

Goh Yang Hui (committee of the person and estate of Chua Jie Liang Samuel, mentally
disordered) v Soon Teck Soon
[2013] SGHC 67

Case Number : Suit No 241 of 2012
Decision Date : 22 March 2013
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Gurdeep Singh Sekhon and Pradeep Kumar Gobind (KSCGP Juris LLP) for the plaintiff; Pateloo Eruthiyanathan Ashokan (KhattarWong LLP) for the defendant.
Parties : Goh Yang Hui (committee of the person and estate of Chua Jie Liang Samuel, mentally disordered) — Soon Teck Soon

Tort – Negligence – Breach of duty

Tort – Negligence – Contributory Negligence

22 March 2013

Judgment reserved.

Andrew Ang J:

1 This suit concerns a road accident ("the Accident") which left Chua Jie Liang Samuel ("Chua") incapable of managing himself and his affairs. It raises issues as to the defendant's liability in negligence for the Accident and the extent of such liability.

2 The Plaintiff is Chua's mother who was appointed as the Committee of the Person and Estate of Chua on 9 November 2009, pursuant to the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed). She brought Suit No 241 of 2012 against the Defendant, taxi driver Soon Teck Soon, in negligence for causing the Accident. The Defendant's defence was that Chua had caused, or at least contributed to, the Accident.

Background facts

3 In the evening of 1 April 2009, Chua, who was 22 years of age at the time, was driving his motor vehicle SFJ66E ("Chua's Car") along the third lane counting from the road shoulder ("the Third Lane") of the four-lane Pan-Island Expressway ("PIE") towards the direction of Changi International Airport. I should add that the numbering of the lanes in this judgment start from that nearest the road shoulder on the left in order to be consistent with the evidence given at trial. There had been a prior accident on the Third Lane between a motor vehicle SJD737T and SMRT bus TIB499C. Both vehicles were stationary on the Third Lane, with the SMRT bus parked in front of the motor vehicle SJD737T. Chua brought his vehicle to a halt behind the motor vehicle SJD737T and got out of Chua's Car. Both parties accept that at some later point in time Chua attempted to cross the PIE towards the road shoulder.

4 The Defendant was driving his taxi SHA7672P ("the Taxi") along the second lane of the PIE ("the Second Lane"). According to the Defendant, he was driving at a speed of 80km/h. He avers that upon noticing the three stationary vehicles on the Third Lane at an approximate distance of 20 car-lengths, he slowed down to 60km/h. The Defendant alleges that Chua dashed out from between

Chua's Car and the motor vehicle SJD737T in front of him. The Defendant also claims that he immediately applied the brakes and swerved the Taxi to the left to avoid a collision, but did not manage to do so as Chua had dashed into the Taxi's path at close range.

5 Chua was unable to testify as to how the Accident happened due to the severity of the head and brain injuries he had sustained as a result. From photographs showing damage to the Taxi, the point of impact between the Taxi and Chua was at the centre of the front of the Taxi and that Chua was flung across the first lane and onto the road shoulder.

6 Chua was rushed to the Accident and Emergency Department of the Singapore General Hospital, where he was noted to have a poor Glasgow Coma Score of 7/15, indicating a low level of consciousness. He was also observed to have multiple lacerations of his face and an open fracture of his right leg. An urgent computed tomographic ("CT") scan of his brain demonstrated findings consistent with a severe head injury, viz, bilateral frontal bone fractures, bilateral subdural haematomas, an acute right frontal extra-dural haematoma, haemorrhagic contusions, diffuse axonal injury and multiple comminuted facial fractures. A Specialist Medical Report attached to the Statement of Claim described the injuries as being "consistent with those sustained in a high speed road traffic accident", [\[note: 1\]](#) but as the case was bifurcated and the doctor who had prepared the Specialist Medical Report had not been cross-examined, reliance cannot be placed on this report.

7 After the accident, the Defendant accepted the Traffic Police Department's offer of composition of \$500 with six demerit points for the offence of careless driving under the Road Traffic (Composition of Offences) Rules (Cap 276, R 29, 2008 Rev Ed). The Plaintiff brought this suit on 20 March 2012.

