

27, 1969

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 25 of 1966

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

B E T W E E N:

TAN CHIYE CHOO  
VICTOR SIM WEE TECK  
PETER LIM KENG LOONG (Plaintiffs) Appellants

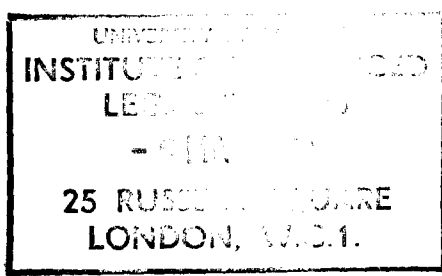
- and -

CHONG KEW MOI  
(Married Woman) (Defendant) Respondent

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RECORD OF PROCEEDINGS

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LIPTON & JEFFERIES,  
Princes House,  
39, Jermyn Street,  
London, S.W.1.

BERRYMAN'S,  
124, Salisbury House,  
London Wall,  
London, E.C.2

Solicitors for the Appellants

Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 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)      Appellants

- and -

CHONG KEW MOI  
(Married Woman)      (Defendant)      Respondent

RECORD OF PROCEEDINGS

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

B E T W E E N:

	TAN CHYE CHOO VICTOR SIII WEE TECK PETER LIM HENG LOONG	(Plaintiffs)	<u>Appellants</u>
		- and -	
10	CHONG KEW MOI (Married Woman)	(Defendant)	<u>Respondent</u>

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS - TAN CHYE CHOO -v- CHONG KEW MOI  
IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

In the High  
Court in  
Malaya at  
Johore Bahru

No. 1

Civil Suit 1963 No. 178

Writ of  
Summons

Between

Tan Chye Choo, the Administratrix of the  
Estate of George Tan Eng Leong, deceased  
Plaintiff

Tan Chye  
Choo -v-  
Chong Kew  
Moi

And

Chong Kew Moi (married woman) Defendant

14th December  
1963

HONOURABLE MR. JUSTICE SYED SHEH BIN SYED HASSAN  
BARAKBAH, B.D.L., Chief Justice of the High Court  
Malaya, in the name and on behalf of His Majesty  
the Yang Di-Pertuan Agong.

To, Chong Kew Moi (married woman) c/o Han Yang  
Estate, Masai, Johore.

WE COMMAND you, that within eight days after

In the High Court in Malaya at Johore Bahru

No.1

Writ of Summons

Tan Chye Choo -v- Chong Kew  
Koi  
14th December 1963

(continued)

the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Tan Chye Choo, c/o No. 13 Jalan Keris, Singapore and the Administratrix of the estate of George Tan Eng Leong, deceased

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Raja Azlan Shah, Registrar of the High Court in Malaya, this 14th day of December, 1963.

Sd: Murphy & Dunbar  
Plaintiff's Solicitors

Sd: V.R.T. Rangan  
Assistant Registrar

High Court, Johore Bahru.

N.B. - This writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Johore Bahru.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Johore Bahru.

The Plaintiff's claim is as Administratrix of George Tan Eng Leong, deceased for damages for the estate of the deceased, for his death which was caused by reason of the negligence of the servants or agents of the Defendant in the driving of a motor vehicle whereby the said George Tan Eng Leong, deceased was killed or alternatively by reason of the breach of statutory duty of the Defendant, her servants or agents in permitting a motor vehicle to be used on a road or using a motor vehicle on a road for a purpose for which

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its type of construction was so unsuitable as to cause or be likely to cause danger to any person on the said vehicle or on the said road and/or alternatively permitting or causing the condition of the said motor vehicle used on the road and its parts and accessories to be a danger or to be likely to cause danger to any person on the said vehicle or on the said road.

Sd: Murphy & Dunbar

Solicitors for the  
Plaintiff

This Writ was issued by Messrs. MURPHY & Dunbar of No. 11, Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, whose address for service is at Oversea-Chinese Bank Building, Jalan Hang Jebat, Malacca, Solicitors for the said Plaintiff whose address is c/o No. 13 Jalan Keris, Singapore and is the Administratrix of the estate of George Tan Eng Leong, deceased.

This Writ was served by me at  
on the defendant on the  
day of 196 , at the hour of the  
Indorsed this day of , 196 .

(Signed)

(Address)

In the High  
Court in  
Malaya at  
Johore Bahru

No.1

Writ of  
Summons

Tan Chye  
Choo -v-  
Chong Kew  
Moi

14th December  
1963

(continued)

In the High Court in Malaya at Johore Bahru

NO. 2

WRIT OF SUMMONS - VICTOR SIM WEE TECK -v- CHONG KEW MOI

No.2

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

Writ of Summons

Civil Suit 1963 No. 179

Victor Sim Wee Teck

Between

-v-  
Chong Kew Moi

Victor Sim Wee Teck, the Administrator of the estate of John Sim Heng Teong,  
Plaintiff

14th December 1963

And

10

Chong Kew Moi (married woman)  
Defendant

HONOURABLE MR. JUSTICE SYED SHEH BIN SYED HASSAN BARAKAH, B.D.L., Chief Justice of the High Court Malaya, in the name and on behalf of His Majesty the Yang Di-Pertuan Agong.

To, Chong Kew Moi (married woman) c/o Han Yang Estate, Masai, Johore.

We COMAND you, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Victor Sim Wee Teck, of No. 14 Lydnhurst Road, Singapore and the Administrator of the estate of John Sim Heng Teong, deceased.

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AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Raja Azlan Shah, Registrar of the High Court in Malaya, this 14th day of December, 1963.

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Sd: Murphy & Dunbar

Sd: V.R.L. Rangan

Plaintiff's Solicitors

Assistant Registrar,  
High Court, Johore Bahru.

N.B. - This writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

In the High Court in Malaya at Johore Bahru

No.2

Writ of Summons

Victor Sim Wee Teck

-v-

Chong Kew Moi  
14th December  
1963

(continued)

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The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Johore Bahru.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Johore Bahru.

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The Plaintiff's claim is as Administrator of the estate of John Sim Heng Teong, deceased, for damages for the estate and for the benefit of the dependant of the deceased, namely, Chew Poh Chan, the mother of the deceased, both of whom have suffered damage by reason of the negligence of the servant or agent of the Defendant in the driving of a motor vehicle whereby the said John Sim Heng Teong, deceased, was killed or alternatively by reason of the breach of statutory duty of the Defendant her servants or agents in permitting a motor vehicle to be used on a road or using a motor vehicle on a road for a purpose for which its type or construction was so unsuitable as to cause or be likely to cause danger to any person on the said vehicle or on the said road and/or alternatively permitting or causing the condition of the said motor vehicle used on the road and its parts and accessories to be a danger or to be likely to cause danger to any person on the said vehicle or on the said road.

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PARTICULARS PURSUANT TO SECTION 7  
OF THE CIVIL LAW ORDINANCE 1956

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The name of the person on whose behalf this claim is filed:-

Chew Poh Chan, aged 48, the mother of the deceased.

In the High Court in Malaya at Johore Bahru

No.2

Writ of Summons

Victor Sim Wee Teck

-v-

Chong Kew Moi 14th December 1963

(continued)

The deceased was 27 years of age at the time of his death and was employed by Lebel (China) Ltd. as a salesman at the salary of \$415/- a month of which he gave his mother, Chew Poh Chan \$150/- a month for her pocket money and personal expenses.

Sd: Murphy & Dunbar

Solicitors for the Plaintiff

This Writ was issued by Messrs. MURPHY & DUNBAR of No. 11, Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, whose address for service is c/o Oversea-Chinese Bank Building, Jalan Hang Jebat, Malacca, Solicitors for the said plaintiff who resides at No. 14 Lydnhurst Road, Singapore and is the Administrator of the estate of John Sim Heng Teong, deceased.

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This Writ was served by me at \_\_\_\_\_ on the defendant on \_\_\_\_\_ the day of \_\_\_\_\_, 196\_\_\_\_, at the hour of \_\_\_\_\_

Indorsed this \_\_\_\_\_ day of \_\_\_\_\_, 196\_\_\_\_

(Signed)

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(Address)

No.3

Writ of Summons

Peter Lim Heng Loong

-v-

Chong Kew Moi 14th December 1963

NO. 3

WRIT OF SUMMONS - PETER LIM HENG LOONG -v- CHONG KEW MOI

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

Civil Suit 1963 No. 180

Between

Peter Lim Heng Loong Plaintiff

And

Chong Kew Moi (married woman) Defendant

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HONOURABLE MR. JUSTICE SYED SHEH BIN SYED HASSAN

BARAKBAH, B.D.L., Chief Justice of the High Court Malaya, in the name and on behalf of His Majesty the Yang Di-Petuan Agong.

To, Chong Kew Moi (married woman) c/o Han Yang Estate, Masai, Johore.

In the High Court in Malaya at Johore Bahru

No. 3

Writ of Summons

Peter Lim Heng Loong

-v-

Chong Kew Moi

14th December 1963

(continued)

We COMMAND you, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Peter Lim Heng Loong of No. 53-B Tiong Poh Road, Singapore, Journalist.

10 AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Raja Azlan Shah, Registrar of the High Court in Malaya, this 14th day of December, 1963.

Sd: Murphy & Dunbar  
Plaintiff's Solicitors

Sd: V.R.T. Rangan  
Assistant Registrar,  
High Court,  
Johore Bahru.

20 N.B. - This Writ is to be served within twelve months from the date thereof, or if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Johore Bahru.

30 A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Johore Bahru.

40 The Plaintiff's claim is for damages for personal injuries suffered by him and caused by the negligence of the servants or agents of the Defendant in the driving of a motor vehicle or alternatively by breach of statutory duty of the Defendant, her servants or agents in permitting a motor vehicle to be used on a road or using a

In the High Court in Malaya at Johnore Bahru

No.3

Writ of Summons

Peter Lim Heng Loong

-v-

Chong Kew Moi

14th December 1963

(continued)

motor vehicle on a road for a purpose for which its type of construction was so unsuitable as to cause or to be likely to cause danger to any person on the said vehicle or on the said road and/or alternatively permitting or causing the condition of the said motor vehicle used on the road and its parts and accessories to be a danger or to be likely to cause danger to any person on the vehicle or on the said road.

Sd: Murphy & Dunbar

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Solicitors for the Plaintiff

This Writ was issued by Messrs. MURPHY & DUNBAR of No. 11, Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, whose address for service is at Oversea-Chinese Bank Building, Jalan Hang Jebat, Malacca, Solicitors for the said Plaintiff who resides at No. 53-B Tiong Poh Road, Singapore and is a Journalist.

This Writ was served by me at \_\_\_\_\_ on the defendant on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 196 , at the \_\_\_\_\_ hour of \_\_\_\_\_

Indorsed this \_\_\_\_\_ day of \_\_\_\_\_ , 196

(Signed)

(Address)

No.4

Amended Statement of Claim

Tan Chye Choo

-v-

Chong Kew Moi

14th December 1963

(Amended 1st June 1964)

NO. 4

AMENDED STATEMENT OF CLAIM  
TAN CHYE CHOO -v- CHONG KEW MOI

1. The Plaintiff as Administratrix of the estate of George Tan Eng Leong, deceased, brings this action for the benefit of the estate under the provisions of section 8 of the Civil Law Ordinance, 1956. Letters of Administration of the estate of the deceased were granted on the 23rd day of November, 1962 and the Grant was extracted on the 24th day of January, 1963.

2. On or about the 20th day of January, 1962, the

deceased was travelling as a passenger in motor car No. BG.1358 which was being driven along the Johore Bahru - Scudai Road going from Segamat towards Johore Bahru at or near the 3th milestone, Scudai-Johore Road in the Federation of Malaya when he was run into by motor taxi No. H.814 which was being driven by one Yap Sen Hock who was the servant or agent of the Defendant and who was driving motor taxi No. H. 814 along the Johore - Scudai Road travelling in the opposite direction.

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3. In consequence of the said collision the deceased was killed.

4. The said collision was caused solely by the negligence and/or breach of statutory duty of the Defendant, her servants or agents in the driving and/or using of the said motor taxi No. H. 814 on the said road.

In the High Court in Malaya at Johore Bahru

                      
No.4

Amended Statement of Claim

Tan Chye Choo

-v-

Chong Kew Moi

14th December 1963

(Amended 1st June 1964)

(continued)

PARTICULARS OF NEGLIGENCE OF THE  
SERVANTS OR AGENTS OF THE DEFENDANT

20

- (a) Failing to keep any or any proper look out.
- (b) Travelling at an excessive speed in the circumstances.
- (c) Driving onto the wrong part of the road.
- (d) Driving into the motor vehicle in which the deceased was travelling.
- (e) Failing to stop, swerve, slow down or otherwise avoid the said collision.

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- (f) Using or permitting or causing to be used on the road a motor vehicle No.H.814 the condition of which was a danger or was likely to cause danger to persons on the vehicle or on the road.
- (g) Using or permitting or causing to be used on the road a motor vehicle No.H.814 in a condition which was known or ought to have been known by the defendant her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road.

In the High  
Court in  
Malaya at  
Johore Bahru

PARTICULARS OF BREACH OF STATUTORY  
DUTY ON THE PART OF THE DEFENDANT  
HER SERVANT OR AGENT

No.4  
Amended State-  
ment of Claim  
Tan Chye Choo  
-v-  
Chong Kew Moi  
14th December  
1963  
(Amended 1st  
June 1964)  
(continued)

- (a) Using or permitting to be used motor taxi No. H.814 on the road when its type of construction was so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on the said road, contrary to section 93 of the Motor Vehicles (Construction and Use) rules 1959, 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 unsafe on the road and a danger to the public. 10
- (b) Permitting or causing to be used on the road a motor taxi No. H.814 the condition of which and the condition of its parts and accessories were a danger and did cause or were likely to cause danger to persons on the vehicle or on the road contrary to section 94 of the Motor Vehicles (Construction and Use) rules, 1959. 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 engine being too heavy for the springs and the chassis and the supporting parts of the said motor car. The car was thereby unsafe on the road and a danger to the public. 20 30

5. By reason of the aforesaid negligence and/or breach of statutory duty the deceased was killed and has thereby suffered damage in that he has been deprived of that expectation of life to which he was entitled.

PARTICULARS OF SPECIAL DAMAGE

Funeral expenses .. ... .. £1,750-00 40

And the Plaintiff was Administratrix of the estate of the said George Tan Eng Leong, deceased,



claims damages.

Dated and Delivered this 14th day of December, 1963, by,

Sd: Murphy & Dunbar

Solicitors for the Plaintiff

To, The above named Defendant,  
Chong Kew Moi (married woman),  
c/o Han Yang Estate, Masai

In the High Court in Malaya at Johore Bahru

No.4

Amended Statement of Claim

Tan Chye Choo

-v-

Chong Kew Moi

14th December 1963

(continued)

10

NO. 5

AMENDED STATEMENT OF CLAIM  
VICTOR SIM WEE TECK -v- CHONG KEW MOI

No.5

Amended Statement of Claim

Victor Sim Wee Teck

-v-

Chong Kew Moi

(amended 1st June 1964)

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1. The Plaintiff as Administrator of the estate of John Sim Heng Teong, deceased, bring this action for the benefit of the estate of the deceased under Section 8 of the Civil Law Ordinance 1956 and for the benefit of Chew Poh Chan, the mother of the deceased, both of whom have suffered damage by reason of the death of the deceased. Letters of Administration of the estate of the deceased were granted to the Plaintiff on the 19th day of April, 1962 and the grant was extracted on the 19th day of June, 1962.

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2. On or about the 28th day of January, 1962 the deceased was driving motor car No. BG.1358 along the Johore Bahru Scudai Road going from Segamat towards Johore Bahru at or near the 8 m.s. Scudai-Johore Road in the Federation of Malaya when he was run into by motor taxi No. H.814 which was being driven by one Yap Seng Hock who was the servant or agent of the Defendant and who was driving motor taxi No. H. 814 along the Johore-Scudai Road travelling in the oppsite direction.

3. In consequence of the said collision the

In the High  
Court in  
Malaya at  
Johore Bahru

No.5

Amended State-  
ment of Claim

Victor Sim  
Wee Teck

-v-

Chong Kew Moi

(amended 1st  
June 1964)

(continued)

deceased was killed.

4. The said collision was caused solely by the negligence and or breach of statutory duty of the Defendant, her servants or agents in the driving and/or using the said motor vehicle No.H.314 on the said road.

PARTICULARS OF NEGLIGENCE OF THE  
SERVANT OR AGENT OF THE DEFENDANT

- (a) Failing to keep any or any proper lookout.
- (b) Travelling at an excessive speed in the circumstances. 10
- (c) Driving onto the wrong part of the road.
- (d) Driving into the motor vehicle in which the deceased was travelling.
- (e) Failing to stop, swerve, slow down or otherwise avoid the said collision.
- (f) Using or permitting or causing to be used on the road a motor vehicle No.H.314 the condition of which was a danger or was likely to cause danger to persons on the vehicle or on the road. 20
- (g) Using or permitting or causing to be used on the road a motor vehicle No. H.314 in a condition which was known or ought to have been known by the defendant her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road.

PARTICULARS OF BREACH OF STATUTORY  
DUTY ON THE PART OF THE DEFENDANT,  
HER SERVANT OR AGENT

- (a) Using or permitting to be used motor vehicle No.H.314 on the road when its type or construction was so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on the said road contrary to section 93 of the Motor Vehicles (Construction and Use) Rules 1959. 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 engine being too heavy for the springs and the chassis of the said motor car. The car was thereby unsafe on the road and a danger to the public.

- 10 (b) Permitting or causing to be used on a road a motor vehicle No. H.814 the condition of which and the condition of its parts and accessories were a danger and did cause or were likely to cause damage to persons on the vehicle or on the road contrary to section 94 of the Motor Vehicles (Construction and Use) Rules 1959. 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 engine being too heavy for the springs and the chassis of the said motor car. The car was thereby unsafe on the road and a danger to the public.
- 20

5. By reason of the aforesaid negligence and or breach of statutory duty the deceased was killed and has thereby suffered damage in that he has been deprived of that expectation of life to which he was entitled.

PARTICULARS OF SPECIAL DAMAGE

Funeral expenses	..	..	<u>₹1,500/-</u>
------------------	----	----	-----------------

- 30 6. By reason of the above the mother of the deceased has suffered damage in that she has been deprived of the pecuniary and other benefits which she would have received had the deceased continued to live.

