Thorben Langvad Linneberg *v* Leong Mei Kuen
[2012] SGHC 26

Case Number	: Suit No 373 of 2011/D
Decision Date	: 03 February 2012
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Cecilia Hendrick and Archana Chandrasekaran (Kelvin Chia Partnership) for the plaintiff; Patrick Yeo and Lim Hui Ying (KhattarWong) for the defendant.
Parties	: Thorben Langvad Linneberg — Leong Mei Kuen

Tort – Negligence – Motor Accident – Liability

[LawNet Editorial Note: The appeals to this decision in Civil Appeal No 141 of 2011 was allowed by the Court of Appeal on 5 July 2012. See [2012] SGCA 61.]

3 February 2012

Lai Siu Chiu J:

Introduction

1 This case involved a motor accident that took place along Clemenceau Avenue North ("the road") on 3 June 2009 ("the accident"). The motorcyclist Thorben Lanvad Linneberg ("the plaintiff"), sustained personal injuries as a result of a collision between his motorcycle and a mini-bus driven by Leong Mei Kuen ("the defendant"). At the conclusion of the trial, I found that the defendant was liable for the accident to the extent of 25%, with the plaintiff bearing 75% liability. As the plaintiff has appealed against my decision (in Civil Appeal No 141 of 2011), I now set out the grounds for my decision.

The facts

2 The road is a dual carriage way with two lanes in each direction, one towards Cairnhill Road and the other towards Newton Circus; it is divided by a continuous white line in the middle. Perpendicular to the road, and on the side of traffic heading towards Newton Circus, is Peck Hay Road. The road and Peck Hay Road together form a T-junction uncontrolled by any traffic light.

3 On 3 June 2009, at about 3.45pm, the plaintiff was riding his motorcycle in the direction of Cairnhill Road, travelling along the right lane. The defendant, who is a school bus driver, had stopped her mini-bus on the left lane of the same road, alongside flat No. 50 of Monk's Hill Apartments, where her last student had alighted. After the student had alighted, the defendant moved her mini-bus from its stationary position on the left lane into the right lane of the road. It was disputed whether the defendant was trying to make an illegal U-turn back towards Newton Circus or was turning right into Peck Hay Road.

4 The movement of the mini-bus across the plaintiff's path of travel caused the plaintiff to swerve right in an evasive manoeuvre albeit unsuccessfully. The plaintiff's motorcycle collided with the front-right side of the defendant's mini-bus, causing the plaintiff to be thrown off the motorcycle

and sustain personal injuries.

5 On 24 November 2011, the defendant pleaded guilty to the offence of inconsiderate driving under s 65(b) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). There was, however, no evidence produced before this court as to the Statement of Facts the defendant had pleaded guilty to in the criminal proceedings.

The pleadings

6 In his Statement of Claim ("SOC"), the plaintiff alleged that the defendant caused the accident by, *inter alia*, failing to keep a proper lookout and to have sufficient regard for other road users. He also claimed that the defendant had not signalled right before executing the right turn and that the defendant had suddenly encroached into the plaintiff's path of travel in an unsafe manner.

7 In the Defence, the defendant averred that before executing the turn, she had checked her mirror to ensure that traffic was clear, before signalling and making the right turn into Peck Hay Road. The defendant accordingly alleged that the accident was caused solely by the plaintiff's negligence, or in the alternative, that the plaintiff's negligence contributed to the accident. She pleaded that the accident was caused by the plaintiff's attempt to dangerously overtake her mini-bus on the right side, via the side of the road heading in the direction of Cairnhill Road.

The trial

8 The plaintiff and the defendant were the only witnesses who took the stand in the one day trial.

The plaintiff's case

9 The plaintiff testified that he was riding at the speed of about 50 kph which was well within the speed limit. He claimed that from a distance of 50m, he noticed the defendant's mini-bus parked on the left side of the road, and that the min-bus' hazard lights and right signal lights were not turned on. When he was about 15m away, the plaintiff said that the defendant suddenly executed a right-turn from its stationary position on the left side of the road in an attempt to make an illegal U-turn. According to the plaintiff, this made him suddenly brake hard, causing his rear tyre to "fish-tail". By "fish-tailing", what the plaintiff meant was the effect of the rear-tyre of his motorcycle moving from left to right continuously when he applied the brakes on the front tyres.

10 In response to the suggestion by counsel for the defendant (Mr Yeo) that the plaintiff could have moved his motorcycle to the left instead of the right to avoid the collision, or that he could simply have applied his brakes and kept straight since the collision occurred on the opposite lane, the plaintiff claimed that doing so might have led to him crashing straight into the mini-bus.

The defendant's case

11 Contrary to the plaintiff's account, the defendant testified that she had both switched on her hazard lights and signalled before attempting a right turn into Peck Hay Road. She also claimed that she had looked into her right side-view mirror and over her right shoulder before executing the right turn. She did not, however, see the plaintiff's motorcycle while doing her checks. When referred by counsel for the plaintiff (Ms Cecilia Hendricks) to the traffic police sketch plan which showed the front tyres of the mini-bus turning slightly towards Newton Circus rather than towards Peck Hay Road, the defendant explained that the positioning of the tyres was due to the impact of the collision, not an

attempt to make an illegal U-turn. As the plaintiff's motorcycle had collided into the mini-bus at a very fast speed causing the mini-bus to swerve left, she had to turn her wheels back to the right, resulting in the mini-bus's final position.