Issues

8 The trial was bifurcated and the following issues of liability arise:

- (a) whether the Defendant breached his duty of care to Chua (the existence of such a duty not being in doubt); and
- (b) whether there was contributory negligence on Chua's part.

Whether the Defendant breached duty of care to Chua

Scope and existence of the duty of care

9 It is uncontroversial that a motorist owes a duty of care to other road users to keep a proper look-out and to drive with reasonable care with due regard to the specific traffic circumstances. The Court in *Tan Siok Yee (suing by committee of the person and estate, Liew Chee Kong) v Chong Voon Kee Ivan* [2005] SGHC 157, quoting with approval (at [50]) *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 10th Ed, 2001) (at para 9-186) described the duty thus:

... 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, vehicles or property of any kind on or adjoining the highway. In this connection, *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 look-out, observing traffic rules and signals and so on."* [emphasis added]

10 Whether a motorist was travelling at an excessive speed or not would depend on what was reasonable in the particular circumstances. The motorist has a specific statutory duty to adjust his speed to the conditions of the road and reduce his speed when approaching any obstruction that limits his view; see rr 48 and 49(e) of the Highway Code (Cap 276, R 11, 1990 Rev Ed). The existence of this statutory duty does not overtake or preclude the common law duty in tort to take reasonable care to assess the conditions of the road and to adjust one's speed accordingly, although it may point to what should be expected of a reasonable motorist. I note at the outset that even if the Defendant was *ex facie* in breach of his statutory duties under the Highway Code and/or the Road Traffic Act (Cap 276, 2004 Rev Ed) (see [7] above), the commission of a statutory offence is only one of the circumstances which the Plaintiff is entitled to rely on in establishing the Defendant's negligence; see *Powell v Phillips* [1972] 3 All ER 864, quoted with approval in *Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 ("*Cheong Ghim Fah*") at [56]-[57].

11 *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 12th Ed, 2010) (at paras 10-209 and 10-210), commenting on a motorist's common law duty to adjust his speed, observed:

It is the duty of the driver or rider of a vehicle to travel at a speed which is reasonable under the circumstances. In determining what is reasonable, the nature, *condition, and use* of the road in question, and *the amount of traffic which is actually on it at the time, or which might reasonably be expected to be on it*, are all important matters to be taken into consideration. ...

...

A motorist should drive at a speed such that he can stop *well within the distance that he can see to be safe*. So where a motorist approached the brow of a hill on a single track road at such a speed that she could not stop to avoid a stationary vehicle on the other side of the brow of the hill liability was established even though the defendant was only travelling at between 15 to 20 mph. ...

[emphasis added]

12 The duty to travel at a reasonable speed is therefore linked to the duty to keep a proper look-out. As V K Rajah JC opined in *Cheong Ghim Fah* (at [51] and [53]):

51 Perhaps the best encapsulation of the relevant principles and considerations is to be found in the observations of Rowlatt J in *Page v Richards and Draper* (unreported) cited in *Tart v G W Chitty and Company, Limited* [1933] 2 KB 453 at 457-458:

It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he **is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it** . If there is any difficulty in the way of his seeing, as, for example a fog, he must go slower in consequence. **In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept** . I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look-out, the probability is that the accident would never have happened.

...

53 Speed is always relative and dependent upon the circumstances prevailing on the road being traversed. The general speed limit on our roads is 50km/h. Travelling within the speed limit will not ineluctably acquit a motorist of negligence. If for example there are circumstances warranting a safer speed, a motorist must adjust his speed to suit the road conditions. On the other hand, speeding *per se* will not invariably justify a claim of negligence. It will, however, be a strong indication of driving in a dangerous or negligent manner.

[emphasis added in bold italics]

13 In other words, it will not dispose of the case if the Defendant were only to prove that he was travelling within the speed limit or that he slowed down. In order to discharge his duty of care, it must be proven that he also kept a proper look-out and did not go faster than would permit him to stop or deflect his course at any time to avoid any actual or potential dangers on the road which might be reasonably expected in the circumstances. This is subject to the proviso that if special circumstances existed which would allow or induce the motorist to relax normal standards of vigilance, a failure to keep a proper look-out may not be viewed as a breach of duty. The observations of the court in *Cheong Ghim Fah* (at [50]) are apposite:

A user of our roads is always under a duty to keep a lookout. A failure to do so will invariably be viewed as negligence or contributory negligence on his part. This failure may be mitigated if it can be shown that the danger was concealed from him or that there were special circumstances allowing or inducing him to relax the normal standards of vigilance.