PARTICULARS PURSUANT TO SECTION 3  
OF THE CIVIL LAW ORDINANCE 1956

The name of the person on whose behalf this claim is filed:-

- 40 Chew Poh Chan, aged 40 years, the mother of the deceased.

In the High Court in Malaya at Johore Bahru

-----  
No.5

Amended Statement of Claim

Victor Sim  
Wee Teck

-v-

Chong Kew Moi

(amended 1st June 1964)

(continued)

In the High Court in Malaya at Johore Bahru

No.5

Amended Statement of Claim

Victor Sim Wee Teck

-v-

Chong Kew Moi

(amended 1st June 1964)

(continued)

The deceased was 27 years of age at the time of his death and was employed by Lebel (China) Ltd., as a salesman at the salary of \$415/- a month of which he gave his mother, Chew Poh Chan, \$150/- a month for her pocket money and personal expenses.

The assets in the estate of the deceased is the amount recoverable under Section 8 of the Civil Law Ordinance 1956 and the claim therefor is set out in paragraph 5 hereof. The amount so distributed will be reduced by the costs incurred by taking out Letters of Administration. The Court will be asked to fix the costs of the Letters of Administration under their probate jurisdiction at \$350/-.

10

And the Plaintiff as Administrator of the estate of the said John Sim Heng Teong, deceased, claims damages,

- (1) on behalf of the estate of the deceased and
- (2) on behalf of the mother of the deceased.

20

Dated and Delivered this 14th day of December, 1963,

by,

Sd: Murphy & Dunbar

Solicitors for the Plaintiff.

To,

The above named Defendant,  
Chong Kew Moi (married woman),  
c/o Han Yang Estate,  
Masai.

30

\_\_\_\_\_

NO. 6  
AMENDED STATEMENT OF CLAIM  
PETER LIM HENG LOONG -v- CHONG KEW MOI

In the High  
Court in  
Malaya at  
Johore Bahru

No.6

Amended State-  
ment of Claim

Peter Lim  
Heng Loong

-v-

Chong Kew Moi

14th December  
1963

(amended 1st  
June 1964)

10 1. On or about the 23th day of January, 1962 the Plaintiff was travelling as a passenger in motor car No.BG.1358 which was being driven along the Johore Bahru - Scudai Road going from Segamat towards Johore Bahru at or near the 8th m.s. Scudai - Johore Road in the Federation of Malaya, when he was run into by motor taxi No. H.814 which was being driven by one Yap Seng Hock, who was the servant or agent of the Defendant and who was driving motor taxi No.H.814 along the Johore - Scudai Road travelling in the opposite direction.

2. The said collision was caused solely by the negligence and/or breach of statutory duty of the Defendant, her servants or agents in the driving and/or using of the said motor vehicle No.H.814 on the said road.

20 PARTICULARS OF NEGLIGENCE OF  
THE SERVANT OR AGENT OF THE DEFENDANT

- 30 (a) Failing to keep any or any proper look out.
- (b) Travelling at an excessive speed in the circumstances.
- (c) Driving onto the wrong part of the road.
- (d) Driving into the motor vehicle in which the Plaintiff was travelling.
- (e) Failing to stop, swerve, slow down or otherwise avoid the said collision.
- (f) Using or permitting or causing to be used on the road a motor vehicle No.H.814 the condition of which was a danger or was likely to cause danger to persons on the vehicle or on the road.
- (g) Using or permitting or causing to be used on the road a motor vehicle No.H.814 in

In the High  
Court in  
Malaya at  
Johore Bahru

No.6

Amended State-  
ment of Claim

Peter Lim  
Heng Loong  
-v-  
Chong Kew Moi  
14th December  
1963

(amended 1st  
June 1964)

(continued)

a condition which was known or ought to have been known by the defendant her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road.

PARTICULARS OF BREACH OF STATUTORY  
DUTY ON THE PART OF THE DEFENDANT,  
HER SERVANT OR AGENT

- (a) Using or permitting to be used motor vehicle No. H.814 on the road when its type of construction was so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on the said road contrary to section 93 of the Motor Vehicles (Construction & Use) rules 1959. 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 engine being too heavy for the springs and the chassis and the supporting parts of the said motor car. The car was thereby unsafe on the road and a danger to the Public. 10
- (b) Permitting or causing to be used on the road a motor vehicle No.H.814 the condition of which and the condition of its parts and accessories were a danger and did cause or were likely to cause danger to persons on the vehicle or on the road contrary to section 94 of the Motor Vehicles (Construction & Use) Rules, 1959. 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 engine being too heavy for the springs and the chassis of the supporting parts of the said motor car. The car was thereby unsafe on the road and a danger to the Public. 20 30

3. By reason of the aforesaid negligence and/or breach of Statutory duty the Plaintiff has suffered injuries, has endured pain and has been put to loss and expense. 40

PARTICULARS OF PERSONAL INJURIES

Fracture of the lower jaw.

Traumatic extraction of three upper teeth and three lower teeth.

A half inch lacerated wound on the left side of the forehead.

A one inch lacerated wound on the inner surface of the upper lip.

Multiple abrasions of the chin, and neck and both knees.

There will be permanent injury.

In the High Court in Malaya at Johore Bahru

No.6

Amended Statement of Claim

Peter Lim Heng Loong

-v-

Chong Kew Moi

14th December 1963

(amended 1st June 1964)

(continued)

10

PARTICULARS OF SPECIAL DAMAGE

Johore Bahru Hospital Bill	.. ..	\$550-00
Transport Expenses	.. ..	\$150-00
Loss of earnings	.. ..	\$390-00
Damage to spectacles and sun glass		\$ 75-00
Damage to clothing	.. ..	\$ 90-00
Leather bag damaged	.. ..	\$ 75-00
Leather wallet lost	.. ..	\$ 20-00
Cash lost	.. ..	<u>  \$ 50-00</u>
	Total	<u><u>\$1,400-00</u></u>

20

And the Plaintiff claims damages.

Dated and Delivered this 14th day of December, 1963.

by,

Sd: Murphy & Dunbar

Solicitors for the Plaintiff

To,

The above named Defendant,  
Chong Kew Moi (married woman)  
c/o Han Yang Estate,  
Masai.

In the High  
Court in  
Malaya at  
Johore Bahru

NO. 7

DEFENCE

TAN CHYE CHOO -v- CHONG KEW MOI

No.7

Defence

Tan Chye Choo  
-v-  
Chong Kew Moi  
16th January  
1964

1. The Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim.

2. It is denied that the collision was caused by the Defendant's negligence or that of her servants or agents in the driving of motor taxi No. H. 814 on the said road as alleged in paragraph 4 and in the particulars of negligence. 10

3. It is further denied that the collision was caused by the Defendant's breach of statutory duty or that of her servants or agents in the using of the said motor taxi on the said road as alleged in paragraph 4 and in the particulars of breach of statutory duty.

Further, or in the alternative if it is found that there was such a breach of statutory duty as is alleged in paragraph 4 of the Statement of Claim (which is denied) the Defendant will object that the claim on this ground is bad in law and discloses no cause of action against her on the ground that a breach of the said statutory duty as alleged does not confer a right of action on the person or persons suffering damage as a result of the said breach. 20

4. The claims for damages and special damages are not admitted.

Dated and Delivered this 16th day of January, 1964. 30

Sd: Hilborne, Chung & Co.

SOLICITORS FOR THE DEFENDANT.

To the above named Plaintiff and to her solicitors, Messrs. Murphy & Dunbar, Oversea-Chinese Bank Building, Jalan Hang Jebat, MALACCA.



NO. 8  
DEFENCE  
VICTOR SIM WEE TECK -v- CHONG KEW MOI

In the High  
Court in  
Malaya at  
Johore Bahru

No.8

Defence

Victor Sim  
Wee Teck  
-v-  
Chong Kew Moi  
16th January  
1964

1. The Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim.

2. It is denied that the collision was caused by the Defendant's negligence or that of her servants or agents in the driving of motor taxi No.H.814 on the said road as alleged in paragraph 4 and in  
10 particulars of negligence.

3. It is further denied that the collision was caused by the Defendant's breach of statutory duty or that of her servants or agents in the using of the said motor taxi on the said road as alleged in paragraph 4 and in the particulars of breach of statutory duty.

20 Further, or in the alternative if it is found that there was such a breach of statutory duty as is alleged in paragraph 4 of the Statement of Claim (which is denied) the Defendant will object that the claim on this ground is bad in law and discloses no cause of action against her on the ground that a breach of the said statutory duty as alleged does not confer a right of action on the person or persons suffering damage as a result of the said breach.

4. The claims for damages and special damages are not admitted.

30 Dated and Delivered this 16th day of January, 1964.

Sd: Hilborn, Chung & Co.

SOLICITORS FOR THE DEFENDANT

To the above named Plaintiff and to his Solicitors, Messrs. Murphy & Dunbar, Oversea-Chinese Bank Building, Jalan Hang Jebat,  
Malacca.

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In the High  
Court in  
Malaya at  
Johore Bahru

NO. 9

DEFENCE

PETER LIM HENG LOONG -v- CHONG KEW MOI

No.9

Defence

Peter Lim  
Heng Loong  
-v-  
Chong Kew Moi  
16th January  
1964

1. The Defendant admits paragraph 1 of the Statement of Claim.

2. It is denied that the collision was caused by the Defendant's negligence or that of her servants or agents in the driving of motor taxi No. H. 314 on the said road as alleged in paragraph 4 and in the particulars of negligence. 10

3. It is further denied that the collision was caused by the Defendant's breach of statutory duty or that of her servants or agents in the using of the said motor taxi on the said road as alleged in paragraph 4 and in the particulars of breach of statutory duty.

Further, or in the alternative if it is found that there was such a breach of statutory duty as is alleged in paragraph 4 of the Statement of Claim (which is denied), the Defendant will object that the claim on this ground is bad in law and discloses no cause of action against her on the ground that a breach of the said statutory duty as alleged does not confer a right of action on the person or persons suffering damage as a result of the said breach. 20

4. The claims for damages and special damages are not admitted.

Dated and Delivered this 16th day of January, 1964. 30

Sd: Hilborne, Chung & Co.

SOLICITORS FOR THE DEFENDANT

To The above named Plaintiff and to  
her Solicitors, Messrs. Murphy &  
Dunbar, Oversea-Chinese Bank Building,  
Jalan Hang Jebat,  
MALACCA

JUDGE'S NOTES OF EVIDENCE

NO.10

OPENING BY PLAINTIFFS' COUNSEL

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiffs'  
Evidence

No. 10

Opening by  
Plaintiffs'  
Counsel

1st June 1964

Coram: Azai, J. In Open Court  
This 1st June, 1964.

Murphy for Plaintiffs.

Hilborne for Defendant.

Murphy: 3 Civil Suits 178/63, 179/63 and 180/63.

Civil Suit 178/63.

10 Civil Suit 179/63 - Suit on behalf of driver  
and estate brought by parents as dependants.

Civil Suit 180/63 - Claim for injuries in  
respect of another passenger - suffered injuries  
to jaw and still undergoing treatment - alignment  
of teeth - object is to get both.

All in same accident.

Accident: (1) same place;  
(2) evidence of driver;  
(3) photograph;  
20 (4) surveyor.

"A" (1) This is plan - agreed - marked Exhibit "A".

Collision between car and taxi

Taxi going across road and collided with  
car.

(2) Photographs of motor car and taxi -  
agreed.

"B" Marked Exhibit "B"

(3) Other evidence - Police report of driver  
of taxi.

30 "C" Exhibit "C"

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.10

Opening by Plaintiffs' Counsel

1st June 1964

(continued)

Defendant's evidence.

"D" (4) Put in Mr. Pope's report, marked "D" - Plaintiffs not admitting all contents.

(5) Report of examination of Defendant's taxi - put in - but not admitting all contents

"E" (marked "E")

"F" (6) Registration book of taxi, marked "F" registered in Defendant's name.

"G" (7) Two bills from same garage (marked "G" and

10

"H" "H").

I ask for amendment of all Statements of Claim by addition of two more particulars of negligence, i.e.

"(f) Using or permitting or causing to be used on the road a motor vehicle No. H.314 the condition of which was a danger or was likely to cause danger to persons on the vehicle or on the road.

20

(g) Using or permitting or causing to be used on the road a motor vehicle No. H.314 in a condition which was known or ought to have been known by the defendant her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road."

(Hilborne has no objection to amendment).

No doubt taxi went to wrong side of road.

Burden of proof that it was not fault of Defendant or agent of Defendant.

30

Taxi went across wrong side of road. If we prove that, then burden on Defendant to prove that this happened because of the bursting of the taxi's tyre. That is *res ipsa loquitur*.

(Hilborne interrupted to say: I am taken by surprise that the Plaintiffs are relying on res ipsa loquitur).

Bursting of tyre is not of itself the answer to defence. Defendant still to prove that the tyre burst due to no negligence of his.

Another angle: We are saying that the taxi was not properly maintained and it was put on the highway in breach of the Traffic Ordinance.

10 See Regulation No. 94 Page 182 of the Road Traffic Legislation 1958 and 1959 -

Regulation 94 requires that 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.

20 Duty on Defendant - no excuse for her to say tyre burst if it was defect in car. Her responsibility to see that the vehicle - i.e. the taxi - must be in such a condition not likely to cause danger to others.

Defendant is relying on report of Registrar which says taxi in good condition.

Law:

Phillips v. Britannia Hygienic Laundry Company, Limited. (1923) 2 K.B. 832.

Page 840 - on construction of statute - to provide remedy.

Page 842 - public duty.

30 Road Traffic Ordinance 1958 - 1959 - preamble - "provision for the protection of third parties against risks arising out of the use of motor vehicles...."

See Monk v. Warbey and Others (1935) 1 K.B.75.  
page 79.  
page 80.  
page 81.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.10

Opening by Plaintiffs' Counsel

1st June 1964

(continued)

In the High  
Court in  
Malaya at  
Johore Bahur

Judge's Notes  
of Evidence

Plaintiffs'  
Evidence

No.10

Opening by  
Plaintiffs'  
Counsel

1st June 1964  
(continued)

Refer London Passenger Transport Board v.  
Upson and Another (1949) A.C. 155.

Page 161 Lord Porter's judgment.

2nd paragraph.

Page 163 - 166.

Page 167 - 168.

Breach of statutory duty.

Barkway v. South Wales Transport Co.Ltd.1949  
Weekly Notes page 484.

Practice Note.

10

See also report at page 185 (1950) A.C.  
If the report is right, this point was not argued.

1950 Weekly Notes page 95 - 96.

Also reported in (1950) 1 All E.R. 393.

Lord Normand's judgment page 400 paragraph E.

(1955) M.L.J. 89 - Mg Siew Eng & Anor. v.  
Loh Tuan Woon. Page 92 second column.

Menon v. Henri Pigeonneau (1957) M.L.J.85.

2 ways of putting my case.

1). Absolute duty imposed on Defendant to  
put car or taxi in good condition. Not danger  
against other persons.

20

If this is wrong:

2) There is duty to take every care to see  
that taxi was in good state of repair - Defendant  
or driver failed to do this.

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NO.11  
EVIDENCE OF JOHN ALFRED JANSEN

In the High  
Court in  
Malaya at  
Johore Bahur

Murphy calls:

Judge's Notes  
of Evidence

P.W.1 John Alfred Jansen a/s in English: Professor  
at University of Malaya. L.D.S., Singapore.  
M.S.C.D. Toronto. F.I.C.D. United States.

Plaintiffs'  
Evidence

Head of Dept. of Dentistry, General Hospital,  
Singapore.

No.11

10 This is copy of my report on Peter Lim Heng  
P.1 Loong (marked Exhibit P.1).

John Alfred  
Jansen  
Examination

He was received at Hospital in March, 1962.

Refers para. 1 of P.1 - I found the lacerations  
of the upper lip had involved the circular muscle  
of the lips and there was loss of mobility and  
sensitivity.

20 Dental injuries - para. 2(i) - I found as to  
upper incisors: the right central incisor socket  
had healed; the incisal one-third of the crown of  
the left incisor had fracturedx but the pulp was  
not exposed; the mesial side of the crown of the  
left lateral had fractured, and at that time no  
evidence bone involved.

30 Lower incisors: right central socket had  
healed; right canine was not seen and the right  
central and lateral teeth had deviated towards lower  
first premolar tooth. Due to fracture of lower jaw  
two fragments had gone off. They were to be put  
together to allow for healing. If lower jaw is  
broken, muscle supporting lower jaw will pull  
fragment towards the tongue. Two parts to be  
wired.

Para. 4 - Although no evidence was adduced  
about fractures of the necks of the condyles, I  
checked and found these to be intact.

Para. 5 - There was definite loss of efficiency  
in the elevating muscles of the mandible.

Treatment recommended is now being done.

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiffs'  
Evidence

No.11

John Alfred  
Jansen

Examination  
(continued)

Treatment recommended.

- i) Correction of the malocclusion by the use of bite planes. This could restore to some extent the previous position - improve mobility of the lip muscle and masticatory efficiency. This takes about 3 months.
- ii) Restoration of the fracture sections of the upper left central and lateral incisors. Will have to be restored. 10
- iii) Dentures to replace upper right central and lower right central incisor teeth until, in the expected rehabilitation of his occlusion, fixed bridges could be made to replace these teeth. Temporary plates - 2 teeth of lower jaw and 2 in upper.
- iv) Observation of the teeth in the right segment of the mandible as I had expected a certain amount of pulpal injury which if there was any, would show up over a period of time. In lower incisor we found pulp had died. 20

From March, 1962, to November, 1963, he came to see me monthly.

(Read para. 4 (a) at page 2 of Report) - continuing treatment.

In January, 1964, I examined him - part of upper pulp of upper lateral incisor was dead and the tooth is root filled. 30

At the moment we have stabilised upper front segment with a bridge. The molars will now have to build up in order to stabilise the occlusion - i.e. contact between lower and upper teeth.

After that he has to build up molars. This is going to take to stabilise the bite about 7 months.

It will take another several months to prepare to build upper .... He has to go to



private practitioner after that after I have dealt with him for 5 months. It will cost \$2,000/- to \$3,000/- to have the fittings on. When all treatment had been finished, there should be minimum trouble.

