Ngiam Kong Seng and Another v CityCab Pte Ltd and Another
[2007] SGHC 38

Case Number : Suit 633/2005

Decision Date : 21 March 2007

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Cecilia Hendrick and Elizabeth Lee (Kelvin Chia Partnership) for the plantiffs; Anthony Wee (United Legal Alliance LLC) for the second defendant

Parties : Ngiam Kong Seng; Quek Sai Wah — CityCab Pte Ltd; Lim Chiew Hock

21 March 2007 Judgment reserved.

Lai Siu Chiu J

1 This was a claim for personal injuries sustained by the first plaintiff Ngiam Kong Seng in a road accident. The cervical spinal injury he sustained reduced the first plaintiff to a tetraplegic. He is permanently and totally disabled. The second defendant Lim Chiew Hock was/is a driver of taxi no. SHA9997P ("the taxi") belonging to the first defendant CityCab Pte Ltd ("CityCab"). The taxi with the second defendant behind the wheel had allegedly collided into the first plaintiff, who was riding a motorcycle no. AZ3210S ("the motorcycle), causing the first plaintiff to lose his balance and fall off onto the road. The second plaintiff Quek Sai Wah is the wife of the first plaintiff. The couple has three sons.

The facts

2 At the material time, the first plaintiff (who was then 61 years old) was working for the Port of Singapore Authority as an operations supervisor. He was due to retire a year later. On 27 January 2004, at about 3.19pm, the first plaintiff was riding the motorcycle along the Central Expressway ("the CTE") heading home to Block 210, Ang Mo Kio Avenue 3. It was then raining heavily and visibility was poor. The first plaintiff was travelling in the middle lane of the CTE whilst the taxi had just emerged from the tunnel of the CTE near to the Starhub building off Cavanagh Road, when the alleged collision took place. The first plaintiff claimed he felt an impact at the rear of the motorcycle. Although the impact was not great, the first plaintiff lost total control of and was thrown off, the motorcycle. He was then flung backwards and landed on his back on the wet road.

3 It was the first plaintiff's case that he neither skidded nor changed lanes before the impact. He did not know which lane the taxi was travelling on and had not seen the taxi at all prior to the collision. In fact, just before the collision, the first plaintiff had not seen any taxis or other vehicles travelling in the extreme right lane. However, from his limited peripheral vision, the first plaintiff saw a vehicle's tyre moving forward on his right side.

4 As he lay on the road a man (whom the first plaintiff found out only much later was the second defendant) came up to the first plaintiff. Thinking the second defendant was a passer-by and a good Samaritan, the first plaintiff requested the second defendant to telephone the second plaintiff to inform her of what had happened. The first plaintiff was taken to Tan Tock Seng Hospital ("TTSH") by ambulance.

5 The second defendant used his mobile telephone to call the second plaintiff at her flat, told her the first plaintiff had met with an accident, assured her it was not serious and that the first plaintiff only suffered bruises on his face and hands. The second defendant did not inform the second plaintiff of how the accident occurred nor of his involvement. The second defendant telephoned the second plaintiff again shortly thereafter to inform her that the first plaintiff had been taken to TTSH.

6 The second plaintiff contacted the wife of her second son Andrew to inform the latter of the accident. She then proceeded to TTSH where upon arrival, she found that the first plaintiff had been admitted to the emergency department. The second plaintiff saw the first plaintiff on a stretcher at the observation ward and was shocked by his condition – it was completely different from what she understood from the second defendant.

7 On the following day, the first plaintiff underwent an emergency operation. It is common ground that the second defendant telephoned the second plaintiff on the evening of the accident and again on the following morning to inquire about the first plaintiff's condition. It was also not disputed that the second defendant asked to see the first plaintiff and offered to send the second plaintiff who accepted, to TTSH for the visit.

8 When the second plaintiff and the second defendant arrived at TTSH on the morning of 28 January 2004, the first plaintiff was already warded in the intensive care unit ("ICU") after undergoing an operation to decompress his spine. He had suffered severe injuries to his spinal cord. It was only then that the second plaintiff discovered (from the neurosurgeon who had performed the operation) that the first plaintiff was paralysed from the neck down. The second plaintiff informed the second defendant of the first plaintiff's condition. He invited her to which she agreed, to have lunch with him at the hospital's food court.

9 On the following day (29 January 2004), the second defendant telephoned the second plaintiff at her home and informed her he had taken photographs of the accident scene and wanted to pass them to her. She arranged to collect the photographs from him at the foot of her residential block. The photographs were eventually handed to the plaintiffs' solicitors who forwarded them in turn to the second defendant's solicitors.

10 The second defendant telephoned the second plaintiff on the morning of 30 January 2004 to inquire again on the first plaintiff's condition. According to the second plaintiff, the second defendant asked if the first plaintiff had made any statement to the traffic police. The second plaintiff answered in the negative and added that she did not want to ask her husband about the accident to avoid traumatising him. Sometime thereafter, the second defendant stopped contacting the second plaintiff.

11 Much later (on or about 25 June 2004), when the first plaintiff was interviewed by the plaintiffs' solicitors, the second plaintiff was told there was an independent witness to the accident by the name of Maureen Andrew ("Maureen"), who was a passenger in the taxi. After the plaintiffs' solicitors had interviewed Maureen, the second plaintiff discovered that the taxi driven by the second defendant was involved in the accident; the taxi's front left side had collided with the rear of the motorcycle.

12 The second plaintiff's reaction was one of shock. She felt betrayed by the second defendant whom she had trusted completely but who had deceived her. She realised he was not the good Samaritan he had made himself out to be and that his previous contacts with her were not out of genuine concern for the first plaintiff but were attempts to find out what the first plaintiff had informed the traffic police and whether the first plaintiff had implicated him in the accident in any way.

13 The second plaintiff's shock caused her to lose her memory (temporarily) on 7 July 2004, prompting two of her sons to get her admitted to TTSH's emergency department. The second plaintiff was then referred by TTSH to an outpatient psychiatric clinic for psychiatric treatment; she has been treated for major depression since 2 August 2004. She was re-admitted to TTSH between March and April 2005.

