

Tan Siok Yee (suing by the committee of the person and estate, Liew Chee Kong) and Others
v Chong Voon Kee Ivan
[2005] SGHC 157

Case Number : Suit 608/2004

Decision Date : 29 August 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Muthu Kumaran (Justicius Law Corporation) for the plaintiffs; Gan Seng Chee and Anna Quah (Ang and Partners) for the defendant

Parties : Tan Siok Yee (suing by the committee of the person and estate, Liew Chee Kong); Liew Chee Kong; Liew Hoe Peng; Liew Yian Yee; Liao Hao Yu a minor suing by Liew Chee Kong his father/next friend — Chong Voon Kee Ivan

Tort – Negligence – Contributory negligence – Whether motorists solely responsible to look out for pedestrians – Whether pedestrians have duty to exercise reasonable care for own safety

Tort – Negligence – Duty of care – Motorists' duty of care – Whether motorists' duty of care breached by reversing vehicle over long distances

Tort – Negligence – Res ipsa loquitur – Whether burden of proving negligence of defendant on plaintiff

29 August 2005

Judgment reserved.

Lai Siu Chiu J:

Introduction

1 This case involves a motor accident which took place on 28 March 2002 and which resulted in Tan Siok Kee ("the first plaintiff") sustaining serious head injuries. The first plaintiff remains in a comatose state to date. I am tasked with determining who is liable for her injuries.

The facts

2 The first plaintiff is the wife of Liew Chee Kong ("the second plaintiff"). The third to fifth plaintiffs are the children of the first and second plaintiffs. Ivan Chong ("the defendant") was at the material time a sales executive employed by a company which office was situated at 5 Hong Kong Street.

3 On 28 March 2002, at about 9.55am, the defendant and two of his colleagues decided to go for breakfast at a place called Killiney Kopitiam ("the coffee shop") located at 11 Lorong Telok ("the road") which road is bounded by North Canal Road on one side and by Circular Road on the other side. The defendant drove his vehicle, a Suzuki station wagon numbered SQR47R ("the car"). His front-seat passenger was Sim Kok Leong ("Sim") while Lai Wye Jin ("Lai") sat in the centre of the rear seat.

4 The threesome arrived at the road at about 10.05am. The road has two lanes for one-way traffic and has parking bays on both sides. The coffee shop is situated on the right side as one enters the road from North Canal Road. Noting that all the parking bays were occupied, the defendant decided to wait for a bay to become available.

5 The defendant noticed that a van numbered GN3066J ("the van"), parked in a bay on the left side of the road, had its driver's door open and a man appeared to be doing some packing. He moved forward and asked the man whether the latter was moving out of the parking bay. Getting a negative answer, the defendant moved the car forward to the right side of the road ahead of the coffee shop and put on his handbrake.

6 While waiting for a parking bay, the defendant and his colleagues engaged in conversation with the windows rolled up and the air-conditioning switched on in the car. After waiting for about five minutes, the defendant noticed from his rear view mirror that a vehicle parked somewhere between parking bays 15 to 19 on the left side of the road had reversed out of its parking bay and had moved forward in the direction of Circular Road. The defendant waited for the vehicle to pass him on the left before he started reversing the car into the parking bay. After releasing his handbrake, the defendant turned his head to the left to look back and to check his blind spot. He then checked his rear view mirror and two side mirrors. Noting that the road was clear, the defendant shifted the car into reverse gear and started to reverse slowly.

7 The defendant intended to reverse in a straight line along the right lane before moving forward to the left lane and reversing into the empty parking bay. In the course of reversing, the defendant continued to maintain a lookout in his rear view mirror as well as the side mirrors. He had both his hands on the steering wheel.

8 After he had reversed for about two to three seconds (according to his estimation), Lai suddenly saw a woman's face in the rear mirror of the car and yelled out a warning. The defendant heard a bang and felt a light impact. He applied the brakes of the car immediately, pulled up the handbrake and put on the hazard lights. The defendant thought he had hit a vehicle at an angle. He (and his passengers) alighted from the car. They found the first plaintiff lying unconscious on her back on the ground behind and parallel to the rear of, the car. According to the police sketch plan, [\[note: 1\]](#) the car stopped abreast of parking bay 7A which is on the right side of the road. The coffee shop is adjacent to parking bays 15 and 16 on the left side of the road.