The findings

12 As indicated earlier at [8], other than the plaintiff and the defendant, who testified for their respective cases, there were no other witnesses. While the plaintiff had indicated in his SOC that the defendant had pleaded guilty in the Subordinate Court for the criminal offence of inconsiderate driving under the RTA, there was no evidence produced before the court nor was the defendant cross-examined on the details of that charge. Therefore much turned on the cogency and the credibility of the respective testimonies given by the plaintiff and defendant, considered in the light of the other evidence presented.

13 I found the defendant to be a far more forthright and credible witness than the plaintiff. The plaintiff was an evasive witness who had a tendency to give answers that seemed more like afterthoughts than candid responses. For example, when asked by Mr Yeo about the lack of detail of the speed he was travelling at, the distance from which he first saw the defendant's mini-bus and whether the defendant had signalled *etc* in the plaintiff's police report filed about one month after the accident, he first claimed that it was because he was merely responding to questions asked by the police officer interviewing him. However, when further pressed by Mr Yeo, the plaintiff then claimed that it was also due to his condition at that time. He subsequently added that the said details were missing as the police interview took place intermittently over a few weeks and seemed like a non-serious discussion, and that he suddenly remembered that the police officer had told him to simply give rough details for the purposes of lodging an insurance report

14 Whether as a result of prevarication or poor recollection, I found the plaintiff's testimony to be far from satisfactory. If, as claimed by the plaintiff during trial, he could recall the details of the accident "as it happened yesterday", the lack of details in the police report, filed a mere one month after the accident, was glaring. He had ample opportunities then to give his full account of what transpired, especially since, as he claimed, the police officer kept coming back to interview him over that period. His failing to do so, only to include such details in his affidavit filed over 2 years after the accident, led me to treat his testimony with great circumspection.

15 In contrast, I found the defendant to be a far more candid witness. In both her testimony in court and in her police report, her consistent position was that she checked for traffic before signalling and making the turn. More importantly, she was also consistent in her testimony that she did not see the plaintiff's motorcycle until the point of collision and was thus unable to identify the speed at which the plaintiff was travelling. Notably, this was despite the fact that her own counsel was trying to establish that the plaintiff was actually travelling faster than 50kph.

16 The plaintiff's version of what transpired was also inconsistent with the evidence that was before the court. While he claimed that he was travelling at 50kph, the extent of the damage to his motorcycle, as shown in the photographs tendered, indicated otherwise. Indeed, as Mr Yeo pointed out during his cross-examination of the plaintiff, the police report indicated that the front of the motorcycle was "totally wrecked". The plaintiff himself also conceded that the photographs showed that the damage to the motorcycle was the result of a severe impact.

17 The plaintiff's account that he had to brake so hard that the rear tyre of his motorcycle started to "fish-tail" was also riddled with inconsistencies. The plaintiff's motorcycle was a high performance sports machine called Yamaha Fazer, with an engine capacity of 1000cc with an advanced braking

system. Had the plaintiff really been travelling at only 50kph and had braked so hard that his rear tyre "fish-tailed", it would have been unlikely that he was unable to stop or, at the very least, slowed his motorcycle such that the extent of damage to the bike was less severe than what it was. Even more telling was the absence of any skid or brake marks in the traffic police's sketch plan. Surely if the plaintiff had braked so hard that his rear tyre was "fish-tailing", one would expect for there to be at least some markings on the road.

18 For the above reasons, I found that it was more likely than not on the evidence that the plaintiff was travelling at a greater speed than 50kph on his high performance machine, speeding on the road in the direction of Cairnhill Road. It was also possible that the plaintiff was in the defendant's blind spot. That together, would explain why the defendant did not see the plaintiff until the point of collision, despite doing her checks. The plaintiff's account that he was travelling at the speed of 50kph, well within the speed limit, was evidently an afterthought. I would also note that my finding would be consistent with the defendant's explanation for the positioning of her front tyres as shown in the traffic police's sketch plan, which was that the impact of the collision was so great that it caused the mini-bus to swerve left, resulting in the defendant having to turn her wheels back to the right in a defensive manoeuvre.

19 I also found that the absence of any skid marks can be explained by the fact the plaintiff was trying to overtake the defendant on the right side, *ie* on the wrong side of the road, and against the direction of traffic. This can be ascertained by reference to the traffic police sketch plan, which showed that the collision took place after the defendant's mini-bus had crossed the centre continuous white line and was on the other side of the road. By attempting to overtake the defendant on the wrong side of the road, the plaintiff had himself committed a traffic offence. Given that traffic on the plaintiff's original side of the road (heading towards Cairnhill Road) was clear, had the plaintiff simply applied his brakes and manoeuvred left instead of overtaking, he would most likely have averted the accident. The plaintiff was, however, committed to swerving right in an attempt to overtake the slow turning mini-bus. In my view, the plaintiff's failure to execute the safer evasive manoeuvre contributed partly to the accident.

