

6

No. 9 of 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE NEW INDIA ASSURANCE  
COMPANY LIMITED

Appellant  
(Plaintiff)

- and -

YEO BENG CHOW alias YEO  
BENG CHONG

Respondent  
(Defendant)

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
10 MAY 1973  
25 RUSSELL SQUARE  
LONDON W.C.1

T.L. WILSON & CO.,  
6/8 Westminster Palace Gardens,  
London, SW1P 1RL.

Solicitors for the  
Appellant.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE

No. 9 of 1971

OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE NEW INDIA ASSURANCE CO. LTD.

Appellant  
(Plaintiff)

- and -

10

YEO BENG CHOW alias  
YEO BENG CHONG

Respondent  
(Defendant)

RECORD OF PROCEEDINGS

NO. 1

SPECIALLY INDORSED WRIT  
AND STATEMENT OF CLAIM

In the High  
Court

No. 1

IN THE HIGH COURT IN MALAYA AT MUAR

Civil Suit No. 95 of 1967

Specially  
Indorsed Writ  
and State-  
ment of Claim

20

Between

THE NEW INDIA ASSURANCE CO. LTD.  
Plaintiffs

27th June  
1967

And

YEO BENG CHOW @ YEO BENG CHONG  
Defendant

DATO AZMI BIN HAJI MOHAMED, DP.M.K., P.S.B.,  
P.J.K., Chief Justice of the High Court, Malaya  
in the name and on behalf of His Majesty, the  
Yang di-Pertuan Agong.

30

To:

Yeo Beng Chow @ Yeo Beng Chong,  
13-5, Gresik, Panchor, Muar.

In the High Court

No. 1

Specially Indorsed Writ and Statement of Claim

27th June 1967

continued

WE COMMAND YOU, that within eight (8) 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 The New India Assurance Co. Ltd., of No. 13-2, Jalan Majidi, Muar.

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

Witness MEHAR SINGH Assistant Registrar of the High Court in Malaya the day of 1967.

10

Sd. Sault, Keith Sellar & Co. Plaintiffs' Solicitors

Sd. Mehar Singh Assistant Registrar High Court, Malaya Muar

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.

20

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 Muar.

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 Muar.

30

If the defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice unless he has in the meantime been served with a summons for judgment.

40

STATEMENT OF CLAIMIn the High  
Court

---

No. 1Specially  
Indorsed Writ  
and State-  
ment of Claim27th June  
1967

continued

1. The Plaintiff company were at all material times and are an Insurance Company incorporated in India and having a place of business at No. 13-2, Jalan Majidi, Muar, Johore.
2. The Defendant was at all material times the owner of motor lorry No. J 7962 and the sole proprietor of Gresik Transport Service and residing or carrying on business at No. 13-5, Gresik, Panchor, Muar.
3. By a Policy of Insurance issued by the Plaintiff Company on the 8th day of June, 1960 to cover the period from the 1st day of July, 1960 to the 30th day of June, 1961 the Plaintiff Company agreed to indemnify the Defendant in the event of an accident caused by or arising out of the use of the Defendant's motor lorry No. J 7962 against all sums which the Defendant would be legally liable to pay to third parties.
4. On the 18th day of January, 1961 at or about or in the area of Kampong Parit Bengkok, Gresik, Muar while the insured motor lorry was being driven by one Gan Yau Chong, a servant or agent of the Defendant, it was involved in a collision with motor cycle No. MA 1397 whereby the rider Sayunan bin Mosni died.
5. On the 29th day of October, 1961 the said Gan Yau Chong was charged in the Magistrates' Court at Muar in Summons Case No. MS. 417 of 1961 for driving on the road without reasonable consideration for other persons using the road contrary to Section 36 (1) of the Road Traffic Ordinance, 1958 and on which charge he was acquitted and discharged.
6. It was a condition in the Policy that the Insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor vehicle in efficient condition.
7. It was adduced at the hearing of the Inquest in Muar Inquest No. 13 of 1961 that at the time of the said accident, motor lorry No. J 7962 had



In the High  
Court

No. 1

Specially  
Indorsed Writ  
and State-  
ment of Claim

27th June  
1967  
continued

not been maintained in an efficient condition in that:

- (i) handbrakes - not working
- (ii) steering - offside track rod ball joints worn.
- (iii) tyres - front; near and off side both bald.
- (iv) front and rear spring shoulder shackle pins and brushes worn.
- (v) off side front axle wheel bearing very slack.

10

The Defendant had therefore through his servant or agent committed a breach of conditions of the said Policy of Insurance under Condition 3 of the Policy No. MV (C) 615/04/08748/60 covering the said motor lorry at the material time and the Plaintiff Company has thereby suffered damage.

8. The Plaintiff Company on the 21st day of August, 1961 gave a written notice repudiating liability.

PARTICULARS

On a claim being made by the third party in Muar High Court Civil Suit No. 21 of 1963 the Plaintiff Company paid the sum of \$2,709-60 and \$1,819-35 being the judgment awarded by His Lordship and costs respectively. The said judgment was given on the 4th day of December, 1966 and the Bills of Costs and Certificate of Taxation given by the Assistant Registrar on the 23rd day of February 1967. The Plaintiff Company had further to meet and pay costs for defending the said Civil Suit to their Solicitors amounting to \$2,022-10.

20

30

9. And the Plaintiff Company therefore prays that Judgment may be entered against the Defendant for:-

- (i) \$6,551-05 made up as follows:
  - (a) Judgment given in Muar Civil Suit No. 21 of 1963 amounting to \$2,709-60;

(b) Costs of the Plaintiff in Muar Civil Suit No. 21 of 1963 amounting to \$1,819-35;

In the High Court

No. 1

(c) Costs of the Plaintiff Company's Solicitors in defending the said Civil Suit No. 21 of 1963 amounting to \$2,022.10;

Specially Indorsed Writ and Statement of Claim

27th June 1967  
continued

10

(ii) Interest thereon at the rate of 6% per annum from the date hereof to date of realisation or satisfaction of the said sum;

(iii) Further and/or other relief as to this Honourable Court may seem just; and

(iv) Costs.

Dated this 27th day of June, 1967.

Sd. Sault, Keith Sellar & Co.  
Solicitors for the Plaintiffs

20

And the sum of \$45/- (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff/s obtain/s an order for substituted service, the further sum of \$ (or such sum as may be allowed on taxation). If the amount claimed be paid to the plaintiff/s or his/their advocate/s and Solicitor/s or agent/s within four days from the service hereof, further proceedings will be stayed.

30

Provided that if it appears from the indorsement of the writ that the plaintiff/s is/are resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953 or is/are acting by order or on behalf of a person/ persons so resident, or if the defendant/s is/ are acting by order or on behalf of a person/ persons so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff/s, his/their advocate/s and Solicitor/s or agent/s.

40

This writ was issued by Messrs. Sault, Keith Sellar & Co., of No. 64, First Cross Street,

In the High Court

Malacca solicitors for the said Plaintiffs who has a place of business at No. 32-2, Jalan Majidi, Muar.

No. 1

This writ was served by me at on the defendant on the day of 1967 at the hour of

Specially Indorsed Writ and Statement of Claim

Indorsed this day of 19

27th June 1967 continued

(Signed)

No. 2

NO.2

Defence 25th May 1968

DEFENCE

IN THE HIGH COURT IN MALAYA AT MUAR

10

Civil Suit No. 95 of 1967

Between

THE NEW INDIA ASSURANCE CO. LTD.

Plaintiffs

And

YEO BENG CHOW @ YEO BENG CHONG

Defendant

D E F E N C E

1. The Defendant admits paragraph 1 to 6 of the Statement of Claim.

20

2. The Defendant denies paragraph 7 of the Statement of Claim and states that his vehicle was maintained in a efficient roadworthy condition at the material time. The Defendant will contend that he had not committed a breach of the conditions of the Policy and that the Plaintiff Company had not suffered damages.

3. In answer to paragraph 8 of the Statement of Claim the Defendant will state that the Plaintiff Company after repudiating liability proceeded to act

for the Defendant by engaging Counsel of their own choice without of the Defendant in all litigations in connection with the said fatal accident viz. Muar Inquest No. 13 of 1961; Muar Magistrate's Court Summons Case No. MS 417 of 1961 and Muar Civil Suit No. 21 of 1963.

In the High Court

No. 2

Defence

25th May 1968  
continued

4. Save as herein admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out seriatim and traversed.

10

Dated this 25th day of May, 1968.

Sd. M.S. Miranda & Co.,  
Solicitors for the Defendant

To:

The abovenamed Plaintiffs,  
and/or their solicitors,  
Messrs. Sault, Keith Sellar & Co.,  
No. 64 Jalan Hang Jebat,  
Malacca.

20

This Defence is filed by Messrs. M.S. Miranda & Co., Solicitors for the Defendant whose address for service is at No. 8, Jalan Petrie, Muar.

NO. 3

PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT MUAR

Civil Suit No. 95 of 1967

The New India Assurance Co. Ltd. .. Plaintiffs

vs.

Yeo Beng Chow @ Yeo Beng Chong .. Defendant

30

NOTES OF EVIDENCE & GROUNDS OF JUDGMENT

26th November 1969

No. 3

Proceedings

26th November  
1969

In the High Court

No. 3

Proceedings

26th November 1969

continued

Mr. Thara Singh for the Plaintiff.

Mr. Miranda for the Defendant.

Mr. Thara Singh refers to the law.

Mr. Thara Singh puts in the Agreed Bundle of Documents which is marked A.

Mr. Thara Singh and Mr. Miranda agree that there is only one issue to be tried and that is:

" Whether the Defendant was in breach of Condition No. 3 of the policy issued by the Plaintiff to the Defendant."

10

Condition No. 3 appears at A4. (p.61).

Plaintiff's Evidence

No. 4

Chow Teik Khoon Examination

NO.4

CHOW TEIK KHOON

P.W.1 Chow Teik Khoon, Vehicle Examiner, Road Transport Department, Kuala Lumpur, affirmed states

On 22.1.1961 I was stationed in Johore Bahru. On that day (22.1.61) I examined Lorry J 7962 at the Maur Police Station.

My report appears at page 31 of A (A31) (p.87).

All the damage I found on the Lorry J 7962 is stated in that report and that report is correct. This vehicle was not roadworthy. It was not roadworthy for reasons stated in para. 8 of A31. It was not roadworthy even before the accident. This vehicle has not been properly maintained. The owner of that lorry had not kept the lorry in an efficient or roadworthy condition. If I had inspected the lorry prior to the accident, I would not have permitted this lorry to be used on the road.

20

The only damage to the lorry as a result of the accident is given in para. 7 of my report A31.

30

The lorry would have been unroadworthy for any

one of the defects stated in paras. 3, 4, 5 & 6 of my report A31.