9 At the material time, the first plaintiff worked at the coffee shop as a supervisor. Her duties included going to United Overseas Bank Ltd ("the Bank") near Boat Quay between 10.00am and 11.00am daily, to deposit cash into the account the coffee shop maintained with the Bank. The first plaintiff was on her way to the Bank that morning when she was knocked down.

10 The defendant was subsequently charged with failing to drive in an orderly and careful manner without due regard for the safety of others, *viz* the first plaintiff. He was offered, which he accepted and paid, a composition fine of \$500 on 29 August 2003 to compound the offence.

11 On 11 October 2002, the second plaintiff was appointed the committee of the person and the estate of the first plaintiff in Originating Summons No 1413 of 2002.

The pleadings

12 In the Statement of Claim, the plaintiffs alleged the defendant caused the accident by, *inter alia*, failing to keep any and/or a proper lookout and failing to observe the presence of the first plaintiff along the road.

13 In the Defence, the defendant averred that he had lawfully reversed the car along the road when the first plaintiff suddenly emerged from the rear and the left of the car without proper care and/or attention and thereby caused the accident. The defendant pleaded that the collision was due

to an inevitable accident that occurred without negligence on his part.

14 The defendant went on to allege contributory negligence on the part of the first plaintiff. He denied the allegation of injuries, loss and damages particularised in the Statement of Claim.

The trial

15 The two passengers in the car, *viz* Sim and Lai, did not testify even though both had given statements to the defendant's insurers on 17 and 19 August 2002 respectively. Neither did Tham Weng Kuen ("Tham") the driver of the van and Nurizzah bte Khalil, an eye-witness, both of whom had lodged police reports.

The plaintiffs' case

16 Liew Hoe Peng,[\[note: 2\]](#) who is the third plaintiff and the eldest child of the first plaintiff, was a witness. However, large portions of his testimony were expunged from his Affidavit of Evidence-in-Chief as he deposed not to facts but to hearsay evidence, gave his opinion of the first plaintiff's daily routine and how the accident probably occurred and contained submissions. His evidence was irrelevant.

17 Another witness called by the plaintiffs whose testimony was also irrelevant was that of Soh Lee Yong ("Soh"), the manageress of the coffee shop. Soh[\[note: 3\]](#) testified that she was in Chinatown that morning when she received a telephone call from her staff informing her of the accident. She rushed to the scene and found the first plaintiff still lying on the road. By then the first plaintiff had been moved from her original position by an employee of the coffee shop. Soh stayed with the first plaintiff until an ambulance arrived. She then accompanied the first plaintiff to the hospital. What Soh learnt of the accident was told to her by her staff, none of whom saw the accident themselves. Soh's testimony was hearsay.

18 The last witness of the plaintiffs was Assistant Superintendent of Police James Lim ("ASP Lim") who is the head of licensing and testing in the Traffic Police department. In compliance with the subpoena served on his department, ASP Lim[\[note: 4\]](#) produced two handbooks of the Traffic Police, *viz* the sixth editions respectively of the *Basic Theory of Driving* and *Advanced Theory of Driving*.[\[note: 5\]](#)

19 ASP Lim testified that the handbooks provided recommendations on driving and were not exhaustive of every driving situation that might occur. However, although compliance with the handbooks' recommendations was not compulsory, he said failure to comply meant that a learner driver would not pass the theory test for driving.

20 ASP Lim was referred to ss 111 to 115 of *Advanced Theory of Driving* ("P2") which sections recommended techniques on reversing. He opined that the traffic police did not encourage driving in reverse for a long distance. Questioned by the court, he clarified that anything more than reversing into a parking bay should be avoided. As for a pedestrian, he agreed that the person should look in both directions before he/she crossed a road, even in one-way streets.

The defendant's case

21 There were three witnesses who testified for the defendant who was also a witness. One of them was Denny Sim ("Denny") who was the executive director of Crawford & Company International Pte Ltd ("Crawford"). Crawford was instructed by the defendant's insurers to interview the defendant,

Sim and Lai and by the defendant's solicitors to take photographs and measurements of the accident site. Denny [note: 6] took the photographs and measurements while his (former) colleague Mohamed Raffi bin Sharwan ("Sharwan") interviewed the defendant, Sim and Lai. The photographs taken by Denny included those taken from inside the car, to ascertain the extent of vision outside of the car.

22 Sharwan [note: 7] recorded and transcribed the statements that he had obtained from the defendant and the defendant's passengers. His evidence was not particularly useful since, as stated earlier at [15], save for the defendant, neither Sim nor Lai testified.