Sd. Azmi.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.11

John Alfred Jansen

Examination (continued)

No.11

John Alfred Jansen

Cross-examination

Cross-examined

Mxd. Hilborne

10

Only lower jaw was fractured. Upper jaw not fractured, incisor tooth was knocked off. The treatment was done to get most teeth normal - physiology - involving teeth, jaw and muscle. He lost three teeth in accident. Once lower teeth are extracted and replaced with dentures, the chewing deficiency would be lost.

After my treatment he should be at about 80% normal.

Sd: Azmi.

Murphy: We agree at \$540/- for Johore Bahru Hospital.

20 (ii) Loss of earning at \$485/-. Sd. Azmi.

NO. 12

EVIDENCE OF PETER LIM HENG LOONG

P.W.2. Peter Lim Heng Loong a/s in English:

Employed by the Straits Times. Born on 23.9.1938 - Age 25.

No.12

Peter Lim Heng Loong.

Examination

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiffs'  
Evidence

No.12

Peter Lim  
Heng Loong.  
Examination  
(continued)

On 28.1.1962 I was travelling as a passenger in car BG.1358 sitting in front next to driver. At time of accident I was sleeping. It was past 2 p.m. I was taken to General Hospital, Johore Bahru.

P.2 (Murphy puts in medical report and marked Ex.P.2.. Hilborne agrees).

I was in General Hospital for 11 days. I was given sedatives. The pain was mostly round jaw and at my knees. After discharge I was treated as outpatient in Johore Bahru.

10

On 8.3.1962 I was referred to P.W.1. Since then I have been under him. I don't feel comfortable when eating. I have to eat very slowly.

About 2 days after accident my jaw was wired together. In late February the wire was removed. I was on liquid diet. I could not move my jaw after wire removed because of immobility of muscle. I was still on liquid diet after wire removed.

20

I was outpatient in Singapore. Since 8.3.1962 I attended Prof. Jansen 55 times. Frequency of visits varied. Sometimes once a week and sometimes more, sometimes once a month. There was a time when I did not go for a few months.

I was on medical leave until February 1962. I returned to work but worked only half-day for about a month, i.e. until 20/3/62.

30

Transport expenses: I made 5 trips to Johore Bahru - \$10/- a trip. I lived at 23B Tiong Poh Road, Singapore. I made 5 trips. My mother made 10 trips. I had to pay for them - at \$10/- a trip.

(Damages to glasses - \$75/- agreed by Hilborne).

Damage to clothing - after accident Police returned some clothing.

My Arrow shirt at \$20/-. 2 new pairs of trousers missing. \$35/- per pair.

Leather bag damaged - crushed and torn. Case is 2 years old - new costs \$100/-.

Leather wallet - at \$24/- new. Cash lost wallet. I never saw wallet again.

I don't get any pain now. It does not hurt any more when eating or talking. I find difficulty in moving my tongue when pronouncing words.

10

Movements of lips restricted. Sd. Azmi

Cross-examined

Xxd. by Hilborne: Trips to hospital by taxis. I did not have a car then.

Sd. Azmi.

(Hilborne: I am not raising any objection but I am drawing Court's attention that these 3 actions have not been consolidated. I have no objection to 3 cases tried together. It is possible that considerable difficulty may be encountered.)

20

By consent of both Counsel three actions are now consolidated. Sd. Azmi.

NO.13

EVIDENCE OF TAN CHYE CHOO

P.W. 3. Tan Chye Choo a/s in English:

Administratrix of the estate of George Tan Eng Leong, deceased.

30

I produce receipts of funeral expenses:

P.3. (i) \$700/- for graveyard (marked P.3)

P.4. (ii) \$641/- for cost of funeral (marked P.4)

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.12

Peter Lim Heng Loong Examination (continued)

No.12

Peter Lim Heng Loong

Cross-examination

No.13

Tan Chye Choo Examination

In the High  
Court in  
Malaya at  
Johore Bahru

Nothing else paid by me.

Deceased was 35 years.

Judge's Notes  
of Evidence

He is my brother. He was unmarried. He was  
employed by the Straits Times.

Sd. Azmi.

Plaintiffs'  
Evidence

No.13

Tan Chye Choo  
Examination

No.14

Victor Sim  
Wee Teck  
Examination

NO.14

EVIDENCE OF VICTOR SIM WEE TECK

P.W.4 Victor Sim Wee Teck a/s in Khok:

Administrator of the estate of John Sim Heng  
Teong, deceased.

10

Age 59. Father of John Sim Heng Teong.  
Deceased was my eldest son. He was 27 years when  
he died. He was employed by Lebel (China) Ltd.  
He was unmarried. I have another son, aged 23.

I took out Letters of Administration.

I paid funeral expenses;

They were \$1,470/-:

- |   |                   |    |
|---|-------------------|----|
| 1) Singapore Casket   | \$ 830.00         |    |
| 2) New suit for deceased to wear  | 120.00            |    |
| 3) Transport expenses   | \$ 200.00         | 20 |
| 4) Expenses for priest to hold<br>mass  | \$ 60.00          |    |
| 5) Miscellaneous expenses<br>including gifts of hand-<br>kerchiefs to those who<br>attended | \$ 260.00         |    |
|   | <u>\$1,470.00</u> |    |

(Murphy: Hilborne agrees deceased was paid \$400/- a month.)

Deceased lived with me. He gave me \$150/- a month and \$150/- for his mother, i.e. \$300/- altogether. With that money I bought food for whole family, paid for rent and clothes. He ate his food at the house. His food would cost \$50/- to \$60/- p.m. The rest of my children are daughters.

10 I have retired for last 4 years. Retired in 1960. I am not getting pension.

Beside deceased my eldest child also helps the family. She is a nurse.

Sd. Azmi.

Cross-examined

Xxd. by Hilborne:

20 I retired when I was 55. I was a publisher on my own, in Singapore, at 791-E Havelock Road, Singapore. I retired because of my poor health. I had stomach trouble. My stomach not functioning well. I have lost my teeth. I still have trouble.

I made \$300/- to \$400/- a month before I retired.

For first two years of his working years, i.e. before I retired, he gave me \$100/-. After my retirement he gave me \$150/-. He was working for 7 years up to time of death. He started work in 1955.

30 From 1955 he also gave his mother \$100/- a month and later \$150/- a month.

He gave to both of us separate sums according to Chinese custom.

My other son started work in 1957. He gave me \$100/- a month and \$50/- to my wife. My eldest daughter is 30. She has been working for

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.14

Victor Sim Wee Teck

Examination (continued)

No.14

Victor Sim Wee Teck

Cross-examination

In the High  
Court in  
Malaya at  
Johore Bahru

7 or 8 years. She gave \$60/- p.m. to my  
wife only and nothing to me. She stopped giving  
when she married in 1962.

Judge's Notes  
of Evidence

One daughter was working in a steam laundry.  
Of other 3, one is not working and two are in  
school.

Plaintiffs'  
Evidence

Contribution from my second son had not  
varied since.

No.14

Victor Sim  
Wee Teck

I save money when I retired but not very  
much. My deceased son was not engaged to be  
married, though he had a girl friend.

10

Cross-  
examination  
(continued)

Sd. Azmi.

No re-examination. Sd. Azmi.

1.15 p.m.

Adjourned to 2.30 p.m.

2.35 p.m.

Counsel as before.

No.15

NO.15

Chew Poh Chan  
Examination

EVIDENCE OF CHEW POH CHAN

P.W.5. Chew Poh Chan a/s in Hokkien:

20

Living at No. 14 Lydnhurst Road, Singapore.  
Age 51. Mother of Sim Heng Teong deceased:

I am claiming that he gave me money for  
myself whilst he was alive. He gave me for first  
two years of his working life \$100/- and after that  
\$150/- a month. I made use of money for my own  
dress and clothings of his younger sisters.  
Nothing was spent on him.

Sd. Azmi.

Cross-examined

Xxd. by Hilborne: I live with P.W.4. The house is not our own. The surviving son gave me \$50 p.m. At present my second daughter gives me a few tens of dollars. Eldest daughter used to give me before her marriage but none after her marriage.

Deceased had a number of girl friends. I don't know any of them. I don't know if he was fond of any one of them.

10 P.W. 4 retired some years ago. We were then living at No. 719 B Havelock Road. That was not his business address. That was residence. I don't know where his office was. He did his business from 719 B Havelock Road. He was not well.

I was in Court whilst my husband gave evidence. He was talking same dialect. I did not hear all he said.

Sd. Azmi.

Murphy:

20 On question of negligence: Driver of taxi admitted when passing the car tyre burst and straight-away collided with the car and other car stopped outright across the road and other car.

I say what I have proved is that the accident was due to negligence of the driver or in breach of statutory duty. That is my case.

Sd. Azmi.

DEFENDANT'S EVIDENCENO. 16

30 OPENING BY DEFENDANT'S COUNSEL

Hilborne:

Collision between Volkswagon car and a taxi H.814.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.15

Chew Poh Chan  
Cross-examination

Defendant's Evidence

No.16

Opening by Defendant's Counsel

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

Defendant's  
Evidence

No.16

Opening by  
Defendant's  
Counsel

(continued)

Taxi proceeding out of Johore Bahru and driver had a fare sitting with him. When he got to 3 $\frac{1}{2}$  milestone accident happened. Collision with Volkswagon. Two cars approaching each at same speed - total about 100 m.p.h.

Defendant admits that for some reason which I propose to explain, taxi as it passed, suddenly swerved to the right and smashed into the Volkswagon in which were 3 persons - driver killed. Car pushed off road and into grass verge. Taxi came to rest broadside across the road with two occupants - driver and fare were injured.

10

Question: Why did it happen?

Nearside front wheel collapsed due to fact bolt joints which govern the steering themselves collapsed. Bolt joints came adrift - no steering - no brake.

D.5 (Put in plan marked D.5. Admitted by Murphy).

Groove marks - regular pieces of tarmac cut off road. They are caused by near under side of car.

20

Plan made on 21.2.1962.

History of taxi.

Registered in February, 1959, as private car.

Became taxi on 5.11.1960 - up to 5.11.60 owned by Inche Mansor b. H. Bakri.

In November, 1960, diesel engine put in place of its petrol engine, done by Keng Soon Motor Co. of 91 Jalan Rahmat, Batu Pahat - See Exhibit "H".

30

"Austin B.M.C. Engine \$2,079.75".

SS 6395 - registration number of Chevrolet.

On 7.11.1960 it became a Diesel engine car H.814.

On 7.11.60 taxi was sold to Defendant.



It was run as such for 14 months until date of accident.

All facts were found in extract of the registration of vehicles.

Taxis have to be examined by R.I.M.V. and owners are issued with certificate. On 1.10.1961 taxi was examined by R.I.M.V. - see Exhibit "E".

Mr. Pope saw the vehicles 3 days after accident. His report is "D".

10 If this is true, i.e. as to cause of accident, I submit whoever could be blamed, owner knew nothing of this - or driver.

Refer to pleadings:

Statement of Claim - particulars of negligence all same.

Paragraph 1 - admitted by Defendant.

In addition to negligence, allegation of breach of statutory duty.

Following things emerge from Statement of Claim.

- 20 1) It does not raise question of res ipsa loquitur.
- 2) On contrary it has made it clear in parts of his pleadings what he thinks is cause of accident, i.e. breach of statutory duty.
- 3) He has not made out a case of breach of statutory duty - no evidence adduced by Plaintiff.

Defence -

30 It admits para. 1 of Statement of Claim - inevitable accident.

Sd. Azmi.

Charlesworth on Negligence 4th Edn. para. 1185.

Sd. Azmi.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Defendant's Evidence

No.16

Opening by Defendant's Counsel

(continued)

In the High  
Court in  
Malaya at  
Johore Bahru

NO. 17

EVIDENCE OF CHONG KEW MOI

Judge's Notes  
of Evidence

Defendant (D.W.1) Chong Kew Moi a/s in Hakka:

Defendant's  
Evidence

Age 58. Living at 92 Jalan Ngee Heng,  
Johore Bahru.

I am owner of taxi H.814.

No.17

Chong Kew Moi  
Examination

Not employed in any job nor used to be a  
labourer.

I had a taxi licence. The taxi was involved  
in an accident. I did not drive it myself. It  
was driven for me by one Yap Sen Hock. I know  
nothing about motor car. It was made known to me  
that it was a diesel engine.

10

Sd. Azmi.

No.17

Cross-examined

Chong Kew Moi  
Cross-  
examination

Xxd. by Murphy: The taxi was registered in my  
name on 7th November, 1960. I did not buy it  
through Mansur. Another person arranged to buy  
it for me. I have forgotten his name. 3 months  
before I bought it I sent this man to buy a car.  
He is Mr. Chin. I told him to go and look for a  
diesel engine car. He took 3 or 4 months to get  
the car. I told him to get a good car and he  
later brought this car. I don't know that it was  
a car converted from petrol into diesel engine.  
He did not tell that the engine was diesel  
converted from petrol. The price was over  
\$7,000/-. I paid by instalments. My friend  
told me it was a good car. So I bought it. I  
was introduced by Mr. Chin to Mr. Lee, a motor  
car agent. I paid \$4,000/- in cash and balance  
in instalments.

20

30

After deducting expenses I got \$3,000/- to  
\$4,000/- a year. I got \$17 to \$20 a day. I paid  
taxi driver \$5/- to \$6/- a day. I had only one  
driver. The taxi plied for hire only at day  
time but sometimes at night. If the collection  
was more I would give him \$2/- or \$3/- more. The

taxi was parked in front of my house at night.

I don't know when the servicing was done. It was work of my driver. I don't know, but the car was sent to garage if something was wrong. The driver would take the car to the garage if something was wrong. In respect of major repairs I paid, but for minor repairs he paid for it.

10 I cannot remember if there were major repairs. I don't remember to which garage the car was sent for repairs.

I did not buy any tyres. My driver did that. He bought new tyres. Sometimes I paid more, sometimes I paid less for the tyres.

Q: You mean taxi was never sent to a garage for major repairs or for servicing?

A: I don't know anything about it. I entrusted all these things to my driver.

20 I could see the taxi parked in front of my house. I instructed my driver to send it to garage when there was something wrong.

Q: You would not expect driver to take it to garage unless there is something wrong?

A: If there was nothing wrong my driver would not send it to garage.

I don't remember if the taxi was sent to R.I.M.V. on 1.10.61 for inspection. I don't know if taxi was sent for inspection once only or more than once.

Sd. Azmi.

30

Re-examined

Re-examination by Hilborne: I am a widow now. My husband died 18 years ago.

Sd. Azmi.

Adjourned to 10.30 a.m. tomorrow.

In the High Court in Malaya at Johore Bahru

—————  
Judge's Notes of Evidence

—————  
Defendant's Evidence

—————  
No.17

Chong Kew Moi  
Cross-examination  
(continued)

No.17

Chong Kew Moi  
Re-examination

In the High  
Court in  
Malaya at  
Johore Bahru

NO.18

EVIDENCE OF CLAUD FREDERICK POPE

2nd June, 1964

Judge's Notes  
of Evidence

Counsel as before

Defendant's  
Evidence

Hilborne calls:

No.18

D.W.2 Claud Frederick Pope a/s in English:

Claud  
Frederick  
Pope

Rochfort House, Singapore.

Automobile Engineer. I have been one for  
about 40 years.

Examination

I was consulted about this accident almost  
immediately after it occurred. On 4.2.1962 I  
examined the 2 vehicles with particular emphasis  
on the taxi. I made further examination of the  
vehicles later and also of road where accident  
happened. I also took away some parts of taxi in  
presence of Mr. Goodsir, Deputy Chief Police  
Officer, Johore. The parts were:

10

- 1) lower control arm.
- 2) broken ball joint:
- 3) Coil spring;
- 4) shock absorber;
- 5) coil shim.

20

As result of my examination of these parts and  
road I found that they had been incorrectly  
assembled. I also found that because of being  
incorrectly assembled the failure has been caused  
to top ball joint allowing the whole of suspension  
on near side to break away from its anchorage and  
in so doing fractured the flexible brake pipe  
line causing the vehicle to have no brake and no  
steering.

30

The taxi is a diesel engine. Originally the  
vehicle was a petrol engine car.

D.6. This is the spring of the taxi (marked Ex.D.6)

- D.7 This is lower control arm (Ex. D.7)
- D.8 This is ball joint (marked Ex.D.8)
- D.9 This is shim (Exhibit D.9)
- D.10 This is front shock absorber (Exhibit D.10).

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

D.7 is cast out to take and receive blunt end of the spring.

Defendant's Evidence

No.18

10 In this particular instance the manufacturer designed in order to increase height of spring this shim wheel of smaller diameter was placed at the bottom. As result no locking left for the original spring. Therefore the original spring was not secured. It was allowed to rock.

Claud Frederick Pope

Examination (continued)

Top control arm is fastened to the ball joint and upper control and lower control arms are joined together by the steering knuckle. On to steering knuckle is a stub axle brake drum, the hub and front wheel.

20 With failure of ball joint which is connecting two together, the wheel and steering knuckle fell away on ground, broke the pipe line, destroyed the brake and steering.

You can see how the ball joint breaks away (demonstrates on Ex. D.8) from socket. With that breaking away, there would be no steering and brake any more.

The section of spring is round.

The manufacturer specially instructs on this placing of spring - Ex. D.6 - no shim like P.9 should be used.

30 I would say so myself that such shim should not have been used on such spring because there is no allision between the two. In other words in first place the spring should be one piece. If a shim is to be used, the two surfaces of spring and shim should be flat surface and not round. If the tension of spring decreases, the spring should be replaced completely and no strain should be used. Diesel engine is heavier than petrol engine.

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

Defendant's  
Evidence

No.18

Claud  
Frederick  
Pope

Examination  
(continued)

I regard it as criminal to put in a shim in this particular car.

I inspected the tyres of the taxi. They were in serviceable condition. The nearside front tyre was not deflated. The offside front tyre had burst. In my opinion it burst on impact with something else.

I have got a Chevrolet Workshops manual issued by the manufacturers. It deals with same model as the taxi. The book is about 1957 model. It appears to be of same model as the taxi.

10

(Refers to page "Front Suspension 3 -2"). There are two lower control arms. The one in Court is the near side one. The offside control arm has also a similar shim.

