Cheung Fung (a patient) (suing by his litigation representative Goh Fun Cheng) *v* Shanmugam Thanabal
[2014] SGHC 271

Case Number : Suit No 470 of 2013

Decision Date : 18 December 2014

Tribunal/Court : High Court

Coram : Tan Siong Thye J

Counsel Name(s) : Vangadasalam Ramakrishnan (V Ramakrishnan & Co) for the plaintiff; Loh Kia Meng and Crystal Goh (Rodyk & Davidson LLP) for the defendant.

Parties : Cheung Fung (a patient) (suing by his litigation representative Goh Fun Cheng) — Shanmugam Thanabal

Tort – Negligence – Traffic accident

18 December 2014

Tan Siong Thye J:

Facts

1 This was a tragic case of an accident between the plaintiff-cyclist and the defendant-van driver, as a result the plaintiff would most likely be mentally impaired for life. Earlier, I had delivered an oral judgment in favour of the defendant as I found that it was the plaintiff who was solely negligent. The plaintiff is dissatisfied with my decision and has appealed against it. I shall now give further reasons for my decision.

2 The plaintiff was Cheung Fung ("the plaintiff"), a waiter who had been working at Carlton Hotel. His wife, Goh Fun Cheng ("PW1"), sued on his behalf as he had suffered severe head injuries that led to significant cognitive dysfunction as a result of the accident with the defendant. The defendant was Shamugam Thanabal, a businessman who owned a food delivery business, an internet browsing centre and a cleaning company. [note: 1]

3 On 5 June 2010 at about 5.45am, the plaintiff was riding his bicycle along Havelock Link towards the junction with Havelock Road. One lane of Havelock Road was for traffic heading towards Ganges Road while the other lane was for traffic towards Zion Road. There were no traffic lights at the junction of Havelock Road and Havelock Link. The defendant was driving his van along Havelock Road towards Zion Road.

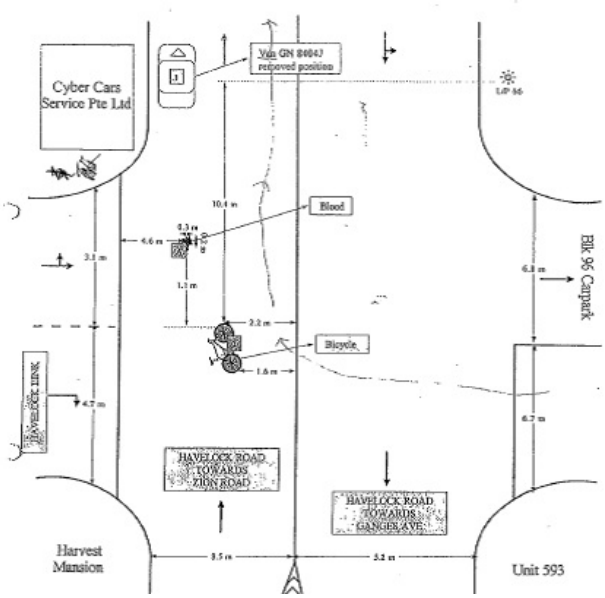
4 Havelock Link was a minor road which sloped downwards towards Havelock Road. There was a stop line at the end of Havelock Link adjoining Havelock Road. Thus motorists travelling along Havelock Link had a duty to stop before proceeding into the junction. It was at this junction that both parties got into an accident in the early hours of the morning. The evidence showed that the plaintiff crashed into the rear right side of the defendant's van. As a result of the collision, the plaintiff injured his head. At the material time, the plaintiff did not wear a bicycle helmet.

5 After the collision, the defendant stopped his van, got out, and called for an ambulance which rushed the plaintiff to the hospital. A police report was also filed on the same day at 10.24am by the

defendant. [note: 2] The police investigations were inconclusive as to the party who was responsible for the accident. Therefore no criminal proceedings were instituted. [note: 3]

6 Unfortunately, the plaintiff sustained severe injuries. According to the medical report, the plaintiff arrived in the Accident and Emergency Department in a state of comatose and had to be resuscitated and intubated. The Computer Tomography scans showed that he had multiple areas of contusion, traumatic subarachnoid haemorrhage and diffuse cerebral cedema. [note: 4] It was not until 15 June 2010 that the plaintiff was successfully extubated and subsequently he was admitted into Ren Ci Hospital for his recuperation. [note: 5] Nearly two years later, the plaintiff continues to have severe cognitive dysfunction and medical opinion concluded that he had severe cognitive impairment and mild atxia. [note: 6] It was pursuant to this background that PW1 initiated the present proceedings.