23 As the defendant's version of events that transpired that fateful day has been set out earlier (at [3] to [8]), I turn to the evidence that was adduced from him during cross-examination.

24 The defendant said he did not see the first plaintiff before the collision. The defendant's evidence suffered from lack of details, was vague in several respects and was generally unhelpful. He could not recall whether his hazard lights were on nor where the car was dented. (The police photographs showed the car to be dented on the right side of its rear ladder). Neither could he recall the position of the first plaintiff when the car collided into her, although the defendant was certain he did not run over her. The defendant also could not remember whether he had asked his passengers for help in reversing. However, had he seen her, the defendant asserted he would not have knocked down the first plaintiff. The defendant appeared to want to forget the entire episode. It could be because it was the first time he had knocked down a pedestrian although he had previously been fined and had been given demerit points, for knocking down a motorcyclist. (The defendant explained in cross-examination that the previous accident took place on a wet road and his vehicle had skidded at a traffic light).

25 Although he would not describe himself as a "regular" at the coffee shop, the defendant had visited that place two to three times in the past six months and after the accident, he recognised the first plaintiff as someone who had served him previously. He agreed that he was aware the presence of a number of food outlets along the road meant that there was a greater risk of pedestrians crossing the road.

26 Questioned why he did not drive off into Circular Road, make a round and return to the entrance of the road while waiting for a parking bay to be available, the defendant explained he had parked by the roadside. If he was to accept counsel's suggestion and make a round, he might as well go somewhere else. He said it did not occur to him that it would have been safer for him to make a round and return to the entrance of the road and wait there, adjacent to either of the first two parking bays. To get the car into the vacant bay, the defendant would have had to reverse the length of seven to eight car park bays. The defendant agreed such an action was not the right thing to do. The defendant also agreed that reversing along the road was a more difficult (albeit more convenient) process than driving off and returning to the entrance of the road.

27 I should at this juncture make two pertinent observations. First, the original rear mirror in the car had been replaced by a larger and broader mirror by the defendant. Second, the defendant had learnt to drive while serving his national service. He drove a three tonne truck as well as a minibus while in the army. During his army days, the defendant was taught not to look back but to rely on the side and rear view mirrors of the vehicle when reversing. As he continued this method of reversing after his discharge from the army, changing the rear view mirror of the car to a larger one helped to give the defendant a better view of the back.

28 The defendant recalled he was driving at a "normal" speed (estimated to be 10–15km/h) that morning. Pressed further, the defendant said he could not remember his speed while reversing. The

defendant could not recall if the car's radio was on although Sim said he (Sim) was listening to music, according to Sim's statement to Crawford. The defendant recalled he wanted to get into parking bay 17 which was two parking bays behind bays 14 and 15 on the same side as the coffee shop.

29 The defendant had an expert witness. He was Christopher Curtis O'Neill Marks ("Marks") a professional (mechanical) engineer from New Zealand who is also a forensic scientist and motor vehicle accident analyst. Marks was tasked with assessing the timing relationship between the first plaintiff's actions and those of the defendant when the defendant decided to reverse and looked behind to see if the road was clear to do so. Marks' further objective was to assess the extent to which the defendant could have viewed the first plaintiff from the reversing stage onwards until the collision and whether the defendant could have avoided the accident.

30 At the outset, I should point out that Marks[\[note: 8\]](#) visited the road (twice) before the first hearing and, by the time of the second hearing, he had also inspected a car of the same model as the defendant's car. Marks took measurements (width and length) of the road, the car and the parking bays. For purposes of his report, Marks was provided with all the relevant documents including the police sketch plan and photographs of the accident scene, the police reports lodged by the defendant and his two passengers and the statements they gave to Crawford. He noted that there were minor differences between the measurements taken by the police and Crawford which were not material, although Crawford was clearly wrong in its positioning of the coffee shop *vis-à-vis* the left parking bays. Based on the measurements he took, Marks calculated[\[note: 9\]](#) the stopping distances of the car based on various speeds it travelled or would have travelled at the material time.

31 As part of his analysis, Marks had to estimate the location of the point of impact. He then used that point as a reference for all time and distance relationships between the first plaintiff and the rear of the car.

