

Zhang Wan Bo v Poh Kay Leong and Another
[2002] SGHC 274

Case Number : Suit 1442/2001
Decision Date : 19 November 2002
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : N Srinivasan (Hoh & Partners) for the plaintiff; Peter Madhavan and Subramanian (Madhavan Partnership) for the defendants
Parties : Zhang Wan Bo — Poh Kay Leong; Poh Choon Ann (Pte) Ltd

Judgment

GROUNDS OF DECISION

Introduction

1. On 19 August 2001, the plaintiff, his wife, and two friends, arrived in Singapore on holiday. That evening they went to Circular Road for dinner. As they were walking along the road looking for a restaurant, the plaintiff was knocked down by a car driven by the first defendant. The impact was slight but resulted in a cervical whiplash which caused the plaintiff to become paralysed.
2. The plaintiff commenced this action for damages against the first defendant as the driver of the car and the second defendants as the employers of the first defendant and the owners of the car. At the trial, he withdrew the action against the second defendants as it was clear that at the time of the accident, the first defendant was not acting in the course of his employment.
3. The plaintiff asserted in the statement of claim that the first defendant had been negligent by failing to have regard for the presence of plaintiff on the road when he reversed his car towards a parking lot along the road and thus hitting the plaintiff. In the defence, it was first denied that the first defendant's vehicle had collided with the plaintiff. The defence then went on to assert that the accident was caused and/or contributed to by the negligence of the plaintiff. There was a long list of particulars. These included failing to have regard for the car driven by the first defendant, failing to keep any proper lookout for this vehicle, failing to exercise due care to avoid the same and further attempting to walk or stand in the path of the vehicle when it was unsafe to do so.
4. The first defendant was charged under s 65 of the Road Traffic Act with having driven motor car Q8P on a road without due care and attention for other road users, to wit by failing to exercise care when he was reversing the vehicle and thus colliding with the plaintiff. The first defendant claimed trial and after a hearing lasting two days, he was found guilty of the charge on 12 August 2002. After this decision, the plaintiff amended the reply in this action and pleaded that, by reason of the conviction, the first defendant was estopped from denying that the car driven by him had collided into the plaintiff.
5. The trial of this action commenced on 22 August 2002. The plaintiff, his wife, Madam Wu Bao Yan, his friend, Mr Zhang Qi, and the first defendant, Mr Poh Kay Leong, gave evidence. The affidavit of evidence-in-chief of Mr Teo Liak Hoo, a licensed appraiser, was admitted by consent without the necessity for Mr Teo's attendance in court.
6. At the end of the trial, I gave judgment in favour of the plaintiff. I found the first defendant solely to blame for the accident. He has appealed.

The evidence

(i) The plaintiff

7. In his affidavit of evidence-in-chief, the plaintiff stated that at about 9pm on the evening in question, he and his wife and friends took a taxi to Circular Road to have dinner. After alighting from the taxi, they walked along Circular Road to look for a Chinese restaurant. The

plaintiff was walking with his wife. When they saw a car driven by the first defendant coming towards them, he and his wife walked to the side of the road to avoid the car. The plaintiff continued to walk along with his wife on his right, abreast of him, but about half a step in front of him. He then felt a hit on his left leg and fell forward. The car that had passed by had suddenly reversed, apparently to park in an empty car park lot alongside where the plaintiff and his wife were walking. After falling down, the plaintiff slowly lost consciousness and when he woke up he was already in the Accident and Emergency Department of Singapore General Hospital.

8. Under cross-examination, the plaintiff agreed that he and his friends were visiting Singapore for the first time. After they disembarked from the taxi at Circular Road, they walked along the road itself. He said he did not know whether Circular Road was a one way street. He and his wife were walking abreast of each other and as they walked they looked to either side of the road to look for a restaurant for their meal. The plaintiff was asked whether when they were walking along Circular Road, he, his wife and their friends were occupying about half the road. His reply was that he was crossing the road and there were cars from all sides. Subsequently, he was asked whether he agreed that when he was walking abreast of his wife he was occupying almost half the width of the road. He disagreed and said that it was a narrow street and he was crossing the road diagonally.

9. As far as the plaintiff could remember he was walking against the flow of traffic and had crossed the road from right to left. He was asked whether the accident occurred immediately after he crossed the road and reached the left-hand side. He said no and that after crossing he continued to walk against the flow of traffic and abreast of his wife. His wife was on his right-hand side and there were cars parked on his left-hand side. He remembered a car coming from the front which he managed to avoid. He was asked whether by this car he meant the car driven by the first defendant. His reply was he did not know. He also said that he did not notice the presence of the first defendant's car immediately prior to his falling down onto the road. After the accident, his wife told him that he had been knocked down by a BMW but he did not see the first defendant. The first time he saw the first defendant was in court.