(It states on a page:

"7. To correct the height, springs must be replaced. These springs do have flat ends and shims should not be used.")

Once the ball joint breaks away, the driver loses control of the steering and the brake.

20

I summarise my findings as included in my report Exhibit D.

Q: Having regard to all your findings did you come to any conclusion as an expert automobile engineer as to what caused this taxi to go across the road and hit the oncoming vehicle?

(Mr. Murphy objects. Refers to Crosfield & Sons, Ltd. v. Techno-Chemical Laboratories Ltd. (1913) 29 T.L.R. 379 - "The function of expert witness is (inter alia) to explain words, or terms of science or art appearing on the documents which have to be construed by the Court, to give expert assistance to the Court (e.g., as to the laws of science, or the working of a technical process or system), or to inform the Court as to the state of public knowledge with regard to the matters before it;")

30

An expert should not express opinion reference any of the issues whether of law or fact which Judge or jury to determine.

In the High Court in Malaya at Johore Bahru

Sd. Azmi.

Hilborne: I agree with everything said.

Judge's Notes of Evidence

The issue is whose fault was it that caused the accident?

Defendant's Evidence

Sd. Azmi

No.18

10 Q: If the steering ball joint failed, what would happen to the car?

Claud Frederick Pope

A: The car would be completely out of control with no steering or break, from then on it could go in any direction.

Examined (continued)

Sd. Azmi.

Cross-examined

No.18

Xcd. by Murphy:

Claud Frederick Pope

20 The wall of offside front tyre was cut. It was almost a new tyre. It was not retreaded tyre. It came in contact with something. The outside cord was cut in full length and the inside cord has not been cut to same depth.

Cross-examined

The tube had burst at same spot.

The ball attached to the joint was pulled out with some force. That would cause nearside wheel breakaway from the upper control arm, it must fall outwards.

The ball had come off D.8.

30 Q: Is it not a fact some force or pressure must have been put to cause ball to pull out socket?

A: No.

For it to pull out, no force was used.

In the High  
Court in  
Malaya at  
Johore Bahru  
-----  
Judge's Notes  
of Evidence

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Defendant's  
Evidence

-----  
No.18

Claud  
Frederick  
Pope  
Cross-exam-  
ined  
(continued)

Force could not cause it to cause break  
in D.8.

When vehicle is running on the road the  
weight on front is lifted and down again, as the  
front of car rises, the ball is pulled out.

It is possible that the hitting of the wheel  
could cause the ball joint to come off.

A collision with wheel would put force on  
lower portion of wheel and possible for that  
pressure to pull out socket out of the joint.

10

Q: May I suggest that the cracks round socket  
(D.8) could be caused by tearing of ball  
out?

A: No.

The tear seen in part of socket could be  
caused by the ball pulling out. It shows which  
side of socket the ball pulls out.

Q: May not other cracks be caused by same  
pull?

A: No.

20

It seems to me the other cracks are dark and  
old. It was due to colouration of cracks that I  
say they were old.

Q: Could not cracks similar to those seen be  
caused by the pulling out of the ball?

A: Not in this case.

It is possible that similar cracks could be  
caused by the ball being pulled out.

I see signs of wear on the ball.

Diesel engine is shorter and has to sit  
back slightly.

30

The more you pushed back the engine the less  
weight on the spring but in this case only a few  
inches back.



I have not weighed this diesel engine nor have I weighed the Chevrolet engine.

Diesel engine is 4 cylinder, Chevrolet engine is 6 cylinder.

Q: Is the diesel engine of 4 cylinders heavier than 6 cylinders Chevrolet engine?

A: Yes. Not of same weight.

The difference is about one hundredweight (6 lbs.) With gear box, Chevrolet engine is 224 lbs.

If you have a burst tyre, the tendency is to drag.

If near side which collapsed while car is in motion, the tendency should drag in direction of near side. There was no drag on other side.

Q: If the socket has been worn out, you must feel steering is loose?

A: Yes, you will feel a little.

I cannot say if in such circumstances it should be taken to a garage. I would not know how much would be apparent. I would have all vehicles examined periodically, i.e. every 6 months if proper maintenance is kept.

Proper maintenance is imperative and changing oil, etc. A taxi should be inspected after every 1,000 miles or one month.

Sd. Azmi.

To Court: It could be possible that the taxi had been going for 70,000 miles before the accident happened.

Sd. Azmi.

Re-examined

Re-examined:

70,000 miles is small mileage for a taxi.

Sd. Azmi.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Defendant's Evidence

No.18

Claud Frederick Pope

Cross-examination (continued)

No.18

Claud Frederick Pope

Re-examination

In the High Court in Malaya at Johore Bahru

At time I examined the vehicle I also examined the road. On my instructions this plan was drawn up (D.5). I found a series of groove marks on the road.

Judge's Notes of Evidence

I cut the chassis frame and it fits exactly with marks (groove marks on plan).

Defendant's Evidence

From these I would say the ball joint came out before collision.

No.18

Claud Frederick Pope

Whatever the taxi hit, it hit with its offside. The worse damage was on that side. There is also no accidental damage to near side of car.

10

Re-examination (continued)

(Refers to photos. B.1 - B.4) Sd. Azmi.  
Adjd. to 2 p.m. Sd. Azmi.

No.19

Yap Sen Hock Examination

NO.19

EVIDENCE OF YAP SEN HOCK

2.05 p.m.

Counsel as before.

Hilborne calls:

D.W.3 Yap Sen Hock a/s in Hakka:

20

Living in Jalan Ngee Heng, Johore Bahru. Taxi driver.

At the time of accident I was driving a taxi, H.814. On that day I was making the journey from Johore Bahru to Kulai. At about 3½ milestone there was an accident.

In the taxi I had a passenger. He was sitting in front next to me.

When I reached 8½ milestone, Jalan Scudai, I saw a vehicle from opposite direction and all of a sudden the vehicle 'banged' into my car. It was about 2 p.m. The weather was good.

30

I did not hear anything before the cars collided. When the collision took place I was on my side of the road.

The oncoming car "banged" into me. I was going along properly, then suddenly that car knocked into mine.

The taxi is not mine. It belonged to Chong Kew Moi, the Defendant.

10 I was paid \$5/- to \$6/- a day. I paid the rest of the collection to her.

I have been a taxi driver for more than 20 years. I was never involved in any accident before this.

I bought the diesel oil for the taxi. Nobody else drove the taxi. I did servicing of the taxi. By servicing I mean spray on springs, fill oil in gear box and other things. Spray oil, put oil on the springs and king pins. The servicing was done at the service station - the oil station.

20 For changing oil, I did twice or 3 times monthly. Spraying oil once a month.

I have been driving this taxi about 7 or 8 months before accident. It was a good car. I did not notice anything wrong with the car before accident. I took it for inspection of R.I.M.V. once in six months.

The portion of taxi, on right, in front of driver, suffered heaviest damage.

Sd. Azmi.

Cross-examined

30 Xxd. by Murphy

Q: I have been driving the taxi for 7 or 8 months. Did you tell Police you have been driving it for 2 years?

A: I did not say that.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Defendant's Evidence

No.19

Yap Sen Hock

Examination

(continued)

No.19  
Yap Sen Hock  
Cross-examination

In the High  
Court in  
Malaya at  
Johore Bahru

—————  
Judge's Notes  
on Evidence

—————  
Defendant's  
Evidence

—————  
Yap Sen Hock  
Cross-  
examination  
(continued)

I only started driving the car when it was bought over. No, I have not been driving it for 14 months. I took over afterwards from another driver. I cannot remember from what month to what month I drove it.

I did the servicing at the Kota Tinggi Road. It is not Tek Long. I paid first and later asked for expenses from the towkay. She would therefore know every time I had the taxi serviced.

I travelled more than 200 miles a day - i.e. about 6,000 miles a month. For 200 miles I would go from Johore Bahru to Kulai and sometimes as far as Ayer Hitam. Johore Bahru to Kulai = 25 miles. Sometimes 3 times and sometimes 5 times a day.

10

I did only minor repairs, e.g. changing a leaking pipe or plugs. The pipe adjoining the carburettor. So far as plugs are concerned, they are cleaned and put back. When I refer to plugs I mean 'ejectors'.

Q: Do you know they are not supposed to be changed?

20

A: Sometimes the foreman recommended them to be changed, and so I did.

Apart from changing those I had nothing else done. During time I had the taxi it was sent to R.I.M.V. only once. That was only inspection R.I.M.V. had during my time. No other inspection by anyone else. The taxi was going well and normally.

I went across the road as in Exhibit B.1. As a result of the collision my car came round.

30

I was driving perfectly straight up to time of accident. It was a straight road. It is my story the other car came to my side of the road. As result of collision my car went to other side of road.

(Shown 'A').

Q: Does that not show the position of the car after accident?

A: I cannot read the plan.

The other car landed on his side of road. My car ended in position shown in Exhibit B.1.

Q: If the other car had gone to your side and hit you, it could not have landed in this side of the car?

A: My car was a bigger car and stronger car and knocked a smaller car.

10 Line DE is a tyre mark made by my car. This was made after the collision. After collision, the car dragged. The other car knocked against mine and bounced back.

Then I made a report to Police. I did not say after my car passed the other car my car "meletop". I referred to noise made by the collision. I did not say after "explosion" my car straightaway hit the other car. I found my offside tyre had burst.

Before collision I did not feel anything wrong.

20 Q: Why did you not say in your report the other car came into wrong side of your car?

A: I said that the other car came to my side of the road. I cannot explain why there is nothing about that.

I was prosecuted by Police on my report. I did not say the other car got into my side of the road.

I had a lawyer and he made all the talking at the trial.

30 I did not make any other statement to Police apart from the report Exhibit 'C'.

Q: Mr. Pope told us this morning that the car broke down and careered across to other side?

A: I don't know what he said. If he said my car broke down and careered across the road, then he was wrong.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Defendant's Evidence

Yap Sen Hock

Cross-examination  
(continued)

In the High Court in Malaya at Johore Bahru

My taxi did not wobble before the accident. Nothing wrong with the steering. It was steady.

Sd. Azmi.

Judge's Notes of Evidence

Re-examined

Defendant's Evidence

Re-ex. by Hilborne:

Yap Sen Hock  
Cross-examination

At the trial at the lower Court I did not give any evidence. I was merely asked if I committed the offence and I said 'No.' I was not called upon by Magistrate to give evidence.

(continued)

I spoke in Malay when I gave my report.

10

Re-examination

To Court: I was born in Johore Bahru.

Sd. Azmi.

That is case for defence.

Sd: Azmi.

Murphy: I was going to call evidence to rebut Mr. Pope in reference to condition of Exhibit D.8 and as to shin having caused wobble. Since D.W.3 has said that there was nothing wrong with car.....

Hilborne refers to notes on "rebutting evidence" in Annual Practice (1958) Vol. 1 at page 864.

20

Judge has discretion to allow Plaintiff to adduce rebutting evidence:

- (1) In answer to evidence of Defendant in support of an issue, the proof of which lay upon him. (Penn v. Jack L.R. 2 Equity 314).
- (2) When Plaintiff taken by surprise or evidence is contradictory. Point not pleaded.

30

Also, when the proof is on Defendant.

Accident happened 2 $\frac{1}{2}$  years ago.

Secondly, these parts produced were available to Plaintiff.

Murphy knew in July, 1962, cause of accident. D.11 See his letter marked D.11, and this is our D.12 reply, D.12. Therefore no surprise.

I sent copy of Mr. Pope's report to Mr. Murphy when vehicle and parts were still available.

I don't admit that onus on me.

10 I call Mr. Pope owing to state of law in Storey v. Storey - in submission on "no case to answer". Defendant is put to election, etc. By calling Mr. Pope I never admit anything. There is no issue shifted on to me.

Mr. Murphy cannot say he was taken by surprise.

If point is an issue it is not on me to prove. Sd. Azmi

Murphy: Mr. Pope has gone outside what he has previously stated.

20 Sd. Azmi.

I allow rebutting evidence as to condition of D.3 only. Sd. Azmi

PLAINTIFFS' EVIDENCE

NO.20

EVIDENCE OF BENJAMIN WONG

Murphy calls:

P.W.6 Benjamin Wong a/s in English:

Living at 10 Cairnhill Circle, Singapore.

Employed by Malaya Motors.

30 I did a course in London with a motor car company. I know diesel engines well.

In the High Court in Malaya at Johore Bahru

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Judge's Notes of Evidence

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Defendant's Evidence

-----  
Yap Sen Hock  
Re-examination  
(continued)

Plaintiffs' Evidence

-----  
No.20

-----  
Benjamin Wong  
Examination

In the High Court in Malaya at Johore Bahru

I have seen Exhibit D.8.

This is ball joint on the steering swivel hub. That houses a ball. That ball has come away.

Judge's Notes of Evidence

In my experience and from what I saw there is no excessive wear in this but force has been applied to opposite side of the housing where it has been forced out. It was the force of pulling out.

Defendant's Evidence

No.20 Benjamin Wong Examination (continued)

If there is excessive wear, you would get a steering wobble if you go from 35 to 45 m.p.h.

10

There is a slight wear but not excessive.

In my opinion these cracks in D.8 could appear only after the ball was forced out of D.8. The blackness was due to grease. Grease when pumped in was in yellow form. The grease turns black after it has been some time in the socket. It is stain of metal.

Sd. Azmi.

No.20 Benjamin Wong Cross-examination

Cross-examined

Xxd. by Hilborne:

20

I had a look at it yesterday but I properly examined it today during lunch time. I was called yesterday.

There would not be greasing after accident. The greasing was before the accident.

Owing to friction grease turns black.

I am an expert.

The cracks were caused by the ball coming out of socket. All the cracks were caused by that.

Sd. Azmi.

30

No.20 Benjamin Wong Re-examination

Re-examined

Re-Xd: I don't think it was so much wear and tear that caused the small cracks. It was due to



force being applied. There is a little wear inside (points to a small brownish colouration inside).

Sd. Azmi.

To Court: Exhibit D.8 is made of steel.

Time 4 p.m. Mr. Hilborne requires 2 hours to address.

Sd. Azmi.

10 Adjourned to a date to be fixed by Assistant Registrar.

Sd. Azmi.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

Plaintiffs' Evidence

No.20

Benjamin Wong  
Re-examination  
(continued)

Certified true copy.  
Sd: Nesathurai  
Secretary to Judge  
4/9/1964.

NO. 21

SUBMISSIONS BY PLAINTIFFS' COUNSEL

28th February, 1965

No.21

Submissions by Plaintiffs' Counsel.

20 C.S. 178, 179  
and 180 of 1963  
(Contd.)

Counsel as before.

Murphy: Hilborne thinks that I should plead "res ipsa loquitur". I submit I don't have to do so. Refer to (1957) M.L.J. 85. If Court holds I should have pleaded I ask for amendment of my statement of claim in all 3 cases by adding the following:

"The Plaintiff relies on the doctrine of res ipsa loquitur."

30

Sd. Azmi.

Hilborne: I oppose this application because I have already raised it and it should have been done

In the High  
Court in  
Malaya

Judge's Notes  
of Evidence

No.21

Submissions  
by Plaintiffs'  
Counsel  
(continued)

before. If the Court had allowed it, then I would ask that it be done only on "terms".

I did not come to Court prepared to argue on this question. I ask for adjournment because I have been taken by surprise.

I would like to consider my own amendments.

Sd: Azmi.

Murphy: No reason for adjournment. It has been obvious I have been relying on that principle. In the circumstances I withdraw my application.

10

Sd: Azmi.

Hilborne: It has been several months since the last hearing and I propose to go through the evidence and would refer to the notes of evidence supplied.

(Mr. Hilborne read through evidence of P.W.2, P.W.3, P.W.4, P.W.5, D.W.1, D.W.2, and D.W.3).

To summarise:

- (1) No attempt by Plaintiffs to prove an affirmative case of negligence. Clear not relying on "res ipsa loquitur". If Court concludes that it is so, it is upon Defendant to prove how it happened. 20
- (2) Murphy at page 3 of notes of evidence refers to bursting of tyre as not the answer to defence, and so on. I suggest Murphy got mixed up in his mind that accident was due to bursting of tyre. (Murphy interrupts to say that driver himself said his tyre burst). 30
- (3) Question of liability - an explanation has been given how the accident happened by the Defendant.

History of the car as appeared in the  
Registration Book of car:-

1st registered on 21.2.59.

Sold to Mansor b. H. Bakri - 9.7.59.

Engine converted to diesel, see Exhibit "G" - 15.11.60.

Vehicle transferred to Defendant - 17.11.60.

Change to diesel approved by R.I.M.V.

Routine inspection by R.I.M.V., J. Bahru and passed - 1.10.61.

Accident happened on 24.1.62.

Res ipsa loquitur.

10 I submit it should have been pleaded, see Benas & Essenhigh's Precedents on Pleadings, 2nd Edn., p.236.

Concede this is no authority for saying it must be pleaded.

If Plaintiff is entitled to plead it without pleading it I rely on Halsbury Vol. 28 para. 79-83.

We rely on "inevitable accident" - para. 84 of same.

20 Refer to Mazengarb's Negligence on Highways, p.112 - res ipsa loquitur.

Page 113.

Barkways v. South Wales Transport Co. Ltd. (1950) A.C. 185.

Moor v. R. Fox & Son (1956) 1 All E.R. 182.

Refer Mazengarb's Negligence on Highways page 114 - from 3rd para. to 5th para.

30 The Court will have to decide at the end of the Plaintiff's case if it is a case of res ipsa loquitur and, if it does so, the burden shifts to Defendant.

Page 115.

I admit this is a case of res ipsa loquitur

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.21

Submissions by Plaintiffs' Counsel

(continued)

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.21

Submissions by Plaintiffs' Counsel (continued)

but I rely on (ii) and (iii) of the para. at page 115. I will submit that the accident was due to negligence of another person, i.e. the person responsible for putting in the shim - Exhibit P.9. under the spring - Exhibit D.6, in order to increase its height. That is not the Defendant. Besides, car approved by R.I.M.V.

We have proved by a witness negligence on another person.

Refer to paragraph (iii). I say we have given a reasonable explanation equally consistent with inevitable accident, etc.

10

Sd: Azmi.

Short adjournment.

Sd: Azmi.

No.22

Defendant's Counsel's Address to Court.

