

Kwek Peck Ying v Loh Kwang Chay (Chen Hui Jie, Third Party)
[2007] SGHC 56

Case Number : Suit 141/2006
Decision Date : 23 April 2007
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : S Selvam (Ramdas & Wong) for the plaintiff; Low Tiang Hock (Low & Co) for the defendant; Ramasamy s/o Karuppan Chettiar (Acies Law Corporation) for the Third party
Parties : Kwek Peck Ying — Loh Kwang Chay — Chen Hui Jie

23 April 2007

Judgment reserved.

Lai Siu Chiu J:

The background

1 This action for personal injuries arose out of a traffic accident on 6 March 2004 in which a vehicle numbered SBL 935R ("the defendant's car") driven by the defendant Loh Kwang Chay collided into another vehicle numbered EX 398S ("the plaintiff's vehicle") driven by the third party Chen Hui Jie. The third party's front seat passenger was the plaintiff Kwek Peck Ying, who is her mother.

2 At the conclusion of the trial, I found the defendant wholly liable for the accident. Consequently, I awarded interlocutory judgment with costs to the plaintiff and directed that damages be assessed by the Registrar with the costs of such assessment reserved to the Registrar. I further dismissed the defendant's claim against the third party with costs. In view of the defendant's appeal against my judgment in Civil Appeal No. 27 of 2007, I shall now set out the reasons for my decision.

The facts

3 At about 1.30pm on 6 March 2004, the third party was driving the plaintiff's vehicle along Woodlands Road towards Kranji. At the signalised junction of Woodlands Road and Kranji Expressway ("KJE"), the third party stopped the plaintiff's vehicle in the extreme right lane and waited as the traffic light facing her was red. When the green traffic light together with the green arrow appeared, the third party proceeded to make a right turn into KJE.

4 While she was in the middle of the yellow box junction ("the junction") just before making the turn, the defendant's car came from the opposite direction of Woodlands Road at a fast speed. As a result, the defendant's car collided onto the left side of the plaintiff's car, injuring the plaintiff and the third party. At the material time, the weather was clear, the road surface dry, traffic was light and visibility was clear.

5 The plaintiff and the third party were taken to National University Hospital ("NUH") after the accident. The plaintiff suffered serious head and neck injuries and was warded first in the intensive care unit, and then in the normal ward, for a total of 23 days. The third party sustained facial injuries and was given outpatient treatment by NUH while the defendant himself fractured a right collarbone and was warded for three days followed by a month of medical leave.

6 Photographs produced in court of the defendant's car after the accident showed its front bonnet was badly damaged and was buckled in, indicating the considerable force with which it must have hit the plaintiff's vehicle, which left side was badly smashed.

7 Subsequently, the defendant was charged with and convicted of dangerous driving on 8 July 2004, under S 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the Act"). The defendant admitted to the prosecution's Statement of Facts without qualification, pleaded guilty to the charge and was fined \$2,800 by the Subordinate Courts or in default 28 days' imprisonment, as well as disqualified from driving all classes of vehicles for one year.

The pleadings

8 The plaintiff's Statement of Claim alleged that the defendant was negligent in the driving of the defendant's car in that *inter alia*, he drove at an excessive speed, failed to keep a proper lookout before proceeding across the junction, failed to adhere to traffic lights, failed to heed the approach of the plaintiff's vehicle, which had the right of way at the material time and failed to brake and take evasive action to avoid the collision.

9 In his defence, the defendant denied he was negligent. He alleged that when he travelled across the junction, the light was green in his favour and it was the plaintiff's vehicle that was making a right turn across his path. He asserted that he pleaded guilty to an offence under s 64(1) of the Act as a matter of convenience. He countered that it was the third party's negligence in the driving of the plaintiff's vehicle that caused or contributed to, the collision.

10 The defendant then instituted third party proceedings against the third party claiming an indemnity or contribution from her for the plaintiff's claim as well as costs.

The evidence

11 The plaintiff and the third party as well as the defendant testified for their respective cases. The third party had an independent witness in one Loh Xiao Ling ("Loh"), who was a front seat passenger in a car that was immediately behind the plaintiff's vehicle at the junction at the material time.

12 The plaintiff's testimony was unhelpful as she had no recollection of the accident at all. She (PW1) only remembered waking up in NUH sometime after 6 March 2004.

13 When she testified, the third party (TPW1) did not deviate from the statement in her police report (at AB1-2) that she lodged on 7 March 2004 – she had moved forward to turn right to enter the KJE upon seeing the green arrow appear on the traffic light facing her when she saw the defendant's car approaching her from the opposite direction. The third party testified that not only did the defendant not slow down and stop at the red traffic light facing him but he accelerated and then hit the plaintiff's car. Her evidence was not challenged in any material respect.

14 The independent witness was the last witness for the trial. I would describe Loh as a reluctant witness as she refused to testify until served with a subpoena. Counsel for the third party informed the court that although he had been in telephone communication with Loh as she had given her handphone contact to the police and the third party, Loh would not reveal her whereabouts. It was only when Senior Station Inspector Ong Pian Heng ("Ong") from Traffic Police testified, that counsel managed to obtain Loh's residential address for purposes of serving a subpoena on her.

