IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 31

Suit No 589 of 2020

Between

Danny Raj a/l Muniappan

… *Plaintiff*

And

Ang Zhiqiang

… *Defendant*

ORAL JUDGMENT

[Tort — Negligence — Duty of care]
[Tort — Negligence — Breach of duty]
[Tort — Negligence — Causation]
[Tort — Negligence — Res ipsa loquitur]
[Tort — Nuisance — Public nuisance]

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Danny Raj a/l Muniappan
v
Ang Zhiqiang

[2022] SGHC 31

General Division of the High Court — Suit No 589 of 2020
Mavis Chionh Sze Chyi J
26–29 October 2021, 24 December 2021

14 February 2022 Judgment reserved.

Mavis Chionh Sze Chyi J:

Background

1 This matter concerns a collision between Mr Danny Raj's ("the plaintiff") motorcycle JLX215 and Mr Ang's ("the defendant") Audi car SFJ1223T along Seletar Expressway ("SLE") on the morning of 24 July 2017. At the material time, the defendant's car had lost power and stalled in the rightmost lane ("the first lane") of the SLE.[1] The defendant switched on the car's hazard lights, pressed the boot switch to open the car boot where a triangular breakdown signage was stored, and then opened the car door to alight from the

[1] para 7 of the Defendant's Affidavit of Evidence-in-Chief ("AEIC") at Tab 3, BAEIC.

car to retrieve the signage.[2] However, before he could alight, the plaintiff's motorcycle crashed into the rear of the car.[3]

2 The incident was captured on video by the in-car camera of Mohammad Wirman Bin Saptu ("DW2"), who had been driving behind the defendant's car in the same lane of the SLE.[4] The video footage captures the plaintiff overtaking DW2's vehicle from the right and then colliding with the defendant's car.

3 The defendant called two eyewitnesses to testify at trial, namely, DW2 and Chandra Kumaran Rao a/l Krishnan Moorthy ("DW3"), both of whom had been driving on the SLE at the material time. The defendant also called as witnesses his mother Khoo Heng Lai ("DW4"), who was the registered owner of the car SFJ1223T and who was in the front passenger seat of the car at the material time, as well as Neo Gim Seong ("DW5"), whose motor workshop NGS Trading had been providing repair services for the car since November 2015.

4 Both parties also led evidence from their respective expert witnesses, Sivasothy Nanthagopal ("PW2") and Ang Bryan Tani ("DW6"), on possible reasons why the defendant's car had stalled and on the manner in which the car SFJ1223T had been maintained prior to the accident.

5 In bringing this action, the plaintiff sought compensation for personal injuries arising from the collision. The plaintiff framed his claim against the defendant as being one in negligence and/or nuisance. In respect of the claim in

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2 paras 7–8 of the Defendant's AEIC at Tab 3, BAEIC.

3 paras 8–9 of the Defendant's AEIC at Tab 3, BAEIC; para 3 of the Plaintiff's AEIC at Tab 1, BAEIC; paras 4–5 of Mohammad Wirman Bin Saptu's AEIC at Tab 8, BAEIC.

4 paras 3 and 7 of Mohammad Wirman Bin Saptu's AEIC at Tab 8, BAEIC.

negligence, the following particulars were pleaded in the Statement of Claim (Amendment No 2):

> (a) Driving at a very slow speed or being stationary on the extreme right lane of the highway;
>
> (b) Posing as a nuisance and obstructing the normal flow of traffic along the highway;
>
> (c) Failing to exercise due care and skill in the management and control of the car;
>
> (d) Failing to observe the presence and approach of Mr Danny Raj on the motorcycle;
>
> (e) Failing to give a clear and unobstructed travel path to Mr Danny Raj, who was proceeding straight along the fast lane of the highway in a normal manner;
>
> (f) Allowing the car to remain on the fast lane which was unsafe and dangerous so to do;
>
> (g) Failing to take all reasonable steps to alert other road users that the car poses a danger;
>
> (h) Causing a nuisance by failing to remove the car from the fast lane;
>
> (i) Failing to stop, swerve, slow down or in any other way to manage or control the car so as to avoid the said collision.[5]

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5 para 3 of the Statement of Claim (Amendment No 2), Supplementary Set Down Bundle.

6 In respect of the claim in nuisance, an amendment was made to the Statement of Claim on 11 October 2021 to delete the reference to "private" nuisance. As such, I understand the plaintiff to be claiming public nuisance. In his Statement of Claim (Amendment No 2), this was described as having been an "unlawful obstruction" caused by "the Defendant's car in coming to a stop all of a sudden along the fast lane of the expressway".[6] In addition, the following particulars were pleaded:

(a) Failing to maintain the car at all times to ensure that it would not stall while on the highway;

(b) Failing to appreciate in time or at all that the car was going to stall;

(c) Failing to appreciate the signs and symptoms of the car prior to stalling;

(d) Failing to ensure that the car was reasonably well maintained by competent car mechanics and repairers who are well-versed in the technology and design of the car;

(e) Failing to have the car inspected for professional opinion on the cause of the car to stall suddenly along the highway and leading to the road traffic accident;

(f) *Res ipsa loquitur*.[7]

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6 para 4 of the Statement of Claim (Amendment No 2), Supplementary Set Down Bundle.

7 para 4 of the Statement of Claim (Amendment No 2), Supplementary Set Down Bundle.

7 I add that while the above particulars were ostensibly pleaded in respect of the claim in nuisance, the manner in which the plaintiff's case was put at trial showed that he actually relied on them as being additional particulars of the defendant's alleged negligence.

