Ang Kuang Hoe v Chia Chor Yew
[2004] SGHC 29

Case Number : Suit 549/2003/B

Decision Date : 18 February 2004

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Liew Teck Huat and Devendarajah Vivekananda (Niru and Co) for plaintiff; P E Ashokan and Gwen Vetuz (Khattar Wong and Partners) for defendant

Parties : Ang Kuang Hoe — Chia Chor Yew

Tort – Negligence – Contributory negligence – Plaintiff contributorily negligent in road accident – Principles applicable when apportioning liability

18 February 2004

Belinda Ang Saw Ean J:

1 In this action, the plaintiff, Ang Kuang Hoe, claims damages for injuries he sustained as the result of being struck by the defendant's motor vehicle, registration no SDM 86L. The sole question before me is whether the defendant, Chia Chor Yew, is liable in whole or in part or not at all for the accident. The issue of damages will be determined separately.

2 On 14 May 2002 at about 7.10am, the defendant was driving his dark blue Mercedes-Benz C180 along South Buona Vista Road in the direction of Ayer Rajah Expressway ("AYE"). His young daughter was a passenger in the car. South Buona Vista Road is a dual carriageway with one lane on each side. The accident happened before the T-junction between South Buona Vista Road and Science Park Drive. Traffic flow along that lane where the accident occurred is towards the direction of AYE.

3 The weather was fine and visibility was good. The road surface was dry. The defendant had indicated the traffic volume as heavy in his police report. The speed limit for that stretch of the road is 50km/h. It is common ground that there is a pedestrian crossing at the traffic lights located at the T-junction between South Buona Vista Road and Science Park Drive.

4 At the time of the accident, the plaintiff was 22 years old and a third year mechanical engineering undergraduate with the Engineering Faculty, National University of Singapore. He is a Malaysian from Kuching. He came to Singapore in 1999 for his tertiary education and he was to have graduated in 2003. His graduation was delayed on account of the accident.

5 On that fateful morning, the plaintiff was on his way to catch either bus no 14 or no 166 for Clementi. He left his hall of residence at Prince George's Park, which is near South Buona Vista Road, together with Bernard Kee Buck Tong ("Kee"), a fellow undergraduate and friend. At the material time, he was on industrial attachment with Omnimold Ltd, a company in Jurong. His intention was to cross to the other side of South Buona Vista Road, continue along a footpath towards the direction of the bus stop at Science Park Drive, walk pass the traffic lights at the T-junction and then to his bus stop.

6 His pleaded case is that he was crossing South Buona Vista Road when the defendant's vehicle hit him. The defendant was at fault in that he had not, *inter alia*, kept a proper look out and was travelling at an excessive speed. The plaintiff had considered it safe to cross the road at the

place he did as the road was narrower and he could also see cars approaching from both lanes.

7 The pleaded defence is that the plaintiff suddenly stepped out from the kerb into the path of the defendant's vehicle without first looking to see if there were oncoming cars approaching from behind him. The defendant's attempt to avoid hitting the plaintiff by swerving to the right was to no avail. In the particulars of negligence, the defendant alleged in para 4 of the Amended Defence that the plaintiff had suddenly:

> (f) [dashed] across South Buona Vista Road into the path of motor car No SDM 86L thereby creating an emergency situation for the Defendant;
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> (g) [dashed] across South Buona Vista road when it was dangerous and unsafe to do so;
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> (h) [dashed] into the path of motor car No SDM 86L …;
>
> (i) [stepped] onto the road from the kerb into the path of motor car No SDM 86L;
>
> (j) …

8 The defendant further averred that the plaintiff was in breach of r 3(1) of the Road Traffic (Pedestrian Crossings) Rules (Cap 276, R 24, 1990 Rev Ed) in that he failed to cross South Buona Vista Road at the pedestrian crossing which is situated within 50m of the accident site. It is the defendant's case that the pedestrian crossing is about 20m ahead of the point of impact.

9 To succeed in this action, the plaintiff must establish fault on the part of the driver without which the claim must fail. What constitutes reasonable care is judged or measured by the standard of the reasonable man in the circumstances. In terms of determining responsibility for the accident, it matters whether the plaintiff had suddenly moved into the path of the defendant's oncoming vehicle. An issue before me is whether the plaintiff was struck when he suddenly stepped off the pavement as asserted by the defendant, or he was struck when he was crossing South Buona Vista Road as asserted by the plaintiff.

