

Sim Lee Keng Cindy v Paul Bayliss Brown (Vythilingam s/o Packirisamy and Another, Third Parties)
[2002] SGHC 271

Case Number : Suit 236/2002/M
Decision Date : 18 November 2002
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : G Prasanna Devi (Hoh & Partners) for the plaintiff; James Yu & Jemy Ong (Yu & Co) for the defendant; K Anparasan (Khattar Wong & Partners) for the third parties
Parties : Sim Lee Keng Cindy — Paul Bayliss Brown — Vythilingam s/o Packirisamy; Chua Chuan Leong & Sons Pte Ltd

Judgment

GROUNDS OF DECISION

1. At the conclusion of the trial, I awarded interlocutory judgment to the plaintiff against the defendant on her claim with costs, on the basis that the defendant was entitled to 50% contribution on liability, from both Third Parties. As the Third Parties have now appealed against my judgment (in Civil Appeal No. 108 of 2002), I set out the reasons for my decision.

The facts

2. On 3 August 2000 at about 5pm, Paul Bayliss Brown (the defendant) with his fiancee Cindy Sim (the plaintiff) riding pillion, was riding motorcycle no. FR 8924R (the motorcycle) along Commonwealth Avenue West in the direction of Clementi Avenue 6. At the junction of the two roads, the defendant stopped as the traffic light was red, and waited for the light to change to green before he turned right into Clementi Avenue 6. As he moved off towards the right after the traffic light had changed to green, lorry no. YG 8791P (the lorry) which was driven by the first Third Party collided into the rear of the motorcycle.

3. As a result of the collision, both the plaintiff and defendant were thrown off the motorcycle; the plaintiff landed on a pile of roadwork debris. They were taken to National University Hospital by ambulance where an emergency operation was carried out on the plaintiff. The defendant suffered minor injuries (cuts and bruises) but the injuries sustained by the plaintiff were more serious. She suffered a degloving injury to her right knee, besides bruises to her left forearm and right arm. The plaintiff was in and out of hospital for about nine (9) months thereafter for more operations and treatment, arising from her initial injuries.

The claim

4. The plaintiff sued the defendant (who has since married her) for negligence in his riding, management and control of the motorcycle. She (inter alia) alleged that defendant had speeded, had failed to keep a safe distance from the lorry, had failed to keep a proper or any lookout and had paid insufficient regard to other vehicles at the junction, in particular the lorry, while waiting to turn into Clementi Avenue 6.

5. The defendant denied he was negligent. He contended that it was the first Third Party/lorry driver who was negligent in the driving, control and management of the lorry and caused the collision.

After he had filed the defence, the defendant issued Third Party proceedings against both the lorry driver and lorry owners (the second Third Party) and filed a statement of claim against them. In the event he was found to be liable to the plaintiff, the defendant claimed to be indemnified by the Third Parties.

6. In the defence they filed to the defendant's statement of claim, apart from admitting that it occurred, the Third Parties denied the first Third Party caused the accident. Both Third Parties alleged that it was the defendant who caused or contributed to the collision by his negligent driving and control of the motorcycle. Consequently, they denied they were liable for any indemnity or contribution towards the plaintiff's claim or for her costs or, the costs of the third party proceedings.

The evidence

(i) the plaintiff's and defendant's case

7. I will consider the plaintiff's and defendant's evidence together as their testimony was fairly straightforward.

8. The plaintiff (PW2) testified that on the day in question, she and the defendant were returning home to West Coast Road via Clementi Avenue 6, after shopping at International Mega Mart (IMM). She and the defendant were wearing crash helmets at the material time; this made conversation and hearing difficult. The defendant was travelling on the extreme right lane which allowed traffic to turn into Clementi Avenue 6; the lorry occupied the second lane from the right with its wheels straddling onto the motorcycle's lane slightly (by about 20cm). As the traffic lights turned green in favour of traffic proceeding straight towards Commonwealth Avenue West, the defendant rode the motorcycle forward into the box junction preparing to turn right. Suddenly, the defendant changed direction and proceeded straight ahead. The motorcycle then travelled along Commonwealth Avenue West before it collided into a road sign. She and the defendant were thrown off the motorcycle.