The plaintiff's claim in negligence

8 I deal first with the plaintiff's claim in negligence. I do not think it is disputed that in principle, the plaintiff has to establish the following in order to succeed in his claim in negligence:

(a) The existence of a duty of care;

(b) The standard of care required, i.e. what would be reasonable in the circumstances;

(c) Breach of the duty of care by the defendant;

(d) A causal connection between the defendant's breach and the plaintiff's damage;

(e) That the plaintiff's damage was not so unforeseeable as to be too remote.

Negligence: Duty of care

9 The defendant did not dispute that he owed other road users such as the plaintiff a duty of care. Nor did he dispute that such a duty of care would have required him to exercise due care and skill in the management and control of the car.

Negligence: Breach

10 However, the plaintiff was unable to explain – much less to prove – exactly how the defendant had failed to exercise due care and skill in the management and control of the car. It was not pleaded – nor was it put to the defendant – that he had *driven* the car in a careless manner prior to its stalling. This was not a case where the defendant had voluntarily and deliberately parked or stopped his car while driving along the first lane of the expressway. Comparisons to cases such as *Chop Seng Heng v Thevannasan & ors* [1975] 2 MLJ 3 and *Yang Xi Na v Lim Chong Hong and another (Ong Ah Seng, third party)* [2006] 3 SLR(R) 459 ("*Yang Xi Na*") – in the context of the negligence claim – were therefore not entirely apt, because the stationary vehicles in those cases were stationary as a result of the drivers' deliberate decisions to park the vehicles in a particular spot and/or in a particular position.

11 While it was pleaded that the defendant had failed to appreciate that "the car was going to stall" and/or to appreciate the "signs and symptoms of the car prior to stalling",[8] there was no evidence before me to bear out this assertion. Towards the end of the defendant's cross-examination, it was put to him that "an alarm and warning lights" would have come on inside the car prior to its stalling and that he must have "ignored" such alarm or warning lights, thereby causing the car to stall.[9] However, I did not find that the evidence before me was sufficient to conclude that *more probably than not*, the problem(s) which caused the car to stall was of such a nature that it would have set off "an alarm and warning lights". In any event, even assuming for the sake of argument that "an alarm and warning lights" would more probably than not have come on inside

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8 paras 4(b) and 4(c) of the Statement of Claim (Amendment No 2), Supplementary Set Down Bundle.

9 See transcript of 27 October 2021 at p 59 line 26 to p 60 line 5.

the car prior to its stalling, the evidence available was insufficient for me to conclude that more probably than not, the defendant had sufficient time to steer the car to a safe spot along the expressway but "ignored" the alarm and warning lights until the car had actually stalled. There did not appear to me to be any reason why the defendant would have "ignored" an "alarm and warning lights", and persisted in continuing to drive on the first lane despite such warning signs, when he had his mother DW4 in the car with him. From the evidence of the defendant[10] and that of DW4,[11] it appeared that the first sign of trouble with the car was the loss of power: as the defendant explained in cross-examination, the car failed to respond when he pressed the accelerator pedal and slowed down "very quickly".[12] The defendant denied that he had "ignored" any alarm and/or warning lights;[13] and he was not shaken in his evidence.

12 There was also no evidence at all that the defendant responded in a careless manner to the loss of power in the car. On the contrary, it appeared to me that the defendant's actions in response to the loss of power were those which a reasonable driver would have taken in the circumstances. According to the defendant, he first signaled left with the intention of filtering left to the road shoulder, but soon realized that he would not be able to get the car across several lanes of traffic due to its loss of power and the fact that vehicles were continuing to pass by on his left.[14] On realising this, he immediately switched on his hazard lights. At this moment, the car stalled. The defendant then pressed the boot switch to release the boot where his break-down signage was kept, and opened

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10 para 6 of the defendant's supplementary AEIC, Tab 4, BAEIC.

11 para 9 of DW4's AEIC, Tab 7, BAEIC.

12 See transcript of 27 October 2021 at p 14 lines 14 to 19.

13 See transcript of 27 October 2021 at p 59 line 26 to p 60 line 5.

14 See transcript of 27 October 2021 at p 16 lines 18 to 21; para 7 of the defendant's supplementary AEIC, Tab 4, BAEIC.

his door to alight to retrieve the break-down signage.[15] It was at this point that the plaintiff's motorcycle collided into the rear of the defendant's car.

13 The defendant's account of the actions he took upon experiencing the loss of power in the car was corroborated by the evidence of the independent eyewitness, DW2. DW2's evidence was that when he was a few car lengths behind the defendant's car, he had already seen the hazard lights of the defendant's car switched on and its boot open.[16] The video footage taken by DW2's in-car camera, as well as the still photographs taken from the footage, showed the defendant's car with its hazard lights switched on, its boot open, and the driver's door open, as DW2's car approached it from behind.[17]

14 It should also be noted that DW2's evidence was that once he noticed that the defendant's car had its hazard lights switched on and its boot open, DW2 reacted by "trying to filter to the left lane" – but was unable to do so because traffic in the lane to his left (the second lane) was "still fast-moving".[18] This is corroborated by the video footage. DW2's evidence[19] – and the corresponding video footage – also showed that DW2 was straddling the first and second lanes when the plaintiff's motorcycle overtook DW2's car from the right and collided into the rear of the defendant's car. The necessary inference that must be drawn from this evidence is that *the defendant's car had stalled and come to a stop only seconds before the plaintiff's motorcycle collided into its rear*. In the circumstances, it was simply not true to say (as the plaintiff did) that the

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15 paras 7–8 of the defendant's AEIC, Tab 3, BAEIC.

16 para 3 of DW2's AEIC, Tab 8, BAEIC.

17 pp 13–17 of DW2's AEIC, Tab 8, BAEIC.

18 paras 4 and 9.2 of DW2's AEIC, Tab 8, BAEIC.