14 On his part, the first plaintiff underwent a tracheotomy on 9 February 2004. He was discharged from TTSH on 31 March 2004 and transferred to Ang Mo Kio Community Hospital ("AMK Hospital") where he remained until 18 August 2004. From AMK Hospital, the first plaintiff was sent to St Luke's Hospital for the Elderly from whence he was discharged on 13 October 2004. Since 13 October 2004, the first plaintiff has been cared for at home by the second plaintiff with the assistance of an Indonesian maid.

The pleadings

15 In the statement of claim, the first plaintiff alleged that the collision was solely caused by the negligence of the second defendant which was particularised inter alia, to include driving at an excessive speed, failing to keep a proper lookout and failing to keep a proper distance from the motorcycle.

16 On her part, the second plaintiff (aged 59 at the time of the accident) alleged that the second defendant's failure to inform her of his involvement in the accident and making her believe he was a helpful bystander caused her to suffer from clinical depression.

17 In his defence, the second defendant denied there was a collision between the taxi and the motorcycle. Even if there was a collision between the two vehicles, the second defendant contended that the collision took place after the first plaintiff's motorcycle had self-skidded. The second defendant denied the accident was caused by his negligence. He asserted that the accident was caused or contributed to by the negligence of the first plaintiff in the riding, control and management of the motorcycle, evidenced by the fact that the traffic police department subsequently issued a warning to the first plaintiff for careless driving.

18 The second defendant put the second plaintiff to strict proof of her claim. Alternatively, the second defendant averred that if she did suffer the loss, damage and expense she alleged, the same were caused solely or contributed to by the negligence of the first plaintiff. In the further alternative, the second defendant contended that the second plaintiff did not personally witness the accident nor was she sufficiently proximate in time or space to the accident such that it would result in her alleged psychiatric problems.

The evidence

19 The trial before me was only to determine liability. In the event that I ruled in favour of one or both plaintiffs, damages would be assessed by the Registrar at a later date. Both plaintiffs testified along with their eldest son Ngiam Peng Hong ("James"). They had expert testimony from medical practitioners on the mental state of the second plaintiff while the second defendant had an accident reconstruction expert as a witness, as well as a medical expert. By the time the trial came on, the plaintiffs had withdrawn their claim against the first defendant.

(i) The plaintiffs' case

20 According to his written testimony, the first plaintiff (PW1) at the material time was riding the

motorcycle at a speed of about 50-60 kph in the middle lane but more towards the right. He alleged (and it was pleaded in his statement of claim) that the taxi driven by the second defendant collided into the rear of the motorcycle and caused him to be flung backwards and onto the road.

21 However, in his Further and Better Particulars of the statement of claim filed on the 31 October 2005, the first plaintiff stated he was unable to identify the exact point of impact because he was immobile and lying on the road after the accident but was able to say that prior to the impact, the taxi was behind the motorcycle. Pressed for more particulars of his Further and Better Particulars, the first plaintiff on 6 January 2006 filed additional Particulars to say that the exact point of the impact was the right side of the motorcycle with the left front side of the taxi.

22 In a statement he gave to his solicitors on 25 June 2004 (exhibit P1), the first plaintiff said (at para 6) that he was travelling in the centre of the middle lane. When the first plaintiff gave a second statement to his lawyers on 23 July 2004 (exhibit P2), he had changed his position and stated (in para 2) that he was travelling more towards the right side in the middle lane. In both statements, the first plaintiff did not say he was flung backwards after the collision.

23 In cross-examination, counsel for the second defendant put it to the first plaintiff that he changed his evidence on the position of the motorcycle (from the centre of the middle lane in his first statement of 25 June 2004 to the right of the middle lane in his second statement and in his affidavit of evidence in chief) because after 6 July 2004, his counsel had received Maureen's statement of what happened. In the oral statement she gave to the plaintiffs' solicitors on 28 June 2004 and which written copy Maureen signed on 6 July 2004 (the first statement), Maureen had said that the front left corner of the taxi collided into the rear of the motorcycle. The first plaintiff denied he changed his evidence so as to be consistent with and to take advantage of what Maureen said, in the first statement.

24 When he was cross-examined (at N/E 12/13) however, the first plaintiff testified that he was hit on the rear right side of the motorcycle. He added (N/E 17) that the taxi could have been straddling the middle and right lanes when it hit the motorcycle. In re-examination, he maintained he was knocked down from behind by someone.

25 In his closing arguments, the second defendant submitted that the first plaintiff had three inconsistent versions of how the accident happened. Indeed, counsel for the second defendant went further to say that the inconsistency of the first plaintiff's evidence meant his testimony should be rejected and the version of the accident given by the second defendant should be accepted.

26 What was common ground was that the first plaintiff lost control of the motorcycle. What was in dispute was why he lost control. Was it because the taxi rear-ended the motorcycle as the first plaintiff asserted? Or, as the second defendant was to contend, it was because the motorcycle self-skidded due to the wet and slippery road and not because of any impact with the taxi.

27 The first and second statements given by the first plaintiff to his counsel were only revealed in late discovery by the plaintiffs to counsel for the second defendant.

28 Another document of which late discovery (ordered by the court) was given to the second defendant was a representation made on the first plaintiff's behalf to the Attorney-General's Chambers ("AGC") by his solicitors, after the first plaintiff was issued a warning letter (which the first plaintiff vehemently denied receiving) by the Traffic Police department ("the Traffic Police") arising out of the accident. The warning letter would appear to contradict the first plaintiff's statement in his written testimony that he received a congratulatory letter from the police dated 19 June 2004 for

being accident free for five years (31 March 1999 to 31 March 2004) and for not having demerit points. I would add that counsel for the second defendant made much of the first plaintiff's denial of receipt of the warning letter, submitting that the first plaintiff was being untruthful. I should in fairness point out that the warning letter was issued by the Traffic Police after 19 June 2004. The warning letter was not produced in court.

The second defendant's case

29 I turn now to the testimony of Maureen, who was the only passenger in the taxi at the time. Maureen (DW6) gave different versions of how the accident happened at different times. I shall now deal with each version in turn.

30 Maureen's first version of the accident was in the first statement (dated 6 July 2004). In the first statement, Maureen stated that the motorcycle and the taxi were both travelling in the right lane (although the motorcycle was more to the left side of the right lane) and the motorcycle was always ahead of the taxi. Maureen said the accident happened so fast after the taxi emerged from the CTE tunnel that she was not certain how it happened except that the front left side of the taxi collided into the rear of the motorcycle.