NO.22

DEFENDANT'S COUNSEL'S ADDRESS TO COURT

Hilborne:

Refer to Barkway v. South Wales Transport Co. Ltd. (1950) 1 All E.R. 392. Headnote.

20

This case also covers question of statutory duty. Refer to page 399 - judgment of Lord Normad.

Refer also to judgment of Lord Radcliffe.

Court accepted fact bursting of tyre before accident.

In present case no evidence of anything like that happening.

No accident of any kind before date of accident to enable driver to know there was defect in the motor car.

30

In the Barkway's case it was based on finding

which shows that there was a severe impact on tyre on day before date of accident.

In present case Defendant did not know at all the use of shim.

Similar to case Tan Siew Ting & Ors. v. Chong See Jin - Malayan Cases Vol. II page 247.

This case supports my contention that Plaintiffs could not rely on breach of duty.

10 Refer (1963) M.L.J.204 - Wong Eng v. Chock Mun Chong & Ors.

Page 205 left column bottom - "Once the burden of proof ..... braking of the axle".

In present case latent defect - shim put in without knowledge of Defendant - complete disregard of manufacturers' advice. Submit this is a latent or concealed defect.

No notice of it.

Another point.

Plaintiffs rely on breach of statutory duty.

20 Refer again to Tan Siew Ting's case. Judgment of Paul Storr at page 250.

Adjd. to 2.30 p.m. Sd: Azmi.

2.30 p.m.

Counsel as before.

Hilborne continues:

Pope's evidence - opinion based on facts referred to him and what he himself saw at scene on 4.2.1962.

30 Plan made by him - inescapable inference by Court that accident due to collapse of near side front wheel about 80 ft. before collision. Pope relies on plan.

I am admitting my car went across to the other

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.22

Defendant's Counsel's Address to Court

(continued)

In the High  
Court in  
Malaya at  
Johore Bahru

Judge's Notes  
of Evidence

No.22

Defendant's  
Counsel's  
Address to  
Court

(continued)

side of road and hit the other car.

I submit driver's version in Police report -  
Exhibit "C". - is true version.

His evidence in Court - all nonsense.

I submit Pope's exposition of what happened  
correct.

Remember the torn Exhibit D.8.

Statutory duty.

Refer Phillips v. Britannia Hygienic  
Laundry Co. Ltd. (1923) 2 K.B. 332.

10

Held: Not intended by the Act or the Order  
that everyone injured has a right of action for  
damages.

Reads whole judgment of Bankes L.J., Atkins  
L.J. and Younger L.J.

I submit regulations referred in judgments  
are in substance same as ours - refer judgment of  
Storr, J. in the Tan Siew Tin's case.

Phillips' case was followed in Stennett v.  
Hancock (1939) 2 All E.R. 578.

20

Refer to Charlesworth's Negligence 4th Edn.  
para. 964.

Murphy relies on Monk v. Warby (1935) 1 K.B.  
75. Murphy contends that breach of regulations  
is exception to the general rule stated in  
Phillips' case, see page 4 of Notes of Evidence.

I say Monk v. Warbey did not lay any general  
principles.

Refer to Clarke and Wife v. Brims (1947)  
1 K.B. 497. (1947) 1 All E.R. 242.

30

Refer to judgment of Morris, J. at page 501.

At page 505 the test is whether the intention  
was to make the duty one owed to all as well as to  
party aggrieved.

I submit not possible to distinguish the present case as different from cases cited.

Refer to Charlesworth's Negligence, paras. 1181. Para. 1185 - defence of inevitable accident need not be specially pleaded in actions based on negligence.

Apart from the plan, I refer to Police sketch plan which ties up with my plan - shows marks on road.

10 Inspector of Vehicles' report - giving a clear bill of health.

2 letters - Exhibits D.11 and D.12.

Rebutting evidence - Wong examined exhibits 2 hours before he gave evidence. He never saw the car or scene of accident.

Damages:

C.S. 178/63.

Murphy asks \$1,341/- special expenditure - funeral expenses. I suggest only \$641/- be allowed.

20 C.S.179/63

Funeral expenses - no objection to cost of casket - \$830/-, but object to rest.

General damages. Evidence of father and mother.

Court to consider:

Deceased a bachelor. Probability of getting married soon and burden of payment would become lower.

30 I suggest \$50/- to \$100/- a month after marriage, say in another 2 years.

C.S. 180/63.

Personal injuries - see page 7 of notes of evidence.

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.22

Defendant's Counsel's Address to Court

(continued)

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.22

Defendant's Counsel's Address to Court

(continued)

After treatment Plaintiff should be 80% recovery.

Agree he has had a lot of trouble with teeth.

Sd: Azmi.

Murphy. It is now 3.30 p.m. I ask for adjournment.

Sd: Azmi.

Adjd. to 10.3.65.

Sd: Azmi.

10th March, 1965

10

Counsel as before.

Hilborne: In view of time available I ask for leave to cite one or two authorities more. Davies v. Burn 1936 Commonwealth Law Report 246. Pages 257 to 261.

In present case the front suspension collapsed - loss of control of steering and hand brake.

Refer to page 266 bottom to pages 268 and 269.

20

Refer to (1958) 1 Lloyd's List Law Report page 29 headnotes.

Page 36 left column - "The primary question....." to pages 37 and 38.

In the case cited rod became broken.

Not negligent if latent defect.

Refer to page 4 of notes of evidence. Plaintiffs relying on breach of statutory duty.

London Passenger Transport Board v. Upson & Anor. - ratio decidendi (1949) A.C. 155. Clear from the judgment of Lord Wright at page 168 "I think the authorities.....safety of the....."

30



Page 172 "First it is clear.....  
approaching vehicles".

Page 174 "It must be agreed.....injury".

I submit ratio decidendi to protect a  
special class of people contemplated, i.e.  
pedestrians.

I submit this is not authority for a much wider  
principle that a breach of regulations gives a  
cause of action to a person injured as a result  
of the breach.

My last case Winter v. Cardiff Rural District  
Council (1950) 1 All E.R. 819 at page 821 para. C  
"The statement of claim ..... could be  
estimated."

Sd: Azmi.

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Judge's Notes  
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No.22

Defendant's  
Counsel's  
Address to  
Court

(continued)

NO. 23

PLAINTIFFS' COUNSEL'S ADDRESS TO COURT

Murphy:

Damages:

C.S. 178/63 - loss of expectation of life  
£3,500/-. Funeral expenses, see page 9 of notes  
of evidence.

£700/- for grave yard.

C.S. 179/63. Total expenses for funeral  
expenses £1,470/-.

Loss of expectation of life £3,500/-.

Dependants - father and mother.

Page 10 of notes of evidence. Father age 59  
now, 57 at time of accident.

Life expectation - 12 years.

Mother now aged 51, then 49.

Life expectation 20 years.

No.23

Plaintiffs'  
Counsel's  
Address to  
Court

10

20

30

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Judge's Notes  
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No.23

Plaintiffs'  
Counsel's  
Address to  
Court.

(continued)

	At \$240/- for 8 years.	\$7,800/-
	If reduced to \$100 after marriage for further 9 or 10 years.	\$8,500/-
	Total	\$16,000/-

Another way:

Mother at \$50 for rest of her life	\$7,500/-
Father at \$50 for rest of his life - 10 years	\$4,600/-
Total	\$12,100/-

Therefore, figure between \$12,000/- to \$16,000/-.

10

C.S. 180/63.

Plaintiff still undergoing medical treatment.

Special damages - agreed	\$1,485/-
--------------------------	-----------

Costs of fittings \$2,000/- to \$3,000/-  
(including further treatment).

So, total	\$4,000/-
-----------	-----------

Refer to page 7 of Notes of evidence.

Mr. Jansen: "After my treatment he should be  
at about 80% normal." Some difficulty of eating.

Nearest case I can find is 1962 Current Law  
Year Book, S 859 £1,400/-.

20

Negligence:

I accept the opinion of Mr. Pope, i.e.  
car broke down and ran across the road.

That is the burden of proof on Plaintiff.

Defendant has then to show something  
happened and that was not due to her negligence.

Highway Code says car must travel on one  
side of the road.

What has Defendant to do to show that it was not due to her negligence?

Barkway's case - bus careering across road.

Facts of the case.

Refer to page 403 - "The true question is..... relevant particular."

I submit Defendant has not exercised that standard of care.

10 Evidence of driver in present case - in charge of taxi for 7 to 8 months - travelling 60,000 miles.

Servicing of car. No repair done nor servicing.

Page 21 of notes of evidence - Pope himself considers proper maintenance is imperative.

A taxi should be inspected after every 1,000 miles once.

Page 19 of notes of evidence bottom - ball worn out.

20 I say Defendant should have seen that these sockets should have been noticed too and have them replaced.

Driver said he did not see anything wrong. I ask that his evidence should not be accepted as he was lying on another point.

Hilborne admitted car should not have been on the road and yet he said Defendant had exercised every care.

Test on 1.10.61. Accident in January, 1962.

30 No evidence that the car has been tested between those dates. Cannot be assumed it has been tested. Defendant should have called evidence to show car has been tested. Therefore she was negligent.

Refer to Phillips' case.

At page 841 - "Prima facie if it does that is

In the High Court in Malaya at Johore Bahru

Judge's Notes of Evidence

No.23

Plaintiffs' Counsel's Address to Court.

(continued)

In the High  
Court in  
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(continued)

only remedy. But that is not conclusive.  
The intention as disclosed by its scope and  
wording must still be recorded and it may still  
be that, though the statute creates the duty and  
provides a penalty, the duty is nevertheless owed  
to individuals."

This debunks the idea that there must be a  
special person.

That Court was construing the Locomotives and  
Highways Act, 1896, and not the Traffic Act. 10

Our Traffic Ordinance divided into 5 parts.

Part 2 deals with roads - provides for making  
of rules.

Part 3 - Sec. 73 gives power to Minister to  
make Rules - for safety of road users.

The Traffic Act and our Ordinance were  
specially brought in for safety of road users.  
Lord Normand says "we must construe Act", i.e.  
either for public or individual rights.

I say cases cited by Hilborne nothing to do 20  
with Traffic Ordinance.

Refer (1947) 1 K.B. 497 at pages 502 and 505.

Tan Siew Ting's case - Storr, J. decided this  
case on the authority of Phillips' case which deals  
with railway regulations. I suggest he is wrong.

(1945) 2 All E.R. 295.

Road Traffic Ordinance Sec. 5 - Prohibition  
of motor vehicles not complying with rules.

Sec. 5 (3) unlawful to sell or supply, etc., 30  
motor vehicle in condition that their use in that  
condition would be unlawful.

Page 297 of above case. Purchaser has a  
right to claim.

(1952) 1 K.B. 101.

Only case referred by Hilborne that has

reference to this case is Barkways case. Hilborne referred to (1950) 1 All E.R. 392, but if you see the same case reported in (1950) A.C. 185, it is different. Nothing about the judgment of Lord Potter. Submit the Law Report is official report.

1949 W. N. 484.

1950 W.N. 95.

10 Rule 94 of the Motor Vehicles (Construction and Use) Rules, 1959, required that the condition of any motor vehicle to be such that no danger is caused or likely to be caused to any person on the vehicle or on the road.

Refer (1955) M.L.J. p. 89. Case under Sec.67 Traffic Ord.

Sec. 80 (1) of the Road Traffic Ord.

Monk v. Warbey gave right to a party for failing to take out insurance policy.

All cases dealing with Road Traffic given right for damages for breach of regulation.

20 I say it gives similar right for breach of Regulation 94 of the Motor Vehicles (Construction and Use) Rules, 1959.

Sd: Azmi.

C.A.V.

Sd: Azmi

16th June, 1965

C.S. 178/63, 179/63 and 180/63

Counsel as before.

I read my judgment and dismiss the Suit with costs.

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Judge's Notes of Evidence

No.23

Plaintiffs' Counsel's Address to Court

(continued)

In the High  
Court in  
Malaya at  
Johore Bahru

Mr. Murphy: In case of an appeal would the Court  
assess the damages?

Sd: Azmi.

Judge's Notes  
of Evidence

Certified true copy.

Sd: T. Nesathurai  
(T. Nesathurai)

No.24

Secretary to Judge

Judgment of  
Azmi, J.

26/6/1965.

16th June 1965

NO. 24

JUDGMENT OF AZMI, J.

I agreed with Counsel that these 3 Suits be  
consolidated and heard together.

10

It is not disputed that as a result of a  
collision between motor car BG 1358 and taxicab  
H 814 on 28th January, 1962, at the 8th milestone  
Johore Bahru/Scudai Road, three passengers in the  
motor car, namely George Tan Eng Leong, John Sim  
Heng Teong, and Peter Lim Heng Loong received  
injuries and that George Tan and John Sim died as a  
result of their injuries.

It is also conceded by Mr. Murphy for the  
Plaintiffs that the taxi cab went to its wrong  
side of the road due to a mechanical defect in the  
taxi. The Plaintiffs did not call any evidence as  
to how it happened since Mr. Peter Lim, who alone  
survived the accident, said that he was asleep  
when it occurred.

20

This Suit is based on negligence and also on  
breach of statutory duty.

There are several particulars of negligence  
and, in view of the evidence and arguments, I need  
I think refer only to the following:

30

Particular (a) - Driving onto the wrong  
part of the road.

Particular (d) - Driving into the motor  
vehicle in which the two

deceased persons and Peter Lim were travelling.

In the High Court in Malaya at Johore Bahru

Particular (f) - Using or permitting or causing to be used on a road the taxi cab, the condition of which was likely to cause a danger to persons on the vehicle or on the road.

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Judgment of Azmi, J.  
16th June 1965  
(continued)

10 Particular (g) - Using or permitting to be used the taxi cab in a condition which was known or ought to have been known by the Defendant, her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road.

20 The particulars of the breach of statutory duty read as follows:

30 "(a) Using or permitting to be used motor vehicle No. H.814 on the road when its type or construction was so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on the said road contrary to section 93 of the Motor Vehicles (Construction and Use) Rules 1959. 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 engine being too heavy for the springs and the chassis of the said motor car. The car was thereby unsafe on the road and a danger to the public.

40 (b) Permitting or causing to be used on a road a motor vehicle No. H.814 the condition of which and the condition of its parts and accessories were a danger and did cause or were likely to cause damage to persons on the vehicle or on the road contrary to section 94 of the Motor Vehicles (Construction and Use) Rules 1959. 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 engine being too heavy for the springs and the

In the High  
Court in  
Malaya at  
Johore Bahru

—  
Judgment of  
Azmi, J.

16th June 1965

(continued)

chassis of the said motor car. The car was thereby unsafe on the road and a danger to the public."

The Defendant denied that the collision was caused by the negligence of herself or that of her servants or agents.

It is further denied by the Defendant that the collision was caused by the Defendant's breach of statutory duty or that of her servants or agents in the using of the said motor taxi as alleged by the Plaintiffs, and in the alternative if it is found that there was such a breach of statutory duty as is alleged, the Defendant will object that the claim on this ground is bad in law and disclosed no cause of action against her on the ground that a breach of the said statutory duty as alleged does not confer a right of action on the person or persons suffering damage as a result of the said breach.

10

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.

20

The Defendant called Mr. Pope, who examined both motor vehicles and also visited the scene of the accident. A plan Exhibit D.5 was subsequently made. Mr. Pope said that a round shim was used to give additional height to the front suspension coil spring. This became necessary when the engine of the car was changed from a petrol engine to a diesel engine which is heavier.

30

Before I go further into this matter I think I ought to refer to the history of this car as appeared from the Registration Book. The car had originally a petrol engine and was first registered on 21st February, 1959. On 15th November, 1960, the engine was converted from petrol to diesel engine. This change was approved by the Registrar and Inspector of Motor Vehicles, Johore.

40

The taxi cab was inspected by the Registrar and Inspector of Motor Vehicles, Johore, on 1st



October, 1961.

On 28th January, 1962, the accident happened, i.e. less than 4 months after its last inspection by the Registrar and Inspector of Motor Vehicles and about 14 months (or after travelling about 60,000 miles) after the conversion.

In the High Court in Malaya at Johore Bahru

Judgment of Azmi, J.

16th June 1965

(continued)

10 Yap Sen Hock, D.W.3, the driver of the taxi cab at the time of the accident, maintained that his taxi cab never crossed into the wrong side of the road, and that it was the other car that came to his side and hit his taxi cab. I like to say at this stage that this man is no doubt lying on this point because in my view there is ample evidence from the plan at the instance of Mr. Pope and from his evidence that the taxi cab must have gone out of control some distance before collision and that it had gone to the other side of the road and hit the motor car.

20 Yap Sen Hock also said that he used the taxi cab in travelling between Johore Bahru and Kulai and sometimes as far as Ayer Hitam and covered a distance of about 200 miles a day. He also said that he used to take the taxi cab to the garage to have small repairs done and that there was one inspection by the R.I.H.V. and that the taxi cab was going well and normally.

30 The Defendant, a woman aged 58, of little or perhaps no education, said that she bought the taxi cab for \$7,000/- and she understood it to be a diesel engine. She let Yap Sen Hock drive it and for that Yap would pay her about \$17 to \$20 a day. She cannot remember if there were major repairs done to the taxi cab, but any small repairs would be seen to by Yap, who would also buy new tyres for the taxi cab. She did not even know if the taxi cab had been sent to the Registrar of Motor Vehicles for inspection. It is obvious that this woman had no knowledge of motor vehicles and all she was concerned with was that this was a kind of investment and she, being a widow, considered it a good one.

