

Quek Yen Fei Kenneth v Yeo Chye Huat
[2013] SGHC 132

Case Number : Suit No 695 of 2012
Decision Date : 15 July 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : N Srinivasan (Hoh Law Corporation) for the plaintiff; Renuka Chettiar (Karuppan Chettiar & Partners) for the defendant.
Parties : Quek Yen Fei Kenneth — Yeo Chye Huat

Tort – Negligence – Contributory Negligence

15 July 2013

Tay Yong Kwang J:

Introduction

1 This case involved an accident between a motorcycle and a taxi. At around 4am on 11 Aug 2011, the plaintiff was riding his motorcycle along Bencoolen Street (a one-way street) in the direction of Fort Canning Road when he was collided into by a taxi driven by the defendant which was travelling across the said street from the right to the left at an angle.

2 The plaintiff suffered severe injuries as a result of the accident. Among other injuries, his right foot was badly mangled and his right leg had to be amputated below the knee.

3 The defendant did not deny that he was negligent. The only issue at trial was the extent of his liability and the corresponding contributory negligence of the plaintiff. The only two witnesses at trial were the plaintiff and the defendant.

The plaintiff's case

4 The plaintiff testified in English. At the time of the accident, the plaintiff was 20 years old and serving national service in Clementi Camp. On the day in question, he was sending his friend home after they had a meal. His friend was living at Selegie Road. After his friend alighted from the plaintiff's motorcycle, the plaintiff travelled along Short Street into McNally Street, then into Prinsep Street and Middle Road. He made a right turn from Middle Road into Bencoolen Street. The plaintiff was heading for his home in Telok Blangah Drive, after which he intended to return to camp by 7.30am.

5 Bencoolen Street is a one-way street with 4 lanes. The plaintiff claimed that he was riding in the third lane from the right ("lane three"). In the statement of claim filed on 21 August 2012, it was originally averred that he was riding in the extreme left lane ("lane four") of the four lanes. Three days before the trial, the plaintiff took out an application to amend the statement of claim in respect of two matters. The first was to change the above averment to state that he was travelling in lane three instead of lane four. The second was to include the fact that the defendant had been charged and convicted on his plea of guilt on the offence of inconsiderate driving under s 65(b) of the Road Traffic Act (Cap 276, 2004 Rev Ed). The defendant was fined \$800, given nine demerit points and

disqualified from driving all classes of vehicles for slightly longer than four months. Just before the trial commenced, I allowed the plaintiff's application to amend although it was objected to by the defendant, with the plaintiff to bear his own costs for the amendment. There could be no prejudice to the defendant as he could cross-examine the plaintiff on his change of position relating to the lane his motorcycle was travelling on. The criminal proceedings were an admitted fact and were relevant for the trial here.

6 Likewise, the defendant made an oral application to amend his Defence at paragraphs 2(e) and (f) (which set out the particulars of the alleged contributory negligence of the plaintiff) on the ground that they were typographical errors. The plaintiff argued that they were not such errors as they reflected what the defendant said in his police report. I allowed the amendments with the defendant to bear his own costs for the amendment. Similarly, there could be no prejudice to the plaintiff as the defendant could be cross-examined on his change of averment. The said paragraph 2(e) averred that the plaintiff failed "to slow down while filtering to lane 2" while paragraph 2(f) averred that he failed "to pay any or any sufficient heed to the presence of the said motor taxi No. SHC 2398D which was filtering to lane 2". With the amendments, "lane 2" in each case was changed to "lane 3".

7 There were vehicles parked along Bencoolen Street in lane four. The plaintiff recalled seeing a taxi in the extreme right lane ("lane one") picking up passengers. As he rode on, the taxi sped across the road from lane one into lane three at an angle. He sounded the horn on his motorcycle but could not swerve to the left to avoid the taxi as there were vehicles parked along lane four. The taxi collided into the right side of the motorcycle and hit the plaintiff's right leg. The collision occurred near the 24-hour coffee shops and the Bayview Hotel on the left side of the road. In front of the said hotel, there was an extra lane ("lane five") for vehicles to turn left into Lorong Payah, a side road next to the hotel. There was also a taxi stand in lane five in front of the hotel.

8 The force of the impact caused the plaintiff to be flung off his motorcycle. He landed several metres away. He was conscious at that time but suffered excruciating pain at his upper and lower extremities. A Malay man went to help him. A little later, an ambulance arrived to bring the plaintiff to the Singapore General Hospital.