32 Based on the evidence, it was Marks' opinion that the first plaintiff left the kerb at about the dividing line of parking bays 14 and 15, outside the coffee shop. There would have been a gap between the vehicles parked in the two bays for her to pass through. Marks further opined that as the first plaintiff was not run over, the car must have stopped very quickly after the impact. Consequently, the point of impact would very likely have been abreast of the dividing line between parking bays 14 and 15. It was also likely to have been within a few metres towards Circular Road from the rear of the car. The first plaintiff was likely to have crossed the road almost at right angles

33 Using the measurements taken by the police of the distance (4.6m) across the road between the parking bay edge markings, the width (1.4m) of the car, the damaged area (about 0.4m on the rear left side) of the car, and the parking bay width (2.3m), Marks calculated that the distance from the edge of the left parking bays 14 and 15 to the damage on the car was about 2.5m. The distance from the left kerb to the damaged area of the car was about 4.8m. He estimated that the first plaintiff would have walked between 2.5m and 4.8m from her first available visibility to the defendant, until she reached the point of impact. He discounted, as having a negligible effect, any small angle at which she might have walked across the road.

34 Marks then relied on statistics from pedestrian walking tests conducted by Texas A & M University showing that 70% of 57 female test subjects aged between 50 and 59 years of age (which was the first plaintiff's age group) would be expected to walk at between 1.31m and 1.74m per second. At that speed range, he estimated that the first plaintiff would have walked from the edge of parking bays 14 and 15 to the point of impact in 1.44 to 1.91 seconds. Similarly, she would have walked from the edge of the left kerb to the point of impact in 2.76 to 3.66 seconds nominally in 3 to 4 seconds at the most.

35 Therefore, to be detected by the defendant as a potentially emerging hazard, the first plaintiff would have to be seen by the defendant as she became visible to him crossing onto the road from about 3 to 4 seconds prior to impact. If the defendant had looked and decided to reverse at more than 3 to 4 seconds prior to impact, the first plaintiff was most unlikely to have been visible to him as a potential hazard. At any stage thereafter, the defendant would have been able to detect the first plaintiff as she came into view only by looking as he continued reversing.

36 In order to assess the timing relationship of the defendant's action to those of the first plaintiff's, Marks had to determine the expected time that the defendant would have taken from his last deciding look behind the car until it started moving, together with the expected time that it would then have taken to reach the point of impact. Based on tests he and other researchers had conducted, Marks found that the time lapse between a driver viewing an expected signal to proceed and a vehicle's first movement is a minimum of one to two seconds. This is made up of the decision time and the implementation time each of which takes between 0.5 and 1.0 seconds. Once moving, tests done by Marks and other researchers showed that reversing vehicles normally accelerated at 0.05 to 0.10 g (where $g = 9.8\text{m/s}^2$) up to a speed of 5km/h to 15km/h, depending on the circumstances.

37 Marks noted there was no clear evidence from the defendant or his passengers on the location at which the car started to reverse. However, the position of the first plaintiff after the collision showed the rear of the car as just beyond the motorcycle parking bays on the right side. His best estimate therefore was that the car stopped with its rear one to two parking bays beyond the motorcycle parking bays. The car would then have travelled 5m to 10m from this location to the point of impact. After listening to the oral evidence, Marks revised these distances to between one and a half and two parking bays' lengths. His measurement of the length of one parking bay lot was 5.2m, [\[note: 10\]](#) as against Crawford's measurement of 5.4m. The distance travelled by the reversing car would therefore range from 7.8m to 8.1m and 10.4m to 10.8m. At an acceleration of 0.05 to 0.10 g, the car would have travelled 10m in 6.39 seconds and reached a speed of about 11km/h according to Marks' calculations. Given his earlier calculations, the time lapse from the moment the defendant last looked back to the point of impact was likely to be between 4.19 and 8.39 seconds, nominally 4 to 8 seconds minimum.

38 The next issue which Marks addressed was reversing technique. He opined that drivers of vehicles have limited options for detecting emerging pedestrians. In order to monitor left and right and behind, it was necessary for a driver to carry out a repeated scanning sequence of all three directions. Twisting around while driving was both awkward and of limited scope. It was difficult to see directly behind and to the right of a vehicle by twisting to the left. The same problem existed if twisting to the right.

39 Marks opined that using the rear view mirrors was likely to give a better ability to monitor the views to the left, right and behind provided the mirrors covered the necessary fields. He added that the use of rear view mirrors while reversing would more likely detect an emerging pedestrian in the circumstances of this accident than twisting around to look behind. Further, tests have shown that drivers take at least about 0.5 second to switch between views and at least 1.0 second to dwell upon each view when checking for possible objects. Thus the minimum elapsed time between repeats of any particular view amongst the three required for the defendant when reversing was about 3.5 to 4.5 seconds.