40

I will now return to Mr. Pope's evidence. In his considered opinion in order to give additional height to the front suspension coil spring, a round shim was placed in the bottom wishbone. According

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Malaya at  
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(continued)

to him the use of this round shim is forbidden by the manufacturer. What should have been done was to have it replaced with a longer coil spring of the required height or perhaps to have used a flat shim. The use of this round shim had caused the entire stability of the front suspension to be greatly impaired because the front springs were no longer located in the bottom wishbone and were in fact lying loosely upon the single shim that had been incorrectly fixed. The result of this was to cause far greater loads on the top ball joints than they were intended to take, and in consequence the near-side top bolt joint completely failed and this allowed the near-side front stub axle complete with hub and wheel to fall away from its anchorage. When the wheel fell away from its anchorage the flexible fluid pipe of the braking system got severed. With the severing of a brake pipe all braking is completely lost on all wheels. When this happened, the driver would, not only find himself completely out of control through the loss of his steering but also his predicament would be worsened by having no brakes whatsoever. In his opinion the accident was caused as a result of the incompetent workmanship carried out by the Workshop who undertook the changing of the engines and the subsequent modification to the front suspension. 10

He maintained that the ball joint was pulled out of its socket, not due to any pressure. As I understood Mr. Pope, what he meant was that the ball joint came out from its socket as a result of the accident and it did not happen before the collision. 20 30

In view of the fact that Mr. Pope had examined all the parts of the car immediately after the accident I preferred his evidence to that given by the witness called by Mr. Murphy in rebuttal. In other words, I come to the conclusion that the accident was due to the failure of the front and the near-side top ball joint which allowed the near side front stub axle complete with hub and wheel to fall from its anchorage, and that this was due to the incorrect use of the shim for the purpose of giving additional height to that of the coil spring. 40

The first question I have to consider is

whether the Defendant has been negligent in permitting her taxi to be used in that condition, or that she knew that it was in a dangerous condition or ought to have known it.

In the High Court in Malaya at Johore Bahru

10 Before I go further I think I ought to mention that Mr. Murphy suggested that the Defence should have called an officer of the R.I.M.V. to give evidence that the taxi was examined by that Department on the 1st October, 1961. This fact was proved by both the driver and also a document, marked Exhibit E, which is a report on the examination of the taxi cab H 814 by the R.I.M.V. It said that it was examined on 1st October, 1961 at the office of the R.I.M.V., Johore, and that its condition was satisfactory. I personally see no reason why I should not accept that statement. I understand that the periodical examination of taxi cabs is carried out by the Department in exercise of its powers under the law and as required by the law.

20

Judgment of Azmi, J.  
16th June 1965  
(continued)

30 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 Department 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 allegation of negligence set out in particulars (f) and (g) must fail.

I would, therefore, now have to consider the law as to the Defendant's liability on the question of alleged breach of statutory duty.

40 The following opinion of Atkin, L.J., in Phillips v. Britannia Hygienic Laundry Company Ltd. (1) is now regarded as a sound doctrine:

"One question to be considered is, Does the

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(1) (1923) 2 K.B. 832 at page 841.

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(continued)

Act contain reference to a remedy for breach of it? Prima facie if it does that is the only remedy. But that is not conclusive. The intention as disclosed by its scope and wording must still be regarded, and it may still be that, though the statute creates the duty and provides a penalty, the duty is nevertheless owed to individuals."

I also would like to quote the following passage from the judgment of the same learned Lord Justice: (2)

10

"Therefore the question is whether these regulations, viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved. I have come to the conclusion that the duty they were intended to impose was not a duty enforceable by individuals injured, but a public duty only, the sole remedy for which is the remedy provided by way of a fine. They impose obligations of various kinds, some are concerned more with the maintenance of the highway than with the safety of passengers; and they are of varying degrees of importance; yet for breach of any regulation a fine not exceeding 10 l. is the penalty. It is not likely that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and new causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the Legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence."

20

30

40

---

(2) (1923) 2 K.B. 842.

10 In reference to this English case Mr. Murphy as I understood him, suggested that our Road Traffic Ordinance, 1958, is a wider legislation than the English "Locomotives on Highways Act, 1896", and in support he referred me to the preamble of our Ordinance and in particular to the words in the preamble "provision for the protection of third parties against risks arising out of the use of motor vehicles". In my view, in reference to these words, they were intended merely to refer to the Motor Vehicles (Third Party Risks) Rules, 1959, made under the Ordinance.

20 At the hearing of this case I was also cited several other cases, for example, Monk v. Warbey and Others<sup>(3)</sup>, London Passenger Transport Board v. Upson and Another<sup>(4)</sup> and Tan Siew Ting & Ors. v. Chong See Jin<sup>(5)</sup>. I do not think that it is necessary for me to refer to these cases as I think that for the purpose of this case the Judgment of Atkin, L.J. (which I have quoted) would be sufficient guidance for me.

30 Having regard to the provisions of our Motor Vehicles (Construction and Use) Rules, 1959, I do not think that these Regulations were intended to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence. I would, therefore, say that the Plaintiffs' claims on this question must fail.

I would, therefore, dismiss the Suits with costs.

Sd. Azmi bin Haji Mohamed  
JUDGE,  
MALAYA.

16.6.1965.

At the request of Mr. Murphy I have also assessed the quantum of damages in all these 3 Suits which I consider reasonable in the circumstances of the case:

- 
- 40 (3) (1935) 1 K.B. 75  
(4) (1949) A.C. 155  
(5) Malayan Cases Vol. II p. 247

In the High Court in Malaya at Johore Bahru

—————  
Judgment of Azmi, J.

16th June 1965  
(continued)

In the High  
Court in  
Malaya at  
Johore Bahru

Judgment of  
Azmi, J.

16th June 1965  
(continued)

Civil Suit No. 178 of 1963

With reference to Special Damages - funeral expenses - I would allow only  $\$640/-$ . I do not consider that the cost of  $\$700/-$  for graveyard should be allowed.

Under General Damages, the claim is only for loss of expectation of life and I assess it at  $\$3,500/-$ .

The total would, therefore, be  $\$4,140/-$ .

Civil Suit No. 179 of 1963

10

With reference to Special Damages - funeral expenses - in my view  $\$1,000/-$  would be reasonable.

Under General Damages, I have to consider what is the reasonable sum which both the father and mother should have for loss of support. It was agreed that the income of the deceased be fixed at  $\$400/-$  per month.

At the time of deceased's death, his father was 57 years old and, according to the latter, deceased gave him  $\$150/-$  a month, and a similar sum to his mother. At that time the mother of deceased was about 49 years old.

20

The deceased, being a bachelor, would most probably marry, in which case the amount of support given to his parents would likely decrease. Mr. Hilborne suggested that the amount should be assessed from  $\$50/-$  to  $\$100/-$  per mensem after marriage, say in 2 or 3 years' time.

Mr. Murphy suggested that the quantum for loss of support be assessed in the following ways:

30

(1)  $\$240/-$  a month for 3 years (until  
marriage of deceased)  $\$ 7,800$

Figure reduced to  $\$100/-$  for  
9 or 10 years after  
that  $\$ 8,500/-$

Total ...  $\$16,000/-$

(2) Mother at \$50/- for the rest of her life	\$ 7,500/-
Father at \$50/- for 10 years	\$ 4,600/-
Total	\$12,100/-

In the High  
Court in  
Malaya at  
Johore Bahru

No.24

Judgment of  
Azmi J.

16th June 1965

(continued)

I would, however, in view of the age of the father fix the figure for both father and mother at \$10,000/-.

The total of both Special and General Damages would, therefore, come to \$11,000/-.

10

Civil Suit No. 180 of 1963

Under Special Damages, the claim for things lost by the Plaintiff was agreed to by both Counsel at \$1,485/-.

The Plaintiff has to undergo further treatment and, according to Prof. Jansen, that would cost him from \$2,000/- to \$3,000/-. I would, however, fix the amount for this at \$2,500/-.

20

The next question is as to the quantum for General Damages. No doubt the Plaintiff suffered terrible shock and pain as a result of the accident and, according to expert opinion, the final recovery from the injuries would be at about 80 per cent. normal.

30

Mr. Murphy cited to me the case of Hamilton v. Burdon, a short summary of which is given in Current Law Year Book, 1962, under S 859, sub-heading "Jaw and Teeth". That was a case of a boy of 13 whose nose was fractured and the bridge flattened, but who remained a nice-looking boy. Fractures of the maxillae, mandible and hard palate, requiring hospital treatment, which must have been horrible, but the boy's memories of pain were short. He had to wear upper and lower dentures. Damages \$1,400/-.

I found myself under the same heading "Jaw and Teeth" two other cases, namely:

Benham v. A.G. Manly & Co. Male, aged 22.  
Fractures of mandible with considerable displacement

In the High  
Court in  
Malaya at  
Johore Bahru

No.24

Judgment of  
Azmi, J.

16th June 1965

(continued)

of fragments. Had two operations but still found eating difficult and painful. Injuries to nerves of jaw resulted in loss of sensation around lower lip and chin. Had also had abrasions to back, shoulder and left arm. These cleared up but movement of left thumb slightly restricted. Damages £900/-.

Priestly v. Lemm. Male, car driver. Fractures of upper and lower jaw, left knee and fifth metacarpal of left hand. Split tongue. In hospital for month, off work for 13 weeks and on light work for 10 weeks. Had made remarkable recovery. Main trouble was shrinkage of gums: lower dentures did not fit and eating was difficult. Also had numbness of lip and could not feel food, in part of mouth. This was permanent disability. Damages £600/-.

10

In the present Civil Suit in my view \$6,000/- would be a reasonable compensation, so that the total damages would be \$1,485/- + \$2,500/- + \$6,000/- = \$9,985/-.

20

Sd. Azmi bin Haji Mohamed

(Azmi bin Haji Mohamed)  
Judge,  
Malaya.

24.6.1965

Certified true copy.  
Sd. T. Nesathurai)  
(T. Nesathurai)  
Secretary to Judge  
25/6/65

30



NO.25  
ORDER OF COURT.

In the High  
Court in  
Malaya at  
Johore Bahru

BEFORE THE HONOURABLE DATO JUSTICE IN OPEN COURT  
AZMI, JUDGE, MALAYA. THIS 16TH DAY OF JUNE, 1965

No.25

Order of  
Court

16th June  
1965

10 THESE SUITS coming on for hearing on the 1st  
day of June, 1964 before The Honourable Mr.  
Justice Azmi, Judge, Malaya, in the presence of  
Mr. Denis Hubert Murphy of Counsel for the above  
named Plaintiffs and Mr. Kenneth Edward Hilborne of  
Counsel for the above named Defendant and Upon  
reading the pleadings filed herein and Upon  
hearing what was alleged by Counsel for the  
Plaintiffs and for the Defendant as aforesaid  
IT WAS ORDERED that these suits be and they thereby  
were consolidated and Upon hearing the evidence  
adduced IT WAS FURTHER ORDERED that these suits  
be adjourned for further hearing on the 2nd day of  
June, 1964 and these suits coming on for further  
20 hearing on the 2nd day of June, 1964, the 28th day  
of February 1965 and the 10th day of March, 1965  
and Upon hearing the evidence adduced and what was  
alleged by Counsel as aforesaid IT WAS ORDERED  
that these suits should stand adjourned for  
Judgment and the same standing for Judgment this  
day in the presence of Counsel as aforesaid IT IS  
ORDERED AND ADJUDGED that these consolidated suits  
be and are hereby dismissed AND IT IS FURTHER  
ORDERED that the costs of these suits be taxed and  
paid by the Plaintiffs to the Defendant.

30 Given under my hand and the Seal of the  
Court, this 16th day of June, 1965.

Sd. U.R.T. RAHGAM

Assistant Registrar,

High Court, Johore Bahru

Entered No. 44 of 1965.

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In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No. 26  
Notice of  
Appeal  
19th June  
1965

NO.26  
NOTICE OF APPEAL.

TAKE NOTICE that (1) Tan Chye Choo, the Administratrix of the estate of George Tan Eng Leong, deceased, (2) Victor Sim Wee Teck, the Administrator of the estate of John Sim Heng Teong, deceased and (3) Peter Lim Heng Loong, the Appellants above named being dissatisfied with the decision of the Honourable Mr. Justice Dato Azmi given at Johore Bahru on the 16th day of June, 1965 Appeal to the Court of Appeal against the whole of the said decision.

10

Dated this 19th day of June, 1965.

Sd: Murphy & Dunbar.

Solicitors for the Appellants

To,  
The Chief Registrar,  
Federal Court,  
Malaysia,  
Kuala Lumpur

and to,  
The Assistant Registrar,  
High Court,  
Johore Bahru.

20

And to,  
Messrs. Hilborne & Co.,  
22/23, Nunes Building,  
9, Malacca Street,  
Singapore, 1.

The address for service of the Appellant is at the office of Messrs. Murphy & Dunbar, H1, Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, 1.

30

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NO.27  
MEMORANDUM OF APPEAL.

In the Federal  
Court of  
Malaysia  
Appellate  
Jurisdiction)

No. 27

Memorandum  
of Appeal  
28th June  
1965

10 Tan Chye Choo the Administratrix of the  
estate of George Tan Eng Leong, deceased, Victor  
Sim Wee Teck the Administrator of the estate of  
John Sim Heng Teong, deceased and Peter Lim Heng  
Loong the appellants above named appeal to the  
Federal Court against part of the decision of the  
Honourable Mr. Justice Dato Azmi bin Haji Mohamed  
given at Johore Bahru on the 16th day of June  
1965 on the following ground:

1. The learned Judge was wrong in fact and  
in law in finding that the mechanical  
defect which resulted in the accident  
was a defect which would not have been  
apparent to an ordinary person.
2. The learned Judge was wrong in fact and  
in law in not finding that the mechanical  
defect which resulted in the accident  
20 should have been known by the Defendant  
and/or by the driver her servant or agent.
3. The learned Judge should have found that  
the Defendant was negligent in allowing  
the vehicle, which was in a dangerous  
condition, to be used and that the  
Plaintiffs were entitled to recover.
4. The learned Judge was wrong in fact and  
in law in holding that the Defendant was  
entitled to rely on the report of the  
30 R.I.M.V. as indicating that the vehicle  
was in a safe condition.
5. The learned Judge was wrong in fact and in  
law in holding that the defendant was  
entitled to rely on the report of the R.I.M.V.  
to the effect that the condition of the  
vehicle was satisfactory on the 1st day  
of October 1961 as indicating that the  
vehicle was safe at the date of the  
accident.
- 40 6. The learned judge was wrong in law in  
holding that Rules 93 and 94 of the Motor

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

                      
No.27

Memorandum  
of Appeal

28th June  
1965

(continued)

Vehicles (Construction and Use) Rules  
1959 did not give a right of action to  
the Plaintiffs for their breach.

7. The learned Judge should have held that  
there was breach of the said Rules 93  
and 94 and that the Plaintiffs were  
entitled to recover.

Dated this 28th day of June, 1965.

MURPHY & DUNBAR

Solicitors for the Appellants

10

To: The Registrar,  
Federal Court,  
Kuala Lumpur,

And to:

The Assistant Registrar,  
High Court,  
Johore Bahru

and to:

The Respondent,  
and her solicitors,  
Messrs. Hilborne & Co.,  
22/23, Nunes Building,  
9, Malacca Street,  
Singapore.

20

The address for service of the Appellants  
is the office of Messrs. Murphy & Dunbar, H1,  
Hong Kong Bank Chambers, (7th Floor), Battery  
Road, Singapore.

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NO.28NOTES OF ARGUMENT RECORDED BY THOMSON, LORD  
PRESIDENT, MALAYSIA.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

Cor: Thomson, Lord President, Malaysia  
Ong Hock Thye, Judge, Federal Court.  
Ismail Khan, Judge.

No.28

Notes of Argu-  
ment recorded  
by Thomson,  
Lord President,  
Malaysia

4th October, 1965

For Appts: D. H. Murphy.

4th and 5th  
October 1965

For Respt: K. E. Hilborne.

10 Murphy:

Accident occurred on 28.1.62 at 8 milestone  
on Johore-Scudai Road. Plan at p.101.

Admitted Defendant car went to wrong side of  
the road.

There was no evidence for ptffs. on  
negligence - all on damages.

Loosening of steering should have been apparent  
to driver before the accident.

20 I am relying now only on negligence in  
maintenance and inspection.

As to what Defendant had to prove:

Moore v. Fox (1956) 1 A.E.R. 182, 188.

Barkway v. South Wales Transport Co. Ltd.,  
(1948) 2 A.E.R. 460, 471.

The driver's evidence that he noticed nothing  
wrong should not be relied on because his evidence  
that he did not drive to the wrong side was clearly  
false.

So Defendant had not discharged onus.

30 Adj'd. to 5.10.65 at 10 a.m.

5th October, 1965

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.28

Notes of Argu-  
ment recorded  
by Thomson,  
Lord President,  
Malaysia

4th and 5th  
October 1965

(continued)

Murphy (continuing):

As to explanation of prima facie negligence  
act -

Moore v. Fox (1956) 1 A.E.R. 182, 189.

I now turn to the negligence of the owner,  
negligence in the maintenance of the car.

Owner left it entirely to her servants. She  
knew nothing about it.

As far as we know driver never had the  
vehicle inspected.

10

Pope said examination by R.I.M.V. was  
unsatisfactory. R.I.M.V. was not called though  
his certificate was put in. Admitted certificate  
issued but not contents. Admitted car sent for  
inspection.

This was the only evidence of any inspection.

Accident - 28.1.62.

Examination by R.I.M.V. - 1.10.61.

Pope said taxi should be examined every month  
or every 1,000 miles. This one had done 24,000  
since examination by R.I.M.V.

20

Cases on maintenance -

Barkway v. South Wales Transport Co. Ltd.  
(1950) 1 A.E.R. 392, 396.

Basted v. Cozens & Sutcliffe Ltd.  
(1954) 2 Ll. List 132.

I now pass to question of breach of statutory  
duty.

Since Road Traffic Ordinance statutory duty  
imposed on owners of motor cars.

30

Cases contra were before Road Traffic Ordinance.

Rules made under s. 73 of Ordinance No: 49/1958 (p. 182 of print - rr. 93, 94).

Phillips v. Britannia Hygienic Laundry  
(1923) 2 K.B. 832, 840  
(under Locomotives on Highways Act 1912)

Clarke v. Brims (1947) 1 K.B. 497, 501.  
(Road Transport Lighting Act 1927).

Our 1958 Ordinance follows the U.K. Act of 1930.

10 It is divided into 6 parts. Part III deals with "Roads". Part IV with 3rd Party Risks etc.

In part III s. 59 provides for Highway Code. There is a local case under s. 67. It failed because of contributory negligence.

Section 63 relates to pedestrian crossings. In England that has been held to give rise to action for breach of statutory duty.

Part IV deals with 3rd Party Risks.

Monk v. Warby & ors. (1935) 1 K.B. 75.

20 There have been other actions under this Act.

The following was a pedestrian crossing case -

London Passenger Transport Board v. Upson & anor. (1949) A.C. 155.

There is a local case under s. 67.