9 The plaintiff was warded in the hospital where he received treatment. Although he was advised to have his right leg amputated, he did not agree to it. When his mangled right foot continued to show signs of necrosis, amputation became unavoidable and that was done on 17 August 2011. He was discharged on 1 September 2011.

10 A sketch plan done by the traffic police showed the taxi resting on the dotted line dividing lanes three and four, with the length of the taxi almost parallel to the road and the front of the taxi pointing in the direction of the traffic flow. The location of the accident was near the Bayview Hotel. The sketch plan also indicated the motorcycle lying just inside lane five. There was blood stain further up the road.

11 The vehicle damage report prepared by the traffic police showed the left of the taxi's front bumper to be scratched. It also showed that the motorcycle had scratches on both sides and some dents at the front and at the right rear section.

12 In the plaintiff's police report lodged on 1 September 2011, after his discharge from hospital and three weeks after the accident, he stated that he was travelling along lane five when he saw the taxi picking up two passengers along lane one. That was obviously an error as there were only 4 lanes along Bencoolen Street until one reaches the front of Bayview Hotel. No sketch plan was provided by the plaintiff in his police report. In the box marked "Type of Collision", the plaintiff indicated that it

was "between moving vehicles – head to side".

13 In cross-examination, the plaintiff stated that he was presently unemployed. He obtained his motorcycle licence in September 2010, less than a year before the accident. He admitted that he was involved in an earlier accident with a van on 14 June 2011.

14 On the evening before the accident, he had booked out of camp and reached his home at around 6pm. He slept until past midnight when his friend called him for supper. He went to meet his friend at about 1am. They went to have some food and did not consume alcohol. After the meal, they went to a shop to play computer games.

15 Along Bencoolen Street, there were vehicles parked along lane four. The plaintiff's motorcycle and the defendant's taxi were the only vehicles that were moving. Visibility was good as the street was well lit.

16 After his discharge from the hospital, the plaintiff went to take a look at the scene of the accident. He then went to lodge a Singapore Accident Statement with the General Insurance Association of Singapore on 6 October 2011. The details about the accident were taken word for word from his police report. However, the plaintiff drew a sketch plan of the accident in this statement. In this sketch plan, he drew the taxi moving at a sharp angle from lane two to lane three while the motorcycle was travelling straight in lane three. He also indicated that lane four was a bus lane.

17 The plaintiff said he was travelling at around 50kmph. He was taking his time as the traffic lights at the intersection ahead were showing red. The taxi, which was at the taxi stand on the right side of the street in lane one, a short distance from Bayview Hotel, moved suddenly to its left at an angle towards him. He could not swerve away to the left because of the vehicles parked along lane four. There was no time to stop although he tried to apply the motorcycle's brakes. He then tried to speed up to avoid the taxi but it was too late. The collision occurred in lane three, near the taxi stand in front of Bayview Hotel. He disagreed with counsel for the defendant that there were no vehicles parked along lane four. He denied that he was travelling along lane four and went suddenly into lane three because of a stationary vehicle further up along lane four at the time that the taxi was filtering left from lane one. He also disagreed that the accident was a "side-swipe". He was wearing slippers then and his right foot came into contact with the taxi's front left bumper and not its number plate as suggested by counsel for the defendant. To the suggestion that the defendant did not hear any horn being sounded before the collision, the plaintiff testified that his motorcycle had four air horns which were extremely loud so the defendant must have heard his horn just before the collision.

18 The plaintiff also informed the court that he was educated up to secondary 3 in English. He was in the normal technical stream.

The defendant's case

19 The defendant, a taxi driver, was 55 years old at the time of the accident. He testified that he was going to drive his two passengers, a male and a female, to Geylang from Bencoolen Street. After they boarded his taxi at the taxi stand on lane one, he "slowly filtered to the left (*i.e.* lane 2) after switching on the left indicator lights". While the taxi was filtering to lane three, the plaintiff's motorcycle "suddenly filtered to lane 3 as well" from lane four. The collision therefore took place.

20 The defendant got out of his taxi to check on the plaintiff who had been flung off his

motorcycle onto the road. The defendant then called the police. Shortly thereafter, the police and an ambulance arrived and the plaintiff was brought away.

