

Joo Yong Co (Pte) Ltd and another v Gajentheran Marimuthu (by his mother and next friend Parai a/p Palaniappan) and others
[2015] SGCA 38

Case Number : Civil Appeal No 19 of 2015
Decision Date : 04 August 2015
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Tay Yong Kwang J
Counsel Name(s) : Cecilia Lee Thomas and Savliwala Fakhrudin Huseni (Bogaars & Din) for the appellants; Tahaireen T Khan, Shiever S Ramachandran and Ho Thiam Huat (Khan & Co) for the first respondent; Lynette Chew Mei Lin and Leonard Chew Wei Chong (Morgan Lewis Stamford LLC) for the second and third respondents.
Parties : Joo Yong Co (Pte) Ltd and another — Gajentheran Marimuthu (by his mother and next friend Parai a/p Palaniappan) and others

Tort – Negligence

4 August 2015

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

1 This appeal raises the question as to who was responsible for a motor accident involving Gajentheran Marimuthu (“Gajentheran”), who was riding a motorcycle and T Johaselvan (“Johaselvan”), who was driving a lorry and, if it was Johaselvan who was responsible, whether there was contributory negligence on the part of Gajentheran. Gajentheran is the plaintiff in the action and the first respondent in this appeal. Johaselvan is the second defendant in the action and his employer, the first defendant. The first and the second defendants are the appellants in this appeal.

2 As a result of the accident, Gajentheran was seriously injured. The collision took place between 5.10pm and 5.20pm on 1 February 2013 at the junction of Tuas West Road and Tuas Link 4. Gajentheran was riding his motorcycle along Tuas West Road in the direction of Tuas Checkpoint. Following behind him, on a second motorcycle, was Mohd Rosli Wadi bin Mat Nor (“Rosli”), and a pillion rider, Mohd Daud bin Mat Nor (“Daud”). And following behind them, on a third motorcycle, was Mohd Paqmi bin Md Arifin (“Paqmi”). Paqmi and Rosli were joined as third parties in the action and are, respectively, the second and third respondents in this appeal. We should mention that all the three motor-cyclists and the pillion rider were, at the time, colleagues working for the same employer.

3 When the motor-cyclists were about to proceed into the junction, the lorry driven by Johaselvan made a right turn into Tuas Link 4 from the opposite direction. The lorry cut into the path of the motor-cyclists. Gajentheran, riding on the first motorcycle, collided with the middle part of the left side of the lorry and skidded underneath the lorry. Rosli and Daud, riding on the second motorcycle, collided with the front part (also on the left side) of the lorry. [\[note: 1\]](#) Paqmi, riding on the third motorcycle, claimed to have swerved right and thus avoided the lorry entirely. The trial judge accepted Paqmi’s evidence. However, the appellants maintain that Paqmi collided with the lorry as well. We will return to this dispute later.

4 In any event, all three motor-cyclists and the pillion rider sustained injuries and damages to their motorcycles. Four actions were instituted by them – these proceedings, which concern only the

claims of Gajentheran, and three other proceedings in the State Courts which concern the claims of Rosli, Daud and Paqmi. Notwithstanding these separate actions, the parties have appropriately agreed to be bound by the findings of fact made in these proceedings. [\[note: 2\]](#)

5 It is common ground that there are three straight-going lanes on Tuas West Road in the direction the motor-cyclists were travelling. Nearer to the junction itself, there is an additional lane for vehicles which wish to turn right. For convenience, we shall refer to the lanes, counting from the left side of the road (taking bearing from the direction the motor-cyclists were travelling) as lanes 1, 2 and 3. The turning lane will be referred to as lane 4. It is also common ground that at the relevant time, traffic was heavy. According to Gajentheran, Rosli, Paqmi and Daud, there was a traffic jam on lanes 2 and 3. [\[note: 3\]](#)

6 The circumstances giving rise to the accident is disputed. The main dispute is on the question of in whose favour the traffic lights were at the material time. Johaselvan says that he made the right turn when the green turning arrow of the traffic lights lit up in his favour and the lights were red against traffic going straight in both directions. He says that the vehicles at lanes 1, 2 and 3 on the opposite side had already stopped and were not proceeding into the junction. Thus he made the turn. He says that Gajentheran and the other two motor-cyclists beat the red traffic lights which were against them when they crossed into the junction. However, Gajentheran, Rosli and Paqmi give a different story; they say that the traffic lights were still green in their favour. They accept that Johaselvan also faced green traffic lights, which meant that he could make a right turn across the junction if it was safe to do so.