XX

I have with me the file relating to lorry J 7962. On examining the file I find that this lorry was also examined on 18.12.1960 by another examiner. At that time it was examined because of a routine inspection.

10 According to my records this vehicle was in a roadworth condition as on 18.12.1960. All public service vehicles are examined by the department once every six months.

The records do not show if it was examined from 31.8.58 to 17.12.1960. According to the records it was examined on 30.8.1958 only prior to 18.12.1960. If it was examined there should be a report in the file. The initial inspection in respect of this vehicle was only on 30.8.58.

20 I know this lorry met with an accident. My knowledge is based on the information received by me from the police.

In my view it is possible that the off side track rod ball joint was worn out by regular use of the lorry for a period of 1 month. It is the duty of the lorry driver to check it after each trip. It should be replaced if it is found to be worn out. (See para. 4 of A31).

30 I do not agree that this defect could only be detected by a foreman. With defect No. 4 (i.e. the defect stated in para. 4 of A31) the lorry could still be used on the road but it would remain a potential danger on the road. One has to go underneath the lorry to detect this defect. This defect could not have been caused by an accident to the vehicle on the road.

40 Re para. 3 of A31, I agree the hand brake may not work as a result of an accident to the vehicle but in this particular case it was not due to any accident. The defect was there already. The hand brake could not function at all in this case and had nothing to do with the accident.

In the High Court

Plaintiff's Evidence

No. 4

Chow Teik Khoon  
Examination  
continued

Cross-Examination

In the High  
Court

Plaintiff's  
Evidence

No. 4

Chow Teik  
Khoon  
Cross-  
Examination  
26th November  
1969  
continued

The two tyres were totally bald. It means that the thread pattern had been entirely worn out to a stage where there was only the smooth surface left. The lorry should not have been used on the road with those bald tyres.

Re para. 6 of A31, all those defects could have resulted out of regular use of the lorry. Those defects, however, could be detected.

I agree that the defect of spring shackle pins which were found worn out (Para. 6 (1) of A31) could not be visible to the driver. It could only be detected by prising between the chassis and the spring. A driver should do this check every month. This defect (para. 6 (1)) could not have been caused by an accident. 10

Re para. 6 (2) of A31, this slackness could be due to regular use but this slackness should not be allowed to remain. It could have been a potential danger in time. It could have been caused by usual wear and tear. This defect had not resulted from an accident. 20

Re-exam.

Nil.

Sd. N.S.

Case for the Plaintiff

Defendant's  
Evidence

No. 5

Yeoh Beng Chow  
Examination  
26th November  
1969

NO.5

YEOH BENG CHOW

D. W. 1 Yeoh Beng Chow affirmed states in Hokkien.

I am 40 years of age and am the proprietor of Grisek Transport Co., Muar. I am the Defendant in this suit. 30

Lorry J 7962 belongs to me. The lorry was in the charge of the driver. He could have it checked once every fortnight by Keng Hock Motor Co. of Muar.

If there are any parts to be replaced or repaired, such parts would be replaced, or repaired. The lorry was checked fortnightly. I had given the driver instructions to have the lorry checked. R.I.M.V. checked it every 6 months.

In the High Court

Defendant's Evidence

No. 5

XX

10 I know the driver carried out my instructions. I have no record or paper to show that there was a check on the lorry J. 7962 or any of its parts were repaired or replaced.

Yeoh Beng Chow  
Examination  
26th November 1969  
continued

Al-A4 is the policy of insurance I had taken.

Re-exam

Nil.

Cross-examination

By Court

If the tyres were bald, I replaced them. I do not agree that the two tyres on lorry J 7962 were bald on 22.1.61. I think they had 20% of the threadpattern on them.

Sd. N.S.

20

NO.6

No. 6

LEE PAN HOI

D.W.2. Lee Pan Hoi affirmed states in Cantonese.

Lee Pan Hoi  
Examination  
26th November 1969

30

I am 56 years of age and a mechanic attached to Keng Hock Workshop, Muar. I know the Defendant. He sent his lorries to Keng Hock for a check up. This lorry was brought to the workshop every fortnight for a check. I used to check the braking system, the steering rod and the wheels. I repaired the parts which needed repairs. The last time I examined J 7962 was sometime in December 196 . An accident happened to J 7962. I examined it about 2 weeks



In the High Court

Defendant's Evidence

No. 6

Lee Pan Hoi Examination

26th November 1969

continued

before that accident. If the handbrake of this lorry was not working after the accident, it could have been due to the accident. It could be due to the lengthening of the cable.

The lorry was old and its track rod ball joints had become loose. (Para. 4 of A31). It was a very minor defect. I noticed the defect sometime in December 1960. In my opinion it was not necessary to repair or replace it. It was not productive of any danger.

10

I was not concerned with checking the tyres of the lorry. If the tyres were bald I would ask the driver to change the tyres. When I checked the lorry about 2 weeks prior to the accident. I found the condition of all the four tyres satisfactory. All the four tyres had thread patterns on them. All the four tyres were old tyres.

The defects enumerated in A31 Para. 6 were there in the lorry prior to the accident as the lorry was an old one - they existed but the accident increased them. Now I say when I checked the lorry those defects did not exist at all. Now I say I noticed those defects on the occasion I checked the lorry 2 weeks prior to the accident. I tightened the loose parts. The driver did not tell me of the defects in para. 6 (3) of A31.

20

I have no records of the repairs done. I am giving evidence only from memory.

Cross-Examination

XX

I discovered the defective parts in the lorry. The pins at the rods were covered by grease and so I did not discover defect No. (1) in para. 6 of A31.

30

The defects in the lorry could have been caused by the accident or by wear and tear. In this particular case I say the defects were occasioned by the accident alone.

I cannot remember which part of the lorry was damaged.

Now I say I cannot remember what were the defects in the lorry. At the time I had checked it prior to

40

the accident I had removed all the defects and handed back the lorry in a roadworthy condition. I did only the routine checks. I cannot remember what repairs I effected. The lorry was checked in December 1960 before it was sent to the R.I.M.V. for examination.

In the High  
Court

Defendant's  
Evidence

No. 6

10 I checked the lorry after December 1960 but that was only after the accident. There was no check by me on the lorry between the period the lorry was sent to the R.I.M.V. in December 1960 and the day it met with an accident in January 1961. I repaired the lorry only after the accident.

Lee Pan Hoi  
Cross-  
Examination  
26th November  
1969  
continued

I checked the lorry every fortnight however. Now I say I cannot remember whether I checked the lorry between 18.12.1960 and 22.1.1961.

20 All the four tyres which I found on the lorry when I examined it last prior to the accident were old tyres. I do not know when they were changed before that.

The hand brake was not working when I checked the lorry after the accident.

I agree the lorry needed an overhaul. I formed the opinion in December 1960 before the lorry was sent to the R.I.M.V. I told the driver about it but D.W.1 did not get it overhauled. I would not be able to say whether it was safe or not to use the lorry on the road in that condition.

30 Re-exam

Re-examination

The lorry was sent to the R.I.M.V. on 18.12.60.

The accident happened on 21.1.61.

I did examine the lorry between 18.12.60 and 21.1.61.

I am giving evidence only from memory. I am telling the Court as best as I can remember.

Now I say I cannot remember whether I formed

In the High Court

the opinion that the lorry required an overhaul or not.

Defendant's Evidence

I cannot remember whether in fact I told the driver of the lorry that the lorry needed an overhaul.

No. 6

I was not clear in my mind when I said things to the contrary in the cross-examination.

Lee Pan Hoi Re-examination

Sd. N.S.

26th November 1969 continued

By Court

I examined the lorry after the accident when I repaired it. The four tyres on it were still old. All of them were worn out almost to the same extent. Some of these tyres, however, had a better thread. There was, however, not such of a difference in the threads of all those tyres.

10

Sd. N.S.

No. 7

NO. 7

Gan Yeow Chong Examination

GAN YEOW CHONG

26th November 1969

D.W.3 Gan Yeow Chong, aged 46, lorry driver, residing at 10 Jalan Arab, Muar, affirmed states in Hokkien.

20

I am an employee of D.W.1. In 1961 I was the driver of J 7962 which met with an accident on 21.1.61. The standing instructions given to me by D.W.1. were to send the lorry J 7962 to D.W.2 for the purpose of a check every fortnight. I carried out those instructions.

The lorry was checked by R.I.M.V. in December 1960. The lorry was checked by D.W.2 between 18.12.60 and 21.1.61. I cannot remember the actual date it was checked by D.W.2.

30

If I found the tyres were bald, I would inform

the clerk to have the tyres replaced.

Between December 1960 and January 1961 I did not tell the clerk that the tyres required a change as all of them were in a good condition. I checked the tyres myself daily.

The tyres were slightly smooth but had some thread on them. I was never charged by the police for using bald tyres.

10 I December 1960 D.W.2 did not advise me to get the lorry overhauled.

The handbrake was in a working condition before and after the accident. Now I say I do not know what was the condition of the handbrake after the accident.

XX

I say there was still some thread on all the 6 tyres.

Before the accident, the handbrake was in good working condition.

20 As a result of the accident the off side front mudguard was dented.

I do not know if it was the accident which caused any damage to the handbrake.

The lorry was taken to the R.I.M.V. after the accident. It was only from the R.I.M.V's office that I took the lorry to D.W.2 for repairs.

Re-examination

I did not apply the hand brake in the accident. I only used the foot brakes.

In the High Court

Defendant's Evidence

No. 7

Gan Yeow Chong Examination

26th November 1969

continued

Cross-Examination

Re-examination

Sd. N.S.

In the High  
Court

NO.8

CASE FOR THE DEFENDANT

No. 8

Case for the Defendant

Case for the  
Defendant

Mr. Miranda

26th November  
1969

The word 'and' in Condition No. 3 is  
conjunctive.

Defendant did take reasonable steps to maintain  
the motor vehicle in an efficient condition.

Liverpool Corp vs. Roberts

(1964) 3 A.E.R. 56

10

Clarke vs. National Insurance & Guarantee Corpn.  
Ltd.

(1963) 2 A.E.R. 470

Bingham (2nd Edition)

pp. 546-49

p. 586.

No. 9

NO.9

Case for the  
Plaintiff

CASE FOR THE PLAINTIFF

26th November  
1969

Mr. Thara Singh

Evidence of P.W.1.

20

Conditions 3 & 10 of the policy.

Jones & Another vs. Provincial Insurance Co.Ltd.

(1929) 35 Ll. LR. 135

Brown vs. Zurich Gen. Accident & Liability  
Insurance Co. Ltd.

(1954) 2 Ll. L.R. 242 (246)

Sd. N.S.

17.

NO.10

JUDGMENT

In the High  
Court

No.10

Judgment

26th November  
1969

I find on the evidence of P.W.1 that the lorry was not kept in a roadworthy condition by the Defendant and that the Defendant was in breach of condition No. 3 of the policy.

