

Gajentheran Marimuthu (by his mother and next friend Parai A/P Palaniappan) v Joo Yong Co (Pte) Ltd and another (Mohd Paqmi bin Arifin and another, third parties)
[2015] SGHC 11

Case Number : Suit No 477 of 2013
Decision Date : 19 January 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Shrever Ramachandran, Khan Tahaireen Tahaira and Ho Thiam Huat (Khan & Co) for the plaintiff; Cecilia Hendrick (Bogaars & Din) for the defendants; Ang Minghao and Lynette Chew Mei Lin (Stamford Law Corporation) for the third parties.
Parties : Gajentheran Marimuthu (by his mother and next friend Parai A/P Palaniappan) — Joo Yong Co (Pte) Ltd and another (Mohd Paqmi bin Arifin and another, third parties)

Tort – negligence

Road Traffic

19 January 2015

Judgment reserved.

Choo Han Teck J:

1 This case is a claim by an injured motorcyclist for damages for personal injuries and damage to his motorcycle. He alleges that the second defendant, the lorry driver, caused the injuries. The second defendant denies any liability and blames the first and second third parties for causing or contributing to the accident.

2 The accident took place on 1 February 2013 between 5.10pm and 5.20pm at the junction of Tuas West Road and Tuas Link 4. The second defendant was driving a lorry (number YN 2294K). The first defendant is his employer.

3 The plaintiff was riding his motorcycle (number JNV 6426). The first and second third parties were riding motorcycles JMQ 4180 and JLX 642 respectively. The plaintiff and the third parties claim that they were travelling straight on lane 3 (erroneously described in the expert report as lane 1) along Tuas West Road. The second defendant was travelling in lane 1 from the opposite direction.

4 The accident occurred when the second defendant turned right at the junction into Tuas Link 4. He says that the traffic light was in his favour because the 'green arrow' indicator was on. There is no dispute that if the 'green arrow' was on, the traffic light against the plaintiff and the third parties must be red against them. The plaintiff's case was that the traffic light was green in his favour and that means that the light was also green for vehicles in the opposite direction. However, if those vehicles are turning right before the 'green arrow' appears, they will have to be sure that the traffic is clear.

5 The plaintiff stated that his motorcycle had slid under the lorry as the lorry turned right, in the face of oncoming traffic. The plaintiff is not sure whether his motorcycle collided against the lorry but

his police report and evidence show that he was surprised by the sudden appearance of the lorry in front of him. There is further no evidence to show that the plaintiff was speeding at the material time. There seems to be nothing the plaintiff could have done to avoid sliding under the lorry. Seconds later, the second third party's motorcycle crashed into the lorry and after that, the first third party had to swerve round the lorry to avoid crashing into it. The first third party was able to avoid hitting the lorry but was unable to prevent his motorcycle from skidding. He thus fell with his motorcycle behind the lorry. The photographs show the lorry to have stopped just before the pedestrian crossing lines across Tuas Link 4. The lorry was in the junction in front of lane 3 of Tuas West Road and the road shoulder.

6 One of the plaintiff's witnesses was Daud. He was riding pillion on the second third party's motorcycle. He testified that the plaintiff was about five metres ahead of the second third party's motorcycle. The first third party testified that he was about five to ten metres behind the second third party and confirmed that the second third party was behind the plaintiff. The three motorcyclists dispute the second defendant's claim that they were riding on the road shoulder. They were on lane 3.

7 Although the three motorcyclists and the pillion are friends working in the same factory, I do not think that they gave a similar account of the accident just to help each other. The incontrovertible fact is that if the 'green arrow' was in the second defendant's favour, it must mean that all three motorcyclists beat the red light one after the other.

8 Furthermore, the first third party's motorcycle ended behind the lorry and is an objective corroboration of his account of the accident. The second defendant claimed that the plaintiff's motorcycle did not go under the lorry on impact but was pushed under by the motorcycle of the second third party. This account was disputed by the plaintiff and the second third party and I am unable to be persuaded that a motorcycle pushed the other under the lorry. I am of the view that the plaintiff's motorcycle most probably skidded under on impact with the lorry.

9 I am also not inclined to believe the second defendant's claim that the motorcyclists were riding on the road shoulder. There was no evidence to support that allegation other than the fact that there was a shoulder. The plaintiff's evidence, which I accept, is that he was not only on the third lane but on the far side from the shoulder. The two other motorcyclists who were behind him corroborated this – that is, the impact and positions of their motorcycles indicate their versions to be more credible. Mrs Hendrick, counsel for the defendants' main argument was that the lorry's position was beyond the third lane and in front of the shoulder. This would be a strong argument but for the fact that it relies on the second defendant's evidence that he stopped immediately after the accident. "Immediately" is relative. It is not likely, in my view, that the lorry stopped dead in its track upon the collision by the plaintiff's motorcycle. The lorry is more likely to have moved a little before stopping. That would be sufficient to bring it to where it was. As such, I am not inclined to accept his evidence against that of the three motorcyclists and the pillion.

10 In any event, I agree with counsel for the third parties' submission that the road shoulder was a 'red herring'. It would at most indicate that the motorcyclists infringed a traffic regulation but that would only be a factor in contribution. It does not detract from the fact that the light was green in their favour. Moreover, the preponderance of evidence indicates that the motorcyclists were not on the road shoulder. It is a fact that must be proved since the alternative (riding on the road) is to be presumed unless there are reasons or evidence to the contrary. The evidence here leans in favour of the plaintiff.

11 Finally, if the mental element is of any relevance, it seems to me that it was the second

defendant who was the one in a hurry. There is clear evidence that even when the medical rescuers arrived, the second defendant was asking for permission to deliver the goods that he was carrying. This is a small point but completes the overall picture of how and why the accident had probably occurred. Given the mental state of its driver at the relevant time, the second defendant's lorry would have appeared in front of the motorcyclists without giving them (with the exception of the first third party) any chance to take evasive action.

12 For the reasons above, I find in favour of the plaintiff and find no reason to apportion contribution to him or the third parties. The defendants' claim against the third parties is dismissed. There will be interlocutory judgment for the plaintiff against the defendant with damages to be assessed.

13 The usual consequential orders follow.

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