7 It was the circumstances of the crash that were in dispute. The plaintiff said that it was the defendant who had been negligent, while the defendant took the view that it was the plaintiff who had been wholly negligent. By consent, the action was bifurcated to address the separate issues of liability and quantum. Thus, I shall confine this judgment to the issue of liability. I reproduce a pictorial sketch of the scene so that when I later discuss the cause of the accident, it is better understood.



The expert opinions

Mr Ang Bryan Tani

8 The plaintiff's expert was Mr Ang Bryan Tani ("PW2"), a Senior Technical Investigator and Certified Accident Reconstructionist with LKK Auto Consultants Pte Ltd who was tasked to: [note: 7]

(a) reconstruct the accident; and

(b) assess whether there were any contributory factors, in particular, whether there were any sighting difficulties at the accident location that would have prevented the parties from seeing each other.

9 PW2 made two trips to the intersection on 5 May 2014 at 10.30am and 6 May 2014 at 8.45pm in order to take pictures of the day and night view from both Havelock Link and Havelock Road. He was of the opinion that: [note: 8]

(a) The front portion of the bicycle had collided onto the rear right side of the van. [note: 9]

(b) The point of impact was beyond the centre dividing line along the stretch of Havelock Road heading towards Zion Road.

(c) There was a medium-sized tree and a large-sized tree located near the end of Havelock Link. Thus, the line of sight for motorists using the stretch where Havelock Road and Havelock Link intersected would be impaired.

(d) The trees could have prevented the plaintiff and defendant from seeing each other. [note: 10] The sighting difficulties would have been overcome only when the defendant was about 20.3m from the point of impact. The defendant's perception reaction time ("PRT") (*ie*, the time that a person takes to react to a given situation upon first sight of the situation) to the plaintiff suddenly emerging would most likely have been at least 2.5 seconds. [note: 11]

10 PW2 did not opine on the speed of the van and the bicycle. In his view, he did not have sufficient information to determine the speed of both vehicles.

Mr Koay Hean Lie Kelvin

11 Mr Koay Hean Lie Kelvin ("DW2") was the Defendant's expert. He was a Professional Engineer, a Traffic Accident Reconstructionist and a Principal Forensic Consultant at Koays Consulting Pte Ltd. He was similarly tasked to determine the sequence of events that led up to the accident and its causation. [note: 12]

12 DW2 conducted site surveys on 14 and 22 February 2014 at 7.30am. First, he performed forensic mapping of the road features and the environment using a Sokkia CX105 Total Station, which is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. From it, he developed a sketch plan on which landmarks and objects were placed according to scale.

13 DW2 was of the opinion that the travelling speed of the van was between 21.5 km/h and 43 km/h based on whether the defendant had applied 25% or 100% of the brakes, while the bicycle's impact speed was between 12.9 km/h and 21.3 km/h. According to him, the plaintiff would have seen the defendant when he was 10.3m from the point of impact. He calculated that if the bicycle was cycling at a speed above 15 km/h coming out of Havelock Link, the plaintiff's PRT would have been 1.85 seconds. Subsequently, under re-examination he opined that at a speed of 15 km/h, the plaintiff would have taken 2.47 seconds to travel this 10.3m to the point of impact and at a speed lesser than 15km/h, he would have taken less than 2.4 seconds to do so. [note: 13] As the time needed to travel the distance upon first sight of the plaintiff to the point of collision was less than his PRT, the plaintiff would have been unable to avoid the accident.

14 The above was similarly the case for the defendant, who would have first seen the plaintiff when he was 20.3m away from the point of impact (see [9(d)] above). The time that the defendant would have taken to travel the 20.3m to the point of impact would have been between 1.7 seconds

and 2.4 seconds [note: 14] and as that was lower than the PRT of 2.5 seconds needed to respond to suddenly seeing the plaintiff emerge, he would not have been able to avoid the accident.

15 DW2 agreed that the view for vehicles coming out of Havelock Link was obstructed by the trees located near the end of Havelock Link ([9(c)] above). He opined that the damage caused to the van was the result of the plaintiff's bicycle having collided against the van's rear right side. This was because the marks on the van had the following characteristics: [note: 15]

(a) the scratch marks on the van's right rear fender were slanted; and

(b) there were vertical marks seen on the panels.

16 DW2 further explained that as a result of the collision, the plaintiff would have landed and hit his head against the road surface, thereby sustaining the head injuries as described in his medical report from the Singapore General Hospital. It would also have caused the bicycle to slide under the van's rear wheels causing the bicycle's front wheel to be dented the way it was. His summary and conclusion were as follows: [note: 16]

I. SUMMARY: SEQUENCE OF EVENTS THAT LED TO COLLISION

118. Traffic was light along Havelock Road in the direction from Ganges Ave towards Zion Road, approaching the intersection of Havelock Road/Havelock Link at about 7.30 a.m. on Saturday, 5 June 2010.