14 This exception cuts both ways; if there are circumstances on the road which would require a higher standard of vigilance, then the exercise of only a normal standard of vigilance would be *insufficient* to discharge the motorist's duty of care. This was observed by O C Mazengarb in *The Law and Practice Relating to Actions for Negligence On the Highway* (Butterworths, 3rd Ed, 1957) at p 192:

... The sharpness of the look out required depends upon the circumstances existing at the time. In conditions of bad visibility, or when driving at a fast speed, or when there are obstructions to view, ... or other places where the unexpected may happen, it is not unreasonable to expect a higher degree of care in this respect.

15 The following factual questions thus arise:

- (a) Did the Defendant keep a proper look-out given the circumstances on the road on the evening of 1 April 2009?
- (b) Was the emergence of Chua from between Chua's Car and motor vehicle SJD737T onto the Second Lane a potential danger on the road which might be reasonably expected in the circumstances?
- (c) Did the Defendant keep a proper look-out for the emergence of a pedestrian from between Chua's Car and motor vehicle SJD737T, and suitably adjust his speed to permit him to stop or deflect his course should that happen?

16 I should note at the outset that the task of determining what actually happened is compromised by the fact that only the Defendant's account of the Accident was given. The nature and severity of Chua's injuries rendered him unable to testify and neither party called any other witnesses. The Plaintiff's testimony cannot be relied upon as she did not witness the accident and

admitted that her arguments and her account of the Accident were based on reading the police report produced by the Defendant. [\[note: 2\]](#) This case turns on the veracity of the Defendant's evidence and whether it is corroborated by other evidence and an on-site inspection.

Whether the Defendant kept a proper look-out

17 The Defendant's version of events was that he only noticed the three stationary vehicles parked on the Third Lane when he was 20 car-lengths away. Assuming the length of a car to be approximately five metres long, this would mean that he only noticed the three stationary vehicles when he was a hundred metres away. The maps provided [\[note: 3\]](#) show clearly that the road leading up to the site of the Accident is fairly straight, affording a clear line of vision directly ahead. With the benefit of an on-site inspection, it was ascertained that during the day, a driver could easily observe motor vehicles from about 400m away. The site of the Accident was located in a dip in the road, such that the Taxi would have been approaching it from an elevated point on the Second Lane. This would have *increased* rather than *decreased* the visibility of the three stationary vehicles. The on-site inspection clearly contradicted the Defendant's evidence that he was unable to see the three stationary vehicles because there was a slight slope in the road. [\[note: 4\]](#)

18 Even taking into account lower visibility at night, the visibility of motor vehicles on the road would be considerably farther than a hundred metres, as I satisfied myself on a subsequent night visit to the scene of the accident. This view was fortified by the fact that one of the stationary vehicles was an SMRT bus, which would have stood taller than an ordinary motor vehicle and been more noticeable from a farther distance. Of itself, the exact distance was not of great significance because even at a hundred metres, it would have been possible to slow down. What is significant is the Defendant's gross under-estimation of the distance.

19 The Defendant's account is that Chua suddenly dashed out at close range from between Chua's Car and the motor vehicle SJD737T onto the Second Lane right in front of him and that, although he swerved to the left, he had been unable to avoid Chua.

20 The Defendant's account simply does not add up. From his markings on the plan provided, the Defendant indicated that he only saw Chua when the Taxi was almost directly adjacent to Chua's Car and Chua was then almost halfway across the Second Lane. The New Highway Code (Book 2), Advanced Theory of Driving (at p 109) records that the average reaction distance for a motorist travelling at 60km/h (the speed that the Defendant alleged he was travelling at) is about 18m, which would have meant that the Defendant would only have started swerving to the left *after* he had passed the SMRT bus and not at the point he indicated on the plan. In other words, the Taxi would have hit Chua head-on before the Defendant had had a chance to swerve. Chua ought then to have been flung more or less straight on further down the Second Lane. But in fact, Chua was flung diagonally to the left across the first lane onto the road shoulder.

