

Kang Hock Seng Paul v Lee Teck Nam
[2002] SGHC 308

Case Number : Suit 57/2002
Decision Date : 17 December 2002
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Chong Pik Wah (Lim Kia Tong & Pnrs) for the plaintiff; Kwok-Chern Yew Tee (Lawrence Chua & Pnrs) for the defendant
Parties : Kang Hock Seng Paul — Lee Teck Nam

Judgment

GROUNDS OF DECISION

1. At about 8am on 22 June 1999, the plaintiff, Kang Hock Seng Paul ("Kang"), was driving his motor-car SBU 3236H along Marymount Road in the direction of the city. It was, at that time, drizzling heavily. At a point just after a slight right-hand bend in the road his car skidded, climbed up the kerb at the centre road divider and came to a rest with the front wheel in the central drain area and the rear of the car protruding angularly into the outermost lane of the 3-lane double carriageway. The front portion of the car was towards the flow of traffic. According to Kang the car skidded and he lost control over it when he applied his brakes to avoid a pedestrian who had dashed across the road.
2. When the car came to a stop, its rear portion was lifted a foot or so off the ground and Kang could not drive the vehicle out. He switched on the hazard warning lights of the vehicle and came out. A passing motorist, Jessie, lent her handphone to Kang. Using the handphone, Kang tried to call the Automobile Association ("AA") to get a tow-truck but could not get through. Jessie then drove off telling Kang that she would call the AA on his behalf.
3. The traffic along Marymount Road, at that time, was heavy. It was Kang's testimony that although his vehicle was blocking about one-third to half of the outermost lane and there was still enough space left in that lane for motorists, like Jessie, to pass by using the third lane. Kang could not be sure if Jessie, whom he did not know, would in fact arrange for a tow-truck. Kang's regular workshop (a branch of Tan Chong Motors), was fairly close-by at Upper Thomson Road. He therefore hailed a passing taxi and proceeded to Tan Chong Motors to arrange for his car to be immediately towed away.
4. Kang was questioned as to why he did not do anything to warn on-coming traffic about his car obstructing the road before he left the scene. Kang told the court that he had a triangular danger sign in the boot of the car but he could not, without danger, access it because the rear of the car was lifted off the road. When asked why he did not remain at the scene and warn on-coming traffic of the danger, he told the court that it was raining and traffic was heavy and it would have been hazardous for him to stand in the rain directing traffic. His instinct was to get the car towed out as soon as possible and that was what he proceeded to do.
5. At Tan Chong Motors, Kang was advised to contact AA. He telephoned AA and learnt from AA that Jessie had contacted them and a tow-truck was already on its way. He was advised to return to the car to await the arrival of the tow-truck. When Kang got back to the scene, the tow-truck had just arrived and was parked about one car-length ahead of his car in the lane next to the central divider. The revolving blinkers on top of the tow-truck and the four hazard lights at the rear of the truck were flashing. There was a slight drizzle at that time.
6. The driver of the tow-truck, Teo Kim Chai ("Teo"), told the court that when he arrived at the scene he noticed that the front wheel of SBU 3236H had gone beyond the central drain and the rear of the car was jutting onto the road at an angle. He asked Kang for the ignition key of the car in order to switch on the ignition and straighten the front wheels. Kang volunteered to do that himself and so Teo, with two traffic cones in his hands, walked past SBU 3236H to place the cones on the road to serve as warning signs before commencing the towing operations.
7. When Teo was about three car-lengths away from Kang's car, he saw a car, EN 966E, about three car-lengths ahead of him. It appeared

to be coming quite fast. Teo reacted by jumping on to the central road divider to avoid the car. Immediately thereafter he heard the sound of car EN 966E colliding into Kang's car.

8. At the time of the collision, Kang had opened the door on the driver's side and was bending into the car in order to turn the steering wheel. EN 966E collided into the open door and threw Kang into the car. Kang's right leg was sandwiched between the door and frame of the car.

9. It was suggested to Teo that his tow-truck (as well as SBU 3236H) could not be seen by drivers travelling towards the city because of the bend along Marymount Road. Teo disagreed. He told the court that he stopped his truck quite far past the bend and that the revolving hazard lights on top of his truck were flashing so brightly that it was not possible for a driver not to notice his truck. He also told the court that his truck was quite high – about double the height of a motor-car.

10. The driver of EN 966E, Lee Teck Nam ("Lee"), the defendant in this action, testified that at about 8.55am he was driving his company car along the extreme right lane of Marymount Road headed towards the city. It was drizzling at that time after a heavy downpour earlier on. He told the court that as he approached a sharp right-hand bend he reduced speed to about 45kph as he could not see far ahead owing to the bend and to the tall shrubs at the centre divider. As he went around the bend he was shocked to see SBU 3236H stranded perpendicularly across the lane about 3 to 4 car-lengths ahead of him. He also saw Kang standing at the open door on the driver's side and a tow-truck ahead of the car. In that emergency he immediately "jammed" his brakes. He could not swerve left as there was a vehicle in the middle lane just behind him. When he jammed his brakes his wheels locked and his car, owing to the wet road and downward slope, skidded forward and collided into the opened driver's door of SBU 3236H injuring Kang. His vehicle then spun round and came to a stop in the second lane.

11. I did not accept Lee's evidence that his view of the road ahead was blocked by the shrubs at the bend in the road. I accept Kang's evidence that although there were shrubs along the centre divider these shrubs were low enough for drivers to see over their top. It seemed to me that the truth of the matter was that Lee, at that time, was driving at a speed that was – considering the weather and traffic conditions – excessive and Lee was not paying sufficient attention to the road ahead of him. If Lee was paying full attention, he would, at the least, have noticed the revolving lights of the tow-truck in adequate time to adjust the speed at which he was driving. I was satisfied that Lee's negligence caused the accident. The more difficult question was whether there was any contributory negligence on the part of Kang.

12. The contributory negligence alleged against Kang consisted of the following:

- (a) Skidding along Marymount Road thereby causing a state of emergency for other motorists;
- (b) Leaving motor-car SBU 3236H resting across the extreme right lane of Marymount road in breach of s 122 of the Road Traffic Act;
- (c) Failing to turn on the hazard light and/or display the breakdown sign or give any adequate warning to alert other road users; and
- (d) Attempting to straighten the wheels of the car himself without sufficient regard to his own safety.

I will deal with these allegations in the same sequence.

Kang's negligence in losing control of his car

13. There was no evidence before me from which I could arrive at the conclusion that motor-car SBU 3236H skidded because of Kang's negligence. The only evidence I had on the matter – and I had no reason to reject that evidence – was that Kang lost control of the car when he applied his brakes to avoid a pedestrian who had dashed across the road. Losing control of a car, in those circumstances, was not negligence.

Breach of s 122 of the Road Traffic Act

14. It was clear, on the evidence, that motor-car SBU 3236H was left at the position where it landed for about an 1 hour only because Kang was not able to move the car away sooner than that. I was satisfied that Kang had done all that he could reasonably be expected to do to have SBU 3236H quickly removed from the scene. Section 122, in my view, would be breached only if Kang had allowed SBU 3236H to remain where it was for a time longer than the time reasonably required for its removal.

Failure to warn other road users

15. In this case, Kang had switched on the hazard warning lights of the car and they were flashing. His car was equipped with a traffic warning triangle but he could not access it because of the position the car was in. It was unreasonable and even hazardous to expect Kang to stand in the rain directing traffic. In any event, SBU 3236H was some distance away from the bend in Marymount Road and was occupying only one-third to half of the outermost lane. There was therefore sufficient space for cars in that lane to pass safely by. I noted that for the entire hour (until Lee collided into SBU 3236H) traffic passed safely by. The position may have been different if the bend at Marymount Road was a blind corner and if SBU 3236H had come to a rest nearer to the bend.

16. I would also note that the tow-truck was parked just in front of SBU 3236H. It was a high vehicle and its hazard lights (including revolving lights at the top) were flashing. The presence of that tow-truck with its flashing lights was, by itself, a sufficient warning of the hazard on the road at the time EN 966E collided with SBU 3236H.

Attempting to straighten the wheels without regard for his safety.

17. In attempting to straighten the wheels, Kang was doing what he could to expedite the removal of SBU 3236H. When he was straightening the wheels, the tow-truck was parked just ahead and it had its revolving lights flashing. As noted above, the presence of that truck was a sufficient warning of the existing hazard. In the circumstances, Kang was not, in my view, negligent in straightening the wheels. I would note that it was somewhat inconsistent for Lee to suggest that Kang was negligent in trying to straighten the wheels but at the same time fault Kang for not directing traffic.

Case law

18. Mrs Kwok-Chern, counsel for Lee, in support of her submissions on contributory negligence, quoted a number of Malaysian and English cases, including *Lee & Lever* [1974] RTR 35; *Zainap bte Abd Majid & Ors v Gan Eng Hwa & Ors* [1995] 1 MLJ 801; *Chop Seng Heng v Thevannasan & Ors* [1975] 2 MLJ 3; *Siow Choo Foo v Lee Peng Lay & Anor* [1981] 2 MLJ 336; *Ahmad Nordin bin Haji Maslan & Anor v Eng Ngak Hua & Ors* [1985] 2 MLJ 431. In all these cases, the vehicle in question had been parked in such a way that the vehicle constituted a danger to the other road users. In the present case, SBU 3236H had not been "parked" on Marymount Road. It came to be on the road through a mishap not arising from any negligent conduct on the part of Kang. The factual matrix in all those cases was materially different from the present case. I did not find those cases to be of any significant assistance in dealing with the issues in this case.

19. I was satisfied in this case that there was no contributory negligence on the part of Kang. Accordingly, I held Lee to be solely liable for the injuries suffered by Kang and the damage caused to motor-car SBU 3236H in the collision.

Sgd:

S. RAJENDRAN

Judge

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