19 paras 4–5 of DW2's AEIC at Tab 8, BAEIC; see also transcript of 27 October 2021 at p 80 lines 7 to 26.

defendant had failed to take reasonable steps to warn other road users that his car had stalled, or that he had carelessly "allowed" the car to "remain" on the first lane in an "unsafe" or "dangerous" manner.

15 It appears to me the plaintiff realized the futility of trying to prove that the defendant had *driven* the car in a careless manner, because the bulk of his counsel's cross-examination of the defendant at trial actually focused on the *maintenance* of the car. It was put to the defendant that the car had stalled because he had failed to ensure that it was "properly and adequately" maintained.[20]

16 I do not understand the defendant to be seriously disputing that as a matter of general principle, the owner of a car should ensure that his car has been reasonably maintained such that it is capable of being safely driven on the road. Although the defendant was not actually the owner of the Audi car, it was not disputed that the owner DW4 left it to him to arrange for the maintenance of the car.[21] Not surprisingly, however, the defendant denied that he was in breach of any duty vis-à-vis the maintenance of the car;[22] and unfortunately, the plaintiff simply could not articulate with any coherence the standard of care which the defendant should have satisfied.

17 At various points in the course of the trial, it appeared to be suggested that the only reasonable thing which the defendant could have done in terms of the maintenance of the car was to continue taking it to the Audi-authorised workshop for servicing even after the expiry of the warranty period. This

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20 See transcript of 27 October 2021 at p 58 lines 16 to 20.

21 paras 2 and 5 of DW4's AEIC, Tab 7, BAEIC.

22 See transcript of 27 October 2021 at p 58 lines 16 to 20.

appeared to be the point of PW2's evidence, as PW2 claimed that Audi-authorised workshops would have access to Audi service bulletins[23] and genuine Audi parts,[24] whereas non-Audi authorised workshops (or "independent workshops") would not.[25] Further, PW2 claimed that the defendant's car did not appear to have received the checks recommended under an Audi-approved maintenance schedule.[26] Regrettably, however, PW2's evidence appeared to be predominantly based on conjecture and hearsay. PW2 failed to adduce in evidence the service bulletins he claimed to have seen;[27] and the plaintiff's counsel also did not put to the defendant or DW5 any specific alerts or warnings from these service bulletins which might have been missed and which – if only they had been heeded and attended to – might have averted the stalling of the car on 24 July 2017. The maintenance schedule exhibited in PW2's second report[28] was said by PW2 to have been obtained from the US, but no evidence was adduced to show that the maintenance schedule applied strictly and in full to Audi cars produced for the Singapore market. When pressed, PW2 gave vague responses to the effect that "most" of the items in the US maintenance schedule "has [*sic*] to be carried out in Singapore", that he had been "told the number of hours is shortened in Singapore", and that "(s)ome items that are not in the cars in Asia are not to be carried out".[29] When pressed further as to who had "told" him these things, PW2 tried to bridge the gap in his evidence by claiming that he had checked "the Audi website in Singapore" and spoken to

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23 See transcript of 26 October 2021 at p 82 lines 24 to 26.

24 pp 79 and 82 of Plaintiff's Bundle of Documents ("PBOD").

25 pp 81 and 82 of PBOD.

26 pp 78 and 86 of PBOD.

27 See transcript of 26 October 2021 at p 82 line 20 to p 84 line 6.

28 p 86 of PBOD.

29 See transcript of 26 October 2021 at p 84 lines 25 to 28.

"one Audi user".[30] When pressed further, he conceded that he had not adduced in evidence before the court the information allegedly obtained from the Audi website; and he was obliged to concede too that without this information being adduced, there was no way to verify the accuracy of his claims.[31] It also transpired that the "Audi user" he claimed to have "checked with" was not an expert on the servicing of Audi cars but simply a person who "has an Audi".[32] The precise identity of this person was never revealed; and although PW2 claimed to have checked with him on "the services he carried out … at the Audi workshop",[33] the contents of PW2's discussions with this person were not elaborated upon anywhere in the two expert reports.

18 As for PW2's assertion that independent workshops would not have found it possible to obtain genuine Audi parts for repairs,[34] DW5's invoices stated that he had used genuine Audi parts for repairs to the defendant's vehicle.[35] When DW5 was asked in cross-examination whether he had ever used non-genuine parts, he denied it;[36] and he was not shaken in his evidence. In cross-examination, PW2 admitted that his evidence about the lack of access to genuine Audi parts was based on a conversation with an unnamed individual who had answered his telephone call to Audi Singapore's general line – and that he had not mentioned this conversation anywhere in his AEIC or in his reports.[37] If PW2's evidence was intended to persuade me that reasonably competent

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30 See transcript of 26 October 2021 at p 84 lines 29 to 31.

31 See transcript of 26 October 2021 at p 86 line 18 to p 87 line 8.

32 See transcript of 26 October 2021 at p 85 lines 1 to 16.

33 See transcript of 26 October 2021 at p 85 lines 6 to 7.

34 See transcript of 26 October 2021 at p 107 lines 9 to 13.

35 pp 37–41, 44–48 of Defendant's Bundle of Documents ("DBOD").

36 See transcript of 28 October 2021 at p 33 lines 4 to 5, 14 to 26.

37 See transcript of 26 October 2021 at p 107 line 9 to p 108 line 31.

servicing and maintenance of an Audi car could only be provided by an Audi-authorised workshop, then I have to say I found his methodology lacking in objectivity, and his evidence woefully unreliable.