40 Therefore, if the defendant had maintained a continuous sequence of monitoring the back by the car's rear view mirrors, he could have completely missed detecting the first plaintiff from the moment she left the kerb outside the coffee shop and came into view until the impact occurred. This

would apply to any normal attentive driver reversing in the same circumstances. Earlier detection of the first plaintiff's presence would only occur if the view scanning sequence happened to coincide with her coming into view after she stepped off the kerb, while the defendant was looking to the left. If the defendant had seen the first plaintiff, a reaction time of at least about 1.0 second would be expected before he started braking. At the estimated speed of 11km/h and an expected braking deceleration of 0.7 g, it would have taken about 0.45 second to stop. Therefore, in order to avoid the collision by stopping, the defendant's detection of the first plaintiff would have to occur about 1.5 seconds prior to the car's rear reaching the impact location. At that stage, the first plaintiff would have either been at or just past the parking bay edge markings. The defendant would have had no more than about 3.0 seconds to look in her direction and detect her. This was less than the scanning repetition time and thus could have been achieved only by chance. On the available evidence, the impact most probably occurred after a reversing movement of 5m to 10m. The most probable cause was the first plaintiff failing to detect the reversing car as she crossed the road.

41 While he agreed that the technique recommended by the traffic police in ss 112 to 115 of the handbook (P2) was a correct method of reversing, Marks qualified his answer by pointing out that it was not the only correct method.

42 As for the defendant's act of reversing down a one-way street with vehicles parked on both sides, Marks seemed to think there was nothing wrong. He opined that reversing a short distance to reach a parking bay being vacated was essential because the road width was such that clearance ahead of the vacating vehicle was required. However, he acknowledged that if reversing in a one-way street was prohibited under Singapore law (of which he was not familiar), then the defendant would have been responsible for a transgression that led to the collision.

The findings

43 Whilst I do not doubt Marks' credentials as an expert, his report was an *ex post facto* surmise of what was likely to have happened at and before the collision. The court had no reliable eyewitness account of what actually transpired. The first plaintiff could not testify while the defendant's oftentimes vague testimony did little to throw light on the distance and speed at which he reversed the car before it hit the first plaintiff.

44 The best evidence before the court on the collision was the damage to the car itself. It was not in dispute that the damage was not serious but only a shallow dent to the right of the ladder at the left side of the rear. This was consistent with the police report lodged by Nurrizah bte Khalil who said she saw the first plaintiff hit her head on a metal ladder at the back of the vehicle. Unfortunately, as stated earlier at [15], Nurrizah was not called to testify. Counsel for the plaintiffs informed the court [note: 11] that Nurrizah had migrated to Boston in America while the van driver, Tham, was not in Singapore during the trial period. With greater effort (albeit at some cost in the case of Nurrizah) these witnesses could and should have been called by the plaintiffs to testify. My comment would equally apply to Sim (who was in Hong Kong at the time of trial) and to Lai who was doing his national service. It was not for counsel for the defendant or the defendant, but for the court, to decide whether the evidence of Sim or Lai was material.

45 It was Marks' opinion (which I accept) that the low impact and slight damage to the car coupled with the absence of skid marks were consistent with the defendant's testimony that he had reacted to Lai's warning and had braked before the impact. As a result, the first plaintiff was not run over and she did not sustain lower leg injuries. Yet the first plaintiff was and is still comatose. Why? I believe the injuries to the first plaintiff resulted from her head hitting the car's body and/or ladder and then hitting the road when she fell to the ground. At this juncture, I should point out that none of the

medical reports pleaded in para 16 of the Statement of Claim were annexed to the pleadings nor did they appear in any of the bundles of documents produced in court.

46 Why did the defendant not see the first plaintiff? The likely explanation was because she came within the blind spots of the car when she attempted to cross the road. When she eventually came into the defendant's view (confirmed by Lai's warning) it was too late. Photographs taken by Denny from Crawford[\[note: 12\]](#) showed that a significant blind spot was created by the left rear corner structure and that a greater blind spot was created by the right rear corner structure of the car, the right structure being wider than that on the left side.