10 Counsel for the defendant, Mr P E Ashokan, submits that the plaintiff's assertion that he was crossing South Buona Vista Road at the time of the accident cannot be believed. There was no reason for the plaintiff to cross to the other side of South Buona Vista Road. His bus stop was not at Science Park Drive. It was situated along a slip road off the AYE. That bus stop was much further down the road from the one used by Kee. It was more likely than not that the plaintiff would have accompanied Kee to the traffic lights at the T-junction between South Buona Vista Road and Science Park Drive before continuing on his own. Counsel submits that the plaintiff's story was nothing more than an excuse to cover up the fact that he had carelessly stepped off the kerb whilst walking along the pavement with the oncoming traffic behind him.

11 In cross-examination, it was pointed out to the plaintiff that his written testimony was untrue as neither bus no 14 or no 166 serviced the Science Park Drive route. The defendant, therefore, submitted that the reason provided by the plaintiff for crossing South Buona Vista Road at the particular stretch of the road was plainly a lie.

12 The plaintiff denied that he had stepped off the pavement whilst walking with Kee. Although he had used the same bus stop for the past five months, he had made an honest mistake in his reading of the street directory and that accounted for the error in his affidavit evidence. He was unfamiliar with the street names. He learnt about that particular bus stop from a friend who had taken

him there. It was not as if he had been reading the street directory for five months. I find his explanation reasonable and plausible. More importantly, Kee was able to corroborate his testimony.

13 Kee testified that the plaintiff and he were walking along the pavement towards the T-junction. They parted company at some point as the plaintiff had wanted to cross to the other side of the road to catch his bus to Clementi. The plaintiff's bus stop was still some way diagonally across South Buona Vista Road, past the T-junction. Kee had continued walking ahead as his bus stop was on the same side of the road. He did not see how the accident happened. But he was able to testify that within a few seconds (he estimated it to be three to four seconds) of his walking away from the plaintiff, he heard the sound of a collision. As he turned back, he saw the plaintiff being flung forward in the direction of the traffic lights. The plaintiff somersaulted several times before coming to rest in the middle of the lane.

14 Kee also testified that as they parted company, he saw the plaintiff turn to face the opposite side of the road. The plaintiff did not have his back to oncoming traffic. The plaintiff denied stepping off the kerb immediately after bidding Kee goodbye. He stepped off the kerb about two to three seconds later.

15 The defendant's version of the events leading to the accident is that he first noticed four pedestrians walking on the pavement to his left. They were walking in the same direction as the traffic flow towards AYE, that is, with the traffic behind them. He was travelling in the middle of the lane. In his written testimony, the defendant stated that just as he was about to drive pass the pedestrians, the plaintiff whose back was still facing him suddenly and without checking for oncoming vehicles "dashed" out onto the roadway. He had not expected the plaintiff to suddenly "dash" out. In cross-examination, he explained why he had used the word "dash"; it was to indicate a fast motion. In his opinion, the plaintiff's movement was fast enough to be described as a dash. He was not saying that the plaintiff ran from the pavement onto the roadway.

16 The defendant has refuted any suggestion that he was driving too fast and that that was the reason why he could not avoid the accident. The defendant testified that before the collision, the plaintiff was only 1 to 2ft in front of the left front corner of his vehicle. The defendant maintains that the plaintiff had suddenly dashed out. There was no time to stop. He swerved to the right to avoid the plaintiff but to no avail. After hitting the plaintiff, he stopped one car length away. There was no damage to the vehicle except for the cracks on the lower left corner of the windscreen.

17 Under cross-examination, the defendant was less sure of himself as compared to his written testimony. To illustrate, here are some of his answers to counsel's questions:

> Q: [From] where you were before the accident, you could see [the] plaintiff so as to be able to say [his] action was a dash?
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> A: When I was driving, [I] saw them with their backs facing me. It was when I was close that I sense[d] a dash.
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> Q: Did you see or sense the dash?
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> A: I saw them walking with their backs facing me.
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> Q: Did you see [the] plaintiff dash out from the pavement to [the] road?
>
> A: It was very near when I sense[d] a dash.

Q: Did you see [the] plaintiff dash from [the] kerb onto the road?

A: When I was near I could sense the man.

…

Q: [You said] he stepped onto [the] road suddenly. Was it the moment he stepped off [that] the accident took place or did he have [an] opportunity to walk for a bit before [the] accident took place?