19 In any event, and perhaps more problematically for the plaintiff, he never pleaded in the first place that the standard of care to be imposed in this case required the defendant to ensure his car was serviced *only by an Audi-authorised workshop*. Indeed, even if he had pleaded such a position, I do not see how he would have proven it. The defence expert, DW6, testified that "typically, owners do not send their cars to the agent for servicing or maintenance once the warranty period is over".[38] DW6 explained that this was "largely due to the huge cost difference between going to the agent, and to a non-authorised or a normal servicing workshop".[39] Even the plaintiff's own expert, PW2, conceded in cross-examination that it was common practice for "some" Audi owners to bring their cars to independent workshops for servicing after the expiry of the warranty period.[40] Nor did PW2 go so far as to say that all or most independent workshops would be incapable of providing reasonably competent maintenance for the type of Audi car driven by the defendant.

20 As for the position actually pleaded by the plaintiff (*ie,* that the defendant failed to ensure that "the car was reasonably well maintained by competent car mechanics and repairers who are well versed in the technology and design of the car"), the evidence before me was insufficient to prove that the NGS Trading workshop – or DW5 – was in some way incompetent or unqualified to provide reasonable maintenance services. It was never put to the

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38 See transcript of 29 October 2021 at p 6 lines 13 to 20.

39 See transcript of 29 October 2021 at p 6 lines 20 to 22.

40 See transcript of 26 October 2021 at p 109 lines 11 to 15.

defendant which specific portions of the documented servicing and repair history should have set off alarm bells in his mind as to the competence of the NGS Trading workshop or the reliability of the car. In fact, just the month prior to the accident, the car had passed its LTA inspection.[41] PW2 agreed with the plaintiff's counsel in re-examination that the LTA inspection would not have checked on "the integrity of the various car components that drive the machine",[42] but he did not explain what he meant by this. In any case, the LTA certificate made it clear that the inspection – which was carried out pursuant to section 90 of the Road Traffic Act (Cap 276, 2004 Rev Ed) – had found the car in compliance with "the prescribed statutory requirements". It is plainly stated in the statute itself that the inspection pursuant to section 90 is a "test of [the] satisfactory condition of [the] vehicle"; and that under section 91, a vehicle without such a test certificate cannot be used on the road. In the circumstances, there did not appear to be any evidence to suggest the defendant should have been put on notice that his chosen workshop was incompetent or that his car was unroadworthy.

Negligence: Causation

21 Even if I were to assume for the sake of argument that the defendant had somehow failed to ensure that "the car was reasonably well maintained by competent car mechanics and repairers who are well-versed in the technology and design of the car", the plaintiff still had to prove that it was this breach which caused the accident on 24 July 2017.

22 In this connection, it is not enough for the plaintiff to say that "but for" the defendant's car having stalled in the first lane, there would have been

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41 para 6 and p 6 of DW4's AEIC, Tab 7, BAIEC.

42 See transcript of 26 October 2021 at p 135 lines 1 to 4.

nothing for the plaintiff to collide into. Even assuming a defendant's conduct is found to be a cause on application of the "but for" test, it is not conclusive as to whether such a defendant should be held responsible in law, since the function of the causal enquiry in law is to determine which causes have significance for the purpose of attributing legal responsibility: *Clerk & Lindsell on Torts* (23rd edition, Sweet & Maxwell 2020) at [2-09].

23 In *Wright v Lodge & another* [1993] 4 All ER 299 ("*Wright*"), the respondent's car broke down along the eastbound carriageway of an unlit dual carriageway at night when visibility was very poor. The car came to a stop in the nearside lane of the carriageway, and while the respondent was trying to start it, an articulated container lorry driven by the appellant crashed into the back of it, seriously injuring a passenger in the rear seat. The lorry then veered out of control across the central reservation and came to rest on its side in the opposite carriageway where it was struck by three cars and a lorry. The driver of one of the cars was killed and another driver was injured. It was found that the appellant had been driving at a speed above the speed limit to which his vehicle was subject, and that he had been driving at that speed in thick fog at night. *Vis-à-vis* the dead and injured car drivers, the English Court of Appeal upheld (at 300) the lower court's finding that although the respondent had been negligent in not removing her car from the carriageway onto the verge, the sole cause of the lorry ending up on the westbound carriageway and the drivers' consequent death and injuries was the appellant's reckless driving, which was the only relevant legal cause of that event. According to the court, the appellant had driven in a manner which was "unwarranted and unreasonable", leading to the violent swerve and braking that sent his lorry out of control; and the eventual presence of the lorry in the westbound carriageway was "wholly attributable" to the appellant (at 307).

24 In *Wright*, Parker LJ described the appellant's driving as having been "reckless" (at 307), while the judgment of Woolf LJ also referenced at one point the use of the description "deliberately or recklessly" (at 308). In the present case, while the defendant pleaded *inter alia* that the accident was caused solely by the plaintiff and pursued in closing submissions the argument that the plaintiff's conduct constituted a *novus actus interveniens* in the chain of causation, he did not plead recklessness *per se*. However, I do not find this fatal to his argument of *novus actus interveniens*. In *Spencer v Wincanton Holdings Ltd (Wincanton Logistics Ltd)* [2009] EWCA Civ 1404 ("*Spencer*"), Sedley LJ and Aikens LJ eschewed the use of formulations such as "recklessly or deliberately" in determining whether a claimant's own conduct constituted a *novus actus interveniens* and the effective cause of his injury. Sedley LJ pointed out that "one is uneasy about the importation of a formula ("recklessly or deliberately") from the field of criminal law, where recklessness is commonly equated with intent … (A)n intentional act may be anything from a fault-free act to a *novus actus interveniens*" (at [19]). In his view, perhaps the more relevant formulation was that "the degree of unreasonable conduct which is required" for a claimant's conduct to constitute a *novus actus interveniens* is "very high" (at [20]). Agreeing with Sedley LJ, Aikens LJ stated (at [45]):

> The line between a set of facts which results in a finding of contributory negligence and a set of facts which results in a finding that the "unreasonable conduct" of the Claimant constitutes a *novus actus interveniens* is not … capable of precise definition … (E)ach case will depend on the facts and … the court will have to apply a value judgment to the facts as found.