D.W.2 is not a reliable witness. I am also not prepared to place much reliance on D.W.1 and D.W.3.

10

The defects specified in A31 were, at least some of them, so obvious that they should have invited immediate attention.

Also see Shawcross pp. 587-90

Judgment for the plaintiff as prayed for in Pr. 9(i) of the Statement of Claim together with costs of the suit.

Sd. N. Sharma.

---

NO.11

NOTICE OF APPEAL

In the  
Federal Court

No.11

20

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

Civil Appeal No.                      of 1969

Between

Yeo Beng Chow @ Yeo Beng Chong  
Appellant/Defendant

and

The New India Assurance Co.Ltd.  
Respondent/Plaintiffs

Notice of  
Appeal

18th December  
1969

In the  
Federal Court

(In the Matter of Muar High Court Civil Suit  
No. 95 of 1967)

No. 11

Between

Notice of  
Appeal

The New India Assurance Co.Ltd.  
Plaintiffs

18th December  
1969  
continued

and

Yeo Beng Chow @ Yeo Beng Chong  
Defendant

TAKE NOTICE that Yeo Beng Chow @ Yeo Beng Chong the Appellant herein being dissatisfied with the decision of the Honourable Mr. Justice N. Sharma given at Muar on the 26th day of November, 1969 appeals to the Federal Court against the whole of the said decision. 10

Dated this 18th day of December 1969.

Sd. M.S. Miranda

Solicitors for the Appellant/  
Defendant

Sd. Yeo Beng Chow  
Signature of Appellant/Defendant 20

To:

1. The Registrar, Federal Court, Kuala Lumpur and to:
2. The Assistant Registrar, High Court, Malaya, Muar and to:
3. The abovenamed Respondent/Plaintiffs The New India Assurance Co. Ltd. whose address for service is care of Messrs. Sault, Keith Sellar & Co., No. 64 Jalan Hang Jebat, Malacca. 30

This Notice of Appeal is filed on behalf of the Appellant/Defendant by his solicitors, Messrs. M.S. Miranda & Co., whose address for service is at No. 32-D, Jalan Suleiman, Batu Pahat, Johore.

Sd. L.J. FERNANDIS

Assistant Registrar, High Court, Muar.

19.

Filed this 20th day of December, 1969  
The sum of \$500/- has been deposited  
for Costs vide A/C 365/69.

In the  
Federal Court

No. 11

Sd. L.J. FERNANDIS  
Assistant Registrar,  
High Court,  
Muar.

Notice of  
Appeal  
18th December  
1969  
continued

NO.12

No. 12

MEMORANDUM OF APPEAL

Memorandum  
of Appeal

IN THE FEDERAL COURT OF MALAYSIA

30th January  
1970

(APPELLATE JURISDICTION)

Civil Appeal No. X115 of 1969

Between

Yeo Beng Chow @ Yeo Beng Chong  
Appellant/Defendant

And

The New India Assurance Co. Ltd.  
Respondents/Plaintiffs

(In the Matter of Muar High Court Civil Suit  
No. 95/67)

Between

The New India Assurance Co. Ltd.  
Plaintiffs

And

Yeo Beng Chow @ Yeo Beng Chong  
Defendant

10

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In the  
Federal Court

MEMORANDUM OF APPEAL

No. 12  
Memorandum  
of Appeal  
30th January  
1970  
continued

YEO BENG CHOW @ YEO BENG CHONG the Appellant/  
Defendant herein being dissatisfied with the decision  
of the Honourable Mr. Justice N. Sharma appeals to  
the Federal Court against the whole of the decision  
as against the Defendant/Appellant given at Muar on  
the 26th day of November, 1969 on the following  
grounds:-

1. The Learned Judge erred in law and in fact in holding that P.W.1's evidence was reliable in his conclusion that the Defendant's vehicle was not roadworthy prior to the said accident on 18th January, 1961 when in fact it was examined and found to be roadworthy on 18th December, 1960 by another examiner of the Road Transport Department, Johore only 32 days before the said accident. 10
2. The Learned Judge further erred in law and in fact in holding that the defects specified in A31 of P.W.1's evidence make the vehicle unroadworthy when all those defects resulted out of regular use of the said lorry and held the Appellant/Defendant in breach of condition 3 of the said policy. 20
3. The Learned Judge was wrong in entirely believing P.W.1's evidence that the two tyres were totally bald when evidence was given by D.W.1 and corroborated by D.W.2 and D.W.3 that the tyres had thread patterns on them and not completely bald. The Learned Judge should have considered if what P.W.1 had said was true the police would have had taken criminal proceedings against the owner and driver of the motor lorry in this respect but which they did not. 30
4. The Appellant/Defendant prays that the Judgment of the Learned Judge may be set aside and that this appeal may be allowed with costs here and below.

Dated this 30th day of January 1970.

Signed

Solicitors for the Appellant/Defendant

To:

The Registrar, Federal Court, Kuala Lumpur. And to the abovenamed Respondent/Plaintiffs and/or their solicitors, Messrs. Sault, Keith Sellar & Co., of No. 64, Jalan Hang Jebat, Malacca. 40

This Memorandum of Appeal is filed by Messrs. M.S. Miranda & Co., Solicitors for the Appellant/Defendant whose address for service is at No. 32D, Jalan Sulaiman, Batu Pahat.

In the  
Federal Court

No. 12

Memorandum  
of Appeal  
30th January  
1970  
continued

No. 13

Notes of  
Ong C.J.  
28th March  
1970

NO.13

NOTES OF ONG C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR  
BAHRU

(Appellate Jurisdiction)

10 Federal Court Civil Appeal No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong...Appellant

And

The New India Assurance Co.Ltd. ...Respondents

(In the matter of Muar High Court Civil  
Suit No. 95/1967

Between

The New India Assurance Co.Ltd. ...Plaintiffs

And

20 Yeo Beng Chow alias Yeo Beng Chong ...Defendant)

Cor: Ong, C.J.  
Gill, F.J.  
Ali, F.J.

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

28th March, 1970

Miranda for the appellant.

Thara Singh Sidhu for the respondents.

In the  
Federal Court

No. 13

Notes of  
Ong C.J.  
28th March  
1970  
continued

Ali: qn to Thara Singh -  
Section I  
Bingham

C.A.V.  
Sgd. H.T. Ong

No. 14

Notes of  
Gill F.J.  
28th March  
1970

NO.14

NOTES OF GILL F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR  
BAHRU

(Appellate Jurisdiction)

10

Federal Court Civil Appeal No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong ... Appellant

And

The New India Assurance Co. Ltd. ... Respondents

(In the matter of Muar High Court Civil Suit  
No. 95/1967.

Between

The New India Assurance Co. Ltd. ... Plaintiffs

And

20

Yeo Beng Chow alias Yeo Beng Chong ... Defendant )

Cor: Ong, C.J.  
Gill, F.J.  
Ali, F.J.

NOTES RECORDED BY GILL, F.J.28th March, 1970In the  
Federal Court

No. 14

Inche Miranda for appellant.

Inche Thara Singh for respondent.

Notes of  
Gill F.J.28th March  
1970  
continued

Inche Thara Singh called up to say whether he can support the judgment, says that there was a collision as a result of which a third party was injured, and the lorry being not roadworthy we are entitled to be reimbursed.

10 As to a vehicle being not roadworthy, refer to the two cases at page 706 of Bingham's Motor Claims Cases (6th Edition) Brown v Zurich Insurance Co; Conn v Westminster Motor Insurance Association Ltd.

C.A.V.

S.S. Gill

NO.15

No. 15

NOTES OF ALI F.J.Notes of  
Ali F.J.

20 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR  
BAHRU  
(Appellate Jurisdiction)

28th March  
1970Federal Court Civil Appeal No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong ... Appellant

And

The New India Assurance Co. Ltd. ... Respondents

(In the matter of Muar High Court Civil  
Suit No. 95/1967)

In the  
Federal Court

Between

The New India Assurance Co. Ltd. ... Plaintiffs

No. 15

And

Yeo Beng Chow alias Yeo Beng Chong.. Defendant )

Notes of  
Ali F.J.

Cor: Ong, C.J.  
Gill F.J.  
Ali, F.J.

28th March  
1970  
continued

NOTES RECORDED BY ALI, F.J.

28th March, 1970

Mr. Miranda for appellant.

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Mr. Thara Singh for respondent.

Condition of vehicle not road worthy.

Refers to two cases. Brown v. Zurich Insurance Co; Conn v Westminster Motor Insurance Association Ltd. - 6th Edition, Bingham's Motor Claim case.

Miranda does not wish to add anything.

Judgment reserved.

No. 16

NO. 16

Written  
Submission  
on behalf  
of Plaintiff

WRITTEN SUBMISSION ON BEHALF  
OF PLAINTIFF

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FEDERAL COURT CIVIL APPEAL  
No. X.115 of 1969

It is submitted that:

Condition No. 3 was deliberately allowed to remain as part of the conditions inspite of the fact that Section 1 was deleted. If the Insurers had intended that the whole of Condition 3 should be

inoperative they would have deleted the Condition when they issued the Policy at the same time as they deleted Section 1.

There are no limiting words in Condition 3 confining the conditions therein to claims under Section 1 and there is no ground for reading any such limitation into the condition.

10 To read the condition otherwise than in the context of the policy would mean that the Insurers have no right to repudiate liability even if the insured incurred liability to a third party when driving a wholly unroadworthiness of a vehicle could be due to the failure on the part of the insured to have proper brakes on the motor vehicle (as was the case in Jones v. Provincial Insurance Co. Ltd. (1929) 35 Ll. Rep. 135), and/or to have proper tyres with threads (as was the case in Brown v Zurich General Accident (1954) 2 Ll. Rep. 243.

20 Condition No. 3 is operative independently of Section I. In fact all the conditions in the Policy apply irrespective of whether or not the Policy itself is an Act Third Party Policy only (issued to cover third party liability (pursuant to S.75 of the Road Traffic Ordinance, 1958) or Comprehensive Policy which includes an Act cover.

30 The Plaintiffs use the policy form used by other insurance companies in countries where similar legislation applies. Whereas some insurance companies in the United Kingdom use separate policy forms in respect Road Traffic Act covers and different policy forms in respect of Comprehensive cover both forms contain the same condition. A xerox copy of the Road Traffic Act policy form which is found at page 578 in Stone & Cox Accident Insurance Year Book 1963 is attached and marked "A". A xerox copy of the Comprehensive Policy form for Private Type cars which is found at pages 570 to 577 in the same book is also attached and marked "B". It will be seen that condition No. 5 which is similar to  
40 Condition 3 in the Policy under discussion appears in both forms although Section I which appears in the Comprehensive Policy form ("B") does not appear in the Road Traffic Act Policy form ("A").