119. The driver of van GN8404J, Mr. Shanmugan Thanabal was travelling along Havelock Road and approaching towards the said intersection at about the material time.

120. His vehicle speed was between 21 km/h and 43 km/h.

121. At a distance of about approximately 20.3 metres towards the intersection Mr. Thanabal could not see a bicycle that was about to emerge from Havelock Link to his right because of a big tree obstruction.

122. The cyclist continued to ride towards the intersection at a speed between 12.9 km/h and 21.3 km/h without stopping at the stop-line of Havelock Link.

123. The bicycle then collided into the right rear fender of the van at the intersection; its front wheel was rolled over by the right rear wheel of the van; the cyclist impacted against the steel fender panel and fell to the roadway behind the van.

124. Mr. Thanabal instantly applied his brakes when he heard the collision, and then moved his van to the left side of the roadway.

J. CONCLUSION

125. Having completed investigations into this traffic accident the following factors have been identified which when brought together had led to the cause of this accident.

a) *The collision was attributed by the cyclist who did not slow down or stop at the stop-line when he exited from Havelock Link to the right of the van GN8404J.*

b) *The accident could have been avoided if the cyclist had ensured that traffic was clear along Havelock Road and safe for him before he travelled out from the stop-line of Havelock Link.*

c) *At travel speed between 21 km/h and 43 km/h, the van was travelling within the speed limit of 50 km/h in the incident location.*

d) *The cyclist could likely be spared his head injury if he had worn a helmet.*

[emphasis in original]

The parties' submissions

The plaintiff's submissions

17 The plaintiff's primary submission was that the defendant had failed to keep a proper look out for the plaintiff and therefore caused the accident. He submitted that the law was that every road user owed a duty of care to other road users regardless of whether one was travelling on a major road or minor road and the question of whether a motorist is negligent or not would depend on the factual circumstances as well as the overall weather (*Hum Weng Fong v Koh Siang Hong* [2008] 3 SLR(R) 1137 ("*Hum Weng Fong*") at [22]). Furthermore, in assessing the expert evidence, one must not be fallacious such that the speed of travel is overlooked and the circumstances of the moment unaccounted for: *London Passenger Transport Board v Upson and another* [1949] 1 AC 155 at 178.

18 The plaintiff submitted that the defendant was approaching an uncontrolled junction and had he kept a proper lookout, he would have seen the plaintiff approaching. The danger had been reasonably apparent as:

(a) both Havelock Road and Havelock Link were dual carriageways and the possibility of vehicles emerging on either side of Havelock Link would be reasonably apparent;

(b) the defendant said that he had slowed down by releasing his foot from the accelerator but he failed to look out properly for traffic;

(c) if the defendant had been more alert, he would have seen the plaintiff along the minor road way earlier before he approached the junction; and

(d) the defendant had gone at such a high speed that it was not possible to stop to avoid the plaintiff even if he had wanted to do so.

Accordingly, the defendant was under a duty to be careful and it was his failure to do so that caused the accident. Therefore, he was grossly negligent.

19 The plaintiff urged the court to disregard the testimony of the defendant. He cited the following instances in support of his submission:

(a) The defendant had stated in the police report that the weather was clear and dry and the traffic was light. However under cross-examination, he admitted that there were morning dews and therefore the weather was not clear. [note: 17] Hence, he had given wrong information to the police.

(b) The defendant had not kept a proper look out for traffic coming out of Havelock Link. He admitted that he did not see the plaintiff coming out of the road. [note: 18] This is because it was at the "wee hours of the morning shrouded with dew" when the plaintiff approached the uncontrolled junction. Thus the defendant's visibility would have been adversely affected. [note: 19]

20 Third, the plaintiff submitted that the evidence of his expert PW2 should be preferred to the defendant's expert, DW2, for the following reasons:

(a) DW2 had given evidence that the PRT of the van was 1.5 seconds but changed it to two to four seconds when he was cross-examined. [note: 20] He was imprecise with his answers and thus was not reliable.

(b) DW2 could not give a precise speed at which the bicycle was travelling as he did not conduct a crash test for the bicycle. [note: 21]

(c) DW2 could not ascertain the velocity and hence his calculation of the van and bicycle speed must be flawed. [note: 22]

21 In the circumstances, the plaintiff submitted that the defendant had not met the standard of care required of him and hence must be found liable for the plaintiff's injuries.