21 The defendant lodged his police report and a Singapore Accident Statement to the General Insurance Association of Singapore later that day. In his police report, he stated:

With the information stated above, I was travelling along Bencoolen Street on the first lane of a four lanes road, while filtering into the second lane, a motorcycle suddenly speed up fourth lane into my lane. Which resulted the motorist to the front left side of my vehicle and fell onto the ground. After the collision, I called for the ambulance and moments later, the police arrived at scene and the motorist was conveyed to the hospital upon ambulance arrival. I have one witness for this accident. That's all.

No sketch plan was drawn by the defendant. In the box marked "Type of Collision", he stated that it was "between moving vehicles – side swipe – same direction".

22 The defendant's statement to the General Insurance Association of Singapore indicated that his taxi was a Hyundai Sonata 2.0(A). Under "Describe Circumstances of the Accident", a note referred to his police report. The sketch plan provided by the defendant showed his taxi moving at an angle from lane one to lane two, with the collision taking place just when the left side of the taxi moved into lane three. The motorcycle was shown lying in lane three.

23 On 8 August 2012, the defendant pleaded guilty to a charge of inconsiderate driving. He was fined \$800, given nine demerit points and was disqualified from driving all classes of vehicles from 4 July 2012 to 7 November 2012. He decided to plead guilty as he did not have the financial means to engage a lawyer.

24 The defendant added that he did check "all blind spots prior to filtering to lane 3". He believed the plaintiff must have been speeding and did not keep a proper lookout. He recalled seeing an "L" plate on the motorcycle. In oral evidence, he clarified that he meant a yellow plate with a triangle when he referred to the "L" plate in his affidavit of evidence-in-chief.

25 In cross-examination, the defendant (who testified in English) said that he intended to filter to the left so that he could turn left at the junction with Bras Basah Road to proceed to Geylang, the intended destination of his two passengers. However, the passengers wanted him to stop by the 7-11 provisions store which was on the left side of the street, located between the Bayview Hotel and the said junction, some 20 to 30 metres away from the taxi stand where he had picked up the passengers. The defendant said he "had to cut across four lanes" to stop in front of the 7-11 store, switching from lane one to lane four.

26 The defendant looked at his rear view mirror and saw that lanes one and two were clear of traffic. He did not see the plaintiff's motorcycle. His taxi then started to cut across the street. The collision did not take place in lane two, despite what he had suggested in his police report. It was when the taxi was almost in lane three that the defendant saw the motorcycle on his left, more than 10 metres away. He could hear the sound of the motorcycle's engine. It was travelling very fast and the rider did not sound his horn.

27 The defendant said one of his passengers was helping him to look out for traffic while the taxi was moving from lane one to lane two as his side view was restricted. However, he was able to see whether there was traffic while he was proceeding from lane two to lane three. When the taxi was going into lane three, the defendant noticed the motorcycle coming in a straight path along lane four.

The motorcycle then swerved into lane three. The defendant tried to brake but could not react in time to avoid the collision. He did not sound the taxi's horn. He merely slowed down and the next moment, the motorcycle crashed into his taxi which was then about halfway into lane three.

28 The defendant admitted that he shifted his taxi after the accident by straightening it slightly to align with the lanes. He did this so as not to obstruct traffic. He agreed that the collision took place at the left portion of the taxi's front bumper because his taxi was travelling diagonally across the street while the motorcycle was travelling straight. However, the defendant insisted that the motorcycle was travelling straight along lane four and not lane three. He said there were no vehicles parked along lane four at the material time. He only recalled one vehicle (a taxi) parked in lane five in front of Bayview Hotel. The collision took place along lane three, right in front of the said hotel. The motorcycle then fell on its side towards the left. It was five to seven metres away from the point of impact and ahead of the stationary vehicle in lane five. He drew on the traffic police sketch plan of the accident indicating that the motorcycle was lying somewhere in the centre of lane four and not in lane five as drawn by the traffic police. He believed that the traffic police had drawn the resting position of the motorcycle after the collision in the wrong lane.

29 The defendant said he knew which part of his taxi collided into the plaintiff because, at the workshop the next day, he noticed some blood and dried skin on the taxi's broken front number plate. There were no scratch marks on the left side of the taxi. The plaintiff said he heard the very loud sound coming from the motorcycle just before the collision but was not able to tell its approximate speed. He disagreed that he did not see the motorcycle because he was not keeping a proper lookout while changing lanes.