9. Cross-examined, the plaintiff (PW2) could not explain why the defendant rode the motorcycle straight instead of turning right. She was unable to recollect clearly what transpired due to her shock when she saw the lorry coming very close to her as the motorcycle was proceeding to turn right. The plaintiff's recollection of events was unclear, no doubt due to the trauma she experienced from the collision.

10. In his written testimony (para 6), the defendant (DW1) had deposed that the traffic light had turned green in his favour, when he moved the motorcycle forward, travelling in the middle of the extreme right lane. In court, he corrected that statement and said that the junction did not have a proper/permanent traffic light but only a temporary one as there were road works; there was also no separate green arrow for turning traffic.

11. Because of the road works and the erection of a large silver metal siding at the junction, the defendant said it was difficult to check for on-coming traffic without going forward, which was what he did when the traffic light turned green. As he did so, he found to his horror that the protruding (undercarriage) portion of the lorry had locked onto the rear portion of the motorcycle. He moved forward to wrest the motorcycle free of the lorry's hold. He then leaned to his right to try to move away from the lorry which was already turning right but, the handlebars of the motorcycle failed to respond. As he was leaning right, he felt a massive force at the motorcycle's left rear side. It happened so quickly (in a matter of seconds) that he was not aware of what hit him. The next thing he knew was, that the motorcycle had turned 90 angle across the front of the lorry; he had no

alternative but to throttle as hard as he could to get out of the lorry's path. He then felt an even greater force hitting the left rear side of the motorcycle. The defendant said he managed to avoid the lorry and headed in the direction of the road-works sign which had been placed at the junction. He braked very hard and (with the plaintiff) was thrown off the motorcycle; he went over its handle bars and security screen, was thrown back onto and then underneath, the motorcycle while the plaintiff landed in a pile of debris.

12. Questioned by the court on the plaintiff's testimony that he had suddenly changed direction and proceeded straight instead of turning right, the defendant pointed out that the plaintiff was only a pillion rider, she had no experience in driving a powerful machine (1,200 cc) like the motorcycle. He, on the other hand, had over 30 years' experience as a motorcyclist. Consequently, it was only her perception he had changed direction to go straight when in actual fact he was trying desperately to disengage the motorcycle from the lorry. The defendant explained that the motorcycle had a 'crumple zone' which enabled him to maintain his balance when the lorry hit the machine; otherwise he would not have survived the collision. In effect, the lorry collided twice with the motorcycle.

13. The defendant denied the first Third Party's allegation in the latter's police report, that he had failed to turn right. On the contrary, the defendant asserted, he had turned right, having first switched on his signal lights to indicate his intention to do so. It was the lorry driver who had failed to notice his presence, according to what the first Third Party told the defendant immediately after the collision. It was the lorry that collided into the motorcycle, not vice versa. He further denied the first Third Party's allegation that he smelt of alcohol when he approached the first Third Party after the collision. The defendant contended he did not consume alcohol at IMM, not even a beer. Neither was he going fast, nor was he in a hurry as, the plaintiff only needed to be in Bishan two (2) hours later for a dinner appointment with her mother. He was not travelling too close to the lorry either. He disagreed with counsel's suggestion that it was the motorcycle which had grazed the lorry but conceded he could have allowed the lorry to turn right first.

14. Cross-examined, the defendant confirmed that the lorry straddled his lane, even though this fact was omitted from his affidavit as well as from his police report (which was lodged five [5] days later). He had stopped at the junction when the lorry drew up alongside about 1.5m away from the motorcycle. Although he was a foreigner, the defendant had been in Singapore for about 4 years, at the time of the accident. Questioned by the court, the defendant clarified that the extreme right lane in which he was travelling was the compulsory turning lane whereas, the second lane which the lorry occupied was an optional turning lane, which also allowed traffic to proceed straight to Commonwealth Avenue West.

