

BETWEEN

Muhammad Fauzi bin Hj Sabli

..... Plaintiff

AND

Multazimah binti Mohamad Salleh

..... Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No. 1 of 2019)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.

25th May 2021

Civil Procedure --- road traffic accident --- liability in issue --- two conflicting versions of accident

Cases referred to:

Chua Chong Cher vs Teo Lang Keow & Others [1970] 2 MLJ 27

Nooranti binti Zainal Abidin (f) & 8 others vs Tang Lei Ngei and Tang Lye Chang (1990) CLJ 948

Rahmah binti Abd Hamid & 4 Ors vs Ak Md Ali Indra Putra bin Pg Dato Hj Hamzad & Another (2000) JCBD 274

Barita anak Imen & Ors vs Baru Agong & Anor (HCCS No.50 of 2004)

Mr Lim Chin Wah of m/s Ahmad Zakaria & Associates for Plaintiff.

Ms Melissa Ang of m/s Melissa Ang & Co for Defendant.

Hj Abdullah Soefri, JC:

The Plaintiff claim against the Defendant for the damages and injuries suffered by him as a result of a traffic accident between the motorcycle KR8293 driven by the Plaintiff and owned by the Plaintiff with the car BAQ9320 driven and owned by the Defendant.

The Plaintiff case is that on the 24th February 2016 at around 2105 pm, the Plaintiff stopped his motorcycle at the Simpang 3 Mumong area. Then the Plaintiff signaled right to make a U-turn into the left lane heading towards Bandar Seri Begawan. As the Plaintiff turned into the right lane, the Defendant negligently drove, managed, and controlled her car to cause the same to knock into the Plaintiff's motorcycle from behind and thereby caused a collision.

The Plaintiff together with his motorcycle was dragged across the road by the Defendant's car for about 10 meters. The Defendant's car landed in a ditch on the left side of the road. The Plaintiff who suffered various injuries was helped by other passer-by and taken to the Kuala Belait Hospital.

The Defendant in the defence denied all of the alleged negligence against her and stated that:

- i) the Plaintiff made a prohibited U-turn at the junction;

- ii) having made the prohibited U-turn, the Plaintiff encroached onto the Defendant's right of way and collided onto the Defendant's car BAQ9320; and
- iii) the accident was wholly caused by the negligence of the Plaintiff.

THE PLAINTIFF'S CASE

The Plaintiff's case is that he was hit from behind by the Defendant's car when he switched lanes from the left to the right lane. The Defendant had a clear view of his motorcycle and failed to keep a proper lookout of the motorcycle in front of her, something which a driver who was attentive and exercising reasonable care and skill would have done to avoid the collision.

The Plaintiff avers that this is a preventable accident which the Defendant did not in the circumstances take the proper or any action to prevent from occurring.

THE DEFENDANT'S CASE

The Defendant said that the Plaintiff was driving along Seria/Lumut bypass in the direction towards Kuala Belait. The Plaintiff stopped at the junction for cars to turn right towards Mumong, instead of turning into Mumong, the Plaintiff took a U-turn. After executing the U-turn the Plaintiff moved from left to right lane. Defendant denied that Defendant hit his motorcycle from behind.

Defendant said that she was traveling in the opposite direction heading from Kuala Beliat towards Seria. She was driving along the right lane. On approaching the junction, the Defendant saw the Plaintiff at the junction. She slowed down to allow the Plaintiff through. The Defendant then continued her journey along the right lane while traveling along the right land and passed the junction, the Defendant saw that the Plaintiff did a U-turn and was traveling towards her lane. As the Plaintiff got closer and closer to the Defendant, the Plaintiff knocked onto the left front wheel of the Defendant's car. The Defendant tried to avoid it by swerving to the right, hitting the metal divider, and losing control of her car which then landed on the grass verge.

In ***Barita anak Imen & Ors vs Baru Agong & Anor*** (High Court Civil Suit No.50 of 2004), Datin Paduka Hajah Hayati, J said:

"As almost always the case, the court is faced with two conflicting versions of the accident".