31 On 12 September 2005, Maureen filed an affidavit prepared by the plaintiffs' solicitors (the first affidavit) in which she deposed that she saw the front left side of the taxi collide into the rear of the motorcycle. Counsel for the plaintiffs had visited Maureen at her home on the evening of 6 July 2004 (after first writing to Maureen) along with counsel's husband (also a lawyer who was/is a Commissioner of Oaths) to get Maureen to sign the first affidavit.

32 Earlier (on 28 January 2004), Maureen had been interviewed by staff sergeant Andy Foo ("Foo") of the Traffic Police. She gave a statement ("the police statement") where she said that the motorcycle was in the centre lane and was overtaking the taxi on its right. She stated that the second defendant struggled to control the taxi and tried to stop by swerving a little to the right. At that juncture, the motorcycle hit the side of the taxi. Foo recorded the following questions and answers from Maureen in that interview:

Q1: Did the motor taxi swerve to the centre lane, resulting in the accident?

A: No, the motor taxi did not swerve to the centre lane. In fact, the motor taxi tried to swerve a little to the right to avoid the motorcycle.

Q2: Was the rider all along travelling in front of the motor taxi on the same lane?

A: No, I saw the rider overtake the motor taxi from the left along the centre lane.

Q3: Am I right to say that while overtaking, the rider had actually encroached into the path of the taxi?

A: Yes, it was correct.

Q4: Did the rider skid by himself first before the collision occurred?

A: From my observation, it looked like the rider was coming in front of the motor taxi from the left, and I was [sic] not sure whether the rider had skidded.

Q5: Is it possible for the taxi driver to stop in time to avoid the motorcycle?

A: I do not think so as the rider came in front of the taxi very fast. They were very near to each other and it looks like they are side to side when the rider moved towards the right.

Q10: Am I right to say that the taxi driver was just keeping to his lane and going straight?

A: Yes, it was correct.

33 For the trial, the plaintiffs declined to call Maureen to testify. Instead, she was the second defendant's witness. In that regard she swore an affidavit filed on 6 March 2006 (the second affidavit) wherein she deposed as follows:

> 5 Approximately 20 seconds after coming out from the tunnel, all of a sudden, I noticed a motorcyclist (the first plaintiff) losing control of his motorcycle (the first plaintiff's motorcycle) along the centre lane of the CTE. In a split second, it started skidding and careening towards the second defendant's taxi. At this point in time, the second defendant's taxi and the first plaintiff's motorcycle were almost side by side.
>
> 6 The second defendant immediately swerved his taxi to the right to avoid a collision with the first plaintiff's motorcycle. I also felt a braking effect, indicating that the second defendant jammed on his brakes. I am not sure whether there was in fact any impact between the first plaintiff's motorcycle and the second defendant's taxi. I did not hear any collision sound caused by an impact between the two vehicles. Neither did I feel any impact from the first plaintiff's motorcycle onto the second defendant's taxi. What I would say is that, if at all there was any impact, the impact would have been caused by the first plaintiff's motorcycle skidding into the left side of the second defendant's taxi. The impact, if at all there was one, would have been between the right side of the first plaintiff's motorcycle and the left side of the second defendant's taxi.
>
> 9 I would like to state that the second defendant did not cause the first plaintiff to lose control of his motorcycle. There was no impact between the first plaintiff's motorcycle and the second defendant's taxi prior to the first plaintiff losing control of his motorcycle and skidded towards the second defendant's taxi. I do not know why the first plaintiff lost control of his motorcycle.

34 Upon an application made by counsel for the second defendant, Maureen filed a supplementary affidavit of evidence-in-chief on 4 October 2006 (the third affidavit) while the trial was on-going. In the third affidavit, Maureen explained the circumstances of how she came to give the first statement to the plaintiffs' solicitors and to affirm the first affidavit. She said she was first contacted on the telephone by the plaintiffs' son Andrew who informed her rather rudely, that his father (the first plaintiff) was paralysed as a result of the accident; she claimed he made her feel guilty, as if she was to be blamed for the first plaintiff's condition. Maureen explained that she did not give the matter much thought nor did she appreciate the significance of the first statement or of the first affidavit that she had signed, until she was contacted by counsel for the second defendant some time in September-October 2005, who informed her of the pending trial. It was then that she realised that things were more serious than she had thought. Hence, she read carefully the draft of the second affidavit sent to her by counsel for the second defendant and made amendments thereon to reflect her recollection of events.

35 In para 12 of the third affidavit, Maureen gave a very precise account of what happened just before the accident. She deposed:

..I was seated on the rear left of the passenger seat. The second defendant's motor taxi was at all material times, travelling along the rightmost lane of the Central Expressway at normal speed. He kept on the rightmost side without swerving right or left. Shortly after the motor taxi went out of the tunnel, I saw a shadow (the first plaintiff's motorcycle) coming towards me from my left side. I then felt a forward jerk due to the second defendant's motor taxi braking and the second defendant's motor taxi swerved slightly to the right to avoid the shadow (the first plaintiff's motorcycle). As stated above, I am very certain that the second defendant's motor taxi did not, at any point in time, swerve into the centre lane of the CTE. The second defendant's motor taxi was, at all material times, travelling along the rightmost lane of the CTE. I am also very sure that the first plaintiff's motorcycle was coming towards the second defendant's motor taxi on my left side and not the front left side of the second defendant's motor taxi. I can recall this because it happened right before my eyes. I saw the first plaintiff's motorcycle coming towards me where I was seated. It did not come from the front but came from my left side.

36 Not unexpectedly, the focus of Maureen's cross-examination was on her different versions of the accident, particularly on her most recent version as set out in the third affidavit. Counsel for the plaintiffs questioned Maureen on her accuracy of recollection after an interval of more than two years from the date of the accident. Indeed, Maureen was cross-examined at length on the accident both on her version as well as that of the second defendant's, who had testified before her.