21 Even if I were to discount the need for reaction time, the Defendant's account still would not square with the facts. In this second scenario, the Defendant would have swerved to the left immediately upon seeing Chua who was then dashing at close range and almost halfway across the Second Lane. The Defendant would have swerved to the left at a speed close to the speed of 60km/h which he admitted to having been travelling at, *ie*, 16.67m per second. The right side of the Taxi ought then to have hit Chua. In fact, however, the Police Report, which is consistent with the photographic evidence, indicates the point of impact was the middle of the Taxi's bonnet. That Chua could have been running so fast as to remain squarely in the middle of the Taxi's path despite the Defendant swerving to the left defies belief. On either scenario, I find that the Defendant's account

of what happened is so improbable as to be unbelievable.

22 I should add that I did find the Defendant a generally truthful witness otherwise. He answered in a straightforward manner with no attempt to hedge, even when the answer was not wholly favourable to him. However, given the speed at which the Accident happened and the fact that it was most likely also a traumatic experience for the Defendant, I am not surprised that his recollection of events was less than perfect. That said, given the improbabilities in his account, it would be wholly unsafe to rely on it. On a balance of probabilities, I am disinclined to accept the Defendant's version that Chua dashed out from between Chua's Car and the motor vehicle SJD737T without warning and at close range.

23 It is more likely than not that Chua had *not* dashed out suddenly at close range from between the Car and motor vehicle SJD737T. I find that, on a balance of probabilities, Chua had almost fully made his way across the Second Lane when the Defendant swerved to the left and collided into him. This would explain the trajectory of Chua's flight across the first lane. What I cannot explain is why the Defendant swerved to the left, the Defendant's proffered reason for so doing having been found to be implausible. However, it was for the Defendant to explain, not for the court to speculate.

Whether Chua's presence on the Second Lane was to be reasonably expected

24 The circumstances on the Second Lane and the Third Lane are undisputed. There was clearly an accident on the Third Lane. To the third party observer, this would have looked like an accident involving two motor vehicles and a bus. It would have been reasonably foreseeable that pedestrians from the bus and two motor vehicles would cross from the Third Lane to the road shoulder, thus traversing the Second Lane. When cross-examined on whether it would have been reasonable to expect pedestrians to cross from the Third Lane to the road shoulder, thereby traversing the Second Lane, the Defendant agreed without demur that it was a reasonable expectation. [\[note: 5\]](#) The presence of a pedestrian traversing the Second Lane would be one of the potential dangers which must be taken into account by the ordinarily skilful driver who is then bound to adjust his speed to take into account that he may be required to stop or deflect his course in order to avoid the pedestrian. The Defendant was travelling at such a speed as to have rendered himself unable to stop in time. In the circumstances, even the speed which the Defendant alleged he slowed down to, *viz*, 60km/h, was too fast. The Defendant would also be required to keep a proper look-out for the specific danger of a pedestrian crossing the road.

25 It was pointed out by counsel for the Plaintiff that the Defendant should have been able to see Chua from a distance. Chua was approximately five feet and five inches tall, while Chua's Car was approximately four feet and eight inches tall. [\[note: 6\]](#) Chua would have stood taller than Chua's Car and been noticeable from a distance unless he had chosen to crouch down between the cars. The Defendant has not suggested that he might have done so. In any case, the Defendant's account of events was that he saw Chua when Chua was approximately halfway across the Second Lane. This would have meant that Chua had covered about two metres in distance before he was spotted by the Defendant. That the Defendant could have missed seeing him until he was almost halfway across the Second Lane strongly suggests that the Defendant had not been keeping a proper look-out for pedestrians like Chua who would have been trying to cross the Second Lane to get to the road shoulder.