47 The car's blind spots were exacerbated by the height of the car which was 1.691m.[\[note: 13\]](#) Marks' inspection[\[note: 14\]](#) of a car of the same model as the defendant's car revealed that the height of the lower edge of the rear window was 1.1m laden. The driver's seat measured from road level to the bottom of the rear window was similar. Consequently, any object or part thereof that was lower than that height would not be seen when close to the car.

The issue

48 The only issue that needs to be determined in this case is who caused the collision? The accident was a tragedy as far as the first plaintiff's family was concerned. The other four plaintiffs are understandably aggrieved and hold the defendant responsible for the first plaintiff's present unfortunate condition from which she is unlikely to recover.

The law

49 At law, the burden is on the plaintiffs to prove that the defendant was negligent in order to succeed in this action. In this regard, the plaintiffs' reliance on the maxim *res ipsa loquitor* in their opening statement is misconceived. *Res ipsa loquitor* is only applicable where the facts proved are more consistent with negligence on the part of the defendant than with other causes. As was rightly pointed out in the defendant's submissions, the burden is on the plaintiffs to prove there was negligence on the part of the defendant, which negligence caused the collision between the car and the first plaintiff. It is only when the plaintiffs have proved a *prima facie* case of negligence on the part of the defendant that the evidential burden then shifts to the defendant to negative his liability by proving it was an inevitable accident, as pleaded in the Defence.

50 What then is the duty of care on the part of the defendant as a motorist? According to *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 10th Ed, 2001) at para 9-186:

[T]he 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."

The above principles were culled from various cases cited by the learned authors.

51 The learned authors then went on to say (at para 9-219):

It is the duty of the driver or rider of a vehicle to keep a good look out. Indeed, a driver will be held negligent if he fails to notice in time that the actions of another person have created a potential danger. He must look out for other traffic, which is or may be expected to be on the

road, whether in front of him, behind him or alongside him, especially at crossroads, junctions and bends.

52 There is a corresponding duty on the part of pedestrians as road users as can be seen from the following passage (at para 9-231) from the same textbook:

Where pedestrians seek to cross the road either near to or at places other than pedestrian crossings, they have no specific precedence and the responsibility for causing an accident more often than not will be shared between the pedestrian and the vehicle driver. Nevertheless, the court has held that a pedestrian may cross a road at any point he chooses, provided that he takes reasonable care for his own safety. He is not obliged to cross over the road only at an adjacent or nearby light-controlled crossing [see *Tremayne v Hill* [1987] RTR 131].

The decision

53 It was the opinion of the defence expert, Marks, that the first plaintiff was entirely to blame for the collision. Conversely, the second to fifth plaintiffs blamed the defendant for what had happened to the first plaintiff, their counsel relying on *Zhang Wan Bo v Poh Kay Leong* [2002] SGHC 274 for his submission that the defendant was solely liable for the accident.

54 Based on the evidence adduced in court, it would appear that the following events took place on that fateful morning of 28 March 2002:

- (a) The defendant and his two passengers, Sim and Lai, arrived at the coffee shop at about 10.05am.
- (b) Finding all the parking bays occupied, the defendant decided to wait for a bay to be vacated.
- (c) While waiting for a vacant parking bay, the defendant moved the car forward to the right side of the road ahead of the motorcycle bays while engaging in casual conversation with his passengers.
- (d) Based on the police sketch plan, the parking bay which became vacant (bay 17) necessitated the defendant having to reverse a distance of at least four to five parking bays from where he waited.
- (e) The defendant reversed the car slowly (at maybe 10–15 km/h) judging from the absence of brake skidding marks on the road.
- (f) The defendant knocked down the first plaintiff after he had reversed one and a half to two parking bay lengths.
- (g) The defendant did not see the first plaintiff before Lai's warning.
- (h) It was a light impact between the car and the first plaintiff (judging from the slight dent to the car). Hence, the first plaintiff did not suffer any lower leg injuries. However, it caused the first plaintiff to knock her head on the rear body and ladder of the car and then on the road when she fell.
- (i) The first plaintiff sustained serious head injuries from the collision or, more likely, from her fall.

55 Although the court will not lightly disregard the testimony of any credible court expert, I am not prepared to accept the evidence of Marks without some reservations. The fact that the plaintiffs did not challenge such expert testimony did not mean (as the defendant rightly acknowledged in the closing submissions) that the court must accept it without question. Granted, Marks was very thorough in his investigations – he inspected the road and a car of the same model as the defendant’s car, took measurements of both, and reworked (retrospectively based on various data) to the best of his abilities the possible speeds (and distances) at which the defendant could have reversed the car at the material time. Marks then relied on empirical data to estimate the speed at which the first plaintiff would have walked just before the collision. He then concluded that the defendant could not see the first plaintiff in time to avoid knocking into her; she was thus to blame.

