

Koh Swee Hoon Joanna Ophelia v Yeo Hee Chong
[2005] SGHC 190

Case Number : Suit 942/2004
Decision Date : 05 October 2005
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Benedict Chan (Benedict Chan and Partners) and Roy Monoj Kumar (Roy and Partners) for the plaintiff; P E Ashokan (KhattarWong) for the defendant
Parties : Koh Swee Hoon Joanna Ophelia — Yeo Hee Chong

Tort – Negligence – Breach of duty – Whether lorry left in position presenting possible source of danger to other road users

Tort – Negligence – Contributory negligence – Whether plaintiff contributorily negligent in failing to keep proper lookout and following vehicle in front too closely

5 October 2005

Belinda Ang Saw Ean J:

1 On 27 January 2004, the plaintiff, Koh Swee Hoon, was involved in a road traffic accident in which her motor scooter no FS 1004L collided into the rear of a stationary lorry no YK 4924D. The driver of the lorry is the defendant, Yeo Hee Chong. The focus here is on the defendant's duty to other road users to exercise reasonable care in the management of his lorry that had a puncture and was left on the expressway as a result. The question for consideration is whether the stationary lorry left in the position where it was presented a possible source of danger to the road users travelling along Tampines Expressway ("TPE") as well as road users from Loyang Avenue joining the TPE towards Changi Airport. It would be a skewed reading of the situation to approach this claim as a simple head-to-rear traffic accident. The trial before me is on liability.

2 The defendant, a liquefied petroleum gas ("LPG") deliveryman, was travelling along the TPE bound for his employer's premises at Jalan Pari Burong off Upper Changi Road when he experienced a puncture to the front left tyre coming down from the Loyang Flyover ("flyover"). He did not stop straightaway but gradually slowed down until he came to a complete stop on the second lane of the TPE some distance from the apex of the chevron markings that separated traffic from Loyang Avenue and the TPE. In dispute is the spot at which the lorry was left stationary along the TPE. The lorry was laden with LPG cylinders both large and small and weighing a total of approximately 2 tons. Some cylinders were empty and others were filled with LPG.

3 According to the defendant, the lorry tilted to its side because of the deflated front left tyre. He also experienced difficulty controlling the steering wheel. Given the constraints, he would have to drive slowly with the assistance of someone controlling the traffic if he were to cut across one lane to reach the road shoulder along the TPE. He was alone and decided to call for assistance. He alighted from his lorry to place a triangular breakdown sign some 25–30m behind his lorry as a warning to oncoming vehicles. He then made his way to the road shoulder from where he telephoned his office. He also claimed that before alighting from the lorry, he had put the hazard lights on. Whilst he was still on his mobile phone, he heard the sound of a crash and soon realised that the plaintiff had collided into the back of his lorry. He did not see how the accident happened as a passing lorry had momentarily blocked his line of vision.

4 The plaintiff's leg was pinned under the rear left tyre. The lorry had to be moved to free her leg. Seeing petrol leaking from the scooter, the defendant decided to move his lorry to the road shoulder which he did so with the assistance of a passer-by.

5 The plaintiff, a senior flight stewardess with Silk Air, was on her way to work and was heading towards Changi Airport. She was to report for work at 12.30pm. The accident happened at about 12.05pm. From Tampines Avenue 7 she rode into Loyang Avenue intending to join the TPE. After overtaking two motor vehicles along Loyang Avenue, she stayed on the right lane of Loyang Avenue. Her intention was to filter to the right onto the TPE as she was heading for Changi Airport. She was travelling at 60km/h. The speed limit on TPE was 90km/h. By way of clarification, the road the plaintiff took to join the TPE was referred to by counsel for the defendant as "the slip road" and by counsel for the plaintiff as "Loyang Avenue". Both are referring to the same road. For convenience, I have in this judgment followed the plaintiff's description.

6 The plaintiff admitted seeing the lorry about 20m^[note: 1] away but believed it to be moving. The lorry was partially visible as there was a vehicle ahead of her. After the motor vehicle in front of her swerved to the left, she realised that the lorry was stationary but by then it was inevitable that she would collide with it. Nonetheless, she had the presence of mind to swerve her bike to slide under the rear of the lorry to avoid a direct impact of the crash. Even so, she fractured her right humerus and injured her liver and right kidney. She now suffers from right radial nerve palsy.