10. The plaintiff said that whilst he was walking along Circular Road he was not aware that vehicles would be manoeuvring into and out of parking lots on either side of the road. When asked whether it occurred to him that it would be safer to walk along the five foot ways alongside the road, he replied that what he had in mind was that he needed to cross the road to look for a restaurant. He agreed that he was not familiar with the traffic rules in Singapore but did not agree that it would be unsafe for him to walk on the road itself. He did not accept that having to look out for a restaurant while walking along the road compromised his ability to keep a proper lookout for vehicular traffic along the road.

11. In re-examination, the plaintiff said that he had moved to the left side of Circular Road when he saw a car coming towards him. After that he was walking straight along the road on the left-hand side. Subsequently the plaintiff's evidence was inconsistent with this stand. He was asked by his lawyer to explain how he was making sure that he was not endangering himself while walking along the road after he moved to the left side of the road. The plaintiff's reply was not quite apposite to the question. He said: 'When we were walking along the road and saw this car coming along the road, we managed to avoid this car before we crossed to the other side of the road. As there was a parking lot on the left side of the road, we walked towards that lot.' Then when asked whether he was walking into the lot or straight into the road his reply was that he was walking into the lot.

(ii) Madam Wu Bao Yan

12. Madam Wu's account of the incident in her affidavit was very similar to that in the plaintiff's affidavit. She said that the plaintiff was walking beside her along Circular Road and their friends were a few metres behind them. When she and the plaintiff saw a car coming towards them, they walked towards the side of the road to avoid the car. The car passed by them. Madam Wu was walking abreast of the plaintiff but about half a step ahead of him. They walked for a further four or five steps and then the plaintiff suddenly fell forward. Madam turned around and saw the boot of a car less than a metre away from them. The car was in a slanted position as if it were about to park in the empty lot next to them.

13. In cross-examination, Madam Wu was asked whether she agreed that because she and her husband were walking abreast of each other, they were occupying half the width of the road. She disagreed and stated that in fact they were walking quite near to the side of the road. She did not know that there was a path for pedestrians alongside the road. She thought that the road was a road for both pedestrians and vehicles. She was then asked whether at first she was on the right-hand side of the road and at some time later had crossed the road. The reply was a firm no. Madam Wu stated that they did not cross the road before the accident.

14. Madam Wu was next asked whether just before the accident she was walking on the right hand side of the road facing the oncoming traffic or whether she was on the left-hand side. Her reply was that she was on the right hand side of the road. She was then asked whether while walking on the right hand side of the road she had looked to the rear for traffic. She said no. The next question was whether just before the accident she had crossed the road diagonally from the right to the left. Again she answered no.

15. I then asked her whether looking towards the front the accident had happened on the right hand side of the road or the left hand side. Her reply was she could not remember. I then asked where her husband was. She replied that he was on her left and he was walking nearer to the parked cars. Madam Wu was then shown a photograph of Circular Road and asked to point out the side of the road she was on with reference to the oncoming vehicle shown in the photograph. After seeing the photograph, she stated that they were on the left-hand side of the road and agreed that the confusion in her evidence as to the side of the road they were walking on was because she did not know the direction of the flow of the traffic.

16. Madam Wu was informed that her husband's evidence was that just before the accident occurred, a car had passed both of them and she and her husband had then crossed the road diagonally towards a vacant parking lot on the left hand side. Her reply was that it was not true and that since that accident, the plaintiff's memory had failed him. She said that all times she was on the same side of the road and did not cross the road at any time. Their two friends, however, were walking behind them on the other side of the road.

17. The first defendant's car passed Madam Wu at the time when she was a few steps away from the vacant car park lot. The car did not stop alongside her but she did not notice whether after it passed her it had passed her completely. When the car passed, she continued to walk straight and at this juncture the car reversed and knocked down her husband. She did not see the first defendant's car knock down her husband. She only saw him fall forward but she was certain that the car knocked him down because after the plaintiff had fallen she turned around and saw the car.

(iii) Mr Zhang Qi

18. Mr Zhang Qi stated that just before the accident he was walking with the fourth member of the party, Madam Jie, about ten metres behind the plaintiff and Madam Wu. The plaintiff turned and called out to him to hurry up. Mr Zhang moved forward and then saw a car driven by the first defendant coming towards the plaintiff and his wife. The plaintiff and Madam Wu walked to the left side of the road to avoid the car. The car passed them and then stopped and suddenly reversed to where the plaintiff was walking and knocked into the plaintiff causing him to fall forward.