37 The sum total of Maureen's cross-examination was that she agreed that the most accurate version of the accident would be that found in the police statement. It was clear to me that Maureen had difficulty recalling the accident on 27 January 2004 (and was uncertain of facts like the taxi's speed) because it happened so fast and not because of the effluxion of time, as counsel for the plaintiffs had suggested to her.

38 I should point out at this juncture that the plaintiffs' eldest son James (PW9) was their witness but not their second son Andrew who was the one who had contacted Maureen. I shall return to James' testimony later.

39 Now for the second defendant's evidence. The second defendant has had 12 years of experience as a taxi driver by the time he testified. In his written testimony, the second defendant (DW3) deposed that he had picked Maureen up along Buona Vista Road and was sending her home to Whampoa Drive. He decided to use the CTE (in the direction of Ang Mo Kio) for the journey. On the way, it started raining heavily. The taxi did not go very fast but travelled at 80-90 km/h while in the tunnel.

40 Immediately after emerging from the tunnel near Starhub building, the second defendant slowed down the taxi possibly to 70-80 km/h as the road sloped upwards, the heavy rain affected his vision and it was dark, almost as if it was 7pm. The second defendant had turned on the taxi's headlights. Approximately 10-20 seconds after coming out of the tunnel, the second defendant suddenly saw from the corner of his eye, a shadow coming towards his path from his left. The taxi was about 5 car lengths behind the car in front on the right lane. At the same time, the second defendant heard vehicles sounding their horns, the screeching sound of tyres braking and the sound of something falling onto the ground. When he first saw the shadow approaching the taxi, the second defendant instinctively swerved to his right to avoid hitting the shadow. Simultaneously, he jammed on the brakes of the taxi. When the shadow came near the taxi, the second defendant realised it was the motorcycle, with the first plaintiff on it. The second defendant believed that the first plaintiff lost control of the motorcycle, which then skidded and came towards the taxi.

41 During cross-examination, the second defendant elaborated on his description of "something

falling". He said (at N/E356) that something dropped onto the ground heavily and there was a dragging and/or scratching sound which he later described as something/someone "skidded". The second defendant did not pay much attention to whether there was any rider on the motorcycle when he first became aware of the motorcycle's presence because he was going up an incline while negotiating a right bend; his attention was focussed on the vehicles in front of the taxi. The second defendant estimated the motorcycle to be three car lengths in front of him in the centre lane when he first saw it.

42 Under persistent questioning by counsel for the plaintiffs, the second defendant said he was unsure whether there was or was not an impact between the taxi and the motorcycle. He said when he got out of the taxi to check, he found the first plaintiff lying in front of the motorcycle. The second defendant did not move the first plaintiff but took the latter's home telephone number so that he could call the second plaintiff which he did. The second defendant said he directed traffic away from the accident scene by using pails from the boot of the taxi, until the police arrived and cordoned off the area. After the first plaintiff had been sent off to TTSH, the second defendant took photographs of the scene some 30 minutes after the accident. (Apparently, CityCab instructs its drivers to carry cameras in the company's taxis so that photographs can be taken in the event of accidents). By then the rain had stopped and the weather had cleared.

43 The second defendant revealed he requested Maureen to be his witness before she left the accident scene in another taxi. After the accident, Maureen did not get out of the taxi to look at the first plaintiff. The second defendant said he was very frightened when he saw that the first plaintiff was injured and lying on the road. He denied the taxi had collided into the rear box of the motorcycle. Further, contrary to the second plaintiff's testimony, the second defendant denied that he had asked her why the first plaintiff rode that particular type of motorcycle. The second defendant also denied he was speeding and/or that he was trying to overtake the motorcycle at the time.

44 In re-examination, the second defendant explained that he visited the first plaintiff in hospital not because he wanted to find out what the latter had told the police and whether the second defendant would be prosecuted for the accident (as the second plaintiff alleged) but because he was worried about the first plaintiff's condition. Foo from the Traffic Police had apparently told the second defendant that if the first plaintiff passed away, the second defendant would have to testify in court. The second defendant said he was naturally worried; attending court meant that he would not be able to drive the taxi to earn his living but he would still have to pay rental to CityCab. Hence, the second defendant visited the first plaintiff in hospital in the hope that the latter would recover from his injuries.

45 The second defendant also explained that he telephoned Maureen at her home on the night of the accident as Maureen was his passenger and she appeared very frightened when she saw the first plaintiff falling. He wanted to find out if she was getting better. However, he did not speak to her as someone else took his call and said Maureen was asleep.

46 There were two independent witnesses called by the second defendant besides an expert witness. The first was Foo, who left the police force in October 2004 to become an insurance agent.

47 In the course of his investigations, Foo (DW5) had interviewed the first plaintiff, the second defendant and Maureen. Foo confirmed he took statements from the second defendant and Maureen on 28 January 2004 but a statement was only taken from the first plaintiff on 21 May 2004. He explained that the delay in getting a statement from the first plaintiff was on account of the latter's medical condition. Foo said he visited the first plaintiff at TTSH but found that the latter was in no condition to be interviewed; the statement was only given after the first plaintiff had been

transferred to AMK Hospital.

48 I should point out at this juncture that I overruled the objections of the AGC and ordered the production by the police department of Foo's investigation papers to enable Foo to refresh his memory while he was in the witness box. I did not however, make the police file available to either of the parties. I was also of the view that it was crucial for Foo to look at the investigation papers because of the conflicting versions of the parties as to how the accident occurred.

49 Foo's record of the statements from the three parties corroborated the testimony of both the second defendant and Maureen. As for the first plaintiff, he had told Foo that he had felt a slight impact on the rear of the motorcycle (after the tunnel near Starhub building). Due to that impact, the first plaintiff claimed he lost control of the motorcycle and skidded but he did not know in which direction. In his statement to the police however, the first plaintiff did not state he was flung backwards (although he did say so in his affidavit of evidence-in-chief and in cross-examination [N/E14]). In cross-examination, Foo's attention was drawn to the police department's vehicle damage report dated 27 January 2004 (at AB8-9) which showed no damage to *either the rear of the motorcycle or to the front of the taxi.* There was however a slight scratch under the left wing mirror of the taxi.

