

HONG KONG / JUDGMENT

HKSAR v. SHEN JESSIE

COURT

Court of First Instance

DECIDED

20 November 2007

CASE / FILE NUMBER

HCMA949/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA949/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 949 OF 2007 (ON APPEAL FROM KCS 8928 OF 2007)

BETWEEN HKSAR Respondent and SHEN JESSIE Appellant

Before : Hon Saw J in Court Date of Hearing : 20 November 2007 Date of Judgment : 20 November 2007 Date of Handing Down Reasons for Judgment : 3 December 2007

JUDGMENT

AUTONUMOUT Shen, Jessie (the appellant) was charged with the offence of careless driving , contrary to section 38(1) of the Road Traffic Ordinance, Cap.374, Laws of Hong Kong. AUTONUMOUT On 17 September of this year, he was convicted after a trial before Ms Josephine Chow, Special Magistrate (the magistrate). He was fined \$1,500. AUTONUMOUT On 20 November 2007, I dismissed his appeal against conviction and indicated that I would hand down my reasons in due course. These are my reasons. AUTONUMOUT The particulars of the charge alleged that ... on 5/12/2006 at 3:30pm at Waterloo Road near Argyle Street did drive a light goods vehicle displaying registration mark HE6698 on a road carelessly. AUTONUMOUT The facts could not have been simpler. On that day a vehicle driven by the defendant ran into the rear of another vehicle driven by Chan Yung Kan (). The evidence of PW1 was that he was the chauffeur of Ms Chuen Kwok () and was at the material time driving a private motor car, registration mark DT2011. PW2, his employer, was a passenger in DT2011. AUTONUMOUT It was PW1 s evidence that at around 3:30 p.m., he was driving in the second lane from the left on Waterloo Road approaching the intersection with Argyle Street. As he approached a traffic light, at which he was required to stop, the vehicle he was driving was struck from behind. PW1 said that at the time he

was almost stationery or stopped, and that the blow from behind had caused his vehicle to jerk forward. AUTONUMOUT PW2 also gave evidence to like effect and added that the traffic was heavy at the time. The only difference between her evidence and that of PW1 was that she said that it was after PW1 had stopped that she felt the bump at the rear of her car. AUTONUMOUT This was the evidence in the prosecution s case. AUTONUMOUT It was not in issue that it was the defendant who drove the car which struck PW1 s vehicle from behind. AUTONUMOUT The defendant elected not to give evidence or call witnesses. AUTONUMOUT Chan Lun who appeared in the court below and in the appeal, quite correctly reminded the magistrate of the fact that the doctrine of *res ipsa loquitur* has no part in criminal proceedings and the obligation was on the prosecution to establish that the defendant was driving carelessly. AUTONUMOUT Chan submitted on his behalf that there was no evidence of carelessness in the appellant s driving and that it was conceivable that what had caused the appellant s motor vehicle to drive into the rear of PW1 and s was the presence of oil on the road surface. This was entirely speculative and properly rejected by the magistrate. The appeal AUTONUMOUT Before me, Mr Chan submits that the magistrate fell into error by drawing an irresistible inference from all of the evidence that the appellant was unable to stop in time and consequentially the appellant s driving was obviously without due care and attention AUTONUMOUT In support of this argument, Mr Chan refers me to (as he had before the magistrate in the court below) to three authorities :

- (i) The Queen v. Li Tat Man, HCMA1518/1990; (ii) Kit Wing Wo v. The Queen [1985] 1 HKC 204; and (iii) R. v. Ma Tze Kit, Dicky, HCMA195/1997; which, it is said, demonstrate that the magistrate was in error in concluding that the appellant was driving carelessly. AUTONUMOUT The thrust of Mr Chan s submissions is that there was, as he puts it, no positive evidence of the appellant s driving manner and that the magistrate must have convicted the appellant by relying on the doctrine of *res ipsa loquitur*. As to the latter part of this submission the magistrate stated in clear and unambiguous terms that she was alert to the fact that there must be positive evidence of the defendant s manner of driving and that the doctrine had no application. As to the first part of that submission, what the magistrate found, as she was entitled to find, was that in all of the circumstances the defendant was driving without due care and attention, and was careless. AUTONUMOUT The authorities relied upon by Mr Chan are clear. Every case must depend on its own facts. In some cases the fact that a driver collides with the rear of another may render his driving careless, in others it might not. It is a matter for the magistrate to determine on the facts of the case before him or her. AUTONUMOUT In the instant case the magistrate s conclusions are unassailable. The defendant ran into the rear of a vehicle in front of him which was stationary or stopping slowly for a traffic signal. Prior to the accident the traffic was heavy. The fact that the appellant was himself travelling at a slow speed (the damage caused was minimal) but nevertheless ran into the vehicle in front of him indicates that he was not paying attention. There was no suggestion that PW1 had stopped abruptly or had slowed suddenly. This was the only evidence, there was nothing to contradict it. AUTONUMOUT The magistrate concluded that on the basis the evidence before her the defendant had driven carelessly in as much as he had failed to keep a proper distance from the vehicle ahead of

him, and as a consequence, failed to stop in time to avoid a collision. She was, in my opinion, entitled to do so. The appellant was quite obviously not paying sufficient attention to the traffic conditions at that time and in particular the traffic ahead of him.

AUTONUMOUT There was no merit in this appeal and it was dismissed. (Darryl Saw) Judge of the Court of First Instance High Court Mr Joseph Wong, SGC of the Department of Justice, for HKSAR Mr Chan Pat Lun, instructed by Messrs Jesse H.Y. Kwok & Company, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=59365
CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-shen-jessie-2007>

Prepared on 27 October 2026 · Esheria