The defendant's submissions

22 The defendant's first submission was that the danger posed by the plaintiff was one which was too remote to be foreseeable. It would not be reasonable to impose a duty of care on the defendant to all road users that happened to be in the vicinity of Havelock Road. [note: 23] This was because the defendant would not have expected the plaintiff to be heading towards his van from an angle which was in his peripheral vision. It would be difficult for the defendant to notice the plaintiff. [note: 24] Second, the plaintiff did not have headlights on his bicycle to warn oncoming vehicles of his impending approach. [note: 25] As the type of danger was one which could not have been foreseen, there was no duty of care owed to the plaintiff.

23 The defendant's second submission was that even if he had owed a duty of care to the plaintiff, he was not negligent. The cases relied on by the plaintiff were *materially* different from the present facts.

24 The first case relied on by the plaintiff was *Ng Weng Cheong v Soh Oh Loo and another* [1993] 1 SLR(R) 532 which concerned rr 5 and 7 of the Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982). In that case, it was found that the appellant had not slowed down *at all* even though he was approaching a junction and had an obstructed view of the pedestrian crossing. Additionally, the plaintiff's reliance on *Hum Weng Fong* was also misconceived as that case concerned a slip-road with "parallel broken lines" while in the present case the plaintiff was obliged to stop at the stop line before proceeding to Havelock Road, which was the major road.

25 The present case did not concern any pedestrian crossings but instead concerned a major-minor road collision. It was DW2's evidence that a normal driver would only consider the plaintiff as a road hazard and had to be careful if the cyclist was "at the stop line and not behind the stop line". Since theoretically the plaintiff must have been about 2.6m behind the stop line, the defendant would

not have seen him as a road hazard that he should have been careful of. Furthermore, the defendant did not have an obligation to approach the junction at a speed which would enable him to stop for incoming vehicles from a minor road that did not observe the stop sign (*Ong Sim Moy and others v Ong Sim Hoe* [1968–1970] SLR(R) 363 ("*Ong Sim Moy*")). The defendant was also driving below the speed limit. [note: 26] Under the circumstance, the defendant would not have been able to take any action to avoid the accident whether in dry or wet weather. Therefore, he was not negligent.

26 The defendant further submitted that the plaintiff had been at fault. There was a stop line separating Havelock Link (the minor road) from Havelock Road (the major road). DW2 had testified that it was highly unlikely that the cyclist had stopped at the stop line. Thus the plaintiff had been negligent and the defendant could not be blamed for the accident.

My findings

Who had the right of way at the junction of Havelock Road and Havelock Link?

27 The evidence showed that there was a stop line at the junction as illustrated by diagram 140(b) of the Road Traffic (Traffic Signs) Rules (Cap 276, R 33, 1999 Rev Ed) across Havelock Link. This was not disputed by the respective experts of the parties. Thus, Havelock Link was a minor road, and motorists along Havelock Link towards the junction of Havelock Link and Havelock Road had a duty to stop at the junction before proceeding. That being the case, para 70 of the Highway Code (Cap 276, R 11, 1990 Rev Ed) requires traffic along minor roads to give way to traffic along major roads:

> **70**. When approaching a junction with a major road, slow down gradually and give way to traffic on the major road. Where there is a "STOP" sign, stop at the major road.

28 In *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 ("*Thorben*") at [48], Andrew Phang Boon Leong JA cited from *Charlesworth & Percy on Negligence* (Christopher Walton gen ed) (Sweet & Maxwell, 12th Ed, 2010) ("*Charlesworth & Percy*") at para 4–54:

> **Motor accidents.** It will be understood that any finding of contributory negligence will depend upon the circumstances of each individual case. *Whilst there is no general duty to foresee that another will be negligent, instances can and do arise where it will be prudent to anticipate the negligence of others, especially where experience commonly has shown such negligence to be likely or where resulting damage can be minimised.* [emphasis added]
>
> [emphasis in original]

29 While the defendant should be alert to the vagaries of what can happen on the roads, this duty is not an overly onerous one. The Court of Appeal in *SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)* [2007] 2 SLR(R) 211 ("*SBS Transit*") held that the law required every motorist to be aware of the imperfections and honest mistakes that might sometimes be made by other motorists (at [37]). However, as observed by Phang JA in *Thorben* at [50], one was not required to see other road users as potential threats against which he must protect and one must be allowed to drive on the roads with a degree of calm and confidence necessary for the orderly movement of traffic (at [32]). Indeed, the Court of Appeal in *Hum Weng Fong* at [22] accepted Lord Dunedin's view in *Fardon v Harcourt-Rivington* (1932) 146 LT 391 at 392 that "[p]eople must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities". This conforms with the standard adopted by the English courts where in *Berrill v Road Haulage* Executive [1952] 2 Lloyd's Rep 490 at 492, Slade J commented that:

You are not bound to foresee every extremity of folly which occurs on the road. Equally, you are certainly not entitled to drive upon the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. *You are bound to anticipate any act which is reasonably foreseeable, that is to say, anything which the experience of road users teaches them that people do, albeit negligently.* [emphasis added]

30 In the context of approaching road junctions, Phang JC (as he then was) stated in *Ong Bee Nah v Won Siew Wan (Yong Tian Choy, third party)* [2005] 2 SLR(R) 455 at [95] that:

…there is – in the absence of clear and compelling circumstances to the contrary – no legal duty on a driver to slow down automatically each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present.

