Wong Fook & Anor v Abdul Shukur bin Abdul Halim (Wong Piang Loy, Third Party)[1] - A Seatbelt Prejudice

Three issues faced the High Court in Ipoh in this case. Firstly, was the question of liability between the three parties concerned. Secondly, the quantum of damages for the second plaintiff, covering both general and special damages. The third issue was whether the claim of the first plaintiff ought to be extinguished as he had died before judgment was pronounced.

This case note is generally concerned with the first of the three issues mentioned above; but more specifically it will focus on the principle governing contributory negligence as reiterated by the learned judge in this case.

The facts in this case are that the first and second plaintiffs were passengers in a car. The car was driven by the third party, when a van, driven by the defendant, collided into it. The third party lost control of his car. The car swerved to the left side of the road and turned turtle. The second plaintiff, who was sitting in the passenger seat beside the driver's seat, was unconscious when he was pulled out from the car. Evidence revealed that his head had touched the roof of the car before he was pulled out.

He sustained very serious injuries. The specialist report[2] revealed *inter alia* that his upper limbs are in a state of near paralysis, with the consequence that he is unable to use his hands to grasp objects. He is also unable to clothe or feed himself. He is unable to write or to propel his wheelchair. He is completely paralysed in the lower limbs.

The specialist was also of the opinion that it is likely that he (the second plaintiff) will require constant nursing care and regular medical attention for the rest of his life. The psychological distress he experiences is also likely to breed recurrent attacks of severe depression.

[1][1991] 1 MLJ 46.
[2]*Id.* 50.

Before the trial, an agreement had been reached between both counsels as to the amount of special damages for certain items[3] for the second plaintiff. Therefore when the trial began the court was left with the task of deciding the amount of general damages and special damages for the remaining items.

The counsel for the defendant had contended in his submissions that the defendant's liability ought to be reduced because of the contributory negligence of the second plaintiff who either had not worn his seatbelt or had not worn it properly, and also because he did not testify. The learned counsel then referred to the case of *Froom and others* v *Butcher*[4] whereby it was held that if a seatbelt is not worn and this had resulted in more serious injury, liability should be reduced between between 15-25 percent. It was further argued that as the wearing of seatbelt is a legal requirement the second plaintiff's liability should be 100 percent against him.

It should be noted, that nowhere in the judgment is it stated the details of the defendant's contention as to the second plaintiff's 'extra' injury due to his not wearing a seatbelt,[5] as one would think that the basis for pleading contributory negligence ought to be the proving of a lesser degree of injury caused by the defendant's act. Turning back to the law report, Mr. Justice Abdul Malek responded to the learned counsel's contention thus:

> I could not accept this contention as it is clear from the evidence of the third party that the second plaintiff was wearing the seatbelt at the time of the accident. This evidence cannot be disputed by the defendant without any clear evidence to the contrary. Further, the *reduction of liability for not wearing a seatbelt may be considered if the person not wearing the seatbelt is the driver*, who is implicated on the question of negligence, *but a passenger*, like the second plaintiff, *is entitled to damages irrespective*[6] of whether the driver of the car

[3]Unfortunately the list of items claimed by the second plaintiff as special damages is not included in the judgment.
[4][1975] 3 All ER 520.
[5]Assuming that counsel for the defendant did not give any evidence as to the (would-be reduced) extent of the second plaintiff's actual injuries if he had worn a seatbelt.
[6]Emphasis added.

> he is in or the driver of the vehicle which collided into the car he was a passenger in is found to be negligent by the court. In the event, my opinion was that there should be no reduction of liability against the defendant especially when the court had accepted the fact that the second plaintiff was wearing a seatbelt at the time of the accident.[7]

As such the defendant was found to be 100 percent liable for the second plaintiff's injuries. An order for general and special damages was made accordingly.

It is interesting to note that the defendant's purported defence of contributory negligence failed on two alternative grounds.

Firstly, evidence was adduced that the second plaintiff was wearing a seatbelt at the time of the accident, which evidence was accepted by the court. Since the defence rested on the assumption that the second plaintiff did not wear a seatbelt, thus it failed on this ground.

Alternatively, the defence would still have failed because the second plaintiff was a passenger, and not for instance, the driver of the car. The learned judge had implicitly stated that the non-wearing of a seatbelt may only be used as against a driver of a car, in order to reduce a defendant's liability; and not as against a passenger, who is entitled to compensation irrespective of whether he had worn a seatbelt or not.

It is hereby submitted that the decision of the court in finding the second plaintiff not liable for any contributory negligence, is correct. After all the issue of contributory negligence was raised on the probability of the second plaintiff not wearing a seatbelt. Since it was proven that he was wearing a seatbelt at the material time, thus the issue of his negligence becomes redundant.

However, in this writer's view, the alternative ground given by the learned judge raises some confusion with regards to the law relating to contributory negligence and the requirement of wearing seatbelts in Malaysia.

[7] *Id.* 48, para E-G.

The principle of law governing contributory negligence can be found in section 12 of the Civil Law Act 1956.[8] Section 12(1) reads:

> Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

A person has a duty of care towards his own safety. Should he be careless in carrying out this duty, and through the negligence of another, he suffers injuries more serious than if he had taken more care for his own safety, it is only fair and logical that he alone bears the burden of his 'fault' in the circumstances. This duty may be imposed either by statute or through common-law principles.

Coming back to the issue of seatbelts, the question would be - would a person be contributory negligent if he does not wear a seatbelt, as a result of which he suffers serious injuries in an accident? The question that arises is - is there a duty to wear seatbelts? Yes, and this duty is imposed by statute, in Malaysia. Rule 4 of the Motor Vehicles (Safety Seat-Belts) Rules 1978[9] provides:

> Subject to rule 7,[10] every person in the front seat of a motor vehicle ... shall wear a safety seatbelt in the manner required by its nature and construction from the 1st April 1979.

Therefore a front-seat passenger in a car has a duty imposed by law to wear a seatbelt. It follows then that if a person sits as a passenger in the front seat of a car and he fails to wear a seatbelt; an accident occurs and he suffers serious injuries; the defendant will be able to raise a successful defence of contributory negligence against him.

[8](Revised 1972), Act 67.
[9]P.U. (A) 378/1978.
[10]Rule 7 provides:

> Rule 4 shall not apply -
> (a) to any person in a police, military or fire service motor vehicle or an ambulance;

With due respect, it is submitted that the learned judge made an error when he said that a passenger is entitled to damages irrespective of who is negligent. Rule 4 above is quite clear in its wording, and the exception to the requirement of wearing seatbelts only applies to those who fall within Rule 7.[11]

The learned counsel for the defendant raised the case of *Froom and others* v *Butcher*.[12] Though the learned judge himself did not actually refer to this case in his judgment, it should be noted that the Court of Appeal held that the driver or front seat passenger in a motor vehicle who failed to wear a seatbelt had to bear some responsibility for those injuries, even though he was not responsible for the accident, if the injuries would have been avoided, or their extent reduced, by wearing a seatbelt.

Should the principle of law stated by Mr. Justice Abdul Malek be applied literally, it would lead to a situation where all passengers are 'absolved' from any liability, which would undoubtedly give rise to unfairness in the distribution of losses; especially to those of us who drive and run the risk of an accident anytime!

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(b) to any person who is certified by two registered medical practitioners that he is medically unfit to wear a safety seatbelt.

[11] *Ibid.*

[12] [1975] 3 All ER 520.