7 The plaintiff's account of the prevailing traffic conditions and events that swiftly flashed passed when she realised that the lorry was stationary right up to the moment of impact is to be gathered from her answers to counsel's questions:

Q: So there was a car in front of you which swerved to [the] left before you collided into [the] lorry?

A: Yes. That was also the time I realised that the lorry was stationary.

Q: After it filtered left you immediately collided into [the] lorry because you were behind [the] car?

A: I tried to brake. I braked hard. I thought of cutting to [the] right but could not because of oncoming vehicles from TPE. I thought of swerving to [the] left but could not because of [the] vehicle behind me. It was the car I overtook at "W". If I swerved to [the] left he would have hit me. I had no choice but to move forward. I rather go under the lorry than to be hit by the cars.

Q: How soon after the car in front swerved to [the] left did your scooter [collide] into [the] lorry?

A: Split seconds

Q: So you had time to make a conscious choice?

A: I already knew there were vehicles which I had earlier overtaken coming behind me on my left. I thought of cutting through the island but I couldn't because of cars coming from TPE.^[note: 2]

....

Q: When did you realise [the] lorry was not moving? How close were you then?

A: 3 or 2 car lengths. That was after [the] vehicle in front of me swerved to the left.

Q: You were riding at 60 kmph at this time?

A: I was maintaining my speed.

Q: You couldn't brake even though you were 2-3 car lengths away?

A: I didn't brake on time.

Q: Is anything wrong with [your] brakes?

A: No

Q: Was it because [the] road surface was wet and you couldn't brake?

A: I don't know. I squeezed hard on my brakes. Moments later I hit the lorry.[\[note: 3\]](#)

8 The three questions which are often asked in personal injury claims are: (a) Did the defendant owe the plaintiff a duty of care? (b) If so, was that duty breached in that the defendant had acted carelessly? and (c) If so, did the negligence cause the plaintiff's injury? Applying those questions to the instant case, I am satisfied for the reasons below that the plaintiff has proved negligence on the part of the defendant. The defendant was careless for the plaintiff's safety in the face of a reasonably foreseeable risk that she might be exposed to injury. But on the evidence before me, the plaintiff should, in my view, bear part of the responsibility on account of her contributory negligence. I shall elaborate on this later.

9 Rule 6(1) of the Road Traffic (Expressway Traffic) Rules (Cap 276, R 23, 1990 Rev Ed) provides that subject to this rule, no vehicle shall stop or remain at rest on a carriageway. Counsel for the defendant, Mr P E Ashokan, submits that as the lorry had a puncture, it was permitted under r 6(2)(a) to stop and remain at rest on an expressway. Under that sub-rule, the defendant was to, as soon as is practical, drive or move the lorry off the carriageway to the shoulder or verge on the left or nearside of the vehicle. He was in the process of making arrangements by telephoning for assistance when the accident occurred. It was not established how long the lorry was in a stationary position and how long the defendant was standing on the road shoulder before the collision occurred. I should imagine it was not long at all. As for the Fire Safety (Petroleum) Regulations (Cap 109A, Rg 7, 2001 Rev Ed) raised by the plaintiff, I am in agreement with Mr Ashokan that regs 35(1), 37(b) and 38 are irrelevant and merit no consideration.

10 It is not disputed that the defendant owed a duty of care to road users. As the duty was owed, the next consideration is whether the defendant in fact was careless for the plaintiff's safety. Mr Ashokan submits that the defendant had discharged his duty before leaving the lorry where it was. He had done all that a reasonable man could do in the circumstances to avoid a possible collision between the stationary lorry and oncoming vehicles from the rear. He had taken precautionary measures to guard against the risk of injury to other road users by leaving the stationary lorry on the expressway. The defendant had used warning signals like a triangular breakdown sign and the hazard lights were on.

