

Ng Weng Cheong
v
Soh Oh Loo and another

[1993] SGCA 22

Court of Appeal — Civil Appeal No 97 of 1990
S Rajendran J, Warren L H Khoo J and M Karthigesu J
31 March 1993

Tort — Negligence — Duty of care — Pedestrian knocked down by bus while attempting to cross pedestrian crossing when light against him — Whether bus driver exonerated from duty under rr 5 and 7 Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982) — Whether pedestrian contributorily negligent — Rules 5, 6 and 7 Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982)

Facts

The appellant (“Ng”) was knocked down by an SBS bus driven by the first respondent (“Soh”), who was servant and agent of the second respondent (“SBS”). Ng claimed damages for personal injuries sustained. Ng attempted to cross a pedestrian crossing at the mouth of a three-lane carriageway when the “red man” had come on. However, the right turning light for vehicles in the extreme right lane was green, thus allowing for vehicles in that lane to enter the junction and to turn right. Soh was on the extreme right lane as he approached the junction and intended to make a right turn. Because he was blocked by vehicles in the lanes to his left, Soh could not see Ng until he was about 10 to 12 ft from the stop line and as a result was unable to avoid the accident.

The High Court held that Soh was not negligent as it was an offence for a pedestrian to cross when the pedestrian crossing light was against him and a driver had a right to presume that his way was clear when the traffic light was in his favour and the pedestrian crossing light was red. Ng appealed.

Held, allowing the appeal:

(1) It was incumbent upon the driver of a vehicle to approach any pedestrian crossing in the manner required by r 5 of the Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982) (“the Rules”) and to keep a proper lookout to see that there were no pedestrians on it or about to enter it. Rule 7 accorded precedence to a pedestrian who “is about to enter or has entered the crossing”, notwithstanding that the driver “may have already received a signal to proceed”. At controlled crossings, a driver was not exonerated from his duty under r 5 and r 7 by the fact that the pedestrian started crossing when the light was against the pedestrian. It was not the driver’s concern whether the pedestrian had committed an offence by going against the light in getting on to the crossing: at [22], [26], [27] and [38].

(2) However, the fact that it was an offence for a pedestrian to cross a controlled crossing against light signals meant that drivers of vehicles, in general, had less reason to anticipate such occurrences, although such

occurrences could not in reality be ruled out altogether. For the pedestrian, it also meant that the danger inherent in such behaviour was that much greater. A person who crossed a light-controlled crossing in disobedience of a light signal applicable to him thus assumed a high degree of contributory negligence: at [39].

(3) On the facts, Soh was in breach of rr 5 and 7 of the Rules. There was no indication that Soh had slowed down at all when approaching the junction, even though his view of the pedestrian crossing was partially blocked. He clearly dismissed totally the possibility of anyone being on the crossing. Nevertheless, Ng was quite heedless of his own safety in crossing the road against the lights. Hence, blame was apportioned in the proportion of 70% to 30% in favour of Soh: at [42] to [45].

Case(s) referred to

London Passenger Transport Board v Upson [1949] AC 155; [1949] 1 All ER 60 (refd)

Legislation referred to

Road Traffic Act (Cap 276, 1985 Rev Ed) ss 112, 131(1)

Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982) rr 5, 6, 7 (consd); rr 3(3), 12

Pedestrian Crossing Places (Traffic) Regulations 1941 (UK) regs 3, 4, 5

V Ramakrishnan (V Ramakrishnan & Co) for the appellant;
Tim Oei (Khattar Wong & Partners) for the respondents.

31 March 1993

Judgment reserved.

Warren L H Khoo J (delivering the judgment of the court):

1 This is an appeal from a decision of Tan Teow Yeow JC, whereby he dismissed a District Court appeal by the appellant, who had claimed damages for personal injuries sustained when he was hit by an SBS bus driven by the first respondent as servant and agent of the second respondent.

2 The accident happened on 9 April 1984 at the traffic light-controlled junction of Ang Mo Kio Avenue 3 and Avenue 6. The appellant, who was 64 years old, was crossing, or attempting to cross, the pedestrian crossing across the mouth of Avenue 6 on the south side of Avenue 3. The bus driven by the first respondent was proceeding on Avenue 6 from the city northwards towards Yio Chu Kang. The appellant was crossing or attempting to cross the pedestrian crossing from the west side of Avenue 6 to the east side.