19. Under cross-examination, Mr Zhang maintained that he and Madam Jie were walking along the right hand side of the road and that the plaintiff and his wife were walking on the left-hand side of the road. He was asked when they started walking on the road whether there was an occasion when the plaintiff and Madam Wu crossed from the right hand side to left hand side. His reply was that as far as he could remember, they did not cross the road. When he first noticed the first defendant's car approaching the plaintiff and his wife were between 14 and 15 metres ahead of Mr Zhang. Mr Zhang noticed the car because its headlights were on. Mr Zhang said at first that the first defendant's car passed him and then stopped. Later, he corrected himself and said that the car did not pass him. Actually it stopped in front of him, about seven or eight metres ahead of him. He was asked whether the headlights of the car were glaring at him when the vehicle stopped. At that stage, Mr Zhang said that he did not really feel it and he thought that the headlight was not on but only a dim light.

20. Mr Zhang was asked whether he could see Madam Wu and the plaintiff when the first defendant's car stopped. He replied that he could. They had taken evasive steps to avoid the car and after having done so, they continued to walk straight. At that time they were behind the car and walking away from it. After the car stopped, it started to reverse and Mr Zhang saw the car collide into the plaintiff. Mr Zhang was reminded of a question put to him in the criminal proceedings relating to what had happened when he first saw the first defendant's car. In that court, he had replied: 'This happened very suddenly. I did not realise the vehicle knocked someone down. I did not notice this'. Counsel then said that Mr Zhang was now saying that he had seen the collision and asked him what the correct version was. Mr Zhang's reply was that he did see the collision. In the Subordinate Court, his evidence was that he did not expect the first defendant's car to knock down someone. He did witness the collision and there was no reason for him to say that he did not witness the collision. It should be noted that Mr Zhang had given testimony in the Subordinate Court that he saw the instant the car hit the plaintiff and the plaintiff fell and that this evidence was given during cross-examination after the portion of the evidence which counsel in this case read to Mr Zhang.

21. Mr Zhang was also asked whether he agreed that he had not noticed the relative positions of the plaintiff and his wife just before the impact. Mr Zhang disagreed. It was pointed out to him that in the earlier proceedings, he had stated at one portion of his evidence that he did not notice the relative positions of the plaintiff and his wife. Mr Zhang replied that he believed there must be a mistake. He remembered that he did tell the court that he could remember the relative positions before they moved to the left and even now he clearly remembered their relative positions. In re-examination, Mr Zhang stated that in the criminal court he had done drawings of the relative positions of the parties and he agreed that when he said he had given clear evidence about the relative positions he was referring to questions he had been asked about these drawings showing the positions of the parties.

(iv) The first defendant

22. In his affidavit, the first defendant stated that whilst proceeding to reverse into a vacant car park lot along Upper Circular Road on the night in question, he checked on his right to see whether there was sufficient space to reverse into the lot as there were vehicles occupying the parking lots in front of and behind the empty lot. After engaging the reverse gear, he released the brakes and the car was set in reverse motion. After checking on the right side, he turned to look at the left side and noticed a lady was waving at him to stop his vehicle. He immediately brought the car to a halt. He got out of the car and inspected its rear. He noticed the plaintiff was sitting down behind his bumper. He called the ambulance and remained at the scene until the plaintiff was conveyed to the hospital.

23. During cross-examination, the first defendant was asked whether, whilst he was travelling along Circular Road and before he stopped, he had seen anyone on his left-hand side walking along the road. He first replied that he remembered someone walking on the left-hand side, but there was no one on his right-hand side. He could not remember whether the pedestrian was male or female, young or old. When I asked him whether there had been just one person, he replied there might have been two. He then agreed that he was not certain whether anyone was on his left and could not confirm it. The first defendant did not recall seeing the plaintiff and Madam Wu before the accident. He did not see them on the right-hand side though he was sure he would have done so had they been there as his steering wheel was located on the right-hand side of his car.

24. He stated that when he stopped the car he looked into the rear view mirror to make sure there were no cars and people behind. At that point there was no one behind him. Thereafter he looked to the right. He looked to the right for between one and three seconds and then turned to look towards the back. However as he was looking to the right he released the brake. He was asked whether it was right to say there were a few seconds in which he was reversing and had not checked the back. The first defendant replied that that period could not have been longer than one or two seconds. He was then reminded that in the subordinate courts he had said that he had looked to his right for four to five seconds and had engaged his reverse gear from the third second onwards. Thus for the last one or two seconds of his check to the right, he had already let go the break and was reversing. After that he physically turned to the left to look through his rear windscreen and then he saw the plaintiff's wife. At that time he did not see the plaintiff.