25 In *Dymond v Pearce* [1972] 1 QB 496 ("*Dymond*"), a lorry driver had parked his lorry on the highway. The lorry was parked with its lights on beneath a street lamp and was visible for some 200 yards. Some hours after the lorry had been left parked in that position without incident, a motorcyclist collided into the back of the lorry, and the plaintiff – who was then riding pillion on the

motorcycle – was injured. The plaintiff sued (*inter alia*) the lorry driver in negligence and also in nuisance. In respect of the claim in negligence, the trial judge held that on the facts, the lorry driver had not been negligent in parking the lorry as he did. The trial judge further held that "even if this was a common law obstruction, nevertheless as such it was not causative of the present accident", as he found that the accident was "wholly attributable to the fact that the motor cyclist as he rode along was watching the attractive young ladies on the pavement instead of looking ahead of him to see what conditions he was about to encounter" (at 503). On appeal, the English Court of Appeal affirmed the trial judge's findings on the claim in negligence, holding that his "finding that the sole cause of the accident was the motor cyclist's negligence" was "a correct conclusion" (*per* Sachs LJ, at 503).

26 In the present case, the best evidence of the plaintiff's conduct came from his own testimony and from the objective evidence of the video footage. It will be remembered that DW2's vehicle was directly behind the defendant's car when the latter stalled and came to a stop. DW2 did not collide into the defendant's car because he had already – from a "substantial distance" – noticed the defendant's hazard lights turned on and his car boot open.[43] From his evidence,[44] and as seen from the video footage, DW2 in fact had enough time to start filtering towards the left lane ("the second lane"). It was at this point that the plaintiff overtook DW2's vehicle from the right. What happened in the next few seconds is best described in the plaintiff's own words:

> It's only when I overtook this video car [DW2's vehicle] that I saw the other breakdown car [the Defendant's car]. And then, I collided with the breakdown car.[45]

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43 paras 3, 9.1, and 9.4 of DW2's AEIC, Tab 8, BAIEC.

44 paras 4 and 9.5 of DW2's AEIC, Tab 8, BAIEC.

45 See transcript of 26 October 2021 at p 42 lines 6 to 7.

> *When I'm behind any vehicle, I cannot see what is in front of me.* I can only see after I overtake that vehicle … *I couldn't see what was in front of this video car [DW2's vehicle], so when I started to overtake it, I saw the other stationary vehicle [the Defendant's car] and then I started to brake; but it was too near and it collided with the vehicle …*[46] [emphasis added]

27 Several other points were also glaringly obvious from the video footage. First, prior to overtaking DW2's vehicle, the plaintiff had been behind DW2 in the first lane, having switched from the third lane to the second lane and then to the first lane within a matter of seconds. In other words, the plaintiff was not the vehicle immediately behind the defendant's car when the latter lost power and stalled. Second, although the plaintiff claimed that DW2's vehicle had "slowed down" but not yet come to a stop even before he (the plaintiff) entered the first lane,[47] the video footage showed otherwise. As seen from the video footage, DW2's vehicle had already come to a stop prior to attempting to filter left. This should have indicated to the plaintiff the presence of some object ahead in the first lane which was causing DW2 to brake and to filter to the left lane – that is, if the plaintiff had been paying attention. Even if DW2 had only slowed down and not come to a complete stop, his slowing down and his attempt to filter left would have sufficed to indicate to the plaintiff the possibility of obstacles ahead in the lane – that is, if the plaintiff had been paying attention. Third, in choosing to overtake DW2's vehicle *from the right*, the plaintiff's motorcycle had to squeeze through a relatively narrow space between DW2's vehicle and the road divider. The plaintiff himself admitted that he "had to go near to the road divider when [he] was overtaking [DW2's] vehicle".[48] This meant that the plaintiff was left with very limited room to swerve or to otherwise maneuver his motorcycle when he finally noticed the defendant's car. Fourth, it was chillingly clear from

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46 See transcript of 26 October 2021 at p 47 lines 17 to 27.

47 See transcript of 26 October 2021 at p 42 lines 17 to 26.

48 See transcript of 26 October 2021 at p 49 lines 10 to 11.

the video footage that the plaintiff's motorcycle did not brake or even slow down prior to overtaking DW2's vehicle. From the video footage, there was no discernible pause at all in the speed of the plaintiff's motorcycle as it crashed into the rear of the stalled car. Indeed, based on the video footage, the force of the plaintiff's collision with the stationary car was so great that his pillion was flung from the motorcycle and flew through the air till he landed some distance away.[49] In the Plaintiff's own words:[50]

> I was *travelling at about 90 kilometres per hour* and *if I had braked any harder, I would have flown off. By the time I braked, I was too near to the vehicle [the Defendant's car]. That is why I collided.* [emphasis added]

28 Having regard to all this evidence, even if I were to assume for the sake of argument that the defendant had failed in his duty to maintain the car in a reasonable condition such that it stalled on 24 July 2017, it was plain that this was not the effective cause of the accident. Instead, the effective cause of the accident was the plaintiff's wholly unreasonable conduct in overtaking DW2's vehicle from the right without pausing to check the condition of the traffic ahead in the first lane, and in carrying out this maneuver at a speed which did not allow him to brake in time to avoid the stalled car.

29 In sum therefore, the evidence adduced simply does not support the plaintiff's case on breach and causation.

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[49] paras 8–9 of Defendant's AEIC, Tab 3, BAIEC; paras 5–6 of DW3's AEIC, Tab 6, BAEIC; See transcript of 27 October 2021 at p 81 lines 14 to 17.