3 Avenue 6 was a dual carriageway, with three traffic lanes on either side of the road divider. The lane on the west side of Avenue 6 was for traffic proceeding straight or turning left. The middle lane was for traffic proceeding straight or turning right. The extreme right lane next to the

road divider was for traffic turning right only. At the time of the accident, the bus driven by the first respondent was travelling in the extreme right lane.

4 The appellant gave evidence that at the time he started to cross the road, vehicles on the first two lanes had come to a full stop. This is not disputed. The appellant said that the green man of the traffic lights was showing to him when he was crossing. But this was disputed on behalf of the first respondent, and the District Judge found on the evidence of the traffic lights expert that what the appellant said could not be true. In fact, the appellant started crossing when the red man had come on. The learned judicial commissioner agreed with this finding. We ourselves found no ground to say that the district judge was wrong.

5 There is no dispute, however, that at the time when the appellant was crossing the road, the right turning light for vehicles in the first respondent's lane was showing green allowing vehicles in this lane to enter the junction and to turn right.

6 The first respondent said that when he was approaching the junction he was going at 35 to 42kmph. He was travelling in the right lane as he intended to make a right turn into Ang Mo Kio Avenue 3. As he was about 200ft from the junction, he saw that the traffic lights were green in his favour. When he came nearer to the junction, the traffic lights turned red but the green arrow allowing traffic to turn right into Avenue 3 came on. He gave the distance between him and the junction at this point of time as about 100ft. He continued to approach the junction. It was only when he was about 10 to 12ft from the stop line across the junction that he saw the appellant walking on the crossing. He sounded the horn and applied the brakes, but he could not avoid the accident. The left corner of the front bumper hit the appellant.

7 The first respondent said that he was unable to see the appellant until he was about 12ft from the stop line as his view was blocked by vehicles in the first two lanes, the lanes to his left, including two Daihatsu lorries. He was thus unable to see the whole of the pedestrian crossing.

8 The appellant raised the question of the possible breach of the Road Traffic (Pedestrian Crossing) Rules 1982 before the learned judicial commissioner by leave. It had not been raised before the district judge. The appellant relied on the English House of Lords case of *London Passenger Transport Board v Upson* [1949] 1 All ER 60; [1949] AC 155, a case dealing with the interpretation and application of the corresponding provisions of the UK Pedestrian Crossing Places (Traffic) Regulations 1941. The relevant parts of the UK regulations provided as follows:

3 The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able, if necessary, to stop before reaching such crossing.

4 The driver of every vehicle at or approaching a crossing where traffic is not for the time being controlled by a police constable or by light signals shall allow free and uninterrupted passage to any foot passenger who is on the carriageway at such crossing, and every such foot passenger shall have precedence over all vehicular traffic at such crossing.

5 The driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals shall allow free and uninterrupted passage to every foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing.

Application of the rules

9 In the *Upson* case, the facts, briefly, were as follows. The plaintiff was crossing Baker Street at its junction with Blandford Street. She was using a light controlled pedestrian crossing, but against the light. A taxi, which had been left with its wheels on the crossing, blocked her view of on-coming traffic on Baker Street. A bus was coming down Baker Street. The driver's view of her was similarly blocked by the taxi. The plaintiff was knocked down, and she sued the driver and his employers the London Passenger Transport Board.

10 All the members of the House of Lords were of the opinion that the driver, since his view of the pedestrian crossing was blocked by the taxi on the crossing, should have proceeded at such a speed as to be able to pull up. They were unanimously of the view that in failing to do so, the driver was guilty of a breach of reg 3. They, however, upheld the finding of 50% contributory negligence on the part of the plaintiff. Lord Wright said (at 68):

The taxicab unlawfully drawn up on the crossing prevented the driver from seeing that there was no foot passenger on it. Hence he was bound to proceed at a pace which would enable him, if necessary, to stop before reaching the crossing. The driver was, indeed, proceeding at a reasonable rate apart from the regulation, but he was, in fact, unable to stop before reaching the crossing and, in consequence, he hit and injured the respondent.