50 Foo's attention was also drawn to photographs of the taxi taken by the second defendant after the accident. He was shown a curved black line on the left side of the taxi below the wing mirror ("the imprint"). Questioned on what could have been the cause of the imprint, Foo surmised it could have been made by a tyre of the motorcycle. If Foo's supposition was correct, that meant that the accident was a side swipe between the two vehicles.

51 The other independent witness was Goon Lee Hwa ("Goon"), a police station inspector who took over investigations in late November 2004, after Foo's resignation from the police force. Goon confirmed that by the time she took over conduct of the case, the Traffic Police had decided (after receiving representations from the first plaintiff's solicitors) to issue a warning letter to the first plaintiff ([28]) on the accident.

52 The second defendant's expert witness was one Ng Cheng Yeow ("Ng"), a licensed appraiser who was engaged to prepare a reconstruction report of the accident. Ng's brief also included determining whether there was any impact between the motorcycle and the taxi.

53 Ng's report dated 24 August 2006 (at AB42-64) contained the following conclusions:

(a) there was no collision between the motorcycle and the taxi as there was no evidence that the taxi hit the rear or rear right side of the motorcycle;

(b) based on height measurements he had taken of the front wheel of the motorcycle and the left side of the taxi, the imprint on the taxi was not consistent with the height of the front wheel of the motorcycle and could not have come from the motorcycle;

(c) assuming the imprint came from contact with the motorcycle, it could only have been caused by the rear tyre of the motorcycle because the rear tyre was surrounded/protected by protruding objects such as exhaust pipes, rear foot rest, rear box and rear suspension. If there was contact, these protrusions would have come into contact first with the taxi, not the rear tyre of the motorcycle; and

(d) if indeed the imprint came from the front tyre of the motorcycle, that would be inconsistent

with the first plaintiff's version but it would be consistent with the second defendant's version, of how the accident occurred.

54 When he was re-examined, Ng (DW1) elaborated on his conclusion in (b) above (at N/E319). Because the imprint was semicircular in shape, it could have been caused by contact with the rear box of the motorcycle before the motorcycle fell onto its right side. In falling, the line the motorcycle drew on the taxi moved downwards in a semicircle.

55 As I indicated earlier ([38]), I now return to the testimony of the plaintiffs' son. James was not a witness of fact, apart from his statement that he received a call on 27 January 2004 from the second plaintiff to inform him that the first plaintiff had met with an accident. The rest of James' affidavit contained largely hearsay and therefore inadmissible, evidence. There was however one aspect of James' written testimony which calls for further comment.

56 James deposed that on 25 July 2006, accompanied by his brother Andrew, he hired an ambulance to transport the first plaintiff (who was lying on a stretcher) while the trio retraced the route that the first plaintiff took on the day of the accident. James sat in the front passenger seat with the ambulance driver to videotape the route while Andrew sat at the back with the first plaintiff so that Andrew could communicate with the first plaintiff to confirm the route and the location of the accident.

57 Subsequently, on 31 July 2006, James hired a taxi and videotaped the same route again, this time with a clerk from the plaintiffs' solicitor's firm riding a motorcycle on the centre lane of the CTE, as the first plaintiff had done on that fateful day. James deposed that his purpose was to retrace the route of the accident so as to give the court a better view of how the accident happened.

58 In para 14 of his affidavit of evidence-in-chief, James deposed to the following conclusion:

> My parents and I believe that the second defendant had collided into the rear of my father's motorcycle which impact caused my father to be flung backwards thereby seriously injuring his cervical spine and rendering him a tetraplegia for the rest of his life. My parents and I also believe that the second defendant failed to disclose this in his traffic accident report. My parents and I believe that the second defendant misrepresented the cause of the accident to my mother and deliberately sought to win her trust and confidence in order to elicit from her what my father had seen of the accident and what he informed the traffic police. His misrepresentation and deliberate attempt to win my mother's trust and confidence which my mother later realised was misplaced led her to suffer a brief amnesiac episode and major depression which according to the AEIC of Dr Lim Yun Chin was aggravated by the reservoir of anger and rage against the second defendant for which she had no outlet.

59 While James' negative reaction to the second defendant's conduct was understandable being a son of the plaintiffs, that did not, with respect, give him the prerogative of arriving at a conclusion based solely upon his and the plaintiffs' belief, let alone to make a medical diagnosis for which he was not qualified. I found James' testimony unhelpful, particularly his attempts (without any expert testimony to assist the court) to retrace the route taken by the first plaintiff on the day of the accident, to show to what extent the first plaintiff could see other road users. James had overlooked a very important factor which was missing on the two days that he retraced his father's route. It rained heavily on 27 January 2004 and the poor visibility most probably affected the first plaintiff's line as well as the extent, of vision.

The second plaintiff's case

60 The second plaintiff's claim was highly unusual. She based her cause of action and laid the blame for her depression entirely on the second defendant's allegedly deceitful conduct. Did she have a valid claim at law? If so, has she discharged the requisite burden of proof? In this regard, I accept the second defendant's closing submission (at para 138) that the second plaintiff's case hinged on that of her husband. Consequently, if the first plaintiff fails in his claim, the second plaintiff's claim too must fail *in limine*. The second defendant further submitted that even if he had lied to and deceived the second plaintiff, her claim of negligent deception leading to psychological harm was not a valid cause of action at law.

61 The second plaintiff's case was that she was traumatized by the conduct of the second defendant on two counts:

(a) he failed to inform her of the gravity of the injuries suffered by the first plaintiff when he telephoned her after the accident; and

(b) he failed to disclose to her that it was he driving the taxi that had collided into the rear of the motorcycle; she learnt of this fact only from the statement of Maureen.

She alleged that it was foreseeable that as a result of the second defendant's deceit, she would suffer emotional trauma and that it would lead to depression, for which she was still receiving treatment as at the date of trial.

62 As the second plaintiff rightly conceded under cross-examination, if the second defendant proved that he did not lie to her, her claim would and must fail.

63 On her first allegation, the second plaintiff had conceded during cross-examination as well as on questioning by the court (at N/E136-7), that the second defendant did not lie to her. It was the first plaintiff's own evidence that he was wearing a helmet and a raincoat at the material time, that apart from his spinal injuries, he suffered no visible injuries other than bruises to his face and hands. Therefore, when the second defendant saw the first plaintiff lying on the road, the former could only see the latter's superficial injuries. Hence, the second defendant described to the second defendant what he actually saw. The second defendant would not know at that point of time, that the first plaintiff's other injuries were so serious as to render him a tetraplegic.