31 The learned authors of *Charlesworth & Percy* also commented at paras 10–226 and 10–227 that:

Road junctions. When coming from a side road into a main road, the driver or rider of a vehicle should select such a moment as will allow him to enter the main road with safety. There is no principle of law that a driver is entitled to emerge blind, from a minor road where his vision is obscured, by inching forwards beyond his line of vision. … *At junctions with a "stop" sign and solid white line across the approach a driver must come to a halt at the line and wait before moving off.* A driver at a junction must not assume that a vehicle approaching from the right and signalling left will in fact turn left: it is proper to wait to make sure. where there is a doubt about priority at a junction there is a convention that the vehicle which has the other to its right is the give way vehicle.

It is an offence to disobey a "Slow" or "Halt" sign. However, although a vehicle on a minor road must give way, it is the duty of a vehicle on the major road to approach with caution. Should the possibility of danger be reasonably apparent, it would be negligent for a driver on the major road not to take precautions. *This does not involve keeping a foot over the brake pedal on the chance that a car, being driven dangerously, emerges suddenly from a side road without stopping, unless it ought to have been apparent that the danger of a collision was more than just a mere possibility.*

[emphasis added]

3 2 *SBS Transit* provided good guidance as to what kind of scenarios would require a driver to reasonably anticipate against (at [34]):

… At one extreme is a driver of a car on an open road in dry weather and perfect visibility. He may drive at whatever speed his car can permit him safely to attain – subject to the legal speed limit – if he does not see any vehicle, person or animal that may obstruct his path. *However, once there is other traffic on the road, or there are pedestrians or animals at the roadside, or there are obstructions to his view, he must contemplate the possibility that any of these may impinge upon his path and must adjust his speed accordingly to one at which he can effectively stop or otherwise avoid a collision.* If the road is wet, then he must slow down even further because his braking distance is increased. If visibility is low, then he must proceed at a speed at which he can stop the car the moment an obstruction comes into view. If there are children walking alongside the road, he must contemplate the higher possibility of a child suddenly dashing across his path as compared to adult pedestrians. All these are essentially matters of common

sense. … [emphasis in original]

33 Returning to the facts, the circumstances of the accident revealed that the defendant had taken all necessary precautions and was therefore not negligent. What was material in this case was that the plaintiff had collided into the rear side of the van instead of the front and the defendant was the one who was driving on the major road with the plaintiff emerging from the minor road into the major one. There was no evidence to indicate the speed of the plaintiff when he emerged into Havelock Road. DW2's testimony was unhelpful as it was speculative, it was the plaintiff who was under a duty to stop at the stop line before turning right. On the other hand, the defendant (a) was travelling within the speed limit; (b) had taken his foot off the accelerator pedal when approaching the junction; [note: 27] (c) had no prior knowledge that the view of motorists emerging from Havelock Link would be obstructed, resulting in them suddenly emerging from the lane; and (d) testified that the morning conditions did not impair his visibility in any way. It would thus be unreasonable to impose on him an obligation to place his foot on the brake in anticipation to brake upon approaching the junction. The defendant was not in breach of the traffic rules and he had driven in a manner that was fully compliant with the law and had the right of way. It was therefore not reasonably foreseeable for the defendant to expect the plaintiff to sudden entered the junction and collided into him.

34 On the above facts, I found that it was the *plaintiff* who was negligent. The plaintiff had a legal duty to stop at the stop line of Havelock Link to ascertain whether it was safe before he entered the junction. PW2 also agreed hypothetically that if it were him, he would have stopped at the stop line. [note: 28] However, the evidence showed that the plaintiff had failed to observe the traffic rules and pedalled into the junction without ensuring that it was safe to do so. In so doing, he got into an accident with the defendant. If he had obeyed this traffic rule and stopped at the stop line, he would have seen the defendant's van approaching and the accident would have been averted.

35 Moreover, the fact that there were obstructions to the plaintiff's view was no excuse for the plaintiff's failure to check. PW1 said that the plaintiff was familiar with the route as he used it regularly. As a regular user, the plaintiff must have been aware of the presence of trees, scrubs and buildings at the juncture that might have obstructed his view. Under such circumstances, it was incumbent on him to take extra care to ensure that there were no oncoming vehicles from Havelock Road. Hence, the presence of obstructions to the plaintiff's view did not excuse the plaintiff from his duty to check.