In ***Nooranti binti Zainal Abidin(f) and 8 others vs Tang Lei Ngei and Tang Lye Chang*** (1990) CLJ 948, Lim Beng Choon, J:

*"The trial judge should not approach the case on the basis of deciding which story out of the two conflicting stories that should be believed but rather to consider which version was inherently probable or improbable. All things being equal, it is trite law that if the version of one of the parties is inherently probable then, the judge has no choice but to accept that version forthwith (***Chua Chong Cher vs Teo Lang Keow and Others*** [1970] 2 MLJ 27)".*

PLAINTIFF'S EVIDENCE

The Plaintiff, Muhammad Fauzi bin Haji Sabli, told the court that on 24th February 2016 at about 2105 pm, he was riding on his motorcycle registered as KR8293 type Hyosung from Bandar Seri Begawan using the Seria/Lumut bypass. He further told the court that he stopped at Mumong junction waiting for the tow truck from Bandar Seri Begawan who drove straight ahead towards Kuala Belait. He put on his right signal light and took a U-turn to go after the towing truck. After turning into the left lane for about 15 meters, he switched lanes to the right with his right signal light still on. He was hit by a vehicle behind and dragged across the road for about 10 meters.

At the time when it happened, there was no road sign to prohibit a U-turn at the junction, and said that his right signal was still on and blinking after the collision.

CROSS-EXAMINATION

In cross-examination, the Plaintiff told the court that the reason why he made a U-turn to go to another U-turn is to chase a tow truck who was carrying his car. The Plaintiff also said that to make a U-turn at the junction could be dangerous. He also told the court that before he executed the U-turn he did not see the Defendant's car.

The Plaintiff disagrees that it was his motorcycle who collided with the Defendant's car on the front left side. It was highlighted to him that in his police statement he said that:

"saya rasa kaki saya terkena tayar tersebut".

It was put to him which he disagreed that the reason why his leg hit the car tyre because he collided with the front left side of the car.

It was put to him that paragraph 3 of his P1 (Affidavit Evidence of Muhammad Fauzi bin Haji Sabli) which states:

"After the collision, I was still conscious and could see that the driver of the vehicle was holding a handphone in her hand".

and this statement never told to the police, the statement above is not true because he only write the statement for the purpose of the hearing in which he informed the court, *"I think so"*.

In re-examination, he informed the court that he was already in the right lane when he was hit and he was hit from behind by the car.

PW2 L/CPL 5233 Mohd Hairul Rizam bin Md Tahir

PW2 told the court that in Defendant's statement she informed that after she hit the metal road divider, the car overturned and lost control, and landed in the rough area.

He told the court that as far as he can remember that the damage on the motorbike was on the right and was not sure about the rear or front.

There was no sign to indicate no U-turn.

PW2 in cross-examination informed the court that since the road is under renovation and the road is the highway, to make a U-turn is really dangerous.

PW3 CPL 2780 Madzalan bin Haji Ahmad informed the court that he did not measure the distance between the place of the accident and at the place he made the U-turn. He drew X as a place of accident as informed by the public.

DEFENCE CASE

DW1 Multazimah binti Mohd Salleh

DW1 told the court that on 24th February 2016 at 2100 hours, she was driving alone in a car registration number BAQ9320 from Kuala Belait heading towards Seria using the Mumong/Seria bypass. She was driving on the right lane of the dual carriageway of the highway.

She further informed the court that as she was near the junction to Panaga 2000 Housing, she slowed down his car and saw a motorcycle driven by the Plaintiff coming from the opposite direction intending to turn right towards Simpang 3 Mumong area. She slowed down to allow the Plaintiff to cut across the traffic to turn right.

After the Plaintiff cleared his way, she proceed to drive on. Soon after she saw the Plaintiff coming into her lane and collided into her car. She then swerved to the right to try to avoid it. Her car spun and crashed onto the bushes on the left side of the dual carriageway. She then realized that the Plaintiff did not turn into the right junction, instead, he makes a prohibited U-turn and moved from the left into my right of way and collided with her car.

She informed the court that the damages to her car were on the front left part of her car and to the front left tyre. There was no damage to the front of her car.