11 Mr Ashokan submits that the plaintiff was entirely to blame for the accident. She had failed

to keep a proper lookout for traffic along the TPE and in particular the stationary lorry with a puncture. If she had done that, she would have seen the breakdown sign and hazard lights in time and taken appropriate action to avoid the stationary lorry. The accident was in broad daylight. It happened shortly after 12.00 noon and visibility was clear although it had rained earlier and the road surface was still wet as indicated in the defendant's police report. Mr Ashokan picks on the plaintiff's own testimony that there were about six or seven motor vehicles in front of her and none of them collided into the stationary lorry. The car immediately in front of her managed to swerve to the left to avoid a collision. He submits that it was the plaintiff who collided into the triangular breakdown sign before crashing into the rear of the stationary lorry. The traffic police had not taken action against the defendant. Instead, it was the plaintiff who was warned by the traffic police for careless driving.

12 One issue of fact in dispute between the parties was whether or not the hazard lights were on. The plaintiff was convinced that they were not turned on at the time of the collision. I am not persuaded that the hazard lights were on. First, when dealing with warnings to road users, the defendant only mentioned the triangular breakdown sign. He omitted to mention the hazard warning lights in his police report. That omission is curious as the defendant said that both types of warning signs were important. The police report was made at about 5.30pm on the same day of the accident, some five and a half hours after the accident and he could not claim to have forgotten about such an important piece of information. He did not in cross-examination give a satisfactory reason for the omission of this piece of information in his police report. An opportunity to remedy the omission presented itself when he made a report the following day with the General Insurance Association of Singapore ("GIA"). He did not correct the omission. He claimed that the person at GIA had copied the police report. Second, the defendant said that the flow of the traffic behind him was steady. He reduced speed and kept the wheel steady to keep the lorry in the same lane. After the lorry came to a complete stop, he put on the hazard lights before alighting from the lorry to inspect the front tyre. That evidence sounded thin to me. It was illogical not to have put on the hazards light earlier. The most obvious occasion to put on the hazard lights must surely be shortly after he first felt that something was wrong with his lorry as he was coming down the flyover. It would have been necessary to put on the hazard lights then to warn traffic behind him that he was experiencing difficulties with his lorry and that he was slowing down. Third, Staff Sergeant Jason Soh Hui Kiong ("SSgt Soh"), who came across the accident, only saw the hazard lights when the lorry was entering the road shoulder. His testimony does not corroborate the defendant's evidence. By then, the lorry had moved away from the scene of the accident. The other witness, Sergeant Mark Chow Chee Yen saw the lorry on the road shoulder but could not remember if the hazard lights were on. On the other hand, there is the plaintiff who was conscious after the accident. Lying underneath the lorry, she could see the location of the hazard lights below the 60km/h circular marking on the lorry. She was certain and unwavering in her testimony that the hazards lights were not on. Overall, the plaintiff's testimony was more plausible compared to the defendant's version and I find that the hazards lights were not on at the time of the collision.

13 The significance of the hazard lights is that if they were on, they might possibly have indicated to the plaintiff coming up Loyang Avenue slightly earlier that there was a vehicle there that had stopped. In my judgment, it is not even possible to arrive at such a conclusion that if the hazard lights were on, they might have offered some warning to oncoming traffic from Loyang Avenue. What is clear (and it is not in dispute) is that Loyang Avenue slopes upwards until it plateaus at the top to merge with the TPE. So whether the hazard lights might have offered some warning to the plaintiff climbing up Loyang Avenue with a vehicle in front of her is difficult to say. Besides, the hazard lights are located low, way down the back of the lorry to where the rear number plate is, thus making them difficult to see if a vehicle blocked the lorry as was the case here. There is also no evidence of the distance someone in the plaintiff's position riding her scooter at 60km/h would have had of the first opportunity of observing the back of the lorry before she realised that there was an obstruction to

the road. Her initial view of the lorry was of its top and that would not, and she confirmed it did not, enable her to decide whether the lorry was actually in her path or not or was stationary. If the hazard lights were on, would the plaintiff have realised that the lorry was stationary well before the 20m mark indicated by her? There is no answer to that question given the current state of the evidence. In these circumstances, it is a neutral point whether the hazard lights were on or off.