30 The defendant did not call either of his passengers to testify on his behalf.

The decision of the Court

31 From the evidence adduced, it was clear to me that the taxi had taken a sharp and sudden left turn across several lanes of Bencoolen Street that fateful day after picking up the two passengers. In all probability, the defendant was trying to cross over to lane five or that part of lane four after Bayview Hotel in order to stop by the roadside to allow his passengers to alight to buy whatever they wanted in the 7-11 store. The fact that he did not notice the plaintiff's motorcycle or hear its engine until just before the collision showed that he was not paying attention to the left of the street as he thought there was no traffic at that time. The motorcycle turned in from Middle Road when the taxi was already picking up the passengers. In his eagerness to get his taxi to the 7-11 store located a short distance away diagonally across the street, the defendant must have accelerated rapidly and failed to keep a lookout for traffic that might be coming from his left, probably lulled into thinking that there could be no traffic at that particular hour. The collision probably took place somewhere near the dividing line between lanes three and four.

32 It was obvious that the taxi was going across the street at a very sharp angle. The only parts of the taxi that bore any signs of contact with the motorcycle and the plaintiff were the front number plate and the left portion of the front bumper. There were no impact marks at all along the left side of the taxi or even the left front corner. On the other hand, the plaintiff's right leg was badly injured because the taxi went directly at it at great speed, leaving the plaintiff absolutely no time to avoid it. The motorcycle never hit the taxi. It was the taxi's front which collided into the side of the motorcycle, causing the plaintiff to be flung off his motorcycle. If the defendant had not shifted the position of the taxi before the traffic police arrived, it would in all probability have been resting at a much sharper angle to the street than it appeared on the sketch plan.

33 I rejected the defendant's evidence that the motorcycle swerved into the path of the taxi. There was no reason for the plaintiff to swerve suddenly to his right when the street was clear in front of him. Whether the motorcycle was travelling on lane three or just into lane four, the accident would not have happened if the taxi had not cut across from lane one to lane four suddenly and at a sharp angle.

34 After an accident has already taken place, it is often easy after the event to allege that the victim should have taken some evasive action. What the court should consider is the reality of the situation in the split second before impact. When a person is placed in the position that the plaintiff found himself in without any fault of his, he should not be penalised in contributory negligence even if he were to panic and fail to take such action that another person, in the calmness of hindsight and with the knowledge that an accident would be taking place, might consider to be prudent.

35 Similarly, the plaintiff could not be faulted for not recalling accurately the lane that he had been travelling in just before the accident. He had met with a life-changing incident. He was hospitalised for three weeks and, when lodging his police report, was trying his best to piece together the events that had taken place three weeks earlier. It should be noted that the defendant was equally unsure about the lane that the motorcycle was travelling in and about where the collision took place, although he suffered no injuries.

36 In this case, I found that the plaintiff could not be faulted in any way. There was no allegation that the motorcycle was travelling at a high speed. The defendant alluded to this possibility when he claimed that he heard the very loud sound of the motorcycle's engine one or two seconds before impact. However, he declined to say anything about the speed of the motorcycle. In any case, if the motorcycle had been speeding when it turned into Bencoolen Street, it would be strange that the defendant could not hear its engine until just before the collision. The truth was that the defendant did not notice the motorcycle at all until the collision because he was not paying attention to traffic coming from behind him on the left. As I have mentioned, there was no reason for the motorcycle to swerve suddenly to the right when a taxi was coming into its path from the right. On the other hand, the defendant had a reason to swerve his taxi suddenly and sharply to the left side of the street.

37 There was also no assertion that the motorcycle's headlight was not switched on. Therefore, if the defendant had bothered to look carefully to his left before driving his taxi sharply across the several lanes of Bencoolen Street, he would definitely have noticed the motorcycle coming along the left side of the street and the accident would have been averted. The plaintiff could not have done anything to avoid the collision or to lessen its impact. There was simply no time for him to take any evasive action.

38 On the facts here, I found the defendant to be the sole cause of the accident. I therefore gave judgment for the plaintiff, with damages to be assessed by the registrar at 100% liability on the part of the defendant. The defendant was also ordered to pay the plaintiff the costs of the trial on liability. The costs of the assessment of damages would be decided by the registrar.