15. The plaintiff had called as her witness the investigating officer of the accident. However, the evidence of Sergeant Chong Mui Fong (PW1) was not particularly helpful as, she arrived at the scene at about 6.30pm, by which time the plaintiff and defendant had been taken to National University Hospital. She said the first Third Party did not mention in his statement to the police that the defendant smelt of alcohol at the time. The police damage report (see 1AB9) prepared by Sergeant Chong showed that the motorcycle had its front tyre punctured, its steering broken and its two (2) side panniers scratched and damaged. The lorry on the other hand showed no visible damage.

(ii) the Third Party's case

16. I turn now to consider the testimony presented for the Third Parties by the first Third Party, who was the only witness for their case.

17. The 68 year old first Third Party (who has more than 40 years' experience as a lorry driver

and still drives for the second Third Party) testified that on the day of the accident, he wanted to get onto the Ayer Rajah Expressway (AYE) via Clementi Avenue 6. The lorry has an unladen and a laden, weight of 8 and 16 tons respectively with 6 tyres, two (2) in front and four (4) at the rear. He said he was then on his way to make a delivery of steel plates to a work-site at Telok Blangah Road, with two (2) workers.

18. At the junction of Clementi Avenue 6 and Commonwealth Road West, the first Third Party said he took the second lane from the lane as firstly, it would be easier for him to negotiate the turn into Clementi Avenue 6 (due to the length and size of the lorry) and secondly, there were road works which precluded him from turning in the extreme right lane. He did not see the motorcycle in the lane to his right although it was a clear day, the road surface was dry and traffic conditions were moderate.

19. The first Third Party testified that as he approached the junction, the light was red. He stopped the lorry just before the white line; within seconds, the light changed green in his favour so he moved forward, looked into his mirror and turned right when he saw no oncoming traffic. Under cross-examination, the first Third Party clarified he did not look into his rear view mirror, only in his right wing mirror. He then heard a screeching sound of tyres at which point, he noticed there was a motorcycle on his right which had grazed the front right tyre of the lorry; the motorcyclist (the defendant) then rode straight ahead and collided into a road sign. He stopped the lorry, came out, saw the defendant and the plaintiff and went forward to see if he could offer any assistance. The defendant appeared to be helping the plaintiff. He deposed he smelt alcohol on the latter's breath when the defendant approached him.

20. After the plaintiff and the defendant had been taken away to hospital by ambulance, the first Third Party lodged a police report. He was never charged by the traffic police for any offence in relation to the accident.

21. The first Third Party insisted he did not collide into the motorcycle at all; he maintained it was the motorcycle which had grazed the front right tyre of the lorry. He denied the lorry had straddled the right lane occupied by the motorcycle.

22. Re-examined, the first Third Party explained that the two (2) passengers in the lorry with him that day were foreign workers who had since left Singapore and gone back to India; hence, their absence from court. Even so, the Third Parties could have taken statements from the foreign workers before they returned to India.

The decision

23. I was of the view on the evidence, that the acts of omission of both the defendant and the first Third Party contributed to the collision which resulted in the plaintiff's injuries. On the defendant's part, he failed to move away from the lorry when the vehicle came too close to him. On the part of the lorry driver, he failed to notice the motorcycle at all. As I could not determine further on the evidence who was more negligent, I held the defendant and the first Third Party to be equally liable. The second Third Party was sued vicariously for the acts of the first Third Party, who was their servant or agent. Consequently, the second Third Party was also liable with the first Third Party, for 50% contribution to the plaintiff's claim.

24. In counsel's final submissions made on behalf of the Third Parties, he made much of what he considered were inconsistencies in the defendant's testimony. He had argued that his clients should not be liable at all, pointing out that the defendant's police report (lodged on 8 August 2000) did not

mention material particulars adduced from him in court, namely:

- (i) the position of the lorry at the time of the accident;
- (ii) that the lorry straddled the extreme right lane;
- (iii) that there was a protrusion from the lorry which locked onto the rear portion of the motorcycle.

