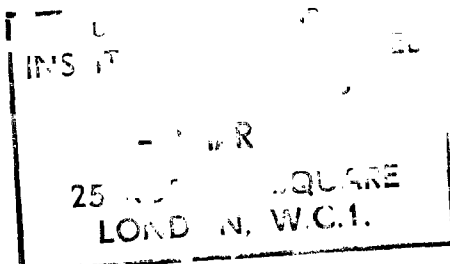


27, 1969



JOURNAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

25 OF 1966

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :-

TAN CHYE CHOO
VICTOR SIM WEE TECK
PETER LIM KENG LOONG (Plaintiffs) Appellant

- and -

10 CHONG KEW MOI (Married Woman)
(Defendant) Respondent

TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

C A S E FOR THE RESPONDENT

Record

(1) This is an appeal from the Judgment of the Federal Court of Malaysia (J.B. Thompson, Lord President, Ong Hock Thye and Ismail Khan, JJ.), dated the 13th of February 1966 dismissing the Appellants' appeal from the Judgment of Azmi J. in the High Court in Malaya at Johore Bahru, dated the 16th June 1965, giving judgment for the Respondent with costs, in an action for damages for death and personal injury as the result of a collision between 2 motor vehicles. pp.96 & 98

(2) The first-named Plaintiff Tan Chye Choo is the Administratrix of the estate of George Tan Eng Loong deceased, the second-named Plaintiff, Victor Sim Wee Teck, is the Administrator of the estate of John Sim Heng Teong deceased.

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30 (3) At about 2 o'clock in the afternoon of the 28th of January 1962 at or near the 8th milestone on the Johore Bahru-Scudai road a collision occurred between a "Volkswagen" motor car registration number BG 1358, in which the third-named Plaintiff Peter Lim Keng Loong and

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the said two deceaseds were travelling, and a "Chevrolet" taxi cab registration number H 814, the property of the Respondent being driven at the material time by Yap Sen Hock, the servant or agent of the Respondent, in the course of his employment.

p.34
line 1-8

(4) The Chevrolet taxi and the Volkswagen motor car were travelling in opposite directions the Chevrolet proceeding out of Johore Bahru and the Volkswagen proceeding towards Johore Bahru. The two cars were approaching each other when suddenly the Chevrolet taxi collided with the Volkswagen, of which the driver was killed, and which overturned into a drain on the left-hand side of the road facing Johore Bahru.

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p.102
line 2.

(5) The third-named Plaintiff was asleep in the front passenger seat of the Volkswagen at the time of the collision.

p.28
line 3.

(6) The Appellants each and severally brought actions against the Respondent for damages for the estates of the respective deceaseds and for their respective deaths, and for personal injuries respectively, by Writs of Summons numbered: 1963 No. 178, 1963 No. 179 and 1963 No. 180 respectively, all three Writs being issued on the 14th December 1963. These three actions were consolidated by consent of both Counsel in the High Court in Malaya at Johore Bahru on the 1st of June 1964 before Azmi J.

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pp. 1-8.

(7) The Appellants each and severally pleaded negligence against the Respondent her servant or agent in the driving and/or using the vehicle No. H.814 on the road, and breach of statutory duty contrary to Rules 93 and 94 of the Motor Vehicles (Construction and Use) Rules 1959, which read thus:-

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Rule 93:- no motor vehicle shall be used on a road for any purpose for which the type or construction is so unsuitable as to cause or be likely to cause danger to any person in the vehicle or on a road.

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Rule 94:- The condition of any motor vehicle used on a road and all its parts and

accessories shall at all times be such that no danger is caused or likely to be caused to any person on the vehicle or on a road.

10 (8) The respects in which the Respondent was alleged by the Appellants to have been in breach of the above Rules were that the said vehicle was permitted to be driven on the road with a heavy diesel engine having been put in place of a petrol engine, the said diesel engine being too heavy for the springs and the chassis and the part of the said motor car on which it rested. The car was thereby alleged to be unsafe on the road and a danger to the public.

pp.10,
lines.13-
16.