In the  
Federal Court

No. 16

Written  
Submission  
on behalf of  
Plaintiff  
continued

In the  
Federal Court

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No. 16

Written  
Submission on  
behalf of  
Plaintiff  
continued

Condition 3 is clearly primarily relevant to third party claims. Similar clause has been considered in the following cases:

- (1) Jones v. Provincial Insurance Co. Ltd. (1929)  
35 Ll. Rep. 135
- (2) Brown v Zurich General Accident (1954) 2 Ll.  
Rep. 243
- (3) Conn v Westminster Motor (1966) 1 Ll. Rep. 423

Messrs. Sault, Keith Sellar & Co.  
Solicitors for the Respondents

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"A"

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## ACCIDENT INSURANCE YEAR BOOK

## "ROAD TRAFFIC ACT" POLICY FORM

## PRIVATE TYPE CARS

WHEREAS the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to the

COMPANY for the insurance hereinafter contained and has paid or agreed to pay the premium as consideration for such insurance in respect of accidents occurring during the Period of Insurance or during any subsequent period for which the Company may accept payment for the renewal of this Policy.

NOW THIS POLICY WITNESSETH that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon.

## Liability to Third Parties

(1) The Company will indemnify the Insured against any liability which may be incurred by him in respect of the death of or bodily injury to any person caused by or arising out of the use on a road in Great Britain the Isle of Man or the Channel Islands or on a public highway in Northern Ireland of any motor car described in the Schedule.

The Company will pay all costs and expenses incurred with its written consent.

(2) In terms of and subject to the limitations of and for the purposes of this Policy

A. The Company will indemnify any person who is driving such motor car on the Insured's order or with his permission provided that

(i) Such person is not entitled to indemnity under any other Policy.

(ii) Such person shall as though he were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.

(iii) Such person holds a licence to drive such motor car or has held and is not disqualified for holding or obtaining such a licence.

B. The Company will also indemnify the Insured while personally driving a motor car or motor cycle not belonging to him and not hired to him under a hire purchase agreement as though such motor car or motor cycle were a motor car described in the Schedule.

(3) In the event of the death of any person entitled to indemnity under this Policy the Company will in respect of the liability incurred by such person indemnify his legal personal representatives in the terms of and subject to the limitations of this Policy provided that such representatives shall as though they were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.

## Exceptions

The Company shall not be liable in respect of:—

A. (i) Death arising out of and in the course of his employment of a person in the employment of the Insured or in the employment of any person who is indemnified under this Policy or bodily injury sustained by such person arising out of and in the course of such employment.



"B"

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ACCIDENT INSURANCE YEAR BOOK

SPECIMEN COMPREHENSIVE POLICY FORM FOR  
PRIVATE TYPE CARS

WHEREAS the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to the

COMPANY for the insurance hereinafter contained and has paid or agreed to pay the premium as consideration for such insurance in respect of accident loss or damage occurring during the Period of Insurance or during any subsequent period for which the Company may accept payment for the renewal of this Policy.

NOW THIS POLICY WITNESSETH that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon.

## SECTION I

## Loss or Damage

The Company will indemnify the Insured against loss of or damage (including damage by frost) to any motor car described in the Schedule (and its accessories and spare parts while thereon or while in the Insured's private garage) arising in Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands or in the course of transit by sea between any ports therein and during the processes of loading and unloading incidental to such transit.

The Company may at its own option repair reinstate or replace such motor car or any part thereof or its accessories or spare parts or may pay in cash the amount of the loss or damage. If to the knowledge of the Company the motor car is the subject of a Hire Purchase Agreement such payment shall be made to the owner described therein whose receipt shall be a full and final discharge to the Company in respect of such loss or damage. The Insured's estimated value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage.

If such motor car is disabled by reason of loss or damage insured under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers. The Company will also pay the reasonable cost of delivery to the Insured after repair of such loss or damage not exceeding the reasonable cost of transport to the address of the Insured in Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands stated herein.

## Exceptions to Section I

The Company shall not be liable to pay for

- (a) Loss of use depreciation wear and tear mechanical or electrical breakdowns failures or breakages.
- (b) Damage to tyres by application of brakes or by road punctures cuts or bursts.

## MOTOR INSURANCE

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- (c) Loss or damage while such motor car is being used in a National or International Rally under the Rules of the Federation Internationale de l'Automobile or a National Club.

## SECTION II

## Liability to Third Parties

(1) The Company will indemnify the Insured in the event of accident caused by or through or in connection with any motor car described in the Schedule in Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands against liability at law for damages and claimant's costs and expenses in respect of

- (a) Death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the Insured.
- (b) Damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured.

The Company will pay all costs and expenses incurred with its written consent.

The Company will pay the solicitor's fee for representation at any coroner's inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section or for defending in any Court of Summary Jurisdiction any proceedings in respect of any act causing or relating to any event which may be the subject of indemnity under this Section.

(2) In terms of and subject to the limitations of and for the purposes of this Section

A. The Company will indemnify any person who is driving any motor car described in the Schedule on the Insured's order or with his permission provided that

- (i) Such person is not entitled to indemnity under any other Policy.
- (ii) Such person shall as though he were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.
- (iii) Such person holds a licence to drive such motor car or has held and is not disqualified for holding or obtaining such a licence.

B. The Company will also indemnify the Insured while personally driving a motor car or motor cycle not belonging to him and not hired to him under a hire purchase agreement provided always that the Company shall not be liable in respect of death of or bodily injury to any person being conveyed by such motor cycle otherwise than in a side-car attached thereto unless such person is being carried by reason of or in pursuance of a contract of employment.

C. The Company will at the request of the Insured also indemnify any person (hereinafter called "the Passenger") who at the time of any accident is mounting into dismounting from or travelling in any motor car described in the Schedule against liability at law for damages and claimant's costs and expenses in respect of death of or bodily injury to any person or damage to property caused by the Passenger. Provided that the Passenger—

- (i) is not driving such motor car or in charge of such motor car for the purpose of driving;
- (ii) is not entitled to indemnity under any other Policy;

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Private Type Cars  
(continued)

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## ACCIDENT INSURANCE YEAR BOOK

- (iii) shall as though he were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply
- D. (i) the Company will indemnify the person using (hereinafter called the User) any motor car described in the Schedule for social domestic or pleasure purposes with the permission of the Insured in respect of any act or omission of the driver;
- (ii) if this Policy permits use for business or professional purposes the Company will indemnify the Insured's employer (hereinafter called the Employer) in the event of accident occurring while any vehicle in respect of which indemnity is provided by this Policy (other than a vehicle belonging to the Employer) is being used by the Insured upon the business of the Employer;

Provided that

- (1) the User or the Employer is not entitled to indemnity under any other policy;
- (2) the User or the Employer shall as though he were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

Exceptions to Section II, Para. C

The Company shall not be liable in respect of—

- (a) Death of or bodily injury to
- (i) the Insured;
- (ii) any person driving such motor car or in charge of such motor car for the purpose of driving;
- (iii) any person in the employment of the Passenger where such death or bodily injury arises out of and in the course of such employment.
- (b) Damage to property belonging to or held in trust by or in the custody or control of the Insured or of the Passenger or being conveyed by such motor car.

(3) In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his legal personal representatives in the terms of and subject to the limitations of such Section provided that such representatives shall as though they were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.

SECTION III

Injury to Insured

If the Insured shall sustain in direct connection with any motor car described in the Schedule or while mounting into dismounting from or travelling in any private motor car not belonging to the Insured and not hired to him under a hire purchase agreement any bodily injury caused by violent accidental external and visible means the Company will pay to the Insured or to his legal personal representatives the compensation herein specified provided such injury shall solely and independently of any other cause (excepting medical or surgical treatment consequent upon such injury) within three calendar months of the accident result in

## MOTOR INSURANCE

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(1) Death ... ..	£1,000	In the event of the Insured being the holder of any Policy or Policies with the Company in respect of any other motor car or motor cars compensation shall be recoverable under one Policy only.
(2) Total and irrecoverable loss of sight of both eyes ... ..	£500	
(3) Total loss by physical severance at or above the wrist or ankle of both hands or both feet or of one hand together with one foot ... ..	£500	
(4) Total loss by physical severance at or above the wrist or ankle of one hand or one foot together with the total and irrecoverable loss of sight of one eye ... ..	£500	
(5) Total and irrecoverable loss of sight of one eye ... ..	£250	
(6) Total loss by physical severance at or above the wrist or ankle of one hand or one foot ... ..	£250	

Payment shall be made under one only of sub-sections (1) to (6) in respect of any one occurrence and the total liability of the Company shall not in the aggregate exceed the sum of One Thousand Pounds during any one period of insurance.

## Exceptions to Section III

The Company shall not be liable under this Section in respect of bodily injury

- (a) Consequent upon suicide (whether felonious or not) or any attempt thereat or
- (b) Sustained elsewhere than in Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands.

## SECTION IV

## Medical Expenses

If the Insured or his driver or any occupant of any motor car described in the Schedule shall in direct connection with such motor car sustain within Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands any bodily injury caused by violent accidental external and visible means the Company will pay to the Insured the medical expenses in connection with such injury up to the sum of Twenty Pounds in respect of each person injured.

## SECTION V

## Rugs Clothing and Personal Effects

In respect of loss of or damage to rugs clothing and personal effects while in or on any motor car described in the Schedule by fire or by theft (or any attempt thereat) or by accidental means the Company will indemnify the Insured or at the request of the Insured such other person as may be the owner of the property so lost or damaged.

Provided that

- (a) The total liability of the Company under this Section shall be limited to £20 in respect of any one occurrence.
- (b) Compensation payable to any person other than the Insured shall be paid direct to such other person who shall as though he were the

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Private Type Cars  
(continued)

Insured of ... fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply and whose receipt shall be a full discharge in respect of any liability hereunder.

**Exceptions to Section V**

The Company shall not be liable under this Section in respect of

- (a) Loss of or damage to goods or samples carried in connection with any trade or business, or money, stamps, tickets, documents and securities.
- (b) Loss or damage arising elsewhere than in Great Britain Ireland and Northern Ireland the Isle of Man or the Channel Islands.

**SECTION VI**

**Foreign Use**

Provided prior notice in writing shall have been given to the Company of each proposed journey this Policy shall notwithstanding any territorial limits in any Section but subject otherwise to the terms exceptions and conditions of this Policy extend to apply for a total period not exceeding one-fourth of its current period to accident loss or damage occurring

- (a) On the continent of Europe or in Algeria or Tunisia while any motor car described in the Schedule is temporarily on the continent of Europe or in Algeria or Tunisia.
- (b) In direct connection with the transit (including the processes of loading and unloading incidental to such transit) of any such motor car between any ports in countries to which this Policy applies provided always that such transit shall be by any recognised sea passage of not longer duration under normal conditions than 65 hours.

The liability of the Company in respect of the cost of delivery of such motor car to the Insured after repair shall be limited to the cost of delivery within the country where the loss or damage was sustained.