CROSS-EXAMINATION

In cross-examination, she told the court that she slowed her car down because she saw the motorcycle waiting to go into the junction. She told the court that when the car collided with the motorcycle she was traveling at 80km per hour and could not recall if the headlight and signal light of the motorcycle was on. She further told the court that she lose control of the car after she hit the divider. She hit the divider first because she was trying to save the motorcycle.

She reiterated that the motorcycle touched her car.

There is no evidence adduced by either party that either the Plaintiff and Defendant were charged in the Magistrate Court with any offences under the Road Traffic Act, Cap 68.

Even though there is no conviction for any charges under the Road Traffic Act, Cap 68, it is worth to refer to Robert CJ in ***Rahmah binti Abd Hamid and 4 Others vs Ak Md Ali Indra Putra***

bin Pg Dato Hj Hamzad and Another (2000) JCBD 274, where the Honorable Chief Justice held:

“The conviction of the first Defendant on 20th June 2000 for the offence of dangerous driving causing death shifts the burden on the Defendant of proving on a balance of probabilities that he was not guilty of negligence”.

Robert CJ added that it,

“will, consider those other proceedings only for the limited purpose of noting the conviction of the Defendant, as the result of which the burden shifts on him of showing that he was not negligent. In other words, he was required to rebut this presumption that he was guilty of some degree of negligence in the driving of his vehicle in relation to this accident by reason of his conviction”.

In this present case before me, I will adopt the approach as enunciated by Lim Ben Choon, J in **Noorianti binti Zainal Abidin (f) and 8 others vs Tang Lei Ngei and Tang Lye Chang (1990) CLJ 943** and adopted by Datin Paduka Hajah Hayati, J in **Barita anak Imen & others vs Baru Agong and anor (High Court of Brunei Darussalam Civil Suit No.50 of 2004)** in considering the evidence in this case and which I have highlighted above.

The question before this court is which of these two conflicting versions of the accident was inherently probable or improbable.

I will not repeat the evidence of the Plaintiff and Defendant

Defendant informed the court that the Plaintiff *‘coming into her lane and collided into her car’*. She further informed the court that the damages to her car were on the front left part of her car and to the front left tyre which she showed to the court in the photographs which she adduced in court and not disputed by the Plaintiff.

PW2 stated that the damage to the motorcycle is on the right but could not remember whether it is at the rear or in front.

The non-disputed evidence is as follows:

1. Plaintiff towing truck has passed him and went to Kuala Belait direction;
2. Plaintiff made a U-turn in order to go to another U-turn to chase the tow truck; and
3. Accident took place after Plaintiff had executed the U-turn.

So which of these conflict versions are more inherently probable?

Taking into account all the evidence, I am satisfied that the version of the Defendant is more inherently probable. Not only that the evidence of the Defendant is supported by the damages of the car and motorcycle which is more consistent to the version that the Plaintiff had encroached onto the Defendant’s car who was traveling on the right lane and hit the front left part of the Defendant’s car when the Plaintiff was moving from left lane to the right lane and

going towards the U-turn to go back to the direction of Kuala Belait to chase the tow truck who had missed the junction.

If the Plaintiff version is to be accepted, this shows that when the Plaintiff entered into the right lane and was hit by the Defendant's from behind he had failed to ensure that the right lane is fully clear and safe to enter the right lane. He had failed to exercise the standard of a reasonable driver and failed to exercise reasonable care and skill of a reasonably prudent driver.

The evidence of the Plaintiff is questionable and this is evident that when questioned about paragraph 3 of his affidavit whereby he did confirm that he was sure of the statement. However, when it was put to him that the statement is not true as he never informs this to the police and the reason why he wrote the statement is for the purpose of hearing and he did reply, *"I think so"*.

My conclusion is that the Defendant is not fully liable for the accident as the Plaintiff has failed to exercise reasonable care and skill of a reasonable prudent driver and gives judgment for the Defendant and dismisses the Plaintiff claim entirely and awards cost to the Defendant to be taxed if not agreed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN

Judicial Commissioner