[50] See transcript of 26 October 2021 at p 46 lines 26 to 28.

Negligence: Res ipsa loquitur

30 I deal with two other points in relation to the plaintiff's claim in negligence. The first concerns the plaintiff's pleaded reliance on the doctrine of *res ipsa loquitur*. In this connection, much reliance was placed in the plaintiff's closing submissions on the decision of the English Court of Appeal ("CA") in *Southport Corporation v Esso Petroleum Co Ltd & another* [1954] 2 QB 182 ("*Southport*"). However, that decision does not assist the plaintiff at all. In *Southport*, an oil tanker belonging to the first defendants developed a defect in its steering gear which caused the vessel to get out of control, to strike the revetment wall, and to become stranded in the estuary of the river it was traveling along. To prevent the vessel from breaking her back, the master of the vessel (the second defendant) jettisoned 400 tons of her oil cargo, which was carried by the tide on to a foreshore belonging to the plaintiffs and caused considerable damage. A majority of the CA (Singleton LJ and Denning LJ) noted (at 192) that the trial judge had found as a fact that the trouble arose through looseness of or a fracture to the stern frame which could not have been caused by heavy seas if the stern frame had been sound; and that the trial judge appeared to have considered that this was a case in which the doctrine of *res ipsa loquitur* applied. In the majority's view, since the doctrine of *res ipsa loquitur* applied, the onus was on the defendant vessel owners to explain why the steering gear of the ship went wrong; and as the defendant vessel owners had failed to provide any explanation, they were liable to the plaintiffs in negligence (at 193–194). As Denning LJ put it (at 201):

> … (T)he facts, to my mind, speak for themselves. The steering gear of the ship went wrong. It ought not to have gone wrong if those having the management of the vessel used proper care. The defendants have not given any explanation of how it could go wrong, consistent with due diligence. Surely, if they had had proper examinations and surveys of the ship, the stern frame would not

> have fractured. The inference of negligence should, I think, plainly be drawn.

31 The CA majority in *Southport* found against the defendant vessel owners. I note as an aside that the defendant vessel owners' appeal was allowed by the House of Lords on the basis that no allegation of unseaworthiness had been pleaded by the plaintiffs, that every allegation of negligence actually pleaded by them had been correctly decided by the trial judge in the defendants' favour, and that the defendants could not be held responsible for failing to negative a possible case which had not been alleged against them in the pleadings (*Esso Petroleum Co. Ltd v Southport Corporation* [1955] AC 218 at 237). The decision by the House of Lords did not touch on the observations of the majority of the Court of Appeal regarding the manner in which the doctrine of *res ipsa loquitur* should be applied: namely, that the doctrine of *res ipsa loquitur* has no application where the cause of the accident *is* known. This has also been made clear in numerous other authorities: for example, in the decision of the House of Lords in *Barkway v South Wales Transport Co Ltd* [1950] 1 All ER 392 ("*Barkway*").

32 In *Barkway*, the appellant's husband was killed while travelling as a passenger in the respondents' omnibus. The omnibus had veered across the road, mounted the pavement and fallen over an embankment. Evidence was given that this had happened because the offside front tyre had burst, and that the cause of the tyre bursting was an impact fracture due to one or more heavy blows on the outside of the tyre leading to the disintegration of the inner parts. Evidence also showed that a competent driver would be able to recognize the difference between a blow heavy enough to endanger the strength of the tyre and a lesser concussion. The trial judge found that the respondents were guilty of negligence in their system of tyre maintenance, but his finding was reversed by the Court of Appeal. Before the House of Lords, the appellant argued *inter*

alia that the doctrine of *res ipsa loquitur* applied. In allowing the appeal, the court pointed out that the doctrine of *res ipsa loquitur* had no application on the facts of the case because the cause of the accident was known: it was an impact fracture to the tyre that had caused it to burst and led to the omnibus veering across the road and down the embankment (*per* Lord Normand, at 399–400). *Per* Lord Porter, at 394–395:

> The doctrine [of *res ipsa loquitur*] is dependent on the absence of explanation [of the cause of the accident], and, although it is the duty of the defendants, if they desire to protect themselves, to give an adequate explanation of the cause of the accident, yet, if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether, on the facts as established, negligence is to be inferred or not.

33 In the present case, it cannot be said that the cause of the accident is unknown. Based on the plaintiff's own admissions and the undisputed video evidence, the cause of the accident was the plaintiff's own conduct, in overtaking DW2's vehicle from the right when he could not see the traffic ahead, and when he was riding at a speed which did not allow him to brake in time to avoid a stationary object like the stalled car. In the circumstances, the doctrine of *res ipsa loquitur* had no application.

Negligence: On the scrapping of the car post-accident

34 The second point concerns the scrapping of the defendant's vehicle a few months following the accident. The defendant was cross-examined at length about this.[51] It was suggested to him that he should have wanted to find out from the workshop what had gone wrong with the car and the reason why it had stalled.[52] I did not find these suggestions helpful to the plaintiff's case. Insofar

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51 See transcript of 27 October 2021 at p 47 line 11 to p 56 line 27.

52 See transcript of 27 October 2021 at p 53 line 5 to p 54 line 29.

as it appeared to be suggested that the defendant had a duty in law to "have the car inspected for professional opinion on the cause of the car to stall suddenly along the highway [*sic*]",[53] no effort was made by the plaintiff to explain the basis for the imposition of such a duty, and no authorities were cited in support of such a position. I add that insofar as the plaintiff seemed to think the defendant bore the burden of proving the precise cause of the car stalling, this was incorrect. It was the plaintiff's pleaded case that the defendant failed to ensure that "the car was reasonably well maintained" by a competent mechanic "well versed in the technology and design of the car". It was the plaintiff who put it to the defendant that his failure to ensure the adequate maintenance of the car led to its stalling which in turn (according to the plaintiff) led to the accident. It was for the plaintiff, therefore, to prove these things: as I have explained (see [30] to [33]), this was not a case where the doctrine of *res ipsa loquitur* was applicable. Plainly, the plaintiff could not prove what he alleged.