20 At the same time, it was also clear from the evidence that the defendant had attempted to make a right turn into Peck Hay Road, all the way from the left lane of the road heading in the direction of Cairnhill Road. The execution of that right turn entailed the defendant cutting sharply across 3 lanes of traffic and the centre continuous white line, albeit in a slow and cautious manner. Consequently, the defendant herself must share some of the blame for the accident.

The law

21 The plaintiff bore the burden of proving that the defendant was negligent in order to succeed in this action. The required duty of care owed by motorists may be gleaned from *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 12th Ed, 2010) ("*Charlesworth & Percy*") at paragraph 10-187:

> ...Hence, the duty of a person who either drives or rides a vehicle on the highway is to use reasonable care to avoid causing damage to persons, vehicle...
>
> Reasonable care means the care which an ordinarily skilful driver or rider would have exercised, under all the circumstances, and connotes an "avoidance of excessive speed, keeping a good lookout, observing rules and signals and so on"...

22 Nevertheless, as the learned authors of *Charlesworth & Percy* themselves stated at paragraph 10-191:

> It is essential always to bear in mind that, and especially in the context of motor accident cases, that each decision turns upon its own individual facts and should be treated as a guide, rather than as a binding authority for a rule of law.

A fact sensitive approach must therefore be undertaken, bearing in mind the duty to drive or ride with reasonable care and prudence.

23 Additionally, one ought to be mindful of the principles behind the concept of contributory negligence. As Lord Simon pointed out in *Nance v British Columbia Electric Ry* [1951] 2 All E.R. 448 (cited in *Charlesworth & Percy* at paragraph 4-03):

> When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove...that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full.

24 The want of care of a plaintiff such that he can be deemed to be part author of his own injury, must be distinguished from situations where in reaction to being placed in a position of danger, the plaintiff does something which with the benefit of hindsight, was a less than optimum solution. In such situations, the court will assess the reasonableness of the course of action undertaken in the light of the circumstances, and in cases of motor accidents, a motorist will seldom be held liable for the outcome of a split second decision where a number of courses of action were open to him and each had potential disadvantages. The key question, however, is whether the risk culminating in the injury originated partly from the plaintiff's own want of care, such that he can be said to be part author of his plight. If so, contributory negligence is established, and it is for the court to decide on the parties' respective share of responsibility for the injury.

25 In order to so decide on the parties' respective share of responsibility, the court has to consider an overall appreciation of the parties' respective blameworthiness, considered in the light of the causative potency of their faults. This, once again, is a fact-intensive exercise and justice has to be done through a broad distribution of blame, rather than a mathematical inquiry (see *Charlesworth & Percy* at paragraph 4-25 and 4-26).

The decision

26 Applying the above principles, while the defendant was partly to blame for making the sharp right turn, the plaintiff's excessive speed and his decision to execute an evasive manoeuvre by overtaking the defendant's mini-bus on the right side were major contributing factors to the collision. There is no doubt that the plaintiff was part author for his own plight, for had he not been riding at high speed, he might have been able to brake in time and avert, or at the very least, reduce the severity of the accident.

27 In addition, by choosing to execute the highly dangerous evasive manoeuvre of over-taking the defendant on the right side, against the direction of on-coming traffic, the plaintiff greatly increased the risk of collision, which eventually materialised. While it is true that the plaintiff ought not to be held to the high standard of having to choose the optimum solution when there were a range of options open to him, it was surely incumbent on the plaintiff to avoid undertaking what clearly was the more risky manoeuvre. By doing so and directly causing the accident, the plaintiff must be held to

be more blameworthy.

Conclusion

28 In light of my findings, I found that the plaintiff was liable for the accident to the extent of 75%, with the defendant bearing 25% liability. I directed that damages for the plaintiff's claim should be assessed by the Registrar with interest on the damages (when assessed) and costs reserved to the Registrar. Costs of the trial would be taxed and payment to or by the plaintiff would take into account the defendant's solicitor's *Calderbank* letter dated 16 September 2011 to the plaintiff's solicitors containing an offer to settle.

29 I should point out that after the court delivered oral judgment, counsel for the plaintiff wrote in on 15 November 2010 applying for further arguments to be heard in relation to additional evidence that the plaintiff's solicitors had procured. The plaintiff's solicitors had obtained copies of the charge, the Statement of Facts and the notes of evidence for the offence of inconsiderate driving in [5] to which the defendant had pleaded guilty. I rejected the request for further arguments on 21 November 2010. Quite apart from the three conditions laid down in *Ladd v Marshall* [1954] 1 WLR 1489 which would likely preclude the plaintiff from adducing the said further evidence, as interlocutory judgment on liability between the parties had been pronounced, this court was *functus officio*. It could not admit any new evidence that would have affected the issue of liability already decided.