

HONG KONG / JUDGMENT

CHAN CHI LUNG v. LAM SHEK WU

COURT

Court of First Instance

DECIDED

12 November 2002

CASE / FILE NUMBER

HCPI401/2001

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bjbj HCPI 401/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 401 OF 2001

BETWEEN CHAN CHI LUNG Plaintiff and LAM SHEK WU Defendant

Coram: Hon. Seagroatt, J. in Court Date of Hearing: 12 November 2002 Date of Judgment: 12
November 2002

J U D G M E N T

On 6 May 1998, at about 20 minutes past 8 in the morning, and therefore in broad daylight, the Defendant was driving his New Territories taxi along Hung Cheung Road towards the junction with Pui To Road, Tuen Mun. His speed, he said, was about 25 kilometres per hour. This seems highly likely to be a fair estimate in view of the fact that the junction was only about 13 metres ahead. It was a Give-Way junction, properly marked. As he approached, occupying a proper position in his lane, he became aware of a pedestrian, the Plaintiff, walking towards him on the near-side pavement, about two car lengths away, being the last of two or three pedestrians coming from the direction of Pui To Road. He saw him walking initially in the middle of the pavement and then move nearer to the edge. His head was looking upwards when suddenly he saw him walk backwards out into the road. The distance between them was, he estimated, less than a car s length. The near-side of the Defendant s taxi came into contact with the Plaintiff s body, specifically his lower body. He suffered an avulsion fracture of his left tibia with meniscal damage and a burst fracture of the upper lumbar vertebra, L1. The Defendant said that he braked and sounded his horn but could not avoid the collision. At that distance, it is not surprising. At 25 kilometres per hour, the overall stopping distance is about 26 feet or two taxi lengths. The Plaintiff s version of events is extremely short. He said that he wanted to cross the Hung Cheung

Road. He could see no vehicle coming, so he started to cross from the point at or near the Kim Hing Timber Garden which is shown on a sketch plan drawn on the instructions of the Plaintiff. Why the Plaintiff did not cross the road at the junction itself with the benefit of road markings is not clear. He said it was because traffic turning into Hung Cheung Road from Pui To Road posed problems. I do not understand why this should be so. The advantage of crossing at that point is that traffic has to slow or stop, enabling pedestrians to reach the middle of the road more safely. They then have only turning traffic to cope with. It is clear he never saw the Defendant's vehicle. There was nothing to impede his view. The taxi must have been so close to him that this omission is seemingly inexplicable. He said he had a range of vision of 30 metres in either direction. It may have been more than that. The sketch plan reflecting his version of events shows that he had travelled no more than five feet to come into contact with the front near-side of the Defendant's taxi. The Defendant's version of events provides a more feasible explanation for what happened. Pedestrians are distracted from time to time by noises which cause them to look upwards. I accept that most of them are careful enough not to walk backwards into the roadway as they do so. Generally, they exercise a greater degree of care. Unfortunately, on this occasion, the Plaintiff was distracted and perhaps at the same time still had it in mind to cross the road at or near that point. He was certainly wholly unaware of any traffic and that was his fault. The Defendant's taxi was there on the road to be seen and heard. Mr Raymond Lau, who has done and said all that could be said on behalf of this Plaintiff, has suggested that the Defendant's evidence is unreliable in certain respects. I have already dealt with the matter of the allegation that the Plaintiff walked backwards into the roadway and the suggestion that this is improbable. It may be unusual in that that is rarely the end result but, in the circumstances of this case, it is entirely feasible and, in my judgment, what happened. It explains why he did not see or hear the taxi. Another point taken concerns whether or not the Defendant sounded his horn and how many times. It is true that his police witness statement and his proof of evidence make no mention of pedestrians other than the Plaintiff or of sounding a horn to alert them generally but he certainly gave evidence on this topic in the Magistrates Court. He says, additionally, that he sounded the horn at the same time as he braked when the Plaintiff stepped into his path. This may simply have been an automatic emergency reaction. Some motorists do react in this way; some do not. I am sure he believes that he sounded his horn this second time. I am not sure that he did so but, in any event, he could do nothing to avoid the accident and so if he did sound it again, it would not have achieved anything. His prime and natural concern was to brake the vehicle. He was travelling at a proper speed. His position on the road was also a sensible one. He was keeping a proper lookout. He had paid attention to pedestrians on the pavement. It is unrealistic to expect him to keep them in his vision all the time. He had other areas and factors to keep eyes and ears alert to. The police scale plan is devoid of a number of relevant features. The photographs do, however, supply some of those. The scale plan was prepared three weeks after the accident. The sketch plan, which a police officer prepares at the scene, usually contains relevant features, e.g. any tyre marks, position of the pedestrian after being injured or knocked over, any blood mark and geographical features to help. The Plaintiff's solicitors had not taken steps to have the police officer produce his notebook containing the contemporaneous entries or sketch or even obtain the original of the scale plan. These were important omissions. They are fundamental documents for almost every

road traffic accident claim. What was adduced in the form of the copy scale plan is entirely consistent with the defence case and my findings. The Defendant was not negligent. He could have done nothing more to avoid this accident. Although one obviously has sympathy for the Plaintiff in his injuries and sufferings, he was the author of his own misfortune. There will therefore be judgment for the Defendant with costs. There will also be an order for the Plaintiff's costs in accordance with the Legal Aid Ordinance. I propose to deal with the question of all costs under Order 62 rule 9(4)(b) on a gross sum basis. It will be quicker and easier, and what I therefore require is that the Plaintiff's solicitors and the Defendant's solicitors the Plaintiff's solicitors because they will have an order for a legal aid taxation submit a statement of the claimed costs and disbursements on no more than three sheets of A4 paper within 14 days. That is, the Plaintiff's solicitors are to submit their statement within 14 days to the Court and the Director of Legal Aid. The Defendant's solicitors are to submit their statement within 14 days to the Plaintiff's solicitors and the Court. Any objections in relation to the Defendant's proposed costs and disbursements, by the Plaintiff's solicitors, must be submitted to the Court and to the Defendant's solicitors within 14 days of receipt of their statement, and the Director, to whom the court will write, is to submit within 14 days of receipt of the Plaintiff's solicitor's statement of costs and disbursements, a note in writing of any objections or any other points for consideration. So that means the matter can be resolved within about 28 days. (Conrad Seagroatt) Judge of the High Court Mr Raymond Lau, instructed by Messrs Kwok, Ng & Chan, Solicitors, for the Plaintiff. Mr Patrick Lim, instructed by Messrs Christine M. Koo & Ip, Solicitors, for the Defendant. PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk i\$&`G user HCPI-ABC.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria