

Kanafatty s/o Krishnan v Chan Chee Loong Peter
[2003] SGHC 223

Case Number : Suit 221/2003
Decision Date : 29 September 2003
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Ramasamy Chettiar (Acies Law Corporation) for the plaintiff; Joseph Goh and Leonard Lim (Vincent Lim & Joseph Goh) for the defendant
Parties : Kanafatty s/o Krishnan — Chan Chee Loong Peter

Tort – Traffic accident – Whether defendant was liable – Whether there was contributory negligence on plaintiff's part.

The background

1 Kanafatty (the plaintiff) was involved in an accident at the Causeway Woodlands, when his motorcycle numbered AX6908D (the motorcycle) he was riding on collided with a motor vehicle EC 9069T (the vehicle) driven by Peter Chan (the defendant). At the conclusion of the trial I awarded interlocutory judgment to the plaintiff with costs, on the basis that the defendant was 75% liable for the accident. I directed that damages for the plaintiff should be assessed by the Registrar with the costs of such assessment reserved to the Registrar. The plaintiff being dissatisfied, has filed a notice of appeal (in Civil Appeal No. 60 of 2003) against my decision.

The facts

(i) the plaintiff's version

2 The plaintiff now works as a security guard. On 22 October 2000 (a Sunday) at about 2.30pm he came into Singapore from Johor Baru on the motorcycle, on his way to the SBS depot at Defu Avenue 1 where he then worked as a bus captain. The motorcycle occupied the lane reserved for motorcycles; the traffic was heavy at the time. After entering the motorcycle lane leading to the Singapore Immigration checkpoint, the plaintiff (PW1) noticed the vehicle was in a stationary position directly ahead of him, at a distance of about 7.5m-9m away. The plaintiff applied his brakes and stopped some distance behind the vehicle. At about the same time, the defendant reversed the vehicle and its rear collided into the front of the stationary motorcycle. The plaintiff fell off the motorcycle and sustained injuries to his left leg/hand as a result.

3 Cross-examined, the plaintiff said he was travelling at about 30-40 kph that afternoon, there were many motorcycles around him. There were 2 motorcyclists in front of him who moved to his left side. It was only then that he saw the vehicle being reversed. As he had no space to move to the left side because of the other 2 motorcyclists and could not move to the right (where there was metal fencing), he applied the brakes and stopped the motorcycle. Within a matter of seconds, the vehicle collided into the motorcycle. The impact threw the plaintiff off the motorcycle. He landed on the road near the metal fencing while the motorcycle landed about 1½m behind the vehicle after hitting the concrete pavement on the right side. In this regard, the plaintiff claimed that the sketch plan drawn by the police investigation officer (showing the position of the motorcycle after the collision) was incorrect.

4 The plaintiff did not produce photographs of the motorcycle to substantiate its damage caused by the collision. Indeed, it did not occur to him to take photographs. He explained the

motorcycle was then about 20 years old and its certificate of entitlement was about to expire; he had intended selling the motorcycle. As he had no money to repair the damage caused by the collision, he scrapped the motorcycle after the accident.

5 Counsel for the defendant pointed out that in the plaintiff's police report, the plaintiff did not say he had stopped. The plaintiff's police report (see AB3) lodged on 2 November 2000 stated:-

On 22.10.2000 at about 2.30pm, I was riding my motorcycle AX6908D along Causeway and entered the Singapore Immigration complex. I was on the lane for motorcycle only. A motorcar EC9069 entered into my lane for motorcycle only and was directly in front of me. All of a sudden, the driver applied brakes and started to reverse. I sounded my horn but the rear of the motorcar collided into the front of my motorcycle. As a result I fell and injured my left leg and left hand. My motorcycle was also damaged. I was conveyed to Tan Tock Seng Hospital by ambulance. I have one witness and his name is Gopal h/p 012-752304.

The plaintiff explained that a police officer assisted him in drafting. His English is not fluent and, after he had explained to the attending officer what happened, the latter drafted out the report on a piece of paper which the plaintiff copied into his police report.

6 The plaintiff denied he was negligent that day, that he failed to keep a proper lookout, that he was travelling too fast as which result he was unable to take any evasive action, causing the front of the motorcycle to collide into the vehicle (which was stationary) and severely damaging its rear portion.

7 The person identified in the plaintiff's police report namely Gopal V Perumal (Perumal) testified on his behalf. Perumal was a good Samaritan who went to the plaintiff's assistance after the accident; they did not know one another beforehand. Perumal gave his telephone number to the plaintiff and told the latter to contact him should the plaintiff need any help, after telling the plaintiff he had witnessed the accident. The plaintiff's solicitor eventually met Perumal in August 2002 pursuant to the plaintiff's arrangement with Perumal. The plaintiff revealed that Perumal visited him once at his home after the plaintiff had undergone an operation in April 2001.