7 So the first issue we have to determine is whether the green arrow for turning was in fact lit up in favour of Johaselvan when he made the right turn. The trial judge found against Johaselvan. But counsel for the appellants sought to argue that as the vehicles from the opposite side had come to a halt at the stop line, that necessarily suggested that the red lights had appeared and that the green arrow had also appeared allowing Johaselvan to make the right turn. She emphasised, in particular, that there is no yellow box at the junction so motorists were not required to stop before the junction even if there was a jam ahead. She said it was unlikely that motorists would be so considerate as not to proceed into the junction on their own volition so as not to block it.

8 The other evidence relevant to this dispute is: (a) Johaselvan's affidavit evidence that he sighted "a few other motor cycles which rode past the front and rear of the lorry" after he alighted from the lorry following Gajentheran's motorcycle's collision with the lorry, [\[note: 4\]](#) (b) Johaselvan's admission during his cross-examination that the traffic lights were green "for the motorcyclists" at the point of collision; [\[note: 5\]](#) and (c) Johaselvan's retraction of that admission and his further explanation during re-examination that the traffic lights merely "changed to green" after the collision. [\[note: 6\]](#) In their written submissions, the appellants acknowledge that the presence of oncoming traffic would mean that the traffic lights were green for the motor-cyclists, but argue that the traffic lights had changed from red to green between the time of the accident and Johaselvan's observation of the oncoming traffic. [\[note: 7\]](#) The appellants rely on Johaselvan's statement during re-examination that the traffic lights "changed to green", which they say is the "truthful statement". [\[note: 8\]](#) The respondents reject this argument. Counsel for Rosli and Paqmi point out that at least 25s must have elapsed from the point when the steady green arrow appeared to the moment when the traffic lights changed to green for the vehicles coming from the same direction as the motor-cyclists. Essentially, the counterargument is that the accident could not have occurred when the green turning arrow lit up because Johaselvan would not have taken 25s to make the right turn, apply the emergency brakes, check the left wing mirror, and pull up the handbrake before making the crucial observation of

the oncoming traffic as he walked to the right rear of the lorry. [\[note: 9\]](#)

9 In our view, this contention is at best speculative as there is hardly any objective evidence to indicate whether 25s would have passed while these events took place. Estimates as to time of this nature can be most unreliable.

10 But what remains unexplained is Johaselvan's admission at one point of the cross-examination that the traffic lights were green "for the motorcyclists". That line of cross-examination began with a reading of a Johaselvan's affidavit. Johaselvan's attention was drawn to his own evidence that a few other motorcycles rode past the front and the rear of the lorry to avoid it. Johaselvan then agreed with counsel for Rosli and Paqmi that *at the point of collision and in the seconds after the collision, the lights were showing green.* [\[note: 10\]](#) To our minds, this is cogent evidence of the traffic lights at the material time.

11 As earlier mentioned, the appellants' explanation for that condition is that the traffic lights were already red against the motor-cyclists and those vehicles coming from the same direction. Thus they stopped. In support of this claim, they point to the evidence from the three motor-cyclists and Daud that vehicles on the lanes to their right (*ie*, lanes 2 and 3) had stopped. [\[note: 11\]](#) The other explanation, advanced by the respondents, is that there was a build-up of traffic or a "traffic jam at the front" [\[note: 12\]](#) which discouraged vehicles from entering into the junction, even though there is no yellow box at the junction to prohibit vehicles from remaining stationary within the junction. Both explanations are possible. But when the evidence of the vehicles having stopped is weighed together with Johaselvan's momentary admission that the traffic lights were green "for the motorcyclists" as well as the improbability of the three motor-cyclists beating the red lights sequentially, we think that the respondents' explanation is likelier. On a balance of probabilities, we find that the traffic lights were green when the three motor-cyclists proceeded into the junction. In any event, we do not find that the weight of the evidence is so compelling as to require us to hold that the finding of the trial judge was necessarily wrong.

12 The second point of dispute is whether the three motor-cyclists were riding on the road shoulder or on lane 1. This issue is closely intertwined with the aftermath of the accident, which we will now briefly describe. The final resting position of the lorry was just immediately before the pedestrian crossing at Tuas Link 4; the front wheels of the lorry were just inches away from the dotted pedestrian crossing line. [\[note: 13\]](#) From the measurements taken of the lorry and the junction, [\[note: 14\]](#) and the images of the junction, [\[note: 15\]](#) we have observed that the front of the lorry was in line with the grass verge and the back of it was in line with the road shoulder. No part of the lorry protruded into the area in front of lane 1.

13 The appellants advance the argument that the final resting position of the lorry and the two spots on the left side of the lorry, where Gajentheran's and Rosli's motorcycles collided with it, indicate where both of them were travelling from before their respective collisions with the lorry. They rely on Johaselvan's evidence that the latter "immediately stopped" [\[note: 16\]](#) upon feeling an impact on the left side of the lorry. Since the lorry stopped in front of the road shoulder, and no part of the lorry protruded into the area in front of lane 1, they say that all the three motor-cyclists must have been riding along the road shoulder before Gajentheran and Rosli collided with the lorry.