36 Finally, the headlights of the defendant's van were switched on as he approached the junction between Havelock Road and Havelock Link. Had the plaintiff exercised care and due diligence by stopping at the stop line, he would have noticed the van's headlights and avoided the accident. However, due to his failure to check, the plaintiff failed to see the defendant's van and did not give way to him. As a result, he collided into the right side near the rear wheel (driver's side) of the van. He was the negligent party.

Was the defendant at least contributorily negligent?

37 The last issue was whether the defendant had contributed towards the accident. The plaintiff referred to *Ng Swee Eng (administrator of the estate of Tan Chee Wee, deceased) v Ang Oh Chuan* [2002] 2 SLR(R) 321 ("*Ng Swee Eng*") in which the High Court attributed 20% contributory negligence to the motorcyclist riding on the major road and collided into the lorry who emerged from a minor road. This was a junction controlled by traffic lights. The plaintiff, however, he did not draw my attention to two other cases which were also of significant importance. They were *Mohamed Repin v Lim Yu Kee* [1965–1970] SLR(R) 200 ("*Mohamed Repin*") and *Ong Sim Moy* ([25] above), both concerning accidents occurring at the junctions of main roads and minor roads that were not

controlled by traffic lights. As findings of negligence and contributory negligence depend largely on the facts and merits of each case, a review of the facts in these cases is helpful.

38 *Ng Swee Eng* concerned a collision between a motorcycle going straight on the major road and a lorry which was turning into the major road from a minor one. This junction was controlled by traffic lights. The evidence established that the lorry driver did not check to see if there was oncoming traffic from the major road and that if he had checked, he could have stopped in time to allow the motorcyclist to pass. It was also held that a reasonable driver would have looked out for oncoming vehicles while turning out onto the main road.

39 However, the evidence also showed that the motorcyclist had been contributorily negligent as well. Belinda Ang Saw Ean JC (as she then was) found that while the traffic light had been in the victim's favour (at [63]), contributory negligence was a fact-intensive inquiry and he had to account for the carelessness of other road users (at [63]). The relevant portion of the judgment is set out as follows (at [63] and [65]):

> 63 ... A reasonable motorcyclist in the position of the deceased must anticipate that if he collides with a lorry he is likely to be injured more severely in a collision than the driver of a lorry. *That imposes a duty on the motorcyclist to take care of his safety.*
>
> …
>
> 65 The plaintiff said that from the sketch plan the lorry had traversed three quarters of the width of the second lane prior to impact. By the defendant's reckoning, the lorry had cut across half the width of the second lane. The length of the lorry is 5m 70cm. the width of the first lane "V–R" is 3m 70cm. thus, I find that prior to the impact, 2m of the lorry was across the width of the second lane which is 3m 30cm. as such and given the fact that the vehicle in question was a lorry, a reasonable motorcyclist in the position of the deceased would have seen the lorry. *The absence of tyre marks indicated that the deceased either did not see the impending collision in time or had misjudged the lorry's speed and distance from the point of impact.* I therefore find that the deceased was at fault in failing to keep a proper lookout. He had thereby contributed by his failure to take reasonable care of himself to his own death.
>
> [emphasis added]

In the circumstances, Ang JC apportioned liability in the proportion of 20% to the victim and 80% to the lorry driver (at [66]).

40 I was of the view that the plaintiff's reliance on *Ng Swee Eng* was misconceived. There was a material difference between that case and the facts of the present case. In the former, the motorcyclist could have seen the lorry turning into the major lane. It was an obvious and observable vehicle that was turning into the lane. The motorcyclist ought to have known that if he did not take care to anticipate any carelessness on the part of the lorry driver, he would suffer from more severe injuries in the event of a collision. In this case, it was impossible for the defendant to see the plaintiff in time or avoid the accident for the reasons that I will address below (at [44]–[47]). As such, while a reasonable person should and could have taken care to avoid the accident in the former, it was unreasonable to expect the defendant to take care and drive at an exceptionally slow speed in order to anticipate the plaintiff, who cycled out of the lane without checking for oncoming traffic and whom the defendant would not have seen in time.

41 It is also pertinent to note that in *Ng Swee Eng*, the accident took place at a junction

controlled by traffic lights with a yellow box. Hence, there was a general duty for motorists approaching such junction to exercise care and caution as they had to be alert to any traffic light changes which might turn against their favour. In this case, there were no traffic lights at the junction to regulate the traffic. At the junction, motorists coming from the major road had the right of way while the motorists from the minor road had to give way to motorists travelling along the major road.