11 Lord Porter attempted to define what was a reasonable approach speed as follows:

I think the true position is that the motorist must be able to see whether the crossing is clear or not up to the time when, going at the speed he is going, provided it is a reasonable speed, he would still be able to stop before reaching the crossing. ... if I may adopt the method of exposition of MacKinnon LJ [in the *Chisholm v London Passenger Transport Board* [1938] 4 All ER 850], if a motorist proceeding at x miles per hour, whatever that speed may be, provided it is a reasonable speed, can stop in y yards, he must see that the crossing is clear until he

has approached to a stop within that distance. If he does not or cannot do so, he has committed an offence against the regulations. But he has not broken them if someone steps on the crossing after he has reached such a spot.

12 Lord Du Parcq preferred to be less mathematical. He said (at 73–74):

I must respectfully suggest to your Lordships that, notwithstanding the air of mathematical accuracy which the algebraical symbols employed lend to this argument, it is fallacious in so far as it overlooks the fact that no speed is reasonable which is not adjusted to the circumstances of the moment, including the fact that the driver is approaching a pedestrian crossing and may have to pull up quickly and within a very short distance.

13 Lord Wright dealt with the question of the plaintiff's contributory negligence thus:

She was, indeed, herself negligent in coming out beyond the taxicab without sufficiently considering the green light and the approaching traffic. ... That was her contributory negligence. But the driver's failure to obey reg 3 caused, or contributed to, the accident. It was not adeemed by the miscalculation on the part of the respondent; that only goes here to reduce the amount of her recovery ...

Approach of the court below

14 In the instant case, the learned judicial commissioner refused to follow the *Upton* case ([8] *supra*). He thought it was distinguishable. He said:

In London in 1949, jaywalking was not an offence and there was nothing to prevent a pedestrian from crossing a road even though the pedestrian crossing light was against him. In Singapore, a pedestrian who crosses the road when the pedestrian crossing light is against him commits an offence. In Singapore, a driver has a right to presume that his way is clear when the traffic light is in his favour, and the pedestrian crossing light is red. To rule otherwise would be to impose a strict liability on all motorists at controlled junctions. The first respondent in this case had exercised due care by doing all he could to prevent the accident in the circumstances. I therefore found that the respondent was not negligent.

The relevant rules

15 The relevant rules of the Road Traffic (Pedestrian Crossings) Rules 1982 ("the Rules") of Singapore are as follows:

5 The driver of every vehicle approaching a pedestrian crossing shall, unless he can see that there is no pedestrian thereon, proceed at such speed as will enable him to stop his vehicle before reaching the crossing.

6 The driver of every vehicle at, or approaching, a pedestrian crossing where traffic is not for the time being controlled by a police officer or by light signals shall allow free and uninterrupted passage to any pedestrian who is either crossing or is starting to cross a road and every pedestrian shall have precedence over all vehicular traffic at such crossing.

7 Wherever there is a pedestrian crossing at a road inter-section or junction where traffic is controlled by a police officer or by light signals, every pedestrian who is about to enter or has entered such crossing shall be permitted free and uninterrupted passage over the crossing by all drivers of vehicles who are approaching the crossing notwithstanding that such drivers may have already received a signal to proceed either from the light signals or the police officer, as the case may be.

16 With one significant difference in r 7 (of which more below), rr 5, 6 and 7 are largely framed in similar terms to regs 3, 4 and 5 of the UK regulations.

17 It may be assumed that the Singapore rules were made with full knowledge of the decision of the *Upson* case ([8] *supra*) and its effect. The House of Lords' decision in the *Upson* case and their Lordships' well considered views in that case are of assistance in the resolution of the issues before us.

18 As a matter of construction, the position therefore is this. Rule 5 applies to both controlled and uncontrolled junctions. By "controlled", we mean control either by light signals or police officers, as the rules envisage control by either means.

19 For the sake of brevity, in the discussions in the following paragraphs, we shall only refer to control by light signals. Our comments apply, of course, to crossings which for the time being are controlled by a police officer.