14 We find this argument to be improbable in relation to Gajentheran. There would have been a time lapse between experiencing the impact and the lorry actually stopping. The normal reaction time for surprised drivers is between 1.41s and 1.84s. [\[note: 17\]](#) Johaselvan was a surprised driver. On

Johaselvan's own account, he did not see the traffic on his left as he made the right turn. [\[note: 18\]](#) He reacted to stop only when he felt a collision. At a speed of 10km/h to 15 km/h, the expert, Dr Shane Richardson ("Dr Richardson"), stated that the distance travelled during the reaction time would have been 3.9m to 7.7m. He also stated that upon applying the emergency brakes, the lorry could have travelled a further distance of 0.8m to 1.8m before coming to a complete halt. In total, the point of the collision is probably 4.5m to 9.4m away from the rest position. [\[note: 19\]](#) That seems correct to us.

15 The significance of Dr Richardson's report is that it explains how the lorry could have been in front of lane 1 when Gajentheran collided with it. It supports Gajentheran's case that he came into the junction from lane 1 and collided with the lorry that was in front of lane 1.

16 Although the photographs of the site of the accident show a concentration of debris in front of the grass verge and the road shoulder, this does not weaken our inference that Gajentheran's collision occurred while the lorry was still in the position in front of lane 1. First, it is common ground that there were at least two collisions. Assuming that the debris resulted from a collision, there is no evidence that the debris came from Gajentheran's motorcycle. Second, after the accident, the traffic from Tuas West Road (*ie*, from the same direction as the motorcyclists) continued to move ahead despite the accident. The same photographs show vehicles proceeding across the junction from lane 1. These photographs were taken sometime after the accident – between the time of the arrival of the first ambulance and the second ambulance. [\[note: 20\]](#) Any debris in front of lane 1 caused by Gajentheran's collision with the lorry would undoubtedly have been disturbed by the incessant moving traffic. What debris that remained on the road after a while would have little probative value in determining the spot at which Gajentheran's motorcycle collided with the lorry.

17 A corollary of our finding that Gajentheran's collision occurred in front of lane 1 is that he and his motorcycle must have been dragged forward by the momentum of the lorry to its final resting position. We recognise the lack of evidence, such as blood streaks or gorge marks, to show that Gajentheran and his motorcycle were so dragged. However, the alternative would be to hold that Gajentheran and his motorcycle were not dragged at all because the lorry came to an instantaneous stop. In our view, that could not have been the case because it would mean that there was no need for any reaction time, which is physically impossible.

18 As for Rosli and Paqmi, their positions are different. We find that they were riding on their motorcycle on the road shoulder just before Rosli's collision or Paqmi's swerve to the right. We rely on Rosli's oral evidence that his motorcycle hit the front part of the lorry. [\[note: 21\]](#) As we have mentioned earlier, when the lorry came to a complete halt, the front of the lorry was in line with the grass verge. We also rely on the fact that the lorry was likely to be close to its final resting position by the time of Rosli's collision. Very shortly after Gajentheran's motorcycle collided with the lorry, Johaselvan applied emergency brakes. This could be just before or after Rosli's collision with the lorry. But, once the emergency brakes were applied, the evidence from Dr Richardson establishes that the lorry would have moved only minimally.

19 Taking all these circumstances into account, we find that the part of the lorry which Rosli collided with was in line with the road shoulder. Consequently, Rosli could not have been riding on lane 1; if he was riding on lane 1, he would not have collided with the lorry; this is because the lorry would not have been in his way.

20 The same position applies to the third motor-cyclist, Paqmi. By the time Paqmi entered into the junction, the lorry would have been even closer to its final resting position, if it had not already

stopped. Therefore, if Paqmi was riding on lane 1, the lorry would not have been in his way and he need not have swerved right to avoid colliding with the lorry. The trial judge found that he had so swerved. The damage to his motorcycle is slight. [\[note: 22\]](#) That is consistent with his claim that the damage was sustained from a fall onto the road. Accordingly, we find that Paqmi was also riding on the road shoulder immediately before he entered the road junction and therefore had to swerve right to avoid a collision with the lorry.

21 The third point of dispute concerns the possible aggravation of Gajentheran's injuries by Rosli and Paqmi. The appellants argue that Rosli and Paqmi should be responsible for some of Gajentheran's injuries because they were caused by the further impacts from Rosli's and Paqmi's collisions with the lorry. The scope of this argument is necessarily constrained by our earlier findings. Paqmi must be immediately ruled out as having caused any aggravation of Gajentheran's injuries since he did not collide with the lorry.