20 (9) The Appellants contended that there was a duty on the Respondent under Rule 94, and that it was her responsibility to see that the vehicle must be in such a condition as not to be likely to cause danger to others, or that there was a duty to take every care to see that the taxi was in a good state of repair, and that the Respondent or her servant or agent failed to do this.

p.23
line 17.

30 (10) The evidence of the Defendant was that she bought the Chevrolet taxi on 7th November 1960. (The date may be a misprint for 17th November 1960). Although it had been converted from a petrol engine to a diesel engine, she was unaware of this. She entrusted the responsibility for maintenance and servicing of the taxi to her driver Yap Sen Hock.

p.36
line 16.

40 (11) The only witness called by the Appellants as to the condition of the Respondent's vehicle was a Mr. Benjamin Wong, who said that there was no excessive wear in the steering swivel hub, but that force had been applied to the side of the housing where the ball joint had been forced out. There was slight wear, but not excessive. If there had been excessive wear there would be steering wobble between 35 and 45 m.p.h.

p.50
line 11.

Mr. Wong thought that the crack in the ball joint, Defendant's exhibit 8, could appear only after the ball had been forced out of it. The blackness was due to grease.

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p.68
line 34.

The evidence of this witness was not accepted by Mr. Justice Azmi.

p.39
lines 11
and 12

(12) The Respondent's expert, Claud Frederick Pope, gave evidence to show that when the taxi was converted from petrol to diesel, then in order to increase the height of the spring a shim of smaller diameter was placed at the bottom of the spring, as a result of which no locking was left for the original spring. Therefore the original spring was not secured. It was allowed to rock, causing greater loads on the top ball joints than they were intended to take. Consequently, the near side top ball joint eventually failed, allowing the nearside front wheel assembly to fall away on the ground, fracturing the brake fluid pipe line and destroying the effect of the brakes and steering. This caused the taxi to go out of control to the wrong side of the road. Such a shim should not have been used on such a spring.

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p.43
line 27.

line 28.

It could be possible that the taxi had been going for 70,000 miles before the accident happened, but 70,000 miles was a small mileage for a taxi.

The taxi had a diesel engine: originally the vehicle was a petrol engined car. A diesel engine is heavier than a petrol engine.

p.45
line 15.

line 20.

line 21.

line 22.

(13) Yap Sen Hock, the driver of the taxi at the time of the accident, and an experienced driver, said that he carried out the servicing of the taxi, and did minor repairs. He changed the oil two or three times a month, and sprayed oil on the springs and king pins once a month. He had been driving the taxi for seven or eight months before the accident. He had taken it over from a previous driver.

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p.46
line 10.

He travelled more than 200 miles per day.

p.45
line 24.

He did not notice anything wrong with the car.

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During the time he was in charge of the taxi it was sent to the R.I.M.V. (The Registrar and Inspector of Motor Vehicles).

(14) The judgment of Mr. Justice Azmi was given on the 16th of June 1965 of which the relevant passages are as follows:-

10 a) "In my view the fact that the taxi cab went to the wrong side of the road and ran into the motor car is sufficient prima facie evidence that the driver of the taxi cab was negligent, and it is therefore for the Defendant to show or explain that what had happened was not due to her driver's negligence." p.66 line 19.

20 b) "In my view although the use of the coil shim had proved disastrous in this case, it must be said on behalf of the Defendant that it did not happen until 14 months later and after the taxi-cab had travelled about 60,000 miles. In my opinion, therefore, I do not consider that the Defendant was negligent merely because she used the taxi cab which had a mechanical defect which was not apparent to the ordinary person. Besides, she had the permission of the R.I.M.V. to use it, and the same was inspected by the Defendant who stated that it was in a satisfactory condition. In my opinion the Defendant had done all that she could be expected to do, and therefore the 30 allegations of negligence set out must fail."

40 In considering the Defendant's liability on the question of statutory liability, the learned Judge said that having regard to the provision of the Motor Vehicles (Construction and Use) Rules 1959 he did not think that these Rules were intended to impose on the owner of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence. The Plaintiff's claim on this question must therefore fail.