15 Loh (TPW3) had given a statement on 17 June 2004 ("the statement") to Lawrence Tay a station inspector from Traffic Police (who has since retired) in the course of police investigations into the accident. Ong (TPW2) produced (pursuant to s 37 of the Evidence Act (Cap 97, 1997 Rev Ed) the statement (exhibit TP1) given by Loh to Lawrence Tay. When she took the stand, Loh confirmed the contents of her statement. It was clear therefrom that the defendant was attempting to beat the red traffic light just before the collision. I should add that counsel for the defendant did not challenge Loh's statement or testimony to any extent as to cast doubts on her credibility.

16 I reproduce below the relevant passage from Loh's statement to support my finding:-

I remember on that day, I was seated at the front and my friend was driving his car along Woodlands Road towards Johore. I cannot remember whether my friend was driving on the extreme right lane of the 2nd right lane from the right of 4-lane traffic. On reaching the signalised T-junction of Woodlands Rd by KJE, I saw the traffic light was showing red in colour. We stopped at the said junction and I noticed there was a red m/car (recorder refer to EX398S) stopped ahead of our vehicle. There were also vehicles stopping on our left. When the traffic light turned green, the front said m/car moved off from the junction and stopped at the junction pocket and I also followed and stopped behind the said car. I noticed there were oncoming vehicles passing our point. After we stopped for a while, I saw the traffic light signal appeared with green-arrow just beside the green round light. I also noticed the green-arrow was not blinking. At this time, I saw the front said car made (sic) a right turn into the junction of KJE leading towards PIE. While the said car was at the yellow box and in the process of turning, suddenly I saw an oncoming m/car (recorder refer to SBL935R) travelling at a fast speed from the opposite direction and the front portion of the said oncoming m/car hit onto the left side of the front red car. On impact, the red car spun around and thereafter stopped at the middle of the junction.

17 Not surprisingly when he testified, the defendant denied the third party's version of how the accident occurred. The defendant (DW1) maintained the traffic light was green in his favour when he was about 20 metres from the junction. He denied he had beaten a red traffic light. In the course of cross-examination by counsel for the plaintiff, the defendant's attention was drawn to his police report lodged on 11 March 2004. All that he said of the accident was the following:

On 6 March 2004 at 1330 hours, I was travelling on Woodlands Road towards the city. At the junction below KJE, suddenly I saw a flash of shadow and subsequently I lost conscious. I was travelling in my vehicle SBL935R at that point of time when the accident happen (sic).

Questioned why there was no reference to the traffic light being green in his police report, the defendant claimed he had indeed informed the police officer who recorded his statement of that fact as well as the speed at which he was travelling (60 plus kilometres per hour); he could not understand why the police officer omitted to record what he said.

18 Similarly, the defendant's motor accident report lodged on 18 March 2004 with his insurer NTUC Income Insurance Co-operative Ltd made no mention that the traffic light was green in his favour.

19 Cross-examined on why he had pleaded guilty to the charge of dangerous driving under s 64(1) of the Act (at [7]), the defendant gave a number of unconvincing explanations. In addition to his excuse of convenience, the defendant claimed that impecuniosity precluded him from engaging a lawyer to fight the charge. This could not be true as at the material time the defendant was earning \$3,200 a month as a quality assurance manager and he had the means to own a car. The defendant claimed he also had no other alternative as the police officer who was in charge of his case had told him that if he claimed trial, he would have to pay more than \$3,000 to fight the case whereas if he

pleaded guilty as charged, the maximum fine imposed on him would only be \$3,000 or six months' imprisonment as a first offender. The defendant added that he subsequently sought the assistance of his Member of Parliament when the court disqualified him from driving for one year; he was not told beforehand that disqualification from driving would be part of the sentence he would receive for pleading guilty.

20 The reasons given by the defendant for pleading guilty to the charge of dangerous driving were at best unconvincing and at worst untruthful. I therefore rejected his testimony without more.

21 In addition to my above observation, I was not impressed with the defendant's testimony as a whole due to his numerous inconsistencies. As an example, I refer to his police report lodged five days after the accident (at [17]). It is noteworthy therefrom that the defendant made no mention of how the accident happened as he apparently lost consciousness. Yet in court he claimed the traffic light was green in his favour when he was 20 metres away from the junction. Even if that was true, the lights could very well have changed to amber and then red by the time he arrived at the junction.

22 There was no doubt on the evidence that the defendant in order to beat the red light accelerated as he approached the signalised junction. As a result, the defendant's car collided into the plaintiff's vehicle with such force that it smashed into the left side of the plaintiff's vehicle before spinning it around.

23 Consequently, I awarded interlocutory judgment to the plaintiff on her claim with costs and directed that damages be assessed by the Registrar with the costs thereof reserved to the Registrar. It followed that the defendant's claim against the third party must also be dismissed with costs and I made the orders accordingly.

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