20 Rule 5 lays down the general requirement applicable, as we say, to both controlled and uncontrolled crossings. It in terms requires the driver of a vehicle approaching any pedestrian crossing, whether controlled or not, to approach it at such a speed as will enable him to stop his vehicle before reaching the crossing, unless he can see that there is no one on the crossing.

21 Rule 6 applies to uncontrolled crossings. It accords precedence to a pedestrian who is either crossing or is starting to cross the road. Rule 7 applies to controlled crossings. It accords precedence to a pedestrian who is about to enter or has entered the crossings, even if the driver has received a signal to proceed.

Rule 7

22 Rule 7 differs from the UK reg 5 in this respect. Whereas reg 5 gives precedence to a pedestrian “who has started to go over the crossing before the driver receives a signal that he may proceed”, r 7, on the other hand, gives precedence to a pedestrian “who is about to enter or has entered such crossing” notwithstanding that the driver “may have already received a signal to proceed”.

23 In the *Upson* case ([8] *supra*), Lord Porter (at 64C) made the following comment on reg 5:

In considering its application to this case, reg 5 is, perhaps, most material in its negative implications, ie it enacts that uninterrupted passage is to be allowed to everyone who has started to go over the crossing before the light turns green, and, inferentially, declares that such passage need not be given once the light has turned green. But I do not think that reg 5 overrides reg 3 even at a controlled crossing, ...

24 The wording of r 7 removes altogether the “negative implications” spoken of by Lord Porter. The underlying reason for this formulation of r 7 must be the assumption that there will be the occasional individuals who, because of one reason or another, are unable to complete the crossing within the time allowed, particularly if they begin the crossing towards the end of the light cycle, and particularly if they are old, infirm or plain slow. There will also be the occasional individuals who are on the crossing when they are not supposed to be there, through accident, inadvertence or carelessness.

25 As it removes the “negative implications” spoken of by Lord Porter, the wording of r 7 removes the necessity of considering at what point of time a pedestrian steps on to the crossing for the purpose of considering the driver’s duty under the rule.

Driver’s duty at pedestrian crossings

26 It is incumbent upon the driver of a vehicle to approach any pedestrian crossing in the manner required by r 5 and to keep a proper lookout to see that there are no pedestrians on it or about to enter it.

27 At controlled crossings, a driver is not exonerated from his duty under r 5 and r 7 by the fact that the pedestrian started crossing when the light was against the pedestrian. It is not the driver’s concern whether the pedestrian has gone against the light in getting on to the crossing. Indeed, at controlled junctions, the driver is not intended to be guided by the light signals that regulate the pedestrian traffic. He is often not in the best position to see those signals.

28 Thus, while the efficient and proper functioning of pedestrian crossings assume that all pedestrians using them will follow any signal

governing their movements, and indeed, as will be seen in a moment, rules are enacted to secure this, the duty of drivers of vehicles under r 5 or r 7 is not dependent on or subject to the pedestrians obeying such signals. Such a construction would unjustifiably import words into the rules.

29 We therefore respectfully disagree with the learned judicial commissioner in so far as he held that the first respondent had the right to assume that his way was clear when the traffic lights were in his favour and the pedestrian crossing light was red. The implication that the driver only needs to follow the lights regulating his vehicle movement and does not need to look out for persons who might be on the pedestrian crossing, is not supported by the wording of r 5 or r 7. Indeed it goes against it.

“Jaywalking an offence” point: the pedestrian’s duty

30 Rule 3(3) of the Rules provides as follows:

Where a pedestrian crossing is designated by two parallel yellow lines drawn across a road at a junction or an intersection, a pedestrian shall cross parallel with the flow of vehicular traffic and where a pedestrian crossing is designated by a signalised traffic sign, a pedestrian shall only cross when the green man in the signalised traffic sign is illuminated.

31 Rule 12 also provides that no pedestrian shall remain on the crossing longer than is necessary for the purpose of making the crossing.

32 The Rules themselves do not create offences for their contraventions. However, under a general provision in s 131(1) of the Road Traffic Act (Cap 276) (“the Act”), a contravention of rules made under the Act is an offence attracting, in the case of a first offence, a fine not exceeding \$1,000 or imprisonment for a term not exceeding three months and in the case of a second or subsequent offence a fine not exceeding \$2,000 or imprisonment for a term not exceeding six months.