The learned Judge dismissed the Suit with costs.

(15) An appeal to the Federal Court of Malaysia, was heard on the 4th and 5th October 1965 by

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J.B. Thomson the Lord President, Malaysia, and Ong Hock Thye, acting Chief Justice, and Mr. Justice Ismail Khan.

p.86
line 3.

J.B. Thomson, the Lord President, in a judgment with which Mr. Justice Ismail Khan concurred, said that the trial Judge was right in finding that the immediate physical cause of the accident was a mechanical failure of the taxi which resulted in a total failure of the steering and braking system and rendered it completely out of control.

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p.95
line 1.

He went on to say that none of the Motor Vehicle (Construction and Use) Rules 1959 was one for the breach of which a person injured by the breach was entitled to sue for damages.

It was necessary for the Plaintiffs to prove that there had been negligence in the maintenance and inspection of the "Chevrolet", but here, in his view, there was no such evidence to make out the Plaintiffs' case. He would dismiss the appeal with costs.

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p.97
line 39.

(16) Ong Hock Thye, acting Chief Justice, agreed with the Lord President that the Plaintiff had no cause of action for breach of statutory duty. On the cause of the accident he differed in his judgment from the learned Lord President to the effect that in his opinion it was not the "Chevrolet" which crossed the centre line of the road and collided with the Volkswagen but that the converse happened, and that therefore Yap Sen Hock was telling the truth when he said that it was the Volkswagen which had gone over to the wrong side to come into collision with the taxi. Negligence on the part of the Defendant's driver had been negatived by facts which were not open to dispute, and he would also dismiss the appeal.

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(17) On behalf of the Respondent it will be contended that the respective judgments of Azmi J. dismissing the suit and of the Federal Court of Malaysia dismissing the appeal were right and should be upheld for the following and other

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R E A S O N S

(1) BECAUSE the Respondent was not negligent in entrusting the maintenance and repair of the "Chevrolet" taxi to her servant or agent Yap Sen Hock.

(2) BECAUSE Yap Sen Hock, the servant or agent of the Respondent, was not negligent in the manner in which he carried out the maintenance and repair of the said Chevrolet taxi.

10 (3) BECAUSE the vehicle was inspected by the Registrar and Inspector of Motor Vehicles, Johore, on the 1st October 1961, less than four months before the accident on the 28th January 1962, and a certificate was issued therefor stating that all the material parts were in satisfactory condition, and the Defendant and her driver were entitled to rely on such certificates.

20 (4) BECAUSE if the accident was caused (as was so found by Mr. Justice Azmi) by the taxi travelling to its wrong side when out of control the cause of the loss of control was a sudden failure of the near-side top ball joint due to gradual wear over a period of some fourteen months.

30 (5) BECAUSE there was nothing wrong in having a diesel engine instead of a petrol engine in this particular vehicle, and it was not uncommon practice for taxis to have diesel engines installed.

(6) BECAUSE the vehicle had run without any noticeable defects for fourteen months and about 60,000 miles after the conversion from petrol engine to diesel and after the suspension of the vehicle had been modified but before the Defendant bought it.

40 (7) BECAUSE Mr. Justice Azmi and the members of the Federal Court of Malaysia were correct in law in holding that any breach of the Motor Vehicles (Construction and Use) Rules 1959 did not give the Plaintiffs a cause of action against the Defendant.

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(8) AND upon the grounds stated in the reason for judgments of Mr. Justice Azmi in the High Court in Malaya at Johore Bahru, and of J.B. Thomson, Lord President, Malaysia, Mr. Justice Ong Hock Thye, Acting Chief Justice, and Mr. Justice Ismail Khan in the Federal Court of Malaysia.

DAVID CROOM-JOHNSON

CHARLES WHITBY

KENNETH E. HILBORNE

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- and -

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Woman)(Defendant) Respondent

C A S E FOR THE RESPONDENT

BERRYMANS,
124, Salisbury House,
E.C.2.