56 There was a glaring omission in Marks’ report. I find that he was too eager to absolve the defendant from liability and in the process forgot his role as an independent expert. Marks overlooked the fact that the defendant (by his own admission) attempted to reverse a fairly long distance (more than the recommended one to two parking bay lengths according to ASP Lim’s testimony) to get into the vacant parking bay. In my view, a reasonable driver would not have attempted to reverse such a distance to get into the vacant parking bay. It was not a valid defence for the defendant to say that it was inconvenient for him to make a round by driving out of and back to the entrance of the road again to get into parking bay 17. Such laziness cannot be overlooked; it was a contributing factor to the accident.

57 In the closing submissions of the defendant, it was argued that he was lawfully reversing the car when the first plaintiff suddenly emerged, and the collision was an inevitable accident. I have difficulties accepting this submission in the light of my observation in [56] above. Marks himself testified that there were blind spots in the car which would prevent the defendant from having an unobstructed rear view when he reversed the car, be it by relying solely on the rear and side mirrors (as recommended by Marks) or by a combination of looking through the rear view mirror and looking back (as recommended in the traffic police’s handbook P2). That being the case, a reasonable and prudent driver would not have reversed almost the entire length of the road to get into a parking bay.

58 At the same time, I have no doubt that the first plaintiff was equally to blame. Counsel for the plaintiffs submitted that there was no evidence to support the conclusion put forth by the defendant’s closing submission that she had stepped suddenly into the road and that the first plaintiff had failed to exercise due caution for her own safety when she crossed the road. With respect, I disagree. Why else would she not have seen the car and a station wagon at that, being reversed?

59 There is no provision in the Road Traffic Act (Cap 276, 1997 Rev Ed) or in its regulations or in our Highway Code (Cap 276, R 11, 1990 Rev Ed) that puts the onus solely on motorists to look out for pedestrians. At law, there is a corresponding duty on the part of pedestrians to watch out for oncoming traffic. Indeed, r 7 of the Highway Code specifically exhorts pedestrians not to step into the road suddenly without looking. According to ASP Lim, that duty equally applies in one-way streets. It also cannot be disputed that it is usually easier for a pedestrian to see a reversing vehicle than *vice versa* (because every vehicle has its blind spots and a vehicle is a large object) unless the pedestrian’s view is blocked, or he or she is not alert.

60 I have no doubt that the first plaintiff suddenly stepped out onto the road from the kerb on the left side of the road. She did so by making her way through a gap between the vehicles parked outside the coffee shop and failed to look out for traffic in the process. Otherwise, she could not have missed seeing the car being reversed by the defendant.

61 It serves no purpose to rely on case law to determine liability in this action as the fact situation in every case is different. Consequently, counsel's reliance on *Zhang Wan Bo v Poh Kay Leong* ([53] *supra*) to say that the defendant should be liable is misplaced. Granted that in that case, the accident took place along the same road, but the court there upheld the plaintiff's claim because there were witnesses (including the plaintiff's wife) who testified that the plaintiff had moved aside to avoid the defendant's car when it passed him. The defendant's car had then stopped and reversed, hitting the plaintiff in the process.

Conclusion

62 Applying the legal principles enunciated in *Charlesworth & Percy* ([50] *supra*) to the facts, I find that the first plaintiff and the defendant were equally liable for the accident. There will be interlocutory judgment for the plaintiffs with costs based on 50% liability. The Registrar is directed to assess damages and the costs thereof are reserved to the Registrar.

[\[note: 1\]](#)At AB2.

[\[note: 2\]](#)PW3.

[\[note: 3\]](#)PW2.

[\[note: 4\]](#)PW1.

[\[note: 5\]](#)See exhibits P1 and P2.

[\[note: 6\]](#)DW2.

[\[note: 7\]](#)DW3.

[\[note: 8\]](#)DW4.

[\[note: 9\]](#)See D3.

[\[note: 10\]](#)See D4.

[\[note: 11\]](#)N/E 119.

[\[note: 12\]](#)See AB45 to 52.

[\[note: 13\]](#)See AB86.

[\[note: 14\]](#)N/E 118.