintiff. The defendant evaded giving a direct answer saying that nobody would want to get involved in an accident and he supposed that it would be the traffic police who could say who was at fault. It was only when he was asked whether it had been wrong of the plaintiff to go through a red light as he had alleged she had, that the defendant rather reluctantly ascribed blame to the plaintiff, by saying that if the condition of the lights at that time were taken into account she was at fault. I found this reluctance on the part of the defendant to hold the plaintiff even partly responsible for the accident to be revealing. It indicated, to say the least, an awareness of wrong-doing on his part.

28. Secondly, I found Sergeant Govindharajoo's evidence to be more believable than that of Mr Soh on the way in which the statement was recorded. The sergeant was the investigating officer. He was a neutral party. He had no reason to lie. On the other hand, Mr Soh was the defendant's employer and friend and was concerned to help the defendant.

29. Even if one accepts that Mr Soh was not in the interrogation room whilst the statement was being recorded, his evidence was not completely helpful to the defendant. During cross-examination, he admitted that after he had interpreted the statement to the defendant, the latter had understood the interpretation and had not asked any questions or made any comments. Later, the witness attempted to ameliorate the effect of the foregoing evidence by adding that the defendant had informed him that green arrow had come on allowing the defendant to proceed and that he had conveyed this information to the police officer who had not changed the statement. The fact remains, however, that no good reason was given as to why the officer ignored this additional information or why the defendant proceeded to sign the statement when both he and Mr Soh would have been aware that a vital piece of information was missing and, in fact, the statement was wrong on the condition of the traffic lights.

30. The defendant's explanations for his omission to state early in the day that the traffic light was red against the plaintiff are difficult to accept. In regard to the police report that he made before seeing Sergeant Govindharajoo, he had a chance before making it to confer with Mr Soh. Despite that, he did not make any reference to seeing the amber light or the green arrow. In reply to the question as to why he had omitted to mention these facts, the defendant said that he was nervous. The plaintiff submitted that that was a lame excuse because after the accident the defendant had been calm enough to drive to Mr Soh's house and then to drive the both of them to the traffic police headquarters. Further, had he been nervous, he would have turned to Mr Soh for help in making the report, which he did not. I accepted this submission.

31. The defendant went on to make and sign a statement recorded in the course of investigation by the traffic police. He had known beforehand that he might require bail and this was one reason he had asked Mr Soh to accompany him to the police station. He therefore must have known that he had to give the investigating officer an adequate explanation as otherwise he might be charged with a traffic offence. In any event, there was a warning to him that he was bound to state the true facts. Yet he went on to make a statement in which he admitted that the traffic light was green when he made a right turn and that he had

thought it was safe for him to cross even though he had seen the plaintiff coming.

32. Having been charged with the offence of inconsiderate driving as a result of this statement, he pleaded guilty though he must have known then that he could have contested the charge with the help of Mr Soh's evidence to set aside the statement. That he did not do so and never raised the red light until the amended defence was filed some two weeks after his original defence which made no mention of the red light, were two more facts that confirmed me in my view that the defendant had been lying to me about the condition of the lights at the time of the accident.

33. I was satisfied that the plaintiff had the right of way and that it was the defendant who had wrongfully driven into her path and thus been the primary cause of the subsequent collision. The defendant contended that, nevertheless, the plaintiff had to share some blame for the accident because she had not had sufficient regard for her own safety. He submitted that it was clear from the plaintiff's evidence that she had seen him as she approached the junction and was aware that he was moving into the turn. That being the case, she should have taken steps to avoid the collision by, for example, changing lane or slowing down.

34. The plaintiff's rejoinder was that whilst she saw the defendant moving slowly towards her, she considered that he would stop before crossing her path and that it was only because he suddenly accelerated as she approached that the collision occurred. By then there was no time to avoid the accident. The defendant himself testified that as he saw the plaintiff approach him, he stepped on his brake in order to stop his vehicle. He did not jam on the brakes because he was concerned about the consequences of a sudden halt on his pregnant wife and young son who were in the pick-up with him. Thus, having stepped on the brake, he then released it and the pick-up did not come to a complete halt. Instead it moved forward. If the defendant was concerned about injuring his family by bringing his vehicle to a sudden and complete stop, he must have been travelling faster than he would admit. I accepted the plaintiff's evidence that instead of stopping, most probably the defendant picked up speed just before the accident, thus coming into her path. I therefore found that the plaintiff had no time to take any evasive action and that she had not been negligent in maintaining her course despite being aware of the presence and movements of the defendant.

Judith Prakash

Judge