64 As stated earlier ([19]), the second plaintiff called medical experts to testify to her condition together with a witness of fact in her pastor Leonard Wee. The three medical experts who testified for the second plaintiff were Tang Hui Kheng ("Dr Tang") a psychiatrist who is a consultant with the Department of Psychological Medicine at TTSH, Alice Yeoh ("Dr Yeoh"), a clinical psychologist with TTSH and Lim Yun Chin ("Dr Lim") a consultant in Psychological Medicine attached to Raffles Hospital. Dr Lim had interviewed James as well when he interviewed the second plaintiff.

65 The second plaintiff was first seen by a medical officer Yap Eng Soo ("Dr Yap") at the emergency department of TTSH on 7 July 2004. Dr Yap (PW7) testified that he attended to the second plaintiff for short term memory loss alluded to earlier ([13]). The second plaintiff had been sleeping poorly and Dr Yap diagnosed her as suffering from grief reaction; he referred her to Dr Tang's department.

66 When he testified (N/E235), Dr Yap (who has since left TTSH for an attachment with National University Hospital) clarified that the report dated 24 August 2006 signed by Dr Tay Seow Yian contained an error in the following sentence:

She [the second plaintiff] had apparently been under stress because she was paralysed from the

neck down and also had financial difficulties.

Dr Yap had checked the second plaintiff's case notes and clarified he had actually written down that it was the second plaintiff's husband who was recently paralysed from the neck down. He added that the second plaintiff had also told him that she had difficulty coping with her grief.

67 Dr Tang (PW5) first saw the second plaintiff on 2 August 2004. In his medical report dated 26 August 2005 he described her as having symptoms of low mood, poor appetite with weight loss, insomnia and negative thoughts with passive suicidal indications as a result. The main triggering event of her condition was the first plaintiff's disability resulting from the accident. According to Dr Tang, the second plaintiff faced the stress of being her husband's main care-giver upon his discharge from hospital.

68 It was Dr Tang who referred the second plaintiff to Dr Yeoh (PW6) who was first consulted on 9 December 2005. The second plaintiff was last reviewed by Dr Yeoh on 25 January 2006. Dr Yeoh's report dated 27 February 2006 contained the following extracts:

> Madam Quek was very annoyed with the taxi driver who knocked her husband down in a road accident in 2004. The taxi driver informed her that following an accident, he had stopped to help, and found her husband lying on the road. He subsequently bought food for her. She was grateful to him for his kindness until she discovered that he was the one who knocked her husband down. She felt that he had been cheated of her gratitude towards him.

69 The above extract from Dr Yeoh's report on the second plaintiff should be contrasted with the reports of Dr Yap and Dr Tang, in which there was no mention whatsoever that the second plaintiff blamed the second defendant for her condition, when the second plaintiff was seen by them in July-August 2004. This was all the more curious given that the timeframe of her consultations with them was soon after the second plaintiff allegedly discovered the second defendant's deception (on 25 June 2004). However, Dr Tang did see from the case notes of TTSH on the second plaintiff that a medical officer Dr Alvin Tan had written on 19 August 2004:

> Husband knocked down by the taxi driver who called her, saying that he was the first one to attend to him. Taxi driver visited them two times pretended to be a good Samaritan.

70 One question immediately comes to mind – why would the second plaintiff wait almost two years (January 2004 until December 2005) before she disclosed for the first time (to Dr Yeoh) her anger against the second defendant, if indeed he was the cause of her depression? The second defendant's closing submissions argued that the only logical explanation for the omission must be because the second plaintiff well knew the second defendant was not responsible for the accident. She only blamed him 14 months later when she consulted Dr Lim on 7 September 2005, as an afterthought. The medical report dated 17 September 2005 of Dr Lim (PW3) contained the following relevant extracts:

> The couple [the plaintiffs] were on the threshold of reaping the long hard work they have sowed for their retirement when the tragedy of the accident turned their lives upside down. Her recall of the event in which the taxi driver phoned her few days after the accident was that the latter revealed that he saw her husband following the accident lying injured on the road waiting for the ambulance. At that time, he was driving his taxi in the vicinity. He went to her residence and consoled her as well as to fetch her to hospital. He repeated this gesture on another occasion.
>
> She had no reason to doubt him and was feeling very grateful towards him for what she perceived as a "good Samaritan". She was even preoccupied as to how she could repay him. She

remembered thanking him profusely…She recalled him phoning her on several occasions after the accident enquiring as to her husband's condition as well as probing repeatedly as to what she heard from the police about the cause of the accident.

…….

It was understandable that she was emotionally traumatized and shocked when she discovered that the "good Samaritan" was the culprit who caused the tragedy. The shock must have been overwhelming because she slipped into a Dissociative state ("brief amnesic episode") requiring referral to the Emergency Dept of TTSH. The dissociative state manifesting as brief amnesic episode is a rare psychiatric condition and it tend to occur in the face of severe emotional trauma which was too overwhelming for the conscious mind to process. It is nature's way of shutting down to protect the patient from a nervous breakdown.

The more sinister implication of the exposure of the taxi driver was that her grief journey that was supposed to continue towards resolution was derailed and disrupted and she had to start all over again beginning with the feeling of shock and denial. Even as she emerged from the state of shock over the exposure, she has to deal with a more severe emotional obstacle, i.e. the emergence of a reservoir of anger and rage directly at the taxi driver.

At the time of my interview with her, she verbalized her anger in the following ways:

> 'If I see him at the court, I will punch him. He has subjected me to all kinds of suffering. In fact, he is the one who is responsible for my sufferings, not my husband'.

71 At this juncture, it would be appropriate to refer to the following extract from the second defendant's closing submissions:

> 156 It is submitted that it cannot be right that if the second plaintiff had a raging anger against the second defendant it would not have surfaced over the period of 14 months between the time she had her dissociated state to the time she went to see Dr Lim Yun Chin, except for that one-off occasion on 19 August 2004. It is too much of a coincidence that she went to see Dr Lim about her anger with the second defendant only 6 days before she filed her Writ of Summons against the second defendant. Even her own treating psychologist [Dr Yeoh] agreed that this series of events was unlikely.