35 Insofar as it appeared to be implied in cross-examination that there was something odd about the scrapping of the car, no basis was shown for this suggestion either. The documentary evidence showed that following the accident, the car was sent to the workshop nominated by the defendant's insurers.[54] The documentary evidence also showed that the car was sent to the workshop for an assessment of the extent of the damage and the potential cost of repairs: neither the insurers nor the workshop personnel were concerned during this process with conducting an investigation into the cause(s) of the car having stalled, as their chief concern was whether it would be economical to repair the car. As it turned out, the assessment was that it would not be

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53 para 4(e) of the Statement of Claim (Amendment No 2), Tab 1, Supplementary Set Down Bundle.

54 pp 5–12 of the Defendant's Supplementary Bundle of Documents.

economical to repair the car, in view of the estimated cost of the repairs – and this was why the car was scrapped.[55] In short, there was nothing sinister about the scrapping of the car.

Negligence: summary

36 As I find that the evidence before me simply cannot support the plaintiff's case on breach and causation, I do not find it necessary to address the defendant's reliance on the defence of *volenti non fit injuria*.

The plaintiff's claim in public nuisance

37 I address next the plaintiff's claim in public nuisance.

Nuisance: Obstruction

38 In considering the plaintiff's claim in nuisance, I found the case of *Dymond* (referenced by the High Court in *Yang Xi Na* and *Goh Pin Yi Cindy v Mahmod Fadzuli bin Mahnor & another* [2009] SGHC 94) to be relevant and helpful. As noted earlier, the plaintiff in *Dymond* was the pillion on a motorcycle that had collided into the rear of a lorry parked on the highway; and he sued (*inter alia*) the driver of the lorry in both negligence and public nuisance. He failed in both claims, and his appeal against the trial judge's decision on both the negligence and the nuisance claims was dismissed by the English Court of Appeal. The appellate court disagreed with the judge's finding that the lorry – parked as it was for some hours on the highway – did not amount to a nuisance in law. However, it dismissed the appeal against the trial judge's rejection of the nuisance claim because it agreed with his finding that in any event, the motorcyclist's negligence was the sole cause of the collision.

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[55] pp 6 and 9 of the Defendant's Supplementary Bundle of Documents.

39 In considering the claim in nuisance, Sachs LJ held that "(t)he first question to be answered is whether or not this lorry when left on the main road from 6 p.m. with a view to its not being moved until 4 a.m. constituted at 9.45 p.m. an obstruction of the highway which in law should be held to be a nuisance" (at 501). He further noted (at 501) that the "law on the question of what constitutes a public nuisance in a highway is plain" and had been "compactly stated" in the judgment of Lord Evershed M.R. in *Trevett v Lee* [1955] 1 WLR 113 as follows:

> The law as regards obstructions to highways is conveniently stated in a passage in *Salmond on Torts*, 11th ed., p. 303: 'A nuisance to a highway consists either in obstructing it or in rendering it dangerous', and then a number of examples are given, which seem to me to show that, *prima facie,* at any rate, when you speak of an obstruction to a highway, you mean something which permanently or temporarily removes the whole of part of the highway from the public use altogether.

40 In *Dymond*, Sachs LJ held that the "leaving of a large vehicle on a highway for any other purpose for a considerable period … otherwise than in a lay-by *prima facie* results in a nuisance being created, for it narrows the highway". Importantly, he added that "it is *always a matter of degree*" (at 502). In the case before him, he found that there was a nuisance created by the "parking for many hours for the driver's own convenience of a large lorry on a highway of sufficient importance to have a dual carriageway", where the parked lorry had the effect of "reducing the width of such a road [from 24 feet] to about 16 feet" (at 502).

Nuisance: Danger

41 Stephenson LJ agreed with the above reasoning by Sachs LJ. Edmund Davies LJ agreed (at 504) that "the mere fact that an obstruction has come into existence cannot turn it into a nuisance" and that a nuisance would "obviously be created" if the obstruction was allowed to "continue for an unreasonable time

or in unreasonable circumstances" (citing Lord Greene MR in *Maitland v Raisbeck & R.T. & J. Hewitt Ltd* [1944] KB 689). He differed from Sachs LJ to the extent that he took the view that in a public nuisance case, a plaintiff who wished to recover compensation for personal injuries caused by a collision with an obstruction "must establish that the obstruction constituted a danger" (at 504). On the facts of *Dymond*, Edmund Davies LJ concluded that although the parked lorry "constituted an obstruction, and therefore a public nuisance, having been deliberately and inexcusably left parked for several hours, it did not present a danger to those using the highway in the manner in which they could reasonably have been expected to use it" (at 507).

42 As noted earlier, *Dymond* was cited locally by the High Court in *Yang Xi Na*. In that case, the plaintiff was injured when the bus she was in collided with a stationary tipper lorry which had been parked on the lane that the bus was travelling in, opposite an unbroken white line which indicated parking was prohibited. The plaintiff sued the bus driver and his employer (the defendants) in negligence and public nuisance, and they in turn joined the driver of the tipper lorry as a third party. The defendants accepted liability towards the plaintiff; and the High Court allowed in part their claim against the lorry driver for indemnity. In respect of the nuisance claim, the High Court – having noted the difference in approach between Sachs LJ and Edmund Davies LJ in *Dymond* (at [19]–[22]) – held (at [23]–[24]):

> Obstructions of a road vary in magnitude; they can obstruct large or small parts of the road, and may be clearly visible and easy to get around, or may appear without warning and be difficult to avoid. For an obstruction to constitute an actionable nuisance, the obstruction has to be a danger to road users.
>
> When someone creates a condition on the highway which constitutes a danger to road users, that is a nuisance whether the danger is in the form of an obstruction or otherwise, *eg*, where oil flows onto the road and makes it slippery or smoke blows across the road and blocks visibility.