The issue by the Company of an International Motor Insurance Certificate (Green Card) in respect of a motor car described in the Schedule shall be deemed to be evidence that the Insured has complied with the requirements of this Section and that the Company has agreed to extend the Policy in respect of such motor car in the terms of this Section for the period stated in such International Motor Insurance Certificate (Green Card).

**Avoidance of Certain Terms and Right of Recovery**

Nothing in this Policy or in any endorsement thereon shall effect the right of any person indemnified by this Policy or of any other person to recover an amount under or by virtue of the provisions of the law of any territory in which the Policy operates relating to the insurance of liability to Third Parties. BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the provisions of such law.

**Emergency Treatment**

The Company will indemnify any person using a motor vehicle in respect of which indemnity is provided under this Policy against liability under the Road Traffic Acts to pay for emergency treatment of injuries caused by or arising out of the use of such vehicle in any territory to which any of such Acts applies. A payment made by reason of this Clause shall not be deemed to be a claim under this Policy for the purposes of the No Claim Discount Clause.

## MOTOR INSURANCE

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## No Claim Discount

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of this Policy the renewal premium shall be reduced as follows:—

Period of Insurance	Reduction
The preceding year ... ..	10%
The preceding two consecutive years ... ..	15%
The preceding three consecutive years ... ..	20%
The preceding four consecutive years ... ..	25%
The preceding five consecutive years ... ..	30%

Should the Company consent to a transfer of interest in this Policy the period during which the interest was in, the transferor shall not accrue to the benefit of the transferee.

If more than one motor car is described in the Schedule the No Claim Discount shall be applied as if a separate Policy had been issued in respect of each such car.

## Suspension of Cover

Upon notice being given to the Company that the motor car described in the Schedule is to be laid up and out of use the insurance granted by this Policy save only in respect of loss of or damage to such motor car by fire self-ignition lightning or explosion or by theft or any attempt thereof shall be deemed to be suspended automatically as from the date of receipt by the Company of the current Certificate(s) of Insurance.

Subject to the period of suspension being not less than four consecutive weeks and provided that the laying up of such car does not result from loss or damage which is the subject of indemnity under this Policy the Company will deduct from the next following renewal premium a sum equal to 75 per cent. of the pro rata premium for the period of suspension.

## GENERAL EXCEPTIONS

The Company shall not be liable in respect of

1. Any accident injury loss damage or liability caused sustained or incurred while any motor vehicle in respect of which indemnity is provided under this Policy is
  - (a) Being used otherwise than in accordance with the "Description of Use."
  - (b) Being driven by the Insured unless he holds a licence to drive such vehicle or has held and is not disqualified for holding or obtaining such a licence.
  - (c) Being driven with the general consent of the Insured by any person who to the Insured's knowledge does not hold a licence to drive such vehicle unless such person has held and is not disqualified for holding or obtaining such a licence.
2. Any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement.
3. Any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power except so far as is necessary to meet the requirements of the Road Traffic Acts.

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4. Any accident injury loss or damage (except under Section II) arising during (unless it be proved by the Insured that the accident injury loss or damage was not occasioned thereby) or in consequence of
- (a) Earthquake or
  - (b) Riot or civil commotion occurring elsewhere than in Great Britain the Isle of Man or the Channel Islands.

SCHEDULE REFERRED TO WITHIN

Annual Premium ..... Policy No. MC .....

First premium ..... Renewable .....

The Company: ..... Company, Ltd.

The Insured: .....

of ..... carrying on  
or engaged in the business or profession of .....

..... and no other for the purposes of this insurance

Date of signature of proposal and declaration ..... day of ..... 19...

Period of Insurance: From the ..... day of ..... 19...

To the ..... day of ..... 19...

(Both dates inclusive)

Registered letters and number	Make of motor car	C.C. or H.P. Treasury rating	Type of body	Year of manufacture	Seating capacity, including driver	Insured's estimate of present value, including accessories and spare parts

Then follows one of the undermentioned "Description of Use" Clauses according to the Class under which the insured vehicle is rated:—

Class 1.—Use for social domestic and pleasure purposes and use by the Insured in person in connection with his business or profession as stated in the Schedule excluding use for hiring commercial travelling racing pace-making speed testing the carriage of goods or samples in connection with any trade or business and use for any purpose in connection with the motor trade.

Class 2.—Use for social domestic and pleasure purposes and use for the business of the Insured as stated in the Schedule and for the business of the Insured's Employer excluding hiring commercial travelling racing pace-making speed testing and use for any purpose in connection with the motor trade.

The Class 1 and Class 2 "Descriptions of Use" are supplemented by an endorsement reading.

Notwithstanding anything to the contrary contained in the "Description of Use" this Policy shall be operative but only in so far as it relates to the within-named Insured whilst any motor car described in the Schedule is in the custody or control of a member of the Motor Trade for the purpose of overhaul upkeep or repair.

Comprehensive  
Policy Form for  
Private Type Cars  
(continued)

## MOTOR INSURANCE

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Class 3.—Use for social domestic and pleasure purposes and use for the business of the Insured as stated in the Schedule and for the business of the Insured's Employer excluding racing pace-making speed testing and the carriage of passenger for hire or reward.

Signed on the .....

## CONDITIONS

This Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear.

1. The Insured or his legal personal representatives shall give notice in writing to the Head or any Branch Office of the Company as soon as possible after the occurrence of any accident loss or damage with full particulars thereof. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given in writing to the Company immediately the Insured or his legal personal representatives shall have knowledge of any impending prosecution inquest or fatal inquiry in connection with any accident for which there may be liability under this Policy.
2. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
3. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address (and in the case of Northern Ireland to the Ministry of Home Affairs Northern Ireland) and in such event will return to the Insured the premium less the *pro rata* portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current period of insurance) the Insured shall be entitled to a return of the premium less premium at the Company's Short Period rates for the time the Policy has been in force.
4. If at the time any claim arises under this Policy there is any other existing insurance covering the same loss damage or liability the Company shall not be liable except under Section III of this Policy to pay or contribute more than its ratable proportion of any loss damage compensation costs or expense. Provided always that nothing in this condition shall impose on the Company any liability from which but for this condition it would have been relieved under the provisions of Proviso (i) of Paragraph (2) A of Section II of this Policy.
5. The Insured shall take all reasonable steps to safeguard from loss or damage and maintain in efficient condition any motor car described in the Schedule and the Company shall have at all times free access to examine such motor car.
6. Except as regards claims under Section III if any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an Arbitrator to be appointed by the parties in accordance with the Statutory provisions in that behalf for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an Award shall be a condition precedent to any right of action against the Company.
7. The due observance and fulfilment of the terms provisions conditions and endorsements of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.



NO.17

NOTES OF ONG C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHORE  
BAHRU  
(Appellate Jurisdiction)

Federal Court Civil Appeal No. X.115/1969

In the  
Federal Court

No. 17

Notes of  
Ong C.J.

6th July 1970

Between

Yeo Beng Chow alias Yeo Beng Chong Appellant

And

10 The New India Assurance Co. Ltd. Respondents

(In the Matter of Muar High Court Civil Suit  
No. 95/1967)

Between

The New India Assurance Co. Ltd. Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong Defendant

Cor: Ong, C.J.  
Gill, F.J.  
Ali, F.J.

20

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

6th July, 1970

Thara Sing Sidhu for respondents.

Miranda for appellant.

Thara Singh: Submission already in writing.

Miranda: Nothing to add.

Sgd. H.T.Ong

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In the  
Federal Court

NO.18

NOTES OF ALI F.J.

No. 18  
Notes of  
Ali F.J.  
6th July 1970

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR  
BHARU

(Appellate Jurisdiction)

Federal Court Civil Appeal No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong Appellant

And

The New India Assurance Co. Ltd. Respondents 10

(In the matter of Muar High Court Civil Suit  
No. 95/1967

Between

The New India Assurance Co. Ltd. Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong Defendant )

Cor: Ong, C.J.  
Gill F.J.  
Ali, F.J.

NOTES RECORDED BY ALI, F.J.

20

6th July, 1970

Mr. Thara Singh for respondent

Mr. Miranda for appellant.

Written submission by Thara Singh on further point  
for argument.

C.J. reads his judgment.

Appeal allowed with costs here and below.

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NO.19

JUDGMENT OF ONG C.J.

In the  
Federal Court

No. 19

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR  
BAHRU  
(Appellate Jurisdiction)

Judgment of  
Ong C.J.  
6th July 1970

Federal Court Civil Appeal No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong      Appellant

And

10      The New India Assurance Co. Ltd.      Respondents

(In the Matter or Muar High Court Civil  
Suit No. 95/1967

Between

The New India Assurance Co. Ltd.      Plaintiff

And

Yeo Beng Chow alias Yeo Beng Chong      Defendant )

Cor: Ong, C.J.  
Gill, F.J.  
Ali, F.J.

20      JUDGMENT OF ONG, C.J.

30      On July, 1, 1960 the appellant, a licensed haulier, took out a policy of insurance against Third Party Risks for his motor-lorry. It was a 5-ton Austin of 1950 vintage which had stood the wear and tear of ten years' service. The printed form of the policy issued was that used for the Comprehensive insurance of commercial vehicles. The evidence gives no indication whether Third Party insurance only was desired by the insured, or whether the insurers, by reason of the age and condition of the vehicle, were not prepared to insure it against loss or damage "by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear". At any rate an indorsement was made on the printed form that "it is hereby understood and agreed that Section I of this Policy is deemed to be deleted". Then by

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

a rubber-stamp the word "deleted" was impressed on Section I of this Policy is deemed to be deleted". Then by a rubber-stamp the word "deleted" was impressed on Section I and the exceptions thereto. Paragraph 1(a) of the Section is in the terms above quoted.

On January 18, 1961 the appellant's lorry was involved in a collision with a Honda Cub 49 c.c. motor-cycle driven by a learner-driver carrying a pillion passenger. The driver died of his injuries. 10  
The lorry was examined four days later, on January 22, 1961 by Chow Teik Khoon, a vehicles examiner then attached to the Road Transport Department in Johor Bahru. In his report he described the condition of the vehicle as follows (to quote only the relevant portion):-

- "(2) the foot-brake was in order.
- (3) the hand brake was not working
- (4) re the steering, the O/S Tract rod ball joints worn. 20
- (5) re the tyres, both front tyres were bald and both rear 90% (bald).
- (6) re the other components (1) front and rear spring shackle pins and bushes worn.  
(2) O/S front wheel bearings very slack.  
(3) vehicle discharges excessive smoke.  
(4) rear floorboards holed.
- (7) damage which appeared to have been caused in an accident was O/S front mudguard panel badly dented. 30
- (8) the general condition of the vehicle discounting the effects of accident damage was Not Roadworthy  
Items 3, 4, 5 and 6 above refers."

There is not a scrap of evidence that the condition or state of repair of the vehicle had anything to do with the accident. In this connection it may be observed that Condition 4 in the policy requires the insured "as soon as possible" to notify the insurers of any occurrence which may give rise to a claim by third parties. Since no complaint was made 40

by the respondents on this score, it is clear that they had had ample notice to examine the condition of the vehicle - even before the Road Transport Department's examiner, had they seen fit to do so. Whether or not they did so in fact, they made no complaint whatsoever until more than seven months later about the efficiency or state of repair of the lorry. Had they done so promptly and their complaint been disputed, their insured might have been given a proper opportunity of rebuttal. The lorry had been last examined by the Road Transport Department on December 18, 1960 and passed as roadworthy. This was only 31 days before the accident.

In the  
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Ong C.J.

6th July 1970  
continued

An inquest was held by the Magistrate in Muar into the death of the motor-cyclist. It was attended by the legal adviser retained by the respondents and evidence was given by the same vehicles examiner of his findings. The proceedings concluded on May 17, 1961. Then followed the prosecution of the appellant's servant, the lorry-driver, for the offence of driving without reasonable consideration for other persons using the road, contrary to section 36(1) of the Road Traffic Ordinance. Pending the trial the respondents gave notice on August 21, 1961 to the appellant which, for the first time, repudiated liability by reason of his failure to maintain the vehicle in an efficient condition, constituting a breach of Condition 3 of the policy. The allegation was in general terms which failed to state in what respect they had cause for complaint. Nonetheless the respondents retained an advocate and solicitor to defend the lorry-driver who was acquitted on October 29, 1961.

Action on the Third Party claim was commenced in the High Court in Muar in 1963. On December 4, 1966 Ali J (as he then was) gave judgment for the plaintiffs but holding that the deceased motor-cyclist was guilty of contributory negligence equally with the lorry-driver. The damages awarded amounted to \$2,709.60 and costs were taxed at \$1,819.35. The respondents were of course liable, by reason of the provisions of Section 80(1) of the Road Traffic Ordinance to satisfy this judgment, and they duly paid out the total sum of \$4,528.95. They also paid the fees of the advocate and solicitor who on

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

their instructions defended the action. Being thus out of pocket to the extent of \$6,551.05 the respondents sought, in Muar High Court Civil Action No. 95/1967, to recover this sum "as damages" by reason of breach by the appellant of Condition 3 of the policy. On November 26, 1969 they succeeded in obtaining judgment as prayed.

Counsel on both sides appeared to have taken too simplistic a view of the issues involved. They agreed that there was only one issue to be tried, namely, whether or not the appellant was in breach of Condition 3. It was one of 10 Conditions appearing on the back of the printed form. Condition 10 provided that - 10

"The due observance and fulfilment of the Terms of this policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this policy." 20

Condition 3 was as follows:-

"The Insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity covered by this policy." 30

It had been assumed, as a matter of course, that Condition 3 was binding, so much so that the learned trial judge himself had been led to accept the proposition without question. He thought the defects mentioned by the vehicles examiner so obvious that they should have invited immediate attention; in his 40

opinion these defects showed that the vehicle was "not kept in roadworthy condition" and therefore the owner was in breach of Condition 3: guod crat demonstrandum. Consequently he delivered no written judgment as he considered it supererogatory.

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

10 With respect, I think this superficial view of the problems involved does the case less than justice. To assume, without questioning, that Condition 3 was necessarily binding was to forget the contra proferetem principle in the construction of contracts. As Rowlatt J. said in Jones v Provincial Insurance Co. Ltd. (1)

20 "In circumstances of this kind the policy must be construed against the insurance company, it is not a very happy phrase, but what it means is this, that if there is anything the insurance company rely upon to protect them from liability by way of condition precedent they must make it quite clear, and if it is not made quite clear then effect cannot be given to it. On the other hand, if they do make it quite clear, however badly drafted and bad in form it may be, they are entitled to insist upon it."

30 Condition 3 it will be observed formed part of the printed form and was intended to apply to the whole of the policy, including Section I. The section covers "Loss or Damage" - as its caption clearly indicates - in these terms:-

"I. The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon

40 (q) by accidental collision or overturning, or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear."

But Section I had been deleted in toto. Can it still be true to say that Condition 3 was wholly unaffected? Could it survive intact the excision of Section I? The first sentence reads: "The insured shall take all reasonable steps to safeguard the Motor Vehicles from loss or damage and to

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(1) (1929) 35 Lloyd's Reports 135, 136.

In the  
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Judgment of  
Ong C.J.

6th July 1970  
continued

maintain the vehicle in efficient condition...."

Since the respondents were expressly exempted from all liability to indemnify the appellant against loss or damage, so much of the condition as required the appellant to safeguard the vehicle from loss or damage manifestly could have no application.

Neither can the whole of the second sentence in Condition 3 be said to have any relevance for the same reason. Hidden interstitially, however, amid a

plethora of words which were plainly irrelevant is the phrase "and to maintain the Motor Vehicle in efficient condition" - itself an appendage to the obligation imposed on the insured to safeguard it from loss and damage. So far as the respondents are concerned, Condition 3 had been mutilated. In its

attenuated form only the 9-word phrase remained which might arguably be said to preserve the Condition from oblivion. Can it be suggested that this vestigial meaning of Condition 3 was still plain to any beholder? To my mind, it certainly was not.

The respondents had chosen to use a printed form, in small lettering; the Condition was expressed in terminology most appropriate to a comprehensive policy and to that type of policy only. If it needed an Argus-eyed reader to see what several trained legal minds had failed to perceive I do not think it can be held that Condition 3 was binding on the appellant as a condition which he knew or ought to have known.

As Lord Denning M.R. said recently in Barhatt's v Wayne Tank Co.:- (2)

"If it is ambiguous, then all the authorities it does not avail the defendants. They cannot by a printed clause like this, exclude or limit their liability, unless the words are clear and unambiguous."

This, in my view, disposes of the question at issue. What, furthermore, had been overlooked is the natural, ordinary meaning of the word "efficient" in "efficient condition", in relation to the word "roadworthy". Their meaning and connotation seemed to have been regarded as synonymous. The vehicles examiner considered the lorry not roadworthy, for its reasons he gave, but said not a word about it not being efficient. Similarly the judge thought that, because the lorry was not kept in roadworthy condition, the defendant was in breach of Condition 3. Brown v

(2) (1970) 2 HLR 198, 209



Zurich Insurance Co. (3) was referred to as authority for "efficient condition" being held to mean "roadworthy" But I think it is well to remember what Lord Halsbury L.C. said in Quinn v. Leatham (4):-

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

"A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition what may seem to follow logically from it."

10 In Brown's case the van was insured under a comprehensive policy, subject to conditions as in the instant case. The arbitrator's findings there regarding the tyres were as follows:-

"C. The smooth state of the front tyres which are essential if not integral parts of the vehicle made the vehicle unsafe from the point of view of loss or damage and inefficient in condition.

20 D. The claimant by neglecting to replace the smooth front tyres with new, retreaded or other tyres with adequate treads had failed to take reasonable steps either to safeguard the van from loss or damage or to maintain it in efficient condition within the meaning of General Condition 4."

I now quote from the judgment of Sellars J. to show why citation of Brown's case as an authority should be received with caution:-

30 "The question for this court on those findings is whether there should be upheld the award which the arbitrator makes that the claimant is not entitled to indemnity under the policy or one of the alternative awards which he makes on the basis that the claimant is entitled to indemnity. In my view, on these findings of fact which I cannot disturb in any way, the conclusion to which the learned arbitrator arrives in the first finding of  
40 his award (which he made permanent unless certain steps were taken), that the claimant

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(3) (1954) 2 Lloyd's Rep. 243, 246

(4) (1901) A.C. 495, 506

In the  
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Judgment of  
Ong C.J.

6th July 1970  
continued

was not entitled to any indemnity, is the correct one."

That case can have no bearing on the applicability of a condition, though expressed in similar terms, where the insurers here were not liable for loss or damage under a policy limited to Third Party Risks.

In Conn v Westminster Motor Insurance Association Ltd. (5) cited before us for the first time, it was held, that, in the context of Condition 5 (Worded as Condition 3 in this case), the taxi-cab tyres having no thread were unroadworthy and the claimant was not entitled to recover from his insurers for loss of his taxi, even though the accident was not due to the condition of the tyres. Here again, it may be pointed out that in the condition itself had not been whittled down into an unrecognisable form by an indorsement on the policy reducing it to one covering only Third Party Risks of Condition 5 Salmond L.J. had this to say:-

"I confess that I have considerable sympathy with the plaintiff in this case, first because it is apparent from the evidence that during the nine years preceding the accident he had in general kept his taxi-cab in good condition; secondly, I do not like conditions precedent in policies of insurance which enable insurers to escape liability for a breach which has absolutely nothing to do with the loss or damage in respect of which the assured seeks to be indemnified. If one thing is plain in this case it is that whatever did cause this accident, it had nothing to do with the dangerous and inefficient condition of the tyres. But I am far from criticizing the insurers, on the particular facts of this case, for having relied on Condition 5."

When it is realised what a multitude of claims are constantly being made and settled or tried, arising out of motor accidents, the cases are indeed rare where insurers have opted to rely on a condition such as this to escape liability. I think it can be said with some confidence that, when they do, it is because the insured was at fault -although no evidence of such fault is forthcoming - I have my doubts whether

the same can be predicated of the instant case. I incline to find the respondents had no scruples even about claiming reimbursement of the amount of fee they paid their solicitors. They should have known that the claim was entirely groundless. The duty of insurers to satisfy judgments in respect of Third Party Risks is imposed by statute: see section 80(1) of the Road Traffic Ordinance which reads:-

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

10 "If, after a certificate of insurance has been delivered under sub-section (4) of Section 75 of this Ordinance to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of this Ordinance (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments."

20

30 The right of recovery which is the cause of action in this case rests on the following stipulation in the policy:-

**"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY**

Nothing in this policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this policy or of any other person to recover an amount under or by virtue of the Legislation.

40 BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation."

The Legislation referred to is section 80(1) the

In the  
Federal Court

No. 19

Judgment of  
Ong C.J.

6th July 1970  
continued

costs therein referred to plainly do not include Solicitor and Client costs which the insurers pay their own solicitors. Even had the respondents succeeded in persuading this court to accept their interpretation of Condition 3 I fail to see how, de hors the terms expressly agreed upon for recovery of payment from an insured, they have any further claim to be indemnified in respect of their own solicitors' costs. At the most judgment should have been given for \$4,528.95 only, but, for the reasons stated earlier, the claim fails altogether.

10

I would allow this appeal with costs both here and in the court below.

Kuala Lumpur  
6th July, 1970.