25. It was put to the first defendant that he did not see the plaintiff because he had already knocked him down by the time he turned to look towards the back. His reply was that he did not know that. It was further put to him that if he had looked back before reversing he would have avoided the accident and his reply to that question was "that I would not know too". The first defendant confirmed that he had been convicted of a charge under section 65 of the Road Traffic Act and that he was not challenging that conviction.

Findings

26. It was clear that the first defendant had been negligent. He had admitted that his vehicle was already reversing while he was looking towards his right and that he had not waited to check again in his rear view mirror before starting to reverse. Further he had been convicted on a charge of driving without due care and attention for other road users and he had said in evidence that he was not challenging that conviction.

27. The issue was whether the plaintiff had also been negligent. This depended on whether I accepted the story that he and his wife were always on the left hand side of the road or whether I accepted the submission put forward on behalf of the first defendant that they had originally been walking on the right hand side and had crossed to the left hand side just before the first defendant reversed his car and had thereby walked into his path.

28. In the proceedings in the criminal court, the plaintiff himself, Madam Wu and Mr Zhang were very clear in their evidence that the

plaintiff and his wife were already on the left-hand side when the first defendant's car passed them. It was not in evidence there that they had crossed the road diagonally. Madam Wu and Mr Zhang gave straight forward evidence that they, meaning the plaintiff and Madam Wu, had walked a distance along the left-hand side of the road before the plaintiff was hit. In the criminal court, this version of events on the part of all three witnesses was not shaken in cross examination.

29. Before me, Madam Wu and Mr Zhang repeated the same story. It was only the plaintiff who changed his evidence. Madam Wu's explanation was that since the accident the plaintiff had become forgetful. This could have been one reason for the change. Another contributing factor could have been that he was feeling the strain of giving evidence from his stretcher in two separate courts within the relatively short period of a month. It should also be noted that even though he said that he had crossed the road, the plaintiff had also maintained at various points during cross-examination that when the first defendant's car passed him he had moved to the left to avoid the car. He would not have had to do this had he been on the right-hand side at that stage and only crossed the road after the car had passed. The plaintiff's account in this respect was wholly consistent with the version he recounted in the criminal court and in his affidavit. The later inconsistency in his evidence when he appeared to indicate that the first defendant's car had passed him on his left-hand side was, I think, due to some confusion on his part as the answer came at random at the end of his re-examination and was not directed towards the question his counsel had asked him.

30. I preferred the evidence of Madam Wu and Mr Zhang to that of the plaintiff on the issue of the plaintiff's position on the road. They were coherent and consistent. Neither of them was shaken in cross examination. They were able to give convincing explanation for the reasons for the minor discrepancies that arose in the course of their respective cross-examinations.

31. There was some difficulty with the first defendant's testimony. He did not appear willing to accept any part of the responsibility for the accident. Further his memory of who had been on the road was not good. If the plaintiff and Madam Wu had been walking along the right hand side of the road in front of Mr Zhang and Madam Jie, as his counsel wanted me to accept, surely the first defendant would have had a clear impression of the presence of a number of people on that side of the road. As the photograph taken by the police showed, that night there were cars parked along both sides of the road thus leaving a relatively narrow space for vehicular and pedestrian traffic. Visibility was, however, good. In such circumstances the first defendant would, if he had been paying attention to more than the presence of a vacant parking lot, have noticed the plaintiff and his friends. The fact that he did not see them at all either on his left (as his counsel alleged they must be) or two of them on his left and two of them on his right (taking their positions from Madam Wu's account) must mean that he was not paying the necessary attention to the situation on the road and to the presence of other road users at the time. It also means that at the time he started to reverse he did not have the presence of other road users in the forefront of his mind as it should have been.

32. Counsel for the first defendant submitted that the plaintiff endangered himself by walking into the path of a car that was attempting to park. If I had accepted the plaintiff's revised version of events I would have agreed with this submission. However, I rejected that version because I was satisfied on weighing up all the available evidence that that was not what happened. I found as alleged by Madam Wu and Mr Zhang that the plaintiff and his wife had been on the left hand side of the road all along and that the first defendant's car had passed them, stopped and then reversed thus hitting the plaintiff. In these circumstances I was not able to hold that the plaintiff had also been negligent. He had walked along the side of the road and had moved aside in order to avoid the first defendant's car and had then proceeded walking forwards. He was not under any duty to turn to ensure that the first defendant was not reversing towards him. No doubt the plaintiff would have been safer if he had walked along the five foot way but since Circular Road is not an expressway he was not committing an offence by merely walking straight along the road at the side of the road.

Sgd:

JUDITH PRAKASH

JUDGE

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