Ng Siew Eng & anor. v. Loh Tuan Woon (1955) M.L.J. 89.

Bailey v. Geddes (1938) 1 K.B. 156.

30 Returning to Barkway v. South Wales Transport Co. (supra) the report at (1949) W.N. 484 suggests this was reversed, but cf. (1950) W.N. p. 95.

Other reports are at (1950) A.C. 185, (1948) 2 A.E.R. 460, (1950) 1 A.E.R. 392, 400. The judgment of Lord Normand is the only place the point

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.28

Notes of Argument recorded by Thomson, Lord President, Malaysia

4th and 5th October 1965

(continued)

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

is touched on.

Now deal with -

Motion to amend pleadings.

No.28

Notes of Argu-  
ment recorded  
by Thomson,  
Lord President,  
Malaysia.

Trial started 1.6.64. Evidence Ordinance.  
Adj'd. to 28.2.65 and then to 10.3.65 for argument.  
Judgment 24.6.65. Appeal 15.7.65. Whole thing  
was overlooked.

Hilborne:

4th and 5th  
October 1965  
(continued)

Oppose. Ros judicata

Dismissed \$250 costs.

10

Case for Appts.

Hilborne:

Immediate cause of action was mechanical  
failure. Remote cause was introduction of the  
shim in the wish bone.

Once the shim was inserted it could not be  
seen unless the assembly was taken to bits.  
Ordinary examination or maintenance would not have  
discovered it.

Again the ball joint was under the car and so  
v isible but minute cracks would not have been  
visible without almost microscopic examination.

20

Immediate cause was really a case of metal  
fatigue.

In the present case this was fault by a third  
party - the shim should not have been put in loose  
as it were.

Ptff. has not made out affirmative  
negligence. He has not rebutted the case for the  
defence as to how the accident occurred.

30

No evidence that conversion from petrol  
engine to diesel is intrinisically dangerous.

Conversion was approved by R.I.M.V.



Car was passed fit at its bi-annual examination on 1.10.61.

No evidence that car was not running normally.

Ptff. suggests no proper maintenance and no inspection but there is no evidence.

S/C was amended after issue. Originally it was standard pleadings in a running-down case. But on day of trial it was amended to bring in breach of statutory duty.

10 Res ipsa loquitur was never pleaded. Amendment of S.C. withdrawn. Indeed it was not available.

Mazengarb "Negligence on the Highway" pp. 112, 114, 115,

Ptff's own expert was really in our favour.

On 1.10.61 there was nothing to show any signs of weakness were visible e.g. the cracks on the ball-joint.

This case has nothing in common with:

20 Barkway v. South Wales Transport (supra)  
In that case it was assumed Coy. had notice. But the driver had notice before the accident.

I now come to breach of statutory duty.

It has been argued that Britannia Laundry was decided before the Road Traffic Act. But the principle has been accepted in a number of subsequent cases. Construction and Use Regulations do not provide a foundation for a claim to damages.

30 Road Traffic Acts are a codified system of law relating to Highways. The various parts are dealing with different subjects.

The rules in question here are general provisions - not for the benefit of any class of persons e.g. pedestrians or third parties who suffer injury.

In the Federal Court of Malaysia (Appellate Jurisdiction)

\_\_\_\_\_  
No.28

Notes of Argument recorded by Thomson, Lord President, Malaysia.

4th and 5th October 1965

(continued)

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.28

Notes of Argu-  
ment recorded  
by Thomson,  
Lord President,  
Malaysia.

4th and 5th  
October 1965  
(continued)

Winter v. Cardiff R.D.C. (1950) 1 A.E.R. 819.

37, 166. Shawcross on Motor Insurance (2nd Ed.) pp.

578. Stennett v. Hancock & Peters. (1939) 2 A.E.R.

Badham v. Lambs (1945) 2 A.E.R. 295.

Tan Siew Ting & ors. v. Chong See Jin 2 M.C.247.

All these cases show that the principle of Phillips v. Britannia etc. has not been whittled down in any way. It was not cited in the Singapore case - which in any event was wrongly decided.

10

In answer to Court -

The Road Transport Department insist on taxis being inspected every 6 months but there is no legal sanction for this.

Case for Respt.

Murphy:

Pope said it should have been inspected. R.I.M.V. was not called.

20

Driver must have known car which was not fit to be driven.

Vehicle was a public service vehicle and owner had the duty to maintain it properly.

In U.K. Act of 1930 "roads" are Part III, in 1958 Ordinance "Roads" are Part III. But pedestrian crossings were not dealt with till the amending Act of 1934.

Cases quoted by Hilborne can be distinguished.

Badham v. Lambs not in point.

30

There is one other local case -

204. Wong Eng v. Chock Mun Chong (1963) M.L.J. C.A.V.

For Appts: Murphy.

For Respt: Hilborne.

Appeal dismissed with costs.

Deposit to Respt.

Intld. J.B.T.

TRUE COPY

Sd: TNEH LIANG PENG

Secretary to the Lord President  
Federal Court of Malaysia.

9th July, 1966.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.28

Notes of Argu-  
ment recorded  
by Thomson,  
Lord President,  
Malaysia.

4th and 5th  
October 1965

(continued)

10

NO.29

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

No.29

Judgment of  
Thomson, Lord  
President,  
Malaysia

13th February  
1966

This is an appeal in proceedings arising from a collision between a "Chevrolet" taxi and a "Volkswagon" motor car which occurred in good weather on the Johore-Kulai Road at about 2 p.m. on 28th January, 1962. Two of the three occupants of the "Volkswagon" were killed and the third was seriously injured and in consequence the injured man sued the owner of the "Chevrolet" and the administrators of the two deceased also sued her under section 8 of the Civil Law Ordinance, 1956, for the benefit of the respective estates.

20

In the event the trial Judge dismissed the claims and gave judgment for the defendant and against that decision the Plaintiffs have now appealed.

On the original pleadings, which were later amended, there was an allegation of negligent driving by the defendant's servant who was driving the "Chevrolet" at the time of the collision. That, however, was never very seriously pressed, indeed the driver was not joined as a defendant, and the

30

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.29

Judgment of  
Thomson, Lord  
President,  
Malaysia

13th February  
1966

(continued)

trial Judge found that the immediate physical cause of the accident was a mechanical failure in the "Chevrolet" which resulted in a total failure of the steering and braking systems and rendered it completely out of control.

That conclusion has not been seriously attacked before us and with respect I would express the view that it is right.

The only eye witness of the accident was the driver of the "Chevrolet", for the only occupant of the "Volkswagon" to survive the accident was asleep at the time. And this witness' evidence as far as the facts of the collision went (I shall return to certain other parts of it later) was of little value. He was driving along the road and saw the "Volkswagon" approaching. Suddenly it came to his side of the road and "banged" into his. Before the collision he did not notice anything wrong with his vehicle. Now, in fairness to this man it is highly probable, judging from the damage which his vehicle sustained, that he was so shocked by the collision as to render his recollection of little value. Be that as it may the trial Judge found it impossible to accept his evidence as an accurate account of what happened.

10

20

In the first place examination of the "Chevrolet" after the collision showed that there had been a rupture of the connection between the steering mechanism and the nearside front wheel which would have resulted in complete failure of the steering and braking systems. This by itself was a neutral fact in the sense that, considered in isolation, it might have occurred before the collision and been the cause of it or it might have occurred after the collision and been a result of it. There were, however, in evidence a series of Police photographs and a sketch plan with measurements made by the Police immediately after the collision and a survey plan prepared some time later. These showed the positions of the two vehicles immediately after the accident and they also showed a number of grooves about  $\frac{1}{2}$  inch deep cut in the road surface and a tyre mark. A few days after the collision an engineer examined the grooves cut in the road

30

40

10 surface and found them to correspond exactly with a chassis member of the "Chevrolet". On examination of the photographs and the plans in the light of the last piece of evidence, which was neither contradicted nor in any way improbable, it is clear that up to a point about 60 feet from the scene of the collision the "Chevrolet" was on its correct side of the road; that by the time it reached that point, that is 60 feet from the scene of the collision, something had happened which caused its nearside chassis member to come in contact with the road; that it then continued but bearing to the right at an angle of some 15° from the axis of the road; that it ultimately crossed the white line; and that about the time of doing so its offside front collided with the offside of the "Volkswagon" causing the latter to turn completely round and ultimately turn over on its side into the ditch where it was found  
 20 practically on a level with the "Chevrolet". The only hypothesis which could account for all this is that the rupture in the steering system occurred immediately before the "Chevrolet" reached the first scratch on the road 60 feet from the scene of the collision.

At this stage it becomes necessary to consider the evidence as to the history and condition of the defendant's vehicle.

30 This was a "Chevrolet" 5-seater saloon car, 1958 model, and was first registered on 21st February, 1959. The engine was originally a six-cylinder petrol engine of 30.4 horse power. In November it was acquired by the present defendant, who intended to use it as a taxi, and she had it licensed accordingly. Some time previously a British Motors Corporation diesel engine of 16.9 horse power had been substituted for the original petrol engine but the defendant did not know how or by whom this had been done. She had  
 40 asked a friend to find a car for her, her friend told her this was a good car and she bought it. The defendant was a woman and she entrusted the entire management of the vehicle to Yap Seng Hock, the driver at the time of the accident. He was paid a proportion of the takings and he paid for the fuel and saw to minor repairs; she paid for any other repairs and for tyres when necessary.

In the Federal Court of Malaysia (Appellate Jurisdiction)

—  
 No.29

Judgment of Thomson, Lord President, Malaysia

13th February 1966

(continued)

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

—————  
No.29

Judgment of  
Thomson, Lord  
President,  
Malaysia

13th February  
1966

(continued)

Yap Seng Hock, the driver said he had been a taxi driver for over 30 years and had never previously been involved in an accident. He was the only driver of the vehicle since it was bought by the defendant. It was driven about 6,000 miles a month. He attended regularly to the lubrication and did minor repairs himself. He considered it a good car and did not notice anything wrong with it before the accident. On one occasion he took it for examination by the Government Inspector of Vehicles, which I understand is not a statutory requirement but something that is insisted on by the Road Transport Department in connection with the licensing of taxis.

10

I would pause here to observe that what purported to be a "Report on the Examination" by the Registrar of Vehicles at Johore was put in evidence. The Registrar was not called as a witness and counsel for the plaintiffs did not admit its contents. For what it is worth, however, it is dated 4th October, 1961, and the Registration Book of the vehicle shows that Road Tax was paid at Johore on two occasions after that date.

20

Finally there was the evidence of two experts, one called for the plaintiffs and the other for the defendant.

The defendant's witness was a Mr. Pope and, except on one or two points of opinion, his evidence was not seriously contested.

30

He examined the two vehicles and the scene of the accident about a week after it occurred. His evidence as to the scratches on the road has already been mentioned. As regards the "Chevrolet" he found that a ball and socket joint in the connection between the nearside front spring and the corresponding wheel of the vehicle had been ruptured by the ball having been forced out of the socket the sides of which showed signs of wear. This would have had the effect of depriving the driver of any control over the steering of the vehicle and it had broken the tubes conveying power to the front brakes. He then found, on taking the relevant assembly to pieces that the original spring which as installed by the makers

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had been securely anchored at both ends had been lengthened by having a steel ring (apparently called a "shim") inserted between its lower end and its seating. The effect of this was to allow a certain amount of movement between the spring and its seating which there would not otherwise have been and, in his view, it was this movement continuing over a long period of driving which had been responsible for the rupture in the ball and socket joint. In support of this view he quoted the following passage from the Chevrolet Workshop manual referring to this spring:-

"To correct the height springs must be replaced. These springs do not have flat ends and shims should not be used."

He expressed the opinion that this alteration of the seating of the spring must have been done when the petrol engine was replaced by the diesel one. The diesel engine was shorter but heavier than the petrol one and was required "to sit back slightly" and the springs would require strengthening to prevent the tyres fouling the mudguards.

He also examined the tyres which were in "serviceable" condition. The nearside front tyre was not deflated but the offside front tyre which was almost new had burst; he found a cut in it and was of the opinion that it had burst on impact with something and in this connection it is to be observed that according to the photographs it was the offside front of the vehicle that had been in violent collision with the "Volkswagon". He agreed that if there was wear in the socket of the ball and socket joint the driver would feel a little looseness in the steering.

The plaintiff's expert was a Mr. Wong. He was not brought into the case until during the trial. He examined the ball and socket joint, which had been produced by Mr. Pope, and from his inspection of it he expressed the view that the socket showed no excessive signs of wear and that the rupture was caused not by wear and tear but by the application of force. Although he has seen Mr. Pope's report he was not invited to express any views as to the prudence of dealing with the spring as it had been dealt with or as to the

In the Federal  
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No.29

Judgment of  
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(continued)

In the Federal  
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No.29

Judgment of  
Thomson, Lord  
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1966

(continued)

probable effects of the operation in question. He fairly admitted that the ball and socket joint had clearly been lubricated.

If Wong's evidence was accepted then the rupture of the joint could have been the result of the collision and not the cause of it for there was no evidence of the "Chevrolet" having suffered any other violent impact. This coupled with Pope's evidence as to the burst tyre being probably caused also by a violent impact would result in the position that there was no evidence as to the cause of the collision and it was therefore open to the plaintiffs to found themselves on the principle of res ipsa loquitur. Wong's evidence, however, did not account for the scratches on the road and in the event counsel for the plaintiffs was virtually compelled to deal with the case on the basis that the physical cause of the collision was the rupture of the joint.

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On this basis it was the case for the plaintiffs that the defendant, the owner of the "Chevrolet", the person in the course of whose business it was being driven at the time of the collision, was liable by reason of breaches of statutory duty and for negligence, the negligence consisting in permitting the vehicle to be used in a condition in which it was a danger to persons on the road.

20

As regards breach of statutory duty, the statute of which breach was alleged was rule 93 of the Motor Vehicles (Construction and Use) Rules, 1959, made under the Road Traffic Ordinance, 1958, but at the trial it was accepted apparently without formal amendment that the rule actually in question was rule 94 which reads as follows:-

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"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."

40

On this aspect of the case Azmi, J., came to the conclusion that the duty imposed by that rule was a public duty only and not a duty enforceable by an individual. In that he based himself on the



case of Phillips v. Britannia Hygienic Laundry Co. Ltd. (1). With great respect I think he was right.

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(continued)

10 That case was very similar to the present one. The plaintiff had been injured by the defendant's lorry and the cause of the accident in which this had occurred was a defective axle on the lorry which had been negligently repaired by a firm of repairers employed by the defendant. The plaintiff sued on a breach of statutory duty by reason of an alleged breach of a regulation, very similar to our rule 94, made under section 6 of the Locomotive on Highways Act, 1896. In the event the Court of Appeal hold that "it was not intended that anyone injured by a breach of a regulation made under the Act, for which penalties were imposed, should have an action for damages, but that the duty imposed was a public duty only to be enforced by the penalty thereby imposed" (per Du Parcq, L.J. : Badham v. Lambs(2)).

20 The judgment in the Britannia Laundry case, particularly those of Bankes, L.J., and Atkin, L.J., are too long for quotation and too close-knit in their reasoning to be capable of summary. It is clear, however, that in their view the test to be applied was not merely whether the regulations in question prescribed a duty to the public as a whole or only to a particular section of the public. In every case it was a question of the intention of the particular statute. But the following passage from the judgment of Atkin, L.J., (at p.842) shows some of the factors which led to the result that the regulations under the Locomotives on Highways Act, 1896, set out public duties only enforceable by penalty:-

40 "I have come to the conclusion that the duty they were intended to impose was not a duty enforceable by individuals injured, but a public duty only, the sole remedy for which is the remedy provided by way of a fine. They impose obligations of various kinds, some are concerned more with the maintenance of the highway than with the safety of passengers: and they are of varying degrees of importance;

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(1) (1923) 2 K.B. 832. (2) (1946) K.B. 45, 47.

In the Federal  
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yet for breach of any regulation a fine not exceeding £10 is the penalty. It is not likely that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and now causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the Legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence."

10

Since the decision in the Britannia Laundry case the Locomotives on Highways Act, 1896, has been replaced by the Road Traffic Act, 1930, which in its turn has been replaced by the Act of 1960, and the regulations made under the 1896 Act have been replaced by much greater and more complex bodies of regulations made under the later Acts. Nevertheless it is still authoritative.

20

In the case of Badham v. Lambs (Supra) the defendant was alleged to have sold a motor car to the plaintiff the brakes of which were in such a condition that the user of the vehicle on the highway was a breach of a regulation made under section 3 (1) of the Road Traffic Act, 1930, which is in pari materia with our rule 15. It was held that there was no action for breach of statutory duty on the ground that the case was not distinguishable from the Britannia Laundry case.

30

In the case of Clark v. Brims (3) the plaintiff relied on a breach of section 1 (1) of the Road Transport Lighting Act, 1927, which requires motor vehicles to carry certain lights and which is similar to our rule 96. Morris, J., said that the duty under the section was a public duty enforceable by penalties comparable to the duties considered in the Britannia Laundry case and Badham v. Lambs (Supra) and was not such that breach afforded

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(3) (1947) 1 A.E.R.242

a cause of action for damages.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.29

Judgment of Thomson, Lord President, Malaysia.

13th February 1966

(continued)

In the case of Monk v. Warboy<sup>(4)</sup> it was held that the owner of a motor car who committed a breach of section 35 of the Road Traffic Act, 1930, by permitting his car to be used by a person not insured against third party risks was liable in damages to a person injured by the negligent driving of the uninsured person. Both Greer, L.J., and Maugham, L.J., accepted the principles stated by Atkin, L.J., in the Britannia Laundry but they distinguished the provisions of the Road Traffic Act relating to insurance from those of the regulations made under the Locomotives on Highways Act, 1896. Maugham, L.J., said this (at p. 85):-

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"First, the Court has to make up its mind whether the harm sought to be remedied by the statute in one of the kind which the statute was intended to prevent; in other words, it is not sufficient to say that harm has been caused to a person and to assert that the harm is due to a breach of the statute which has resulted in injury..... The second consideration which strongly tends to support the view that this statute was not intended to preclude a civil action is that it is brought by a person pointed out on a fair construction of the Act as being one whom the Legislature desired to protect."

On that he came to the conclusion that "in this case there is nothing in the Act to show that a personal action is precluded by reason of the existence of the special remedy provided for a breach."