33 There are also various provisions in the Highway Code (“the Code”) published in pursuance of s 112. This Code includes various provisions dealing with the use of pedestrian crossings. In particular, para 22 says:

At a light controlled crossing, wait on the footway until the traffic, in front of which you intend to cross, has come to a standstill.

34 Paragraph 23 of the Code says:

If traffic lights have a ‘Cross’ signal or a ‘green man’ signal, do not cross until the signal appears. If there are no pedestrian signals, cross only with the green light.

35 It is provided in s 112 of the Act that a failure on the part of any person to observe any provisions of the Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may,

in any proceedings, whether civil or criminal, be relied upon as tending to establish or to negative any liability in question in those proceedings.

36 Lord Uthwatt in the *Upson* case ([8] *supra*) said:

A driver is not ... bound to anticipate folly in all its forms, but he is not ... entitled to put out of consideration the teachings of experience as to the form those follies commonly take.

37 This was said in the context of the behaviour of pedestrians in London, where it was not an offence for a pedestrian to cross a road junction against the lights. However, the fact that such a behaviour has been made an offence here does not mean that such behaviour has been eliminated, although its incidence has no doubt been much reduced. In our view the driver of a vehicle is not entitled to put out of consideration altogether the possibility of the presence of persons on a pedestrian crossing even when the light is in favour of the driver. Rule 7 contemplates exactly this sort of possibility.

38 We therefore respectfully disagree with the learned judicial commissioner in the rather decisive weight he attached to the fact that it is an offence for a pedestrian to cross a light-controlled pedestrian crossing when the light is against him. It is our view that a driver of a vehicle is not relieved of his duty under rr 5 and 7 by the fact that the pedestrian on his path has committed an offence.

Contributory negligence

39 However, the fact that it is an offence for a pedestrian to cross a controlled crossing against light signals, in our view, does make a difference in this way. The fact that it is an offence means that drivers of vehicles in general have less reason to anticipate such occurrences, although, as we pointed out earlier, such occurrences cannot in reality be ruled out altogether. For the pedestrian, it also means that the danger inherent in such behaviour is that much greater. A person who crosses a light-controlled crossing in disobedience of a light signal applicable to him thus assumes a high degree of contributory negligence.

Traffic paralysis argument

40 It is said on behalf of the first respondent that the Singapore of the 1990s is different from the London of 1949. It is said that imposing a duty on the driver of a vehicle in the way we have proposed would lead to massive traffic congestions and a chaotic situation, as motorists would be required to slow down or stop at every junction even though the lights might be in their favour. Such anxieties are not new. They were adverted to in the *Upson* case.

41 However, the pedestrian crossing rules have been devised to enable pedestrians and motorised vehicles to co-exist on our ever increasingly

congested roads. While traffic has to move efficiently, the rules also seek to give protection to pedestrians using crossings. The courts have to try their best to give these rules the effect intended. The combined operation of the criminal law and the rule of contributory negligence would go a little way to ameliorate these anxieties.

Conclusion

42 On the facts, and on the view we take as to the construction of rr 5 and 7 of the Rules, we are of the view that the first respondent was in breach of these two rules.

43 The first respondent said that he was travelling at 35 to 42kmph. There is no indication that he slowed down at all when approaching the junction, even though his view of the pedestrian crossing was partially blocked. He clearly dismissed totally the possibility of anyone being on the crossing.

44 The appellant, on the other hand, should not have gone on the crossing against the lights. He must have been encouraged to start the crossing when he saw the vehicles in the lanes nearer to him come to a stop. The first respondent could not see him until he was about 10 to 12ft away. In attempting to cross the road in this manner, the appellant was quite heedless of his own safety.

45 We think the appellant was more to blame for the accident than was the first respondent. We would apportion blame in the proportion of 70% to 30% in favour of the first respondent.

46 We allow the appeal. We order that judgment be entered for the appellant for damages to be assessed in the District Court in the proportion indicated. The appellant shall have his costs here and in the High Court, but the order for costs against him in the District Court shall remain undisturbed.

Headnoted by Siew May Yee Cheryl.