A: I don't really know. My first reaction was to turn my car to the right.

Q: One step accident happened or a few steps?

A: I don't know. First thing I did was to sway my car to the right.

…

Q: How far was he from the kerb before the accident?

A: Can't estimate

…

Q: You can't tell us [the] plaintiff took one step or two before [the] accident?

A: Can't. It was too close.

17 It is obvious from the defendant's answers under cross-examination that he did not see the plaintiff move from the pavement onto the lane of traffic. The defendant had assumed that the plaintiff came from the pavement.

18 I accept the evidence of the plaintiff and Kee that the former was intending to cross the road when he was hit by the defendant's car. I agree with counsel for the plaintiff, Mr Liew Teck Huat, that if the defendant's version of the events were true, Kee would have been conscious of the plaintiff stepping off the kerb. After all, they were walking together side by side. Kee's evidence is completely different and does not support the defendant's story.

19 I now turn to the question of where the plaintiff was when he was hit. Was the plaintiff on the roadway when the defendant's car hit him or was he hit as he stepped off the kerb?

20 The defendant travels on South Buona Vista Road everyday. He accepts that this stretch of South Buona Vista Road is adjacent to the National University of Singapore campus. He is aware of, and he expects to see, university students in the vicinity. They do make use of the pavement along that stretch of South Buona Vista Road. On the morning of the accident, he was travelling at the maximum permitted speed limit despite the road conditions and traffic. He had not slowed down but maintained the same speed of 50km/h right up to the time of the accident.

21 The plaintiff recalls stepping off the kerb and was struck by the defendant's car when he was on the roadway. From the defendant's oral testimony, the defendant was unable to tell what had actually happened.

22 What is material is the defendant's admission that owing to the curved terrain, he had a clear visibility of 200m to the point of impact. Equally material are the following facts. He had the four pedestrians in front of him in his view for a while. He first noticed the four pedestrians walking on the pavement at about 60 to 80m away. He could make out their images at about 50m. He confirmed in cross-examination that he continued to observe the four pedestrians as he approached them. He also agreed with counsel that having regard to the narrow road, pedestrians on the pavement and the traffic junction ahead, he had to be, in the prevailing conditions, very careful as pedestrians might cross the road from one side to the other. He claimed that he drove with care that day.

23 If it is true that the defendant was continuously observing the pedestrians right from the beginning at a distance of 60 to 80m, the defendant would have noticed a change in pedestrian movement as he approached the four pedestrians. He would have seen one of them (the plaintiff) break away from the group and Kee walking ahead. He would also have seen the plaintiff face the other side of the road. I am of the view that had the defendant been vigilant and kept a proper lookout as he approached the four pedestrians he would have observed the plaintiff pausing, albeit not for long at the kerb. In my view, it was reasonably foreseeable and at least reasonably anticipated by a reasonable driver in the position of the defendant that the plaintiff might cross the road. In fact, it is evident from the defendant's oral testimony that he was aware that pedestrians might cross the road before the pedestrian crossing. That is in my view sufficient for him to take care even though he might not have foreseen the particular way in which the persons using the road would have behaved. It was a risk to guard against. An obligation to slow down to such a speed that he could stop arose as soon as there was a change in pedestrian movement. The defendant did not slow down. The argument that he could not have expected to foresee that the plaintiff would dash out does not affect this conclusion.

24 The defendant did not, according to his evidence, see the plaintiff until his car was 1 to 2ft from him. There was no time to stop. His attempt to avoid hitting the plaintiff by swerving was to no avail. In the light of the material facts highlighted earlier, these factors strongly suggest a combination of driving too fast in the circumstances and failing to maintain a proper lookout.

25 The defendant informed the court that he was fetching his young daughter to school that morning and that it would take ten minutes to reach Nanyang Primary School, which is off Farrer Road. I am not persuaded that he would be able to get his daughter to school on time. By his reckoning, the traffic volume was heavy. It was already 7.10am. It is inherently probable that he was rushing to send his daughter to school.

26 Mr Liew submits that the defendant was driving too close to the kerb. In *Chen Qingrui v Phua Geok Leng* [2001] SGHC 64, the plaintiff who was a polytechnic student stood close to the kerb and was hit by the defendant's car. Tan Lee Meng J held that the driver drove too close to the raised concrete kerb. In the present case no evidence was led as to the width of the lane or of the defendant's car. The defendant said that he was travelling about 2 to 3ft from the continuous white dividing line. I would say that for the defendant to have struck the plaintiff, the probability is that his lookout was particularly deficient.

29 Mr Liew also referred to *Chapman v Post Office* [1982] RTR 165. In that case the plaintiff was standing on the edge of the kerb and was leaning over so much so that the wing mirror of the defendant's van hit her. The English Court of Appeal held the defendant to be wholly liable. That case is distinguishable. The plaintiff there was standing at an approved and designated area, waiting for a bus. Lord Denning MR held at 166 that the "very fact that a van driver hits with his wing mirror a lady standing legitimately on the kerbside means that he is at fault and she is not".

30 In my judgment, the plaintiff has made good his case of negligence based upon a failure of the defendant to take reasonable care in several respects, namely, a failure in the circumstances to keep a proper lookout, driving at an excessive speed and failing to slow down.

31 Mr Liew's explanation that the plaintiff crossed the road where he did as it was a shorter route to get to his bus stop does not excuse him particularly in the circumstances where the nearest pedestrian crossing was within 50m of the accident site. The defendant says that the pedestrian crossing at the T-junction is about 20m from the accident site whereas the plaintiff says it is about 40m. In any event, it is well within the distance of 50m stipulated in r 3 of the Road Traffic (Pedestrian Crossings) Rules. It is worth noting that the bus stop in question is after and not before the pedestrian crossing. The plaintiff was undoubtedly in breach of r 3 of the Road Traffic (Pedestrian Crossings) Rules.

32 I am also of the view that the plaintiff did not properly look out for oncoming traffic. He stated in his affidavit of evidence-in-chief that before crossing, he had glanced to his right and did not notice any vehicle approaching close to him. He took a different stance during cross-examination. He said that before crossing the road, he had looked to his right. He saw some cars about 50m away. In any event, on any view, he must have determined that he could or had enough time to cross in safety. On either view, he had failed to take care of his own safety.

34 I find that not only had the plaintiff failed to keep a proper lookout for his own safety, he should not have crossed South Buona Vista Road at an unmarked part of the road when the pedestrian crossing at the traffic lights was nearby. He set out to cross the road deliberately and with full knowledge that he was taking a calculated risk. It was a foolhardy crossing.

35 The plaintiff's carelessness for his own safety was blameworthy enough to justify a finding of contributory negligence. In my judgment, the plaintiff must bear some of the responsibility for this unfortunate accident. Mr Liew submits that contributory negligence, if any, should be between 10 to 15%.

36 The principles relating to the apportionment of responsibility are clearly established in *Podrebersek v Australian Iron & Steel Pty Ltd* (1985) 59 ALR 529. The same principles have been applied equally to traffic accidents. The five members of the High Court of Australia said at 532–533:

> A finding on a question of apportionment is a finding upon a "question, not of principle or of positive findings of fact or law, but of proportion, of balance and relative emphasis, and of weighing different considerations. It involves an individual choice or discretion, as to which there may well be differences of opinion by different minds": *British Fame (Owners) v Macgregor (Owners)* [1943] AC 197 at 201.
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> …
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> The making of an apportionment as between a plaintiff and a defendant of their respective shares in the responsibility for the damage involves a comparison both of culpability, ie of the degree of departure from the standard of care of the reasonable man (*Pennington v Norris* (1956) 96 CLR 10 at 16) and of the relative importance of the acts of the parties in causing the damage: *Stapley v Gypsum Mines Ltd* [1953] AC 663 at 682; *Smith v McIntyre* [1958] Tas SR 36 at 42-49 and *Broadhurst v Millman* [1976] VR 208 at 219, and cases there cited. It is the whole conduct of each negligent party in relation to the circumstances of the accident which must be subjected to comparative examination. The significance of the various elements involved in such an examination will vary from case to case; for example, the circumstances of some cases may be

such that a comparison of the relative importance of the acts of the parties in causing the damage will be of little, if any, importance.

37 Applying the test in *Podrebersek* which I found helpful, I conclude that it is difficult to assess the fault of either party as materially in excess of that of the other. In all the circumstances, both should be regarded as bearing equal responsibility. The plaintiff should, therefore, have judgment for 50% of the amount of damages assessed. I also award costs of the action in the plaintiff's favour.