14 As for the triangular breakdown sign, it is obvious to me from the defendant's testimony that the sign was placed on the second lane of TPE on the nearside of the lorry and about 25–30m away from the rear of the lorry. That sign would only serve to warn oncoming traffic from the flyover. It did not give any warning to traffic from Loyang Avenue. As far as the plaintiff was concerned, she was approaching the lorry from Loyang Avenue and not from the TPE.

15 This brings me to the next question which is the position where the defendant had left the stationary lorry. There is no sketch map of the scene of the accident. The scene of the accident was shown in a series of photographs put before the court. The photographs were taken by the defendant well after the event but they gave an idea of the scene from looking at the photographs showing the direction in which both the lorry and the scooter had been travelling. Needless to say, the respective testimonies of the defendant and the plaintiff as to distances and the position of the stationary lorry are entirely "guesstimates".

16 At the hearing, the plaintiff recognised that she has to bear some blame for colliding into the lorry. In closing submissions, her counsel robustly argues that the defendant bears the entire share of the blame in that he either (a) failed to remove his lorry to the road shoulder or (b) stopped at an unsafe place instead of further along the expressway so much so that in leaving the lorry at that particular spot, it was an obstructive source of danger to anyone in the circumstances and conditions as they were at the time. Counsel for the plaintiff, Mr Benedict Chan, instructed by Mr Monoj Kumar Roy, submits that the defendant's culpability lies in leaving his lorry at the worst possible spot where there is a confluence of roads formed by a merger of Loyang Avenue with the TPE and where traffic from these two roads is allowed to filter into one another.

17 According to the plaintiff, the lorry was stationary at the spot marked "Y" which is a point beyond the chevron markings and sandwiched between the right lane of Loyang Avenue and the left lane of the TPE. The lorry was closer to the right lane of Loyang Avenue. Even if the lorry was on the second lane of the TPE, Mr Chan argues that there was no reason why the defendant could not have driven his lorry forward to the section of the road shoulder that was about 50m directly ahead of the lorry. The defendant had agreed with Mr Chan that from where he had stopped on the second lane, if he had continued going straight to reach the end of this confluence of roads comprising Loyang Avenue and the TPE, he would find himself next to the road shoulder. In so doing, the defendant would not be required to manoeuvre his lorry across the path of any traffic. It was an option known to the defendant but he chose to let his lorry remain where it had stopped. It was a fact that the lorry could still be driven for it was later driven to the road shoulder after the accident. Mr Chan pointed out that there was no mention in the defendant's police report that the lorry tilted to its side; it was vibrating vigorously and the steering wheel had tightened.

18 Mr Ashokan contends that the plaintiff's version of the location of the stationary lorry is incorrect. The defendant's case is that the lorry was on the second lane of the TPE. SSgt Soh, who found the scooter on the second lane of the TPE, corroborates the defendant's evidence on this issue. He also saw broken pieces of the breakdown sign on the second lane near the chevron markings. I agree that the stationary lorry could not have been where the plaintiff claimed she saw it. I find that the lorry was left stationary on the second lane of the TPE which is consistent with the location of the breakdown sign.

19 The defendant was an experienced driver of seven years' standing. He was employed by Chuan Ann Gas Trading Pte Ltd as a deliveryman for 20 months when the accident occurred. The defendant was on his way to his employer's premises when the lorry had a puncture coming down the flyover. He was familiar with this route having used it a number of times a week. He drove on for a further distance of 50m after he felt the lorry shudder. My analysis of the evidence is that the defendant coming down the flyover deliberately drove past the chevron markings as he was intending to head towards the road shoulder to his left. What happened was that he was unable to cut across because of the traffic coming from the Loyang Avenue slip road and he applied his brake to slow down. As a result, the loss of the lorry's momentum coupled with the flat tyre made controlling the lorry difficult. That explains, in my judgment, why he did not, contrary to the ordinary expectations of a reasonable person, stop close to the chevron markings. He confirmed that he first felt something was wrong with his lorry before the chevron markings. The chevron markings separate the traffic flow from Loyang Avenue and the TPE and are themselves a vantage ground for the stationary lorry to be noticed by traffic from behind the lorry coming from the flyover and traffic from Loyang Avenue.