25. Counsel (Anparasan) submitted there was also a discrepancy between the defendant's police report and his oral testimony in that in the former, the defendant had stated there was one (1) whereas in court, he testified there were two (2) collisions. The defendant's oral testimony was also discrepant with the sketch plan he drew in his police report; the position of the lorry did not show that it straddled the extreme right lane. Given that the police report was not lodged on the day itself but 5 days after the accident, the defendant's excuse of trauma being the reason for the inaccuracies in his sketch/the police report cannot be true. Counsel said that the alleged straddling by the lorry onto the motorcycle's lane was a very material fact which, if true, meant that the first Third Party was negligent. However, such a material fact was not even pleaded in the defendant's statement of claim against the Third Parties. It was also not reflected in the plaintiff's written testimony. As such, counsel asked the court to ignore the defendant's allegation that the lorry straddled the motorcycle's lane.

26. I was not persuaded by counsel's submissions that the discrepancies between the defendant's oral testimony and his police report were so material as to render the defendant's testimony unreliable. I would point out that by the same token, the first Third Party's oral testimony was also discrepant with the police report he himself lodged the very same day. In his written testimony, the first Third Party had alleged that the defendant's breath smelt of alcohol. Yet such a material fact was neither mentioned on 3 August 2000 to Sergeant Chong nor stated in the first Third Party's police report. It was obviously an afterthought concocted to put the defendant in a bad light. I do not put too much store in what is stated in a police report, bearing in mind that more often than not (although not applicable to the defendant here), it is a police officer who helps a party to write out the report.

27. What I noted was, the damage to the motorcycle recorded in the police damage report and shown in the defendant's photographs was consistent with the testimony of the defendant. The lorry escaped damage because the force it applied to the motorcycle was due to its hooking some part of the motorcycle and it dragged the motorcycle forward when making the right turn; there were no collisions as such although the defendant felt the sensation of the impacts as if the motorcycle was being hit in the rear.

28. I was mindful of the fact that the defendant and the plaintiff are now husband and wife but I do not think that fact per se rendered the plaintiff's testimony any the less credible. She had said she did not know why the defendant suddenly changed direction to go straight instead of turning right and left it to him to explain his actions to the court; there was no attempt by her to cover up for him. The defendant's fault lay in his being too close to the lorry. He owed himself a duty as a road-user to be careful even if other road-users were careless. Had the defendant been more observant, even granted he was wearing a safety helmet, he would have noticed how dangerously close the lorry was, and should have shifted the motorcycle more to his right.

29. As for the first Third Party, his cross-examination (N/E 21) had adduced the following evidence:-

Q: When you were approaching junction, did you see the motorcycle on the right lane?

A: I didn't see the motorcycle and there were no other vehicles as well.

Q: When you stopped at junction, did you see motorcycle to your right?

A: There was no vehicle/motorcycle on the right side.

Q: When was the first time you saw the motorcycle?

A: When motorcycle grazed front right tyre of my lorry.

The testimony supported my conclusion that the first Third Party failed to keep a proper lookout for other traffic on the road. Clearly there were other vehicles or at least one other vehicle (the motorcycle), on the road alongside him; he just did not see. Neither did he notice he was straddling the lane to his right, nor did he have any inkling the lorry had hooked onto and dragged the motorcycle along until he was alerted by the screeching sound.

30. I therefore concluded that the first Third Party was not paying enough attention to surrounding traffic that day. The lorry was much higher and bigger than the motorcycle and its driver should have seen the defendant and the plaintiff quite easily had he really checked the right side mirror (as he claimed) and looked into the rear view mirror. The first Third Party testified that he did not see any tyre marks on the road. That must mean he did not apply the brakes of the lorry at all, because he did not see the motorcycle. It would also be consistent with the defendant's testimony that the motorcycle was dragged along by the lorry's momentum and the motorcycle's brakes/handlebars were rendered useless, after the machine became entangled with part of the lorry's undercarriage. The defendant managed to disengage the motorcycle at one stage and I believe the direction change thereafter was not voluntary but done to avoid the lorry; otherwise the motorcycle may have gone under the wheels of the lorry.

Conclusion

31. While the defendant was undoubtedly liable to the plaintiff for the injuries she suffered as a result of the accident, the first Third Party was equally responsible for what happened. Consequently, it was only fair to apportion liability equally between the parties, which I did.

Sgd:

LAI SIU CHIU

JUDGE

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