8 Perumal (PW2) corroborated the plaintiff's version of how the accident happened, that it was the vehicle which reversed and hit the motorcycle. Perumal had helped the plaintiff to his feet after the impact and waited with the plaintiff until the ambulance arrived to take the latter to hospital. Perumal disagreed with the plaintiff's version only in that he did not think the traffic was very heavy that afternoon.

9 Cross-examined, Perumal claimed he did not notice whether there were other motorcyclists travelling side by side with the plaintiff that day or in front of the plaintiff. He only paid attention when he heard honning by the motorcyclists heading towards the checkpoint. When he saw the plaintiff, the plaintiff was exactly behind the vehicle and the motorcycle had stopped. Perumal denied counsel's suggestion that he did not witness the accident and he was merely giving the plaintiff's version of how the accident happened.

10 One Sergeant Hariati binte Ahmad (Hariati) from the traffic police department testified for the plaintiff. Her testimony was not helpful at all as she was not the actual investigation officer (Azril) who investigated into the accident and prepared the sketch plan and the vehicle damage report; Azril has since resigned from the police force. Hariati (PW3) could only say that the defendant accepted a composition offer for careless driving from the traffic police department.

(ii) the defendant's version

11 The defendant was the only witness for his case. He testified he was returning home from Johor Baru that afternoon; no one was with him. The vehicle was in 1 of 2 lanes leading up to the immigration checkpoint. After he had travelled for about 50m he realised that he was in the lane meant for motorcycles only. Consequently, he stopped the vehicle immediately and turned on his hazard lights. The defendant then checked for traffic behind him. When he saw that the lane was clear, he reversed slowly. After he had reversed for about 5m, the defendant stopped to let some motorcyclists pass him. After they had passed him, the defendant noticed another motorcyclist coming straight at the vehicle. As the motorcyclist did not appear to be slowing down, the defendant horned. It was only when the motorcycle (whom he later realised was ridden by the plaintiff) was less than 5m away from the vehicle, that the rider applied his brakes and tried to swerve the motorcycle but to no avail; the motorcycle hit the rear of the vehicle. The defendant blamed the plaintiff for the accident -- had the plaintiff kept a proper lookout and proceeded slowly, he would have seen and avoided, the stationary vehicle.

12 Cross-examined, the defendant explained that the extreme left lane of the Causeway facing Singapore was a dual function lane; it could be used by motorcars or motorcycles or both and clearly so stated in the markings on the lane. It was only when he had driven into the lane and was about 50m from the motorcycle zone that the defendant realised it was restricted to motorcycles that afternoon; he stopped the vehicle immediately. He could not do anything else but reverse as the metal gate in front was closed and there was no room to make a U-turn. (The metal gate is marked as a wide **X** in the police sketch plan found in 1AB9). While it crossed his mind to seek assistance, the defendant said he did not know which (telephone) number to call. Although it did occur to him the immigration officers were one possible source, the defendant felt they were not the appropriate persons to help him; hence, he did not approach them.

13 Although there was a steady flow of traffic in the motorcycle lane, it was moderate not endless. The defendant could and did take, advantage of gaps in the flow to reverse the vehicle, after switching on his hazard lights. When he was reversing the vehicle, motorcyclists were far away. He reversed for about 5m and then stopped as a bunch of motorcyclists were approaching. After they had passed him on the left of the vehicle, he continued to look in his rear view mirror to try to reverse.

14 The defendant then saw the plaintiff in his rear view mirror, a lone motorcyclist about 2 lamp-posts away from the vehicle. Contrary to the testimony of the plaintiff and Gopal, the defendant did not hear any honking from any motorcyclists before the impact. Indeed, it was he who horned repeatedly and stepped on his brake lights when he saw the plaintiff seemingly heading straight towards him. When the plaintiff was about 5m away from the vehicle, the defendant noticed the plaintiff had a startled look suggesting it was only then that the plaintiff saw the vehicle; the plaintiff tried to swerve and brake. The defendant then heard a loud bang and saw the plaintiff's body on top of the vehicle's boot with the plaintiff's face on the rear windscreen, after which the plaintiff disappeared from his view, having fallen off the boot. The defendant alighted and went to the back of the vehicle. He found the plaintiff conscious and sitting behind the vehicle next to the motorcycle, which was about a metre away from the vehicle. He helped the plaintiff (who said he was in pain) to the side of the road. He did not think the plaintiff was seriously injured.

15 The defendant's estimate of where the motorcycle landed (marked as **Z** on the police sketch plan) was close to the plaintiff's estimate (marked as **X**); both estimates were far off the mark **H** shown on the police sketch plan. In fact, according to the defendant, the position **H** was where the concrete divider started, demarcating lanes for use by motorcycles and cars.