20 I ought to comment on Mr Chan's submission that the defendant should have continued driving directly ahead for about 50m instead of stopping where he did and that he was negligent in not using this option. The question is not whether the defendant could have taken his lorry to the road shoulder, or could have stopped in a different position. The question is whether, in the position in which the lorry was left, it was a possible source of danger to other road users using the road in a way in which the defendant could reasonably expect them to use it.

21 Taking into account all the circumstances and after hearing all the evidence and submissions, I hold that the defendant must bear the larger share of responsibility for the accident. In the position in which the lorry was left stationary on the expressway, it was a possible source of danger to other road users using the road in a way in which the defendant could reasonably expect them to use it. The defendant was familiar with this stretch of road and he knew that at the end of the chevron markings, traffic would commonly be moving from left to cut across to right for Changi Airport and from right to left to Bedok/Upper Changi Road. He maintained that although vehicles could filter from left to right and *vice versa* where he had left his lorry, they could also cut across ahead of his lorry. The availability of an option does not help his case. Although general visibility was good, depending on the amount of traffic from time to time, which in this case was moderate, it seems to me that the possibility, that an accident of some kind might occur and with it potential injury to other road users, was reasonably foreseeable where the lorry was left in that particular stationary position. Where there was a reasonable risk of injury, a reasonable man in the position of the defendant would have thought it necessary to take precautions to guard against it. The so-called precautions taken could not guard against risk of injury. If the plaintiff decided to overtake the stationary lorry, with road and traffic conditions as they were (the plaintiff said that there were cars to her right and left and bearing in mind that she was on a scooter), then she was certainly exposed to some risk of injury from the driver of another vehicle who failed to appreciate the situation in good time. The fact that other vehicles had avoided the lorry is neither here nor there.

22 Mr Ashokan cited various authorities like *Ahmad Nordin bin Haji Maslan v Eng Ngak Hua* [1985] 2 MLJ 431, *Moore v Maxwells of Emsworth Ltd* [1968] 1 WLR 1077 and *Kang Hock Seng Paul v Lee Teck Nam* [2002] SGHC 308. I did not find them of assistance. Accident cases are fact-sensitive and like all other accident cases, the facts in the authorities cited are distinguishable from the facts of this case.

23 I am of the view that the plaintiff did not keep a proper lookout as she rode along. It was the plaintiff's intention to get onto the TPE and eventually to Changi Airport. As her counsel submits, she has to look three ways: traffic coming along TPE on her right and rear as well as traffic ahead of her.

She should have slowed down on reaching the top of Loyang Avenue instead of maintaining her speed. According to the defendant, the road surface was wet. The plaintiff did not correct Mr Askohan when he cross-examined her on this even though in her police report made more than a week after the accident she had indicated that the road surface was dry. The plaintiff first noticed the stationary lorry two to three car lengths away after the vehicle in front of her had swerved to the left and, bearing in mind her speed and the wet road surface, she was left with insufficient braking distance between herself and the lorry. It was clear to me that the plaintiff was following the vehicle in front of her too closely. At some point, she must have veered right from my earlier finding that the lorry was on the second lane and also from the tell-tale signs of the damage to the lorry. The damage to the lorry was confined to the rear number plate and right rear signal light. It does not matter to the conclusion I have reached whether or not the plaintiff saw the breakdown sign or that it was she who smashed it to pieces. In my judgment, the plaintiff had contributed to the accident by her failure to take reasonable care for her own safety.

24 In apportioning responsibility, I have applied the test in *Podrebersek v Australian Iron & Steel Pty Ltd* (1985) 59 ALR 529 which I followed in *Ang Kuang Hoe v Chia Chor Yew* [2004] 1 SLR 696. The plaintiff's damages would be reduced by 40% on account of her contributory negligence. The plaintiff should therefore have judgment for 60% of the amount of damages to be assessed by the registrar. I reserve costs of the action to the registrar.

[\[note: 1\]](#) NE p 26 line 20

[\[note: 2\]](#) NEp37

[\[note: 3\]](#) NEp50/51