72 The second defendant's closing submissions then referred to Dr Yeoh's cross-examination (N/E 223-224) where Dr Yeoh had agreed with his counsel that it was highly unlikely that a person's deep seated anger against another for two years did not manifest itself sooner.

73 Pastor Leonard Wee (PW2) had witnessed the second plaintiff's temporary loss of memory at AMK Hospital on 7 July 2004. He, his wife and the second plaintiff were then chatting in the hospital's cafeteria while waiting for the first plaintiff to finish his physiotherapy session. In his written testimony Pastor Wee deposed that their conversation did not touch on the first plaintiff's accident or on the second defendant's involvement. When he was cross-examined (N/E 94), the pastor confirmed that the second plaintiff did not mention the second defendant let alone that she was angry with him because he had deceived her.

The findings

74 To borrow Lord Ackner's words (at p 398) from *Alcock v Chief Constable of South Yorkshire Police*

[1992] 1 AC 310, if sympathy alone was to be the determining factor in such claims, they would never be contested. This was a very sad case of a man who was robbed of his physical abilities one year short of his retirement. The only issue I have to determine is, was the second defendant (as the plaintiffs alleged) responsible for the first plaintiff's condition?

75 It bears repeating that the first plaintiff's testimony on how the accident occurred was inconsistent and his version changed at various stages as I had observed earlier ([20] to [24]). I could not therefore give any credence to his evidence.

76 The second defendant however never wavered in his version of how the accident occurred. He consistently maintained ([40]) that he saw a shadow (which turned out to be the first plaintiff on the motorcycle) approaching the taxi whereupon he swerved instinctively to the right in order to avoid. Unfortunately, the motorcycle skidded towards the taxi and fell on its right side. The second defendant maintained that the taxi did not hit the motorcycle.

77 The testimony of the independent witness Maureen as well as the investigations of Foo corroborated the second defendant's version of the accident. I have no doubt that Maureen's version of how the accident happened as stated in the police statement she gave to Foo one day later was accurate. There was no reason or incentive for Maureen not to be truthful. By the same token, there was also no reason for Foo not to accurately record Maureen's answers to his questions ([32]). Maureen's evidence was to the effect that the first plaintiff was overtaking the taxi from the left along the centre lane when he apparently lost control of the motorcycle. The first plaintiff could not have been flung backwards due to an impact from behind as he claimed. The front of the taxi did not collide and could not have collided, into the rear of the motorcycle as the Traffic Police's vehicle damage report dated 27 January 2004 ([49]) showed no damage whatsoever to either the front of the taxi or to the rear of the motorcycle. Instead, the photographs taken by the second defendant clearly showed the imprint on the left side of the taxi, below its wing mirror. The imprint was consistent with the motorcycle having fallen on its right side after it skidded towards and hit the taxi with its rear box, scratching the left side of the taxi in the process. I accept the evidence of the second defendant's expert Ng in that regard.

78 There was another piece of evidence which reinforces my finding. The plaintiffs' solicitors had produced (at AB30-31) two ambulance reports dated 8 and 25 November 2006 respectively, from the Singapore Civil Defence Force ("SCDF"). Both reports contained the following incident information in column 2:

> Nature of Incident: According to passerby, patient fell from motorcycle on a slippery road…. He [the patient] complained of pain on his neck and was unable to move his limbs.

The bystander who made the call to the SCDF did not testify for the reason stated in column 4 of the above report:

> No information on the by-stander is available.

Despite the absence of the bystander-caller as a witness, I believe some credence should be given to the first sentence stated in column 2 of both reports, as giving an indication of how the accident must have occurred.

79 It bears recapitulating the weather conditions that afternoon – it was very wet due to the heavy rain, visibility was poor and it was dark almost as if it was 7pm, according to the second defendant ([40]). Since the first plaintiff did not challenge the second defendant's description of the weather, I

can only assume that he was in agreement therewith.

80 I am certain from the evidence adduced in court that the accident occurred due to the manner in which the first plaintiff rode the motorcycle. The first plaintiff may or may not have been overtaking the taxi before he fell from the motorcycle but it was more probable than not that he was speeding. At the very least, the first plaintiff rode the motorcycle at a speed which was unsafe and/or reckless, in the light of the weather at the material time. Otherwise, there would have been no reason for the Traffic Police to have issued the first plaintiff a warning letter after the accident. The fact that the first plaintiff may not have received the warning letter (as he insisted) did not mean it was not issued. I believe the speed of the motorcycle caused the first plaintiff to lose control of and fall from, the motorcycle. The motorcycle then skidded and or careened towards the taxi in the right lane, from its position in the centre lane of the CTE. The first plaintiff was the author of his own misfortune; he can blame no one else for the accident.

81 In their closing submissions, the plaintiffs argued that it was the second defendant who was or must have been speeding, relying on Maureen's testimony when she was questioned by the court (at N/E 480). Maureen had testified that the second defendant was not speeding although he was not slowing down either, when he emerged from the CTE tunnel near Starhub building, she said his speed 'was normal'. The plaintiffs then relied on another portion of Maureen's evidence (at N/E 478) where she revealed she was quite nervous when the taxi emerged from the tunnel to say Maureen was unnerved by the speed of the taxi. The plaintiffs had misinterpreted Maureen's testimony and taken it out of context. Maureen's nervousness was not because of the taxi's speed but due to the fact that she could hardly see anything as the taxi emerged from the tunnel, because of the very poor visibility.

82 The plaintiffs' submissions (see para 11) were premised on the fact that the second defendant had seen the first plaintiff ahead of him in the centre lane. In the alternative, they argued that the second defendant should have seen the first plaintiff if he had kept a proper lookout. The plaintiffs' submissions overlooked an important point – the first plaintiff equally had a duty to keep a lookout for other road users, the onus was not only on the second defendant to do so. The plaintiffs' submission also assumed that the first plaintiff was travelling ahead of the taxi in the right lane. This premise is contrary to the stand taken by the first plaintiff – he maintained throughout his testimony that the motorcycle travelled and remained in, the centre lane although he suggested at one point that the taxi may have straddled the two lanes. There was no evidence that the motorcycle was already in the right lane when the taxi emerged from the tunnel. Based on Maureen's statement to Foo, it would appear that the first plaintiff was riding ahead of the taxi but the motorcycle was not in the right lane. The likely scenario was that the first plaintiff attempted to overtake the taxi on its left, on the right side of the centre lane. While doing so, the first plaintiff lost control of and the motorcycle skidded into the taxi's path in the right lane.