16 While the plaintiff claimed that only the back bumper of the vehicle was dented, the defendant said the damage was far more extensive -- the lights, boot and the chassis sustained damage in addition to the bumper. There were apparently also scratches on the vehicle's rear windscreen where the plaintiff landed. This was to be contrasted with the damage to the motorcycle -- its front fender was dented, the fork twisted and the rim of its front tyre bent.

17 Questioned why he had accepted the offer of composition (2 years after the accident) from the police for careless driving if he felt the plaintiff not he, was responsible for the accident, the defendant explained that he had consulted his lawyer who advised him to accept the same. It made sense to accept as fighting the case may not necessarily result in a different verdict.

18 At this juncture, I pause to look at the police report lodged by the defendant. Unlike the plaintiff's, the defendant's report was lodged on the morning of 23 October 2000, a day after the accident. It stated:-

On 22/10/2000 at about 1500 hr, while I was driving along the Woodlands Causeway coming towards the immigration checkpoint, I was driving on the left lane, when I approached the Y-junction. I continued travelling on the left lane, not realising that it is the m/cycle lane. I stopped about 15m into the m/cycle lane. I turned on my hazard lights and checked for clear traffics and then I reversed my vehicle. About 5m of reversing, I stopped to allow on coming m/cycle to pass me. Then I noticed a m/cycle about two lamposts behind me, heading straight to my car. The m/cycle rider seems not aware of my vehicle and only when he was quite near then he noticed me. He tried to brake and swerve but failed and end up crashing onto my vehicle. He suffered minor injuries and his m/cycle AX6908D suffered damage at the front portion.

One observation I would make at this juncture is that unlike the plaintiff, the defendant's testimony especially under cross-examination, was entirely consistent with his police report.

The decision

19 Although I believed his testimony, it was clear from the evidence that the defendant's conduct in reversing the vehicle was the main catalyst which caused the collision between the vehicle and the motorcycle. The defendant should have considered other alternatives of getting the vehicle out of the motorcycle lane. One possibility would have been for him to stop the vehicle and seek assistance from the immigration/custom officers at the checkpoint to find out whether they could open the metal gate (marked on the police sketch plan as a wide **X**) to let him through. If not, he should have sought the same officers' assistance to direct the motorcycle traffic to ensure he could reverse safely out of the lane. It is noteworthy however, that the defendant did his best to warn other road-users of the vehicle's presence by flashing his hazard lights.

20 The plaintiff however was also partly to blame for the collision. I was not entirely convinced he was being truthful when he said he had seen the vehicle reversing towards him just before the impact. It was far more likely, consistent with the damage caused to the vehicle/the motorcycle and the defendant's version, that the plaintiff only saw the vehicle when it was too late for him to take evasive action. Hence, the motorcycle crashed into the rear of the vehicle and flung the plaintiff forward onto the boot of the vehicle. Had it been the vehicle which collided into the motorcycle, the impact would have pushed the motorcycle much back further than 1 to 1.5m behind the vehicle. I disbelieved the plaintiff when he claimed he had stopped and horned at the vehicle. It was the defendant who horned and flashed his hazard lights to alert the plaintiff when he saw the plaintiff heading straight towards him. The plaintiff's testimony lacked conviction because he was not speaking the truth; it was difficult to pin him down to one version of what actually transpired just

before the impact. Had the plaintiff been more alert, the accident may well have been avoided as the defendant contended, bearing in mind that a number of other motorcyclists passed the vehicle on its left without incident. It was common ground the lane was 4.7m wide, while the vehicle's width was 1.4m; there was therefore an allowance of 3.3m for motorcyclists to pass the vehicle.

21 I was equally sceptical of the alleged corroborative testimony of Perumal; I disbelieved him. If indeed Perumal had witnessed the accident as he claimed, he would have noticed the flow of traffic that day in the motorcycle lane, whether there were motorcyclists on the side of the plaintiff, whether other motorcyclists passed the vehicle before the collision and, whether it was a strong impact when the motorcycle and vehicle collided, instead of only seeing the vehicle reversing. What Perumal told the court was what the plaintiff had told him.

22 Consequently, although I held that the defendant was primarily responsible for the accident, I was also of the view the plaintiff's own inattention was partly to blame. As such, I apportioned liability between the parties on the basis of $\frac{3}{4}$ and $\frac{1}{4}$ in favour of the defendant and plaintiff respectively. I felt it was a fair apportionment, using the guidelines extracted from the cases cited by counsel on behalf of the defendant (*Zulfasari bin Ab Ghani v Shahril bin Idris* [2002] MLJU 90; *Jamiah bte Holam v Koon Yin* [1983] 1 MLJ 103; *Barber v British Road Services* (1964) CA 289; *The Times* November 18 1964).