42 The next case was *Mohamed Repin*, which involved facts which were similar to this case. There was a collision between a van and a bus at the major road and minor road junction. The plaintiff, who was driving the van, became blind as a result of the accident. The court held that the van driver was at fault as it went into the junction from the minor road and hence had a duty to stop and allow the bus from the major road to pass before attempting to cross the junction (at [12]). The court held at [13]–[17] that the bus on the major road had not been contributorily negligent:

> 13 Even accepting the story of the first defendant to be true that he stopped at the Halt line, nevertheless, he was to blame for the accident as he should have stopped there a bit longer to allow the bus, which was travelling on a major road and coming from his right, to pass before attempting to cross the junction. Instead of doing that he took a risk and crossed the junction in the face of the oncoming bus.
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> …
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> 16 … Even if the third defendant had seen the van in Dunman Road coming towards the junction he was justified in assuming that the van would halt at the halt line. As Lord Justice Willmer said in the case of *Brooks v Graham and Berrington* (English Court of Appeal, 1964) (a 1964 Court of Appeal Case which is unreported and a copy of the judgment was put in by consent by counsel for the second and third defendants):
>
> > Assuming, therefore, that Mr Berrington had seen the Dormobile van at the time when he reached the cross-roads, he would have been right to go on as he was going so as to get across; he would have been right to assume that the Dormobile would stop at the halt line and allow him to do so. It appears to me that this is a feature of the case which the learned judge has overlooked. He has treated the case as though it were one of a collision at an uncontrolled cross-road, or a cross-road subject only to a Slow sign. It seems to me that, when one is dealing with a cross-road subject to a halt sign, wholly different considerations apply. *If a vehicle on the major road is to approach such a cross-road in such a way that it can stop dead if a vehicle on the minor road fails to observe the halt sign, it would mean that it would have to slow down to little more than walking pace. That would have the effect for all practical purposes of bringing traffic on the major road to a standstill. That, as I said earlier, would represent a wholly unrealistic view of the requirements of present day traffic conditions.*
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> *17 I find, therefore, that the accident to the plaintiff was due solely to the negligence of the first defendant.*
>
> [emphasis added]

43 The facts of *Ong Sim Moy* are highly similar to the present case in that they both concerned cyclists who were involved in accidents with larger vehicles. There, the dependents of the deceased plaintiff who had been involved in the accident with a lorry driver sued for compensation on the basis that the lorry driver who had approached the junction from the major road had been negligent.

However, the facts were that the deceased plaintiff, the cyclist, had failed to stop at the halt line and collided into the lorry driven by defendant along the main road. The court at [5] held that the cyclist was solely to blame for the accident:

> 5 Taking all the matters before me into account, however, it seems to me that the cyclist was wholly to blame even assuming that he had previously stopped at the "Halt" line. *It was contended on his behalf that the defendant should have seen him inside Jalan Kayu and proceeded with caution accordingly so as to avoid a collision. I am of the view that this argument can also be advanced with even greater force the other way, namely, that the cyclist should have seen the lorry approaching from his right and waited a little longer in order to ensure that the major road was safe to turn into before he proceeded to turn right.* Following the reasoning of F A Chua J in the case of *Mohamed Repin* ([2] *supra*), to which I have referred earlier, the cyclist should have stopped a little longer at the "Halt" line before attempting to turn into Yio Chu Kang Road. Instead of doing that he took a risk and crossed in the face of the oncoming lorry which I find was travelling at a moderate speed on a major highway. In my view, the defendant did all he could, in the circumstances, to avoid a collision by applying his brakes and swerving to his right and the damage shows fairly clearly that the cyclist ran into the front offside mudguard of the lorry. This is supported by the direction of the brake mark *QR* which, even if it were made by the nearside tyres of the lorry, commenced on the defendant's side of the road. There was no other traffic and it is difficult to see what other avoiding action the defendant could have taken at the junction, lit only by one street lamp as it was, short of literally crawling along at walking pace in order to ensure that no foolhardy or reckless person would come shooting out of Jalan Kayu into his path with a view to crossing in front of the lorry rather than behind it. Counsel for the plaintiffs sought to impose a heavier duty of care on the defendant than on the deceased mainly on the ground that the deceased was only a cyclist whereas the defendant was in charge of a lethal weapon like a lorry. That may well be so but *I am quite satisfied that the cyclist was turning right into Yio Chu Kang Road when it was absolutely unsafe to do so, if not extremely dangerous. In the face of the authorities I find myself unable to allow my sympathies with the plaintiffs on their bereavement and their consequential loss of a bread-winner to decide, following Lang's case (*[1] *supra), that the possibility of danger was so apparent as to necessitate a finding of even a slight degree of negligence on the part of the defendant.* …
>
> [emphasis added]

44 In this case, I found that there were two major factors which showed that the plaintiff had to bear sole responsibility for the untoward events that had befallen him. First, the defendant was within the speed limit. He had been driving along Havelock Road, a major road, towards Zion Road at less than 45 km/h [note: 29] and thus was entitled to travel "with a degree of calm and confidence" (see *SBS Transit* at [32], cited in *Thorben* at [50]). While the defendant had to guard against careless behaviour from other road users even though he might have been driving below the speed limit, he did not have a duty to anticipate all sorts of careless road behaviour from the other road users. His duty only covered foreseeable dangers.