(Sgd) H.T. Ong  
Chief Justice  
High Court in Malaya

M.S. Miranda Esq. for appellant  
Thara Singh Sidhu Esq. for respondents

No. 20

NO.20

20

Order

ORDER

6th July 1970

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHORE  
BHARU

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X.115 of 1969

Between

Yeo Beng Chow alias Yeo Beng Chong ... Appellant

And

The New India Assurance Co. Ltd. ... Respondents

(In the matter of Muar High Court Civil Suit No.95/67 30

Between

The New India Assurance Co. Ltd. ... Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong ... Defendant )

IN OPEN COURTTHIS 6TH DAY OF JULY, 1970O R D E RIn the  
Federal CourtNo. 20

Order

6th July 1970

10

THIS APPEAL coming on for hearing on the 28th day of March, 1970 in the presence of Mr. M. S. Miranda of Counsel for the Appellant and Mr. Thara Singh Sidhu of Counsel for the Respondents AND UPON READING the record of Appeal herein AND UPON HEARING Counsel for the parties as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day at Kuala Lumpur in the presence of Counsel as aforesaid IT IS ORDERED that this Appeal be and is hereby allowed AND IT IS ORDERED that the Respondents do pay to the Appellant the costs of this Appeal and the Court below, such costs be taxed by the proper Officer of this Court AND IT IS LASTLY ORDERED that the sum of Dollars Five hundred (\$500/=) deposited in Court as security for costs of this Appeal be paid out to the Appellant.

20

GIVEN under my hand and Seal of the Court  
this 6th day of July, 1970.

Sgd: Illegible

CHIEF REGISTRAR  
FEDERAL COURT OF MALAYSIA

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In the  
Federal Court

NO.21

NOTICE OF MOTION

No. 21

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

Notice of  
Motion

(Appellate Jurisdiction)

10th September  
1970

FEDERAL COURT CIVIL APPEAL No. X.115/1969

Between

Yeo Beng Chow alias Yeo Beng Chong      Appellant

And

The New India Assurance Co. Ltd.      Respondents      10

(In the matter of Muar High Court Civil  
Suit No. 95 of 1967

Between

The New India Assurance Co. Ltd.      Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong      Defendant )

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on  
Monday the 5th day of October 1970 at 9.30 o'clock  
in the forenoon or so soon thereafter as Counsel  
can be heard by Counsel for the abovenamed  
Respondents for an order that      20

(i) leave be granted to the Respondents to  
appeal against the judgment of this  
Honourable Court given on the 6th day of  
July, 1970 out of time.

(ii) conditional leave be granted to the  
Respondents 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 6th day of  
July, 1970 allowing the appeal of the  
Appellant.      30

(iii) the costs of this application be provided  
for.

Dated this 10th day of September, 1970.

Sgd: Shearn Delamore & Co.

SOLICITORS FOR THE RESPONDENTS

In the  
Federal Court

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No. 21

Dated this 17th day of September, 1970.

(SEAL)

Sgd.

CHIEF REGISTRAR  
FEDERAL COURT,  
MALAYSIA,  
KUALA LUMPUR.

Notice of  
Motion

10th September  
1970  
continued

10 To:-

1. The Chief Registrar,  
Federal Court,  
Kuala Lumpur.
2. Yeo Beng Chow alias Yeo Beng Chong and/or  
his solicitors, Messrs. M.S. Miranda & Co.,  
8 Jalan Petrie,  
Muar, Johore.

Dated this 11th day of September, 1970.

20

Sgd.  
CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA  
KUALA LUMPUR.

This Notice of Motion is taken out by Messrs.  
Shearn Delamore & Co., Advocates & Solicitors of  
No. 2 Benteng, Kuala Lumpur, solicitors for the  
Respondents abovenamed.

30

This Notice of Motion is supported by the  
Affidavit of Mr. K. Gopalan Nair sworn on the  
11th day of September 1970.

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In the  
Federal Court

NO.22

AFFIDAVIT OF K. GOPALAN NAIR

No. 22

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

Affidavit of  
K. Gopalan  
Nair

(Appellate Jurisdiction)

11th September  
1970

FEDERAL COURT CIVIL APPEAL NO.X.115 of 1969

Between

Yeo Beng Chow alias Yeo Beng Chong                      Appellant

And

The New India Assurance Co. Ltd.                      Respondents 10

(In the Matter of Muar High Court Civil Suit  
No. 95 of 1967

Between

The New India Assurance Co. Ltd.                      Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong                      Defendant )

A F F I D A V I T

I, K. GOPALAN NAIR of full age and residing at  
No. 3 Road 11/6A Petaling Jaya hereby affirm and say  
as follows:-

20

1. I am the Manager of the Respondents' Kuala  
Lumpur Branch and I am duly authorised to swear this  
Affidavit.

2. On the 6th day of July, 1970 this Honourable  
Court delivered Judgment allowing with costs the  
appeal of the appellant from the judgment of the High  
Court at Muar in Civil Suit No. 95 of 1967.

3. The Respondents were dissatisfied with the  
decision of the Federal Court and desired to appeal  
to His Majesty the Yang di-Pertuan Agong against the  
said Judgment but the final decision to appeal could  
not be taken until now for the following reasons:-

30

(a) Consultations had to be held with the  
Insurance Association of Malaya as the



decision of the Federal Court affected the insurance business generally.

- (b) The Respondents had to consult, and get the clearance from their Head Office in Bombay, India.
- (c) Time was also taken up in getting Counsel's opinion in London.

4. The Respondents' main legal advisers in Singapore were under the impression that the time for appealing against the decision of the Federal Court was three months as it is in Singapore and not six weeks.

5. The said judgment is a final judgment or order in a civil matter where

- (i) the subject matter in dispute in the appeal is of the value in excess of \$5,000/=
- (ii) the case is from its nature a fit one for appeal.

6. The decision of the Federal Court would upset a number of similar claims involving large sums of money which are the subject matter of negotiations between insurers and insured. The appeal involves important points of law regarding construction of documents.

7. The Respondents are willing to comply with such conditions as may be imposed by this Honourable Court as a condition for leave to appeal.

SWORN by the said K. GOPALAN ) Sgd.  
 NAIR at Kuala Lumpur this 11th ) K. Gopalan Nair  
 day of September 1970 at 11.15 )  
 a.m. )

Before me,

Sgd. W.P. Saraty

Commissioners for Oaths  
 High Court, Kuala Lumpur.

This Affidavit was filed by Messrs. Shearn Delamore & Co. Advocates & Solicitors of No. 2 Benteng, Kuala Lumpur, solicitors for the Respondents.

In the  
 Federal Court

No. 22

Affidavit of  
 K. Gopalan Nair

11th September  
 1970

continued

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20

30

In the  
Federal Court

NO.23

NOTES OF ONG C.J.

No. 23

Notes of  
Ong C.J.

6th October  
1970

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X.115 of 1969

Between

Yeo Beng Chow alias Yeo Beng Chong      Appellant

And

The New India Assurance Co. Ltd.      Respondents      10

(In the matter of Muar High Court Civil  
Suit No. 95/1967

Between

The New India Assurance Co. Ltd.      Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong      Defendant )

Coram: Ong, C.J.  
Gill, F.J.  
Ali, F.J.

NOTES RECORDED BY ONG, C.J.

20

6th October, 1970

Kandan for respondent - applicant

Miranda for other side.

Kandan: s.75 of Jud. Act.

Baker v Faber (1908) W.N. 9

affd - Gatti v Shoosmith (1939) 3 A.E.R. 916

Grant ext. of time - condition leave on usual terms -  
no stay of execution.

Sgd. H.T. Ong

NO. 24

In the  
Federal Court

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL  
TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

No. 24

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

Order granting  
Conditional  
Leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.X.115 of 1969

6th October  
1970

Between

Yeo Beng Chow alias Yeo Beng Chong Appellant

And

The New India Assurance Co. Ltd. Respondents

(In the Matter of Civil Suit No. 95 of  
1967 in the High Court in Malaya at Muar

Between

The New India Assurance Co. Ltd. Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong Defendant )

CORAM: ONG, CHIEF JUSTICE, HIGH COURT, MALAYA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 6TH DAY OF OCTOBER, 1970

O R D E R

UPON MOTION made unto Court this day by  
Mr. Letchumi Kandan of Counsel for the abovenamed  
Respondents in the presence of Mr. M.S. Miranda of  
Counsel for the abovenamed Appellant AND UPON  
READING the Notice of Motion dated the 17th day  
of September, 1970 and the Affidavit of K. Gopalan  
Nair sworn on the 11th day of September, 1970 all  
filed herein AND UPON HEARING Counsel as aforesaid  
IT IS ORDERED that leave be granted to the  
Respondents to appeal against the Judgment of this  
Honourable Court given on the 6th day of July,  
1970 out of time AND IT IS ORDERED that leave be

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In the  
Federal Court

No. 24

Order granting  
conditional

Leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong

6th October  
1970  
continued

granted to the Respondents 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 6th day of July, 1970 allowing the appeal of the Appellant upon the following conditions:-

- (i) that the Respondents abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of Dollars Five thousand (\$5,000.00) only for the due prosecution of the appeal and the payment of all such costs as may be become payable to the Appellant abovenamed in the event of the Respondents abovenamed not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondents abovenamed to pay the Appellant's costs of the Appeal, as the case may be; and 10
- (ii) that the Respondents abovenamed do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England. 20

AND IT IS ORDERED that the costs of and incidental to this application be costs in the Appeal. 30

Given under my hand and the Seal of the Court this 6th day of October, 1970.

(SEAL)

Sgd. Illegible  
CHIEF REGISTRAR  
FEDERAL COURT  
MALAYSIA.

NO.25

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

In the  
Federal Court

No. 25

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

Order granting  
Final Leave  
to Appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X 115 of 1969

8th February  
1971

Between

Yeo Beng Chow alias Yeo Beng Chong Appellant

And

The New India Assurance Co. Ltd. Respondents

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(In the Matter of Civil Suit No. 95  
of 1967 in the High Court in Muar

Between

The New India Assurance Co. Ltd. Plaintiffs

And

Yeo Beng Chow alias Yeo Beng Chong Defendant )

CORAM: ONG, CHIEF JUSTICE, HIGH COURT, MALAYA;  
SUFFIAN, JUDGE FEDERAL COURT, MALAYSIA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA

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IN OPEN COURT

THIS 8TH DAY OF FEBRUARY, 1971

O R D E R

UPON MOTION made unto this Court this day by  
Mr. Low Yong Suan of Counsel for the abovenamed  
Respondents in the presence of Mr. M.S. Miranda of  
Counsel for the Appellant AND UPON READING the  
Notice of Motion dated the 14th day of January  
1971 and the Affidavit of K. Gopalan Nair affirmed  
on the 7th day of January, 1971 filed herein AND  
UPON HEARING Counsel as aforesaid IT IS ORDERED  
that final leave be and is hereby granted to the  
Respondents abovenamed to appeal to His Majesty  
the Yang di-Pertuan Agong against the whole of  
the Judgement and Order of the Federal Court of  
Malaysia given on the 6th day of July, 1970

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In the  
Federal Court

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No. 25

Order granting  
Final Leave  
to Appeal to  
His Majesty  
the Yang di-  
Pertuan Agong  
8th February  
1971  
continued

allowing the Appeal of the abovenamed Appellant AND  
IT IS ORDERED that the costs of and incidental to  
this Application be costs in the Appeal.