43 In *Yang Xi Na*, in allowing the defendants' claim against the lorry driver for indemnity, the High Court found that the lorry driver had created a nuisance in parking his tipper lorry where it did. The court found the following factors relevant (at [29]–[30]):

(a) the driver had parked the tipper lorry against an unbroken white line, where parking was prohibited;

(b) the lorry blocked the path of the bus along the left lane which the bus had turned into;

(c) the lorry driver did not turn on warning lights or do anything to alert other road users to the presence of his lorry;

(d) visibility along that stretch of road was limited at the time of the accident; and

(e) other road users might not expect vehicles to be parked illegally along the left side of the road.

44 Coming back to the facts of the present case, I do not find that they support the plaintiff's claim in nuisance. My conclusion would be no different whether I apply Sachs LJ's or Edmund Davies LJ's approach. To recap, the evidence in this case – which included the video footage – showed that in the short span of time between his car losing power and its coming to a stop, the defendant had already switched on his hazard lights, pressed the boot switch to open the boot where he kept the break-down signage, and opened his car door to alight and retrieve this signage. The evidence also showed that DW2 – who was then directly behind the defendant's car in the same lane – was able to slow down and start filtering to the left lane after observing that the defendant's hazard lights had been switched on and that his boot was open. From DW2's

evidence and from the video footage, it was clear that the defendant's car had been stationary for only a matter of seconds before the plaintiff's motor-cycle overtook DW2's vehicle from the right and crashed into the rear of the defendant's car. The facts of this case were thus very different from those in *Dymond* and *Yang Xi Na*, where the drivers of the stationary vehicles had deliberately parked their vehicles on the road for hours. Having examined these facts, I find that they do not support a finding that the defendant had at the time of the accident created "an obstruction of the highway which in law should be held to be a nuisance". Even assuming I am wrong in the above conclusion and the defendant's stalled car did constitute an obstruction and therefore a public nuisance, I would nevertheless find that the car did not present at the time of the accident "a danger to those using the highway in the manner in which they could reasonably have been expected to use it".

Nuisance: Causation

45 It must also be noted that in *Dymond*, having found that the parked lorry constituted a nuisance, Sachs LJ held (at 502) that "the mere fact that a lorry was a nuisance does not render its driver or owner liable to the plaintiff in damages *unless its being in that position was a cause of the accident*" [emphasis added]. Sachs LJ pointed out that the trial judge had found that the sole cause of the accident was the motorcyclist's negligence in "watching the attractive young ladies on the pavement instead of looking ahead to see what conditions he was about to encounter" (at 503). Sachs LJ held (at 503) that this finding:

> … entail[ed] a parallel conclusion that the nuisance was not a cause of the plaintiff's injuries: that indeed, in the vast majority of cases, is an inevitable conclusion once negligence on the part of the driver of a stationary vehicle is negatived, for only rarely will that which was found not to be a foreseeable cause of an accident also be found to have been in law the actual cause of it.

46 On this issue of causation, Edmund Davies LJ agreed with Sachs LJ. He noted that the plaintiff had argued that "once it be found that this lorry so obstructed the highway as to amount to a nuisance, this created a situation of strict liability, with the result that the matter of causation is immaterial and the plaintiff must necessarily succeed" (at 507). Rejecting this argument, Edmund Davies LJ held (at 507) that:

> To accede to [this argument] would have led to the creation of a new sort of tort, a legal freak … Granted that a highway be obstructed, it is still for the party suing to show that the existence of the obstruction played some part in bringing about the collision. For this purpose it is not enough to say baldly, as Mr Harvey [the plaintiff's counsel] has done: 'There would have been no collision in the Wolseley Road that night had there been no parked lorry to collide with'. To submit that is to adduce in the most blatant form *causa sine qua non* as an all-sufficient basis for a finding of liability.

47 In the present case, in respect of the issue of causation, the plaintiff adopted a similar position to that of the appellant's in *Dymond*, with much of his case theory being centered on the argument that there would have been no collision in the first lane that day had there been no stalled vehicle to collide with. As Edmund Davies LJ pointed out in *Dymond*, this is mistaking the *causa sine qua non* for the *causa causans*. As for the *causa causans* of the present accident, I have earlier set out (at [26] to [28] above) my finding that the collision was wholly attributable to the plaintiff's wholly unreasonable conduct in overtaking DW2's vehicle from the right when he could not see the traffic ahead, and when he was riding at a speed which did not allow him to brake in time to avoid a stationary object like the stalled car. Even if the stalled car could be said to constitute a nuisance, its being in that position was not a cause of the collision.

Nuisance: Summary

48 In light of the reasons set out above at [38] to [47], the plaintiff's claim in public nuisance also fails.

Conclusion

49 As I find that the evidence in this case does not support either the plaintiff's claim in negligence or his claim in public nuisance, his action in HC/S 589/2020 is dismissed. Costs should follow the event; and the plaintiff having failed in his action against the defendant, costs of the proceedings are awarded to the defendant, to be paid by the plaintiff. The quantum of these costs is to be agreed between the parties; or if they cannot agree within 14 working days from today, either side may write in to seek an appointment before me for costs to be fixed.

Mavis Chionh Sze Chyi
Judge of the High Court

Ramasamy s/o Karuppan Chettiar (Central Chambers Law Corporation) for the plaintiff;
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