83 The plaintiffs' closing submissions focussed almost entirely on whose version (the first plaintiff's or the second defendant's) of the accident was correct. The positions of the first plaintiff, the motorcycle and the taxi after the accident was dealt with *in extenso* by the plaintiffs who *inter alia* submitted that:

(a) the second defendant failed to keep a safe braking distance from the motorcycle;

(b) the second defendant did not brake then swerve to avoid the motorcycle;

(c) the taxi was travelling at a faster speed than the motorcycle and was at the point of overtaking the motorcycle when the collision occurred; and

(d) the contact point between the vehicles could well have been a part of the rear box such as a corner, due to the possibility that as the motorcycle made its downward motion towards the ground, the taxi simultaneously continued its forward motion. The two motions could easily have caused the rear box to trace the imprint on the left side of the taxi.

Save for (d) the above submissions completely ignored the evidence adduced in court and were speculative, without any factual basis.

84 The plaintiffs also criticised Foo's investigations as not having been thorough. As counsel for the plaintiffs should but did not put this complaint to Foo, I reject this submission. It was an unwarranted and unfair attack on Foo who was not given an opportunity to refute this serious allegation in court.

85 I would stress that I do not for a moment condone the second defendant's actions subsequent to the accident. His conduct was reprehensible; he should have been more candid in his telephone conversations and subsequent personal contacts with the second plaintiff. He should have disclosed to her that the taxi was involved in the accident, even if it meant facing the wrath of the Ngiam family, as the plaintiffs and their sons would undoubtedly blame him for the first plaintiff's plight. I believe the second defendant genuinely feared (however unfounded) that he would be charged by the Traffic Police over the accident. His anxiety to find out from the second plaintiff whether the first plaintiff had implicated him in anyway in my view far outweighed his expressed concern for the wellbeing of the first plaintiff.

86 However, the fact that the second defendant's primary motive in contacting the second plaintiff (and keeping in touch with her until about February 2004) was not altruistic but to find out what the first plaintiff had told the Traffic Police did not *ipso facto* mean he knew he was responsible, for the accident. The second defendant did not come across to me as a devious or manipulative person. Rightly or wrongly, he was worried that his taxi licence and thereby his livelihood, would be jeopardised by the investigations of the Traffic Police even though ultimately no action was taken against him.

87 As the first plaintiff fails in his claim against the second defendant, it must follow from my earlier comment ([60]) that the second plaintiff's claim must similarly fail. Even if I had found the second defendant liable on the first plaintiff's claim, I would still have dismissed the second plaintiff's claim as being too remote.

88 It is trite law that there are five requirements for the tort of negligence:

(a) the existence in law of a duty of care;

(b) breach of that duty;

(c) damages;

(d) a causal connection between the defendant's careless/wrongful conduct and the damage; and

(e) the particular kind of damage must not be too remote.

Cases in which claimants have succeeded in recovering damages for psychiatric injuries are few and far between. It has been allowed where, as a result of the defendant's tort, physical injury to the claimant was foreseeable but he also suffered psychiatric injury (see *Corr v IBC Vehicles*

[2006] ICR 1138).

89 To succeed in her claim, the second plaintiff must satisfy the three elements laid down by Lord Wilberforce in *McLoughlin v O'Brien* [1983] AC 410. The tests were reiterated by the House of Lords in *Alcock & Others v Chief Constable of South Yorkshire Police* (supra ([74])) and followed by our own courts in *Pang Koi Fa v Lim Djoe Phing* [1993] 3 SLR 317 (cases cited by the second defendant). Lord Wilberforce identified the elements as:

(a) the class of persons, whose claims ought to be recognised;

(b) the proximity of such persons to the accident; and

(c) the means, by which the psychiatric illness was caused.

In a nutshell, a claim for damages for nervous shock is not actionable unless the nervous shock had been caused by the claimant actually seeing or hearing the relevant event or its immediate aftermath. In relation to the first element, Lord Wilberforce held that the relationship between a plaintiff and the injured person/victim must be sufficiently proximate, *viz* either parent and child or husband and wife. Whilst the second plaintiff satisfied the first element, she failed on the second and third criteria.

90 I had earlier ([70]) expressed some misgiving over the second plaintiff's claim. Based on her medical reports and the testimony of her medical experts, it cannot be disputed that the second plaintiff first raised the second defendant's conduct as the cause of her anger and frustration on 7 September 2005 with Dr Lim. The writ herein was filed six days later (on 13 September 2005). As was submitted by counsel for the second defendant, such timing is too coincidental and it raises a strong suspicion that the second plaintiff's claim was indeed an afterthought. She had suffered a delayed grief reaction after her husband was discharged from St Luke's Hospital on 13 October 2004 and went home. It was only then or later, that the enormity of her responsibilities dawned upon the second plaintiff – his disabilities meant that she would have to be the first plaintiff's primary caregiver for as long as he lived. Judging from her medical reports, I believe the second plaintiff went into a depression because she could not cope with such a heavy burden, not to mention the attendant financial worries.

Conclusion

91 The cruel hand of fate dealt the first plaintiff a devastating blow from which he can never recover. The second defendant however played no part in that tragedy. He was not negligent in his driving of the taxi and the taxi did not hit or rear-end the motorcycle. The first plaintiff fell onto the road of his own accord when the motorcycle skidded after he lost control. The motorcycle then hit the taxi on the taxi's left side before it fell onto its right side. Regretfully therefore, I must dismiss the claims of both plaintiffs with costs to the second defendant.

92 It was understandable that the plaintiffs and their sons would want to blame someone else other than the first plaintiff for his present condition. The second plaintiff consciously or otherwise, decided well after the accident that the second defendant should be the party responsible for her husband's misfortune and her depression, because of his deceitful conduct. Unfortunately, her claim had no basis at law.

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