45 On the facts, I found that it was unreasonable to expect him to anticipate the careless road behaviour of the plaintiff. The evidence showed that it was unlikely that the defendant would have been able to see the plaintiff riding out from Havelock Link without stopping at the stop line and take evasive action in time (see [13]–[14] above). The following excerpt from the defendant's examination-in-chief is set out as follows: [note: 30]

> … I was going towards Zion Road where I was travelling at about 45 kilometres---below 45

kilometres. The road was clear. When I crossed the---when I crossed the Havelock Ring---Link Road, I heard a bang at the---at the back of my van. I immediately braked. I stopped, I came out and saw---I---I did not come out from the vehicle. I moved my vehicle to the side---to the side of the road. I saw the---I saw the cyclist on the ground, he was bleeding. …

46 Furthermore, it was not the defendant but the *plaintiff* who could have avoided the collision with the plaintiff if he had been slower. This position is consistent with the holdings in all the other cases in which parties have emerged from minor roads without stopping. They were under a duty to check before moving off from the junction and were negligent if they did not do so (see *Mohamed Repin* and *Ong Sim Moy*).

47 Second, PW1's testified that she had presumed that the plaintiff's bicycle had "the normal old fashioned type of light" as she was not present at the time and place of the accident. However her testimony contradicted the photographic evidence which revealed that the bicycle did not have headlights. [note: 31] This was similarly observed by PW2.

48 The absence of bicycle lights was an important finding as it meant that the plaintiff was less visible to the defendant. Both PW2 and DW2 opined that the earliest point in time at which the defendant could have seen the plaintiff near the stop line of Havelock Link was when the plaintiff was about 20.3m from the point of impact (see [9(d)] above). DW2 further testified that it would have required a distance of 29.85m for a vehicle travelling at 43 km/h to stop the vehicle with night lighting conditions as the PRT would be about 2.5 seconds. As it was the defendant's evidence that he had been driving below 45 km/h, I found that it was believable that the defendant had not seen the plaintiff emerging from Havelock Link in time to avoid the collision. Consequently, I found that the defendant was not contributorily negligent.

Conclusion

49 This case was undoubtedly an extremely unfortunate one. I empathised with the wife and children of the plaintiff, who is likely to be permanently injured. However, the weight of the evidence was against the plaintiff. I was unable to grant the plaintiff any relief as the circumstances showed that it was the plaintiff who was solely negligent by failing to stop at the stop line at the Havelock Link-Havelock Road junction. I thus dismissed his claim.

[note: 1] Notes of Evidence ("NE") Day 2 at p 18, lines 16–18.

[note: 2] NE Day 2 at p 19, lines 24–25.

[note: 3] Agreed Bundle ("AB") at p 128.

[note: 4] AB at p 81.

[note: 5] AB at p 82.

[note: 6] AB at p 85.

[note: 7] AB at p 16.

[note: 8] AB at p 33.

[note: 9] NE Day 1 at p 24, line 20–23.

[note: 10] AB at p 17.

[note: 11] NE Day 1 at p 13, line 28.

[note: 12] AB at p 42.

[note: 13] NE Day 2 at p 83, lines 8–21.

[note: 14] NE Day 2 at p 85, line 31.

[note: 15] AB at p 51.

[note: 16] AB at p 60.

[note: 17] Pf's submissions at paras 13–14.

[note: 18] Pf's submissions at paras 18–19.

[note: 19] Pf's submissions at para 44.

[note: 20] Pf's submissions at para 21.

[note: 21] Pf's submissions at para 25.

[note: 22] Pf's submissions at para 33.

[note: 23] Df's submissions at para 47.

[note: 24] Df's submissions at para 44.

[note: 25] Df's submission at paras 45–46.

[note: 26] Df's submissions at para 48.

[note: 27] NE Day 2 at p 29, lines 8–10.

[note: 28] NE Day 1 at p 30, lines 10–13.

[note: 29] NE Day 2 at p 30, line 23.

[note: 30] NE Day 2 at p 20, lines 13–21.

[note: 31] AB at p 74.