Finally there are dicta in two House of Lords cases which are very much in point.

In the case of Winter v. Cardiff R.D.C.<sup>(5)</sup> there had been a question of disregard by the

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(4) (1935) 1 K.B. 75.  
(5) (1950) 1 A.E.R. 819

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(continued)

defendants' servants of a regulation relating to the loading of vehicles, and Lord Porter made the following observation (at p. 821):-

"The statement of claim also contained an allegation that they had been guilty of a breach of statutory duty in that the requirements of reg. 67 of the Motor Vehicles (Construction and Use) Regulations, 1941, had not been complied with. This last contention, however, was not persisted in save as providing a standard with reference to which the requisite care to be observed could be estimated."

10

Then in the case of Barkway v. South Wales Transport(6) there was a question of an accident having been due to a breach of a regulation contained in the Motor Vehicles (Construction and Use) Regulations, 1941, (No:71), Lord Normand held (at p.400) that that regulation "gives no right of action to persons injured by the breach of it."

20

Returning now to our own Motor Vehicles (Construction and Use) Rules, 1959, these consist of some 138 rules which deal with a vast number of subjects of varying degrees of importance - length, weight, brakes, windscreen wipers, lavatories, urinals, seating on public service vehicles including a provision that such seats must be comfortable, fire extinguishers, first aid equipment, marking of vehicles, loads, silencers, omission of fumes, conduct of drivers, mascots, destination indicators on public service vehicles and carrying of children. As a matter of semantics it is clear that they create several hundred offences and impose several hundred duties. Yet for any breach of any of these rules the rules the maximum penalty is the same, it is a six weeks' imprisonment or a fine of \$200 for a first offence (section 146). And there is nothing anywhere in the rules or the Ordinance which provides any means other than a criminal prosecution for their enforcement.

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In the circumstances I have no hesitation in

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(6) (1950) 1 A.E.R. 392

saying that none of these rules is one for the breach of which a person injured by the breach is entitled to sue for damages. As was said in Winter v. Cardiff R.D.C. (Supra) they may in some cases provide "a standard with reference to which the requisite care to be observed could be estimated" in considering by what standard negligence is to be assessed, but that is a different matter.

10           Turning now to the issue of negligence, it is clear that if I am right as to the immediate cause of the collision it was necessary for the Plaintiffs to prove that there had been negligence in the maintenance and inspection of the "Chevrolet."

          Here, in my view, there was no such evidence to make out the plaintiffs' case.

20           As regards maintenance and inspection, if there was negligence at all it was on the part of the defendant's driver, for which of course the defendant would be vicariously liable. His evidence, however, was that the vehicle was regularly serviced and lubricated and that at least once it was sent to the Road Transport Department for inspection. Moreover, the mechanical fault that led to the accident was not one that any ordinary system of inspection would have revealed. It was not something that a normal careful driver or mechanic would have noticed, as for instance a damaged tyre. It was in such a position that it could only have been discovered by taking most of the springing and steering assembly to pieces. And it is difficult to think that even the most prudent person would take such a step without at least some warning that there might be something wrong that such a step would discover. And there was no evidence that there was any such warning. The vehicle had been bought by the defendant after the diesel engine had been

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40           installed and she could not have known of the defect that had been created by the incapacity or carelessness of (to her) the anonymous mechanic who had done the work. Moreover, this type of conversion is of common occurrence and there is nothing to show that it is often done in such a way as ultimately to lead to disaster as it did in

In the Federal Court of Malaysia (Appellate Jurisdiction)

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No.29

Judgment of Thomson, Lord President, Malaysia.

13th February 1966

(continued)

In the Federal  
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(Appellate  
Jurisdiction)

\_\_\_\_\_  
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Judgment of  
Thomson, Lord  
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13th February  
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(continued)

this case. Again the driver who had been driving the vehicle some 6,000 miles a month said he did not notice anything wrong with the steering and though Pope said there should have been some looseness in the steering this is something that commonly develops in old vehicles and it is unreasonable to expect a man who was driving the vehicle day after day for considerable distances to appreciate its oncoming. And that the weakness had developed gradually is clear even to a layman's eye from a visual examination of the parts involved.

10

In all the circumstances of the case I would dismiss the appeal with costs.

Sgd. J.B. Thomson

LORD PRESIDENT  
FEDERAL COURT OF MALAYSIA.

Johore Bahru,  
13th February, 1966

\_\_\_\_\_  
D.H. Murphy Esq. for appellants.

20

K.E. Hilborne Esq. for respondent.

Ismail Khan, J.

TRUE COPY

(Sd: TNEH LIANG PENG)  
Secretary to the Lord President

Federal Court of Malaysia

30/3/66.  
\_\_\_\_\_

NO.30  
JUDGMENT OF ONG, ACTING CHIEF JUSTICE, MALAYA

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.30

Judgment of  
Ong, Acting  
Chief Justice,  
Malaya.

13th February  
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I have had the advantage of reading the judgment of the Lord President and I am in entire agreement with him on the question of breach of statutory duty.

10 With the greatest respect, however, I have been compelled to reach a different conclusion on the question whether the accident was caused by the negligence of the defendant's driver. From the plan of the scene of accident it will be seen that the defendant's taxi had come to rest obliquely just over the middle line of the road and that along the course it had travelled there were scratch marks on the surface of the tarmac showing that the vehicle had been on its own proper side all the way. Now, I think it is reasonable to assume that, along this straight stretch of highway, the taxi must have been cruising at about 40 to 50 miles per hour, if not a little more. Even if one accepts Mr. Pope's theory at its face value, then, upon failure of the brake and steering, the momentum of the vehicle must have continued to propel it forward at a speed which could only have diminished very little by reason of the drag or friction which scratched the road surface. It is common knowledge that a moving object does not come to a dead stop except on encountering an immovable obstacle. The Volkswagon was not such an obstacle. Only an immovable obstruction or a considerably heavier vehicle, such as a fully-laden lorry meeting the taxi in head-on collision, could have stopped the taxi dead on impact. Consequently, the point of impact or collision must have been at some distance behind the path of the taxi. This by itself is the clearest evidence that the driver was telling the truth and that it was the Volkswagon which had gone over to its wrong side to come into collision with the taxi. In my opinion, therefore, negligence on the part of the defendant's driver had been negatived by facts

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In the Federal Court of Malaysia (Appellate Jurisdiction)

which are not open to dispute. On this ground also I would dismiss the appeal.

(Sgd.) H. T. Ong

No.30  
Judgment of Ong, Acting Chief Justice, Malaya.  
13th February 1966

J U D G E ,  
F E D E R A L C O U R T ,  
M A L A Y S I A .  
Johore Bahru,  
13th February 1966.

Mr. D. H. Murphy for the appellants.

Mr. K. E. Hilborne for the respondent.

Certified true copy

Sd: Illegible  
Ag. Secretary to Judge  
Federal Court,  
Malaysia

10

30th March 1966.

No.31  
Order of Federal Court  
13th February 1966

NO.31  
ORDER OF FEDERAL COURT

IN OPEN COURT  
THIS 13TH DAY OF FEBRUARY, 1966

THIS APPEAL coming on for hearing on the 4th and 5th days of October 1965 in the presence of Mr. D.H.Murphy of Counsel for the Appellants above named and Mr.K.E.Hilborne of Counsel for the Respondent above named AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned for judgment and the same coming on for Judgment this day in the presence of Counsel aforesaid IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS ORDERED that the costs of this Appeal be taxed and be paid by the Appellant to the Respondent AND IT IS LASTLY ORDERED that the sum of \$500.00 (Dollars Five hundred only) paid into Court by the Appellants as security for costs of this Appeal be paid out to the Respondent against her taxed costs.

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30

GIVEN under my hand and seal of the Court this 13th day of February, 1966.

THE LEGAL SEAL OF THE FEDERAL COURT MALAYSIA  
Sd: Pawam Ahmad bin Ibrahim Rashid  
CHIEF REGISTRAR  
FEDERAL COURT, MALAYSIA

40



99.

NO.32

No.32

AFFIDAVIT OF PETER LIM HENG LOON  
25th MARCH 1966

∕Not duplicated∕

NO.33

No.33

NOTICE OF MOTION - 30TH MARCH 1966

∕Not duplicated∕

NO.34

No.34

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL  
TO H. M. THE YANG DI-PERTUAN AGONG -  
18TH APRIL 1966

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∕Not duplicated∕

NO.35

In the Federal Court of Malaysia (Appellate Jurisdiction)

ORDER ALLOWING FINAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

BEFORE:

THE HONOURABLE TAN SRI SYED SHEH BARAKBAH, P.M.N., D.P.M.K., P.S.B., LORD PRESIDENT, FEDERAL COURT OF MALAYSIA:

THE HONOURABLE DATO AZMI BIN HAJI MOHAMED, D.P.M.K., P.S.B., P.J.K., CHIEF JUSTICE, MALAYA, AND

THE HONOURABLE DATO MACINTYRE, JUDGE, FEDERAL COURT OF MALAYSIA.

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No.35  
Order allowing Final Leave to Appeal to H.M. The Yang di-Pertuan Agong.  
5th September 1966

IN OPEN COURT

This 5th day of September, 1966

O R D E R

UPON MOTION made to the Court this day by Mr. Richard U.H.Ho on behalf of Mr.Denis H.Murphy of Counsel for the above named Appellants in the absence of Mr.K.E.Hilborne of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 9th day of August, 1966 and the Affidavit of Peter Lim Heng Loong affirmed on the 14th day of July 1966 and filed herein in support of the said Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave be and is hereby granted to the above Appellants to appeal to His Majesty the Yang di-Pertuan Agong against the whole of the Judgment and the Order of the Federal Court of Malaysia given on the 13th day of February 1966 dismissing with costs the above named Appellants' appeal to the said Federal Court against the whole of the decision of the Honourable Mr. Justice Dato' Azmi given at Johore Bahru on the 16th day of June 1965 AND IT IS FURTHER ORDERED that the costs of this Motion be costs in the cause.

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GIVEN Under my hand and the Seal of the Court this 5th day of September 1966.

SD: PAWAN AHMAD BIN IBRAHIM RASHID  
CHIEF REGISTRAR, FEDERAL COURT MALAYSIA, KUALA LUMPUR

( L.S. )

40

PART II

E X H I B I T S

"C" POLICE REPORT

Exhibits

"C"

Police  
Report

28th January  
1962

A.....PAGE.....

THE ROYAL FEDERATION POLICE

COPY OF REPORT

Report No. 29/62 Police Station: Scudai

At: 6.45 p.m. on 28.1.62 Subject:

Complainant: YAP SEN HOCK NRIC No.J.488940 Male

10 Nationality: Khok Aged: 52 years.  
Occupation: Driver.

Address: No. 10-D Yalan Tarom, Johore Bahru.

Complainant states that

I have been a motor-car driver since I was the age of 17 that means to say for the past 33 years.

I have driven motor car No.H.814 for 2 years.

20 On 28.1.62 at 2.30 p.m. I left Johore Bahru intending to go to Kulai. I drove motor-car taxi No.H.814. In my motor car there were two male Chinese. One of them was seated in front and the other at the back. I do not know the names of these two persons.

30 At about 3.00 p.m. when I reached 8th milestone proceeding towards Scudai I saw a motor car about 200 yards away going towards Johore Bahru at a fast speed. When it was passing my motor car I heard my motor car bursting once (bursting of a tyre once?) and straightaway collided with the motor car which I saw earlier. My motor car stopped outright across the road at the place

Exhibits

"C"

Police  
Report28th January  
1962

(continued)

(of collision) and the other motor car overturned into a drain on the left-hand side of the road (as one faces) Johore Bahru. At the time I could not come out of my motor car because I lost my thinking power (of my confused state of mind). I had a slight injury on the right side of my chest and the person who sat next to me had injury or injuries on his face. Many people came to the scene and I saw two persons dead. The motor car was a Volkswagon, number forgotten. At the time of the collision I was driving my m/car at about 40 M.P.H.

10

I have a driving licence No.44211, group (E) dated 23.8.61 till 22.8.62, issued by R.I.M.V., Johore. My Insurance certificate number is CV/01293 dated 6th November, 1961 to 5th November, 1962; name of owner: Madam Chong Kew Moi, United Malayan Insurance Co., Ltd.

Damage: all the front side of my m/car damaged: assessment (of the cost of repair) unknown.

20

This is my report.

Before me, Sd. Abd. Rahman CPL.23886.

Signature of Complaint,

Sd: In Chinese Characters,

Copied and checked by, Sd. Illegible.

Translated by me,

Sd: Sallehudin bin Haji Mohd. Lip  
(Sallehudin bin Haji Mohd. Lip)  
Cert. Malay Interpreter, High Court,  
Johore Bahru.

30

Certified True Copy,  
Sd: (Lee Kim Siew) Insp. 15/5/62  
Officer i/c Police District,  
Gelang Patah,  
Issued this 27th day of May, 1964.

Sd: V.R.T.Rengam  
Assistant Registrar,  
Supreme Court, Johore Bahru

"D" - REPORT OF CLAUD FREDERICK POPEExhibits

Report on  
 Accident at 8 $\frac{1}{4}$  m.s. Jalan Scudai-  
 Johore Bahru on 28.1.1962 -  
 involving Taxi H.814 and motor  
 car No. BG. 1538

"D"

Report of  
 Claud  
 Frederick  
 Pope

Undated.

I confirm having examined the above mentioned  
 vehicle firstly 4th February, 1962.

I found the following:-

- 10 1) The original petrol engine had been removed  
 and replaced with a Diesel engine.
- 2) At the time of this conversion, the additional  
 weight of the Diesel engine was too heavy for  
 the front suspension coil springs which no  
 doubt caused the tyres to foul the front  
 mudguard when the steering was turned on left  
 or right hand lock.
- 20 3) In order to give an increased clearance  
 between the front mudguards and wheels the  
 front springs were removed and replaced  
 together with one coil from a smaller  
 diameter spring in the lower wishbone thus  
 increasing the clearance height.
- 4) By this bodging practice being carried out  
 the entire stability of the front suspension  
 was greatly impaired because the front springs  
 were no longer located in the bottom wishbone  
 and were in fact lying loosely upon the single  
 coil that had been very incorrectly affixed.
- 30 5) The result of this bodging was to cause far  
 greater loads on the top Ball Joints than  
 they were intended to take and in consequence  
 the Near-side Top ball joint completely failed  
 and this allowed the Near-side front Stub Axle  
 complete with Hub and Wheel to fall away from  
 its anchorage.
- 40 6) The braking system which is operated by fluid  
 through pipe lines from the Master cylinder  
 is finally attached to the back plate by a  
 flexible rubber pipe allowing a change of

Exhibits

"D"

Report of  
 Claud  
 Frederick  
 Pope  
 Undated

(continued)

direction of the front wheels. When the wheel fell away from its anchorage the flexible pipe was severed.

- 7) With the severing of a brake pipe all braking is completely lost on all wheels as once there is a fracture any where in the system there is no longer any pressure left to operate any of the wheels brake shoes on to the brake drums.
- 8) In this case the driver therefore would not only find himself completely out of control through the loss of his steering but also his predicament would be worsened by having no brakes what-so-ever. 10
- 9) My examination of the Off-side front tyre proved to me conclusively that this tyre burst on impact with the Volkswagon.
- 10) Reference to the Survey Plan will show peculiar tyre marks on the road, these tyre marks were also photographed under my direction. These marks were caused by the wall of the Near-side front tyre when it fell from its horizontal normal position to a position parallel with the road after the top ball joint had completely collapsed. 20
- 11) The tyres as fitted to this vehicle were in a very serviceable condition before receiving accidental damage.
- 12) In my opinion the accident was caused as a result of the incompetent workmanship carried out by the Workshop who undertook the changing of the engines and subsequent modification to the front suspension. 30
- 13) Subsequent to this work being carried out, the vehicle some 3 to 4 months was examined by the R.I.M.V. Johore Bahru and I come to the conclusion that the examination was of a cursory manner certainly not thorough or these defects would have been detected.

Yours faithfully,

Sd: C.F. Pope.

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"E" - REPORT OF REGISTRAR OF MOTOR VEHICLES.Exhibits

REPORT ON THE INITIAL SPECIAL EXAMINATION OF  
PSV./VEHICLE No. H.814(SS.6395)

"E"

Report of  
Registrar of  
Motor  
Vehicles  
4th October  
1961

Make CHEVEROLET Type Taxi Cab UL - MPLW - Seats  
5 Passengers

- (1) Engine B.M.C.  
22C/-/D19574 - S Diesel HP.16.9
- (2) Clutch S
- (3) Gear Box S
- 10 (4) Propeller Shaft  
and Joints S
- (5) Rear axle and  
wheels S Singles
- (6) Front axle and  
wheels S
- (7) Tyre conditions  
Front 80% - S Rear 80% - S
- (8) Rim size markings.  
Front 750 x 14 4 ply Rear 750x14 4ply
- 20 (9) Springs. Front S Rear S
- (10) Chassis frame  
condition S
- (11) Brake efficiency at  
20 MPH Hand S Front 60% Both S
- (12) Steering effect S Joints S Section Shaft S
- (13) Fuel System S (14) Electrical System S
- (15) Exhaust System S (16) Smoke S
- (17) Equipment:  
Fire Exit/ S Jack/ S Drive Mirror S
- 30 (18) Body condition Saloon  
4 doors - S Markings
- (19) Passenger seats, type  
condition - S

## Remarks:

This vehicle fitted with K.J.K. Taxi Meter,  
T.1 No; 001064 and T.2 No: 001979  
Badge No. JB -

Date examined 1.10.61 Place RIMV Johore Cond.Satis./

Dates re-examined -

40 Good Satisfactory

Examined by SD/- (Shahari bin Yahaya)

Licence fee paid on date

Ag. RIMV. Sd/- (Lim Hong)

Date 4.10.61

Certified true copy Johore

S - G.P. K.1

19/3/62

IN THE JUDICIAL COMMITTEE

No. 25 of 1966

OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N:

TAN CHYE CHOO  
VICTOR SII WEE TECK  
PETER LIM KENG LOONG (Plaintiffs) Appellants

- and -

CHONG KEW LOI  
(Married Woman) (Defendant) Respondent

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RECORD OF PROCEEDINGS

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