22 This leaves Rosli to be considered. Johaselvan presents an account of how he saw that one of the wheels of Rosli's motorcycle hit Gajentheran's midriff as a result of Rosli's collision with the lorry. Johaselvan also says that the wheel of Rosli's motorcycle was pushed further underneath the lorry and on top of Gajentheran by the impact from Paqmi's motorcycle. [\[note: 23\]](#) However, we have difficulties with this account. First, Paqmi did not collide with the lorry. Second, Rosli could not have collided with Gajentheran who was underneath the lorry, if the position of Gajentheran was near the letters "CO" of the phrase "JOO YONG CO., (PTE) LTD" painted on the side of the lorry carriage, [\[note: 24\]](#) and the point of Rosli's collision with the lorry was to the left of the first letter "J". [\[note: 25\]](#) Third, Johaselvan did not see Rosli's collision. This must be pitted against Rosli's evidence that his motorcycle hit neither Gajentheran nor Gajentheran's motorcycle. [\[note: 26\]](#) In the circumstances, given the irreconcilable testimonial evidence and the limited physical evidence available, it is far too speculative for us to hold that Rosli aggravated Gajentheran's injuries.

23 We now turn to the second main issue – the question of contributory negligence on the part of Gajentheran. We find that he, as well as Rosli and Paqmi, were travelling at an excessive speed. The undisputed fact is that traffic was heavy at the time of the accident. Even though the three motor-cyclists were travelling within the speed limit, they were not travelling at a safe speed in the given conditions. Gajentheran's own evidence is that he was riding at 80 km/h. Rosli and Paqmi said their speed then was 60km/h to 70km/h. [\[note: 27\]](#) We think it more likely than not that they were travelling at 70 km/h, trying to keep up with Gajentheran who was riding at 80 km/h. They were obviously anxious to get to their homes in Johor as soon as possible.

24 Speeding is specifically pleaded by the appellants. We find in favour of the appellants that the three motor-cyclists were negligent in approaching the junction in a heavy traffic situation at that kind of speed, especially Gajentheran who was going at 80 km/h. If they had ridden at a lower speed, they might well have avoided the collision. Paqmi's near-miss illustrates the point.

25 It follows from our finding of contributory negligence on the part of Gajentheran that he may not recover his damages entirely from the appellants. But Rosli's and Paqmi's negligence had no bearing on the damages sustained by Gajentheran. Naturally, they should not have to contribute to the damages Gajentheran claims against the appellants.

26 In the result, we reduce the appellants' liability to Gajentheran by 15% to take into account the latter's contributory negligence. We allow the appeal in part to this extent.

27 Finally, on the question of costs, parties are requested to let us have their submissions on it

within two weeks.

[\[note: 1\]](#) ROA Vol III B at p 123 line 25 – p 124 line 7.

[\[note: 2\]](#) ROA Vol III B at p 30 line 31 – p 31 line 27.

[\[note: 3\]](#) CB Vol II at p 207, para 5; p 210, para 6; p 230, para 8; p 235, para 7.

[\[note: 4\]](#) CB Vol II at pp 216–217, para 14.

[\[note: 5\]](#) CB Vol II B at p 82 line 22 – p 83 line 1.

[\[note: 6\]](#) CB Vol II B at p 86 line 4.

[\[note: 7\]](#) Appellants' skeletal submissions at pp 3–5, paras 7–12.

[\[note: 8\]](#) Appellants' reply at p 9, para 19.

[\[note: 9\]](#) CB Vol II at pp 215–217, paras 9, 12–14.

[\[note: 10\]](#) CB Vol II B at p 82 line 2 – p 83 line 1.

[\[note: 11\]](#) ROA Vol III B at p 19 lines 5–9, 15–20; p 37 lines 7–10; p 118 lines 21–26; p 129 lines 26–29.

[\[note: 12\]](#) ROA Vol III B at p 19 line 9.

[\[note: 13\]](#) CB Vol II at pp 8, 12.

[\[note: 14\]](#) CB Vol II at p 145.

[\[note: 15\]](#) CB Vol II at pp 2–3.

[\[note: 16\]](#) ROA Vol III B at p 63 line 18.

[\[note: 17\]](#) CB Vol II at pp 74–76.

[\[note: 18\]](#) CB Vol II at p 216 line 12.

[\[note: 19\]](#) CB Vol II at p 76.

[\[note: 20\]](#) ROA Vol III A at p 18, para 12.

[\[note: 21\]](#) At the spot marked "X": CB Vol II at p 270.

[\[note: 22\]](#) CB Vol II at p 257.

[\[note: 23\]](#) CB Vol II at p 217, paras 15–16.

[\[note: 24\]](#) ROA Vol III B at p 46 lines 21–26.

[\[note: 25\]](#) ROA Vol III B at p 123 line 25 – p 124 line 7.

[\[note: 26\]](#) ROA Vol III B at p 130 lines 19–30.

[\[note: 27\]](#) CB Vol II at p 207, para 6; p 210, para 7; p 230, para 9; p 235, para 8.

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