26 The Defendant should have seen Chua from the moment he emerged from between Chua's Car and the motor vehicle SJD737T, if not earlier when Chua was still standing between the vehicles. It follows that the presence of Chua on the Third Lane with the potential to move onto the Second Lane was not merely a hypothetical scenario, but an actual danger on the road which the Defendant should

have seen and slowed down for. The presence of Chua should have alerted the Defendant to the particular possibility of Chua attempting to traverse the Second Lane. If the Defendant was indeed keeping a proper look-out and had slowed down sufficiently, I find that he would have been able to spot Chua and taken the necessary precautions, including stopping or deflecting the Taxi's course to avoid colliding with Chua.

Whether the Defendant was travelling at an excessive speed

27 Given my finding (at [24] above) that the Defendant should have slowed down to a speed which would have enabled him to avoid colliding with a potential pedestrian attempting to cross the road, I find that the Defendant was travelling at an excessive speed. In the circumstances, he not only had a duty to be more vigilant, he also had a duty to slow down so that he could have stopped or diverted the course of the Taxi in time to avoid Chua entirely. Even if the Defendant had only spotted the three stationary vehicles at 20 car-lengths away, I find that this would have been enough for him to adjust his speed. Slowing to a speed of 60km/h when it was reasonably foreseeable that pedestrians would be trying to cross the Second Lane was not sufficient to discharge his duty of care.

28 Looking at the evidence holistically, I find that the Defendant owed Chua a duty of care to keep a proper look-out and to slow down to such a speed as would have enabled him to avoid the collision. I further find that the Defendant had breached this duty of care by failing to keep a proper look-out for pedestrians attempting to cross the Second Lane despite the fact that such a scenario was reasonably foreseeable in the circumstances, and by failing to slow down to a sufficient degree.

Causation

29 But for the Accident and the Defendant's role in it, Chua would not have sustained the injuries in respect of which the Plaintiff now makes this claim. I find that the Defendant's breach of duty had caused the Accident.

Whether there was contributory negligence

30 The only question remaining is whether or not Chua had contributed to the Accident.

31 I have already found at [23] above that Chua had not suddenly dashed out at close range onto the Second Lane in front of the Defendant as the Defendant claims. Rather, Chua was almost fully across the Second Lane when the Accident occurred. This effectively refutes the Defendant's contention that Chua had contributed to the Accident by suddenly running into the path of the Taxi.

32 The Defendant further contends that there was contributory negligence because Chua had been on the Third Lane for no good reason. With respect, I do not think that this alters the analysis in the slightest. There was already an accident on the Third Lane for which it would have been reasonably foreseeable that pedestrians would be attempting to cross the Second Lane onto the road shoulder. The presence of Chua's Car on the Third Lane did not substantially alter the circumstances on the road or change the potential and actual dangers on the Second Lane or the Third Lane itself. Chua was not behaving in an unusual manner. In other words, Chua's actions, whatever his reasons were, did not contribute to creating a more hazardous situation on the road than already existed. To find that Chua had contributed to the Accident in the circumstances would be tantamount to saying that Chua was partially liable for finding himself in the wrong place at the wrong time. That is not the proper application of the concept of contributory negligence.

33 The truth of the matter is that the Defendant was simply travelling too fast in the circumstances then prevailing to have avoided colliding with Chua or *any other pedestrian* trying to cross from the Third Lane to the road shoulder, and that the Defendant was not keeping a proper look-out for the same. I find that there was no contributory negligence on Chua's part and the Defendant was fully liable for the Accident.

Conclusion

34 I find that the Defendant had breached his duty of care to Chua and that this had caused the Accident. I also find that there was no contributory negligence and the Defendant is fully liable for the injuries which Chua sustained as a result of the Accident.

35 It follows that the Plaintiff is entitled to interlocutory judgment on behalf of Chua with damages to be assessed by the Registrar.

36 Costs and interests reserved to the Registrar.

[\[note: 1\]](#) AB.8 (Agreed Bundle of Documents).

[\[note: 2\]](#) CT: 8 Aug 2012, p 16.

[\[note: 3\]](#) 3AB.6.

[\[note: 4\]](#) CT: 8 Aug 2012, p 51.

[\[note: 5\]](#) CT: 22 Nov 2012, p 39.

[\[note: 6\]](#) CT: 22 Nov 2012, p 3.

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