GIVEN under my hand and the Seal of the Court  
this 8th day of February, 1971.

(SEAL)

Sgd. Dato Sheikh Abdul Rauman

CHIEF REGISTRAR  
FEDERAL COURT  
MALAYSIA

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Exhibit A  
Policy of  
Insurance

COMMERCIAL VEHICLE

THE  
**NEW INDIA ASSURANCE**  
COMPANY LIMITED.



Singapore Branch:

8th Floor, Bank of China Bldg.,  
Battery Road.  
P.O. Box 738.

Head Office:

Mahatma Gandhi Road  
P.O. Box 969  
Bombay (India)

**Motor Policy**  
(COMMERCIAL VEHICLE)

**Whereas** the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to THE NEW INDIA ASSURANCE COMPANY LIMITED (hereinafter called 'The Company') for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance

**Now this Policy Witnesseth:—**

That in respect of events occurring during the Period of Insurance and subject to the terms, exceptions and conditions contained herein or embodied hereon (hereinafter collectively referred to as the Terms of this Policy)

SECTION I—LOSS OR DAMAGE.

1. The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon

- (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear
- (b) by fire external explosion self-ignition or lightning or burglary housebreaking or theft
- (c) by malicious act
- (d) whilst in transit (including the processes of loading and unloading incidental to such transit) by
  - (i) road rail inland waterway lift or elevator
  - (ii) direct sea route across the straits between the Island of Penang and the mainland.

2. At its own option the Company may pay in cash the amount of the loss or damage or may repair, restate or replace the Motor Vehicle or any part thereof or its accessories or spare parts. The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts. The Insured's estimate of value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage.

3. If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained

4. The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that:—

- (a) the estimated cost of such repair does not exceed the Authorised Repair Limit
- (b) a detailed estimate of the cost is forwarded to the Company without delay

EXCEPTIONS TO SECTION I.

The Company shall not be liable to pay for

- (i) consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages
- (ii) damage caused by overloading or strain
- (iii) damage caused by explosion of any boiler forming part of or attached to or on the Motor Vehicle
- (iv) damage to tyres unless the Motor Vehicle is damaged at the same time

SECTION II—LIABILITY TO THIRD PARTIES.

1. The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of

- (a) death of or bodily injury to any person
- (b) damage to property

2. In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver

- (i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply
- (ii) is not entitled to indemnity under any other policy

3. In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of such Section provided that such representatives shall as though they were the insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply

Exhibit A  
Policy of  
Insurance  
(continued)

4. The Company will pay all costs and expenses incurred with its written consent
5. In the event of accident involving indemnity under this Section to more than one person the Limits of Liability shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the Insured
6. The Company may at its own option
  - (a) arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section
  - (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section

## EXCEPTIONS TO SECTION II.

The Company shall not be liable in respect of

- (i) death bodily injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taking away of the load from the Motor Vehicle after unloading therefrom
- (ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment
- (iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises
- (iv) damage to property belonging to held in trust by or in the custody of or control of the Insured or a member of the Insured's household or being conveyed by the Motor Vehicle
- (v) damage to any bridge weighbridge or viaduct or to any road or anything beneath by vibration or by the weight of the Motor Vehicle or of the load carried by the Motor Vehicle
- (vi) damage to property caused by sparks or ashes from the Motor Vehicle if steam driven
- (vii) damage to property caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle
- (viii) death or bodily injury caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle except so far as is necessary to meet the requirements of the Legislation

## SECTION III—TOWING DISABLED VEHICLES.

This Policy shall be operative whilst the Motor Vehicle is being used for the purpose of towing any one disabled mechanically propelled vehicle and the Company will indemnify the Insured in terms of Section II in respect of liability in connection with such towed vehicle provided that

- (a) such towed vehicle is not towed for reward
- (b) the Company shall not be liable by reason of that Section in respect of damage to such towed vehicle or property being conveyed thereby

## NO CLAIM DISCOUNT.

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of this Policy the renewal premium for such part of the insurance as is renewed shall be reduced as follows:

Period of Insurance	Discount
The preceding year .. .. .	10%
The preceding two consecutive years .. .. .	15%
The preceding three or more consecutive years .. .. .	20%

If the Company shall consent to a transfer of interest in this Policy the period during which the interest was in the Transferer shall not accrue to the benefit of the Transferee

If more than one motor vehicle is described in the Schedule the No Claim Discount shall be applied as if a separate Policy had been issued in respect of each such motor vehicle

## AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY.

Nothing in this Policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this Policy or of any other person to recover an amount under or by virtue of the Legislation

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation

## GENERAL EXCEPTIONS.

The Company shall not be liable in respect of

1. any accident loss damage or liability caused sustained or incurred
  - (a) outside the Geographical Area
  - (b) whilst the Motor Vehicle is
    - (i) being used otherwise than in accordance with the Limitations as to Use
    - (ii) being driven by or is for the purpose of being driven by him in charge of any person other than an Authorised Driver
2. any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of nature invasion the act of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war strike riot civil commotion mutiny rebellion revolution insurrection military or usurped power or by any direct or indirect consequence of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accident loss damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim
3. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement
4. any sum which the Insured would have been entitled to recover from any party but for an agreement between the Insured and such party



Exhibit A  
Policy of Insurance  
(continued)

625/04/03105/59

SCHEDULE.

Policy No. M.V. (C)

Premium:

Insured: Name **Mr. Yoo Sang Chong**

Address **13-5 Grisek, Panchor, Muar, Johore**

Carrying on or engaged in the business of and no other for the purposes of this Insurance **Lorry Transport**

Period of Insurance:

(a) From **1st July, 1960.** to **30th June, 1961.** (both dates inclusive)

(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium

Motor Vehicle: Any of the following:—

Registration Mark	Make and Type of Body	Cubic Capacity or H. P.	Year of Manufacture	Carrying or Seating Capacity including Driver	Insured's Estimate of Value including Accessories and Spare Parts	
					Vehicle	Trailer
17962	Austin Lorry	-	1950	5tons	T.P.Only	-

Read hereof understood and agreed that Section I of this Policy is deemed to be deleted.

Limits of Liability:

Limit of the amount of the Company's liability under Section I—3 .. .. \$100  
 Limit of the amount of the Company's liability under Section II—1 (a) in respect of any one claim or series of claims arising out of one event .. .. Unlimited  
 Limit of the amount of the Company's liability under Section II—1 (b) in respect of any one claim or series of claims arising out of one event .. .. \$100,000

Authorised Repair Limit: \$100

Geographical Area:

Federation of Malaya, the State of Singapore and that part of Thailand within 50 miles of the border between Thailand and the Federation of Malaya.

Legislation:

Legislation means the road traffic Ordinance (1958) of the Federation of Malaya and the Motor Vehicles (Third Party Risks and Compensation) Ordinance (1960) of State of Singapore or any Statutory enactments or modifications thereof for the time being in force.

Authorised Driver:

Any of the following:—

(a) The Insured

(b) Any other person provided he is in the Insured's employ and is driving on the Insured's order or with his permission provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle

Limitations as to Use:

Limitations as to Use.

- (1) Use in connection with the Insured's business.
  - (2) Use for the carriage of passengers (other than for hire or reward) in connection with the Insured's business.
  - (3) Use for any other business and pleasure purposes.
- The following are prohibited:
- (1) Use for racing, speed trial or speed-testing.
  - (2) Use whilst towing any other vehicle except the towing of any one disabled mechanically propelled vehicle.
  - (3) Use for the carriage of passengers for hire or reward.

Loss TORNCB..... \$152.00  
 .. 15.20  
\$145.80

Date of Signature of

Proposed and Declaration **In lieu of Policy No.615/04/03105/59.**

IN WITNESS whereof the undersigned being duly authorised by the Directors of the Company has/have hereunto set his/their hand at **Muar** this **8th** day of **June**, 19 **60**,

**CERTIFIED TRUE COPY**

For THE NEW INDIA ASSURANCE CO., LTD.

Examined by *[Signature]*  
 SB

*[Signature]*  
 Dy. Regional Manager.

Exhibit A  
Policy of Insurance  
(continued)

1. This Policy and the Schedule shall be read together as one contract and the expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.
2. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company.
3. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy.
4. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured shall have knowledge of any impending prosecution, inquest or fatal enquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender.
5. No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
6. At any time after the happening of any event giving rise to a claim or series of claims under Section II-1(f) of this Policy the Company may pay to the Insured the full amount of the Company's liability under Section II-1(b) and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for any damage alleged to have been caused to the Insured in consequence of any alleged action or omission of the Company in connection with such defence settlement or proceedings or of the Company relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.
7. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the *pro rata* portion thereof for the period the Policy has been in force; or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current Period of Insurance) the Insured shall be entitled to a return of premium less premium at the Company's Short Period rates for the period the Policy has been in force.
8. If at any time any claim arises under this Policy there is any other insurer covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expenses. Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under provision (ii) of Section II-2 of this Policy.
9. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrator and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
10. The due observance and fulfilment of the Terms of this Policy in offer a they shall to anything to be done or not to be done by the Insured and the fulfilment of the Statutory and provisions in the Contract shall be conditions precedent to any liability of the Company and any payment under this Policy.



**NEW INDIA**

**ASSURANCE COMPANY, LIMITED.**  
(INCORPORATED IN INDIA)

**MOTOR POLICY**  
**(COMMERCIAL VEHICLE)**

Policy No. M.V. (C) 615/04/00749/60

Name..... Mr. Yeo Bang Giang

Expires on..... 30th June, 1961

Notice of the happening of any accident or loss covered under this Policy should be given immediately to the Company.

Please read your Policy and its Conditions and if incorrect return to the Company.

EXHIBIT A  
NOTES OF INQUEST

Muar Inquest No. 13/61

17.4.61

Inspector Ramasamy for Police.  
Mr. Singam for the New India Ins. Comp. - in  
respect of the m/lorry.  
Mr. Paramjothy - for the father of the deceased.

Exhibits  
Exhibit A

Notes of  
Inquest

17th April  
1961

Wit. No.1:-

10 P. Balasingam: a/s (English):

• Hospital Assistant, Muar Hospital.

On 18.1.61. at about 3.00 p.m. I was on duty  
in Muar Hospital. At this time I received 2 male  
Malay patients - brought by another Malay -  
(Salleh - identified). The two patients were  
Sayunan bin Mosni and Nazar bin Dasuki. Nazar  
had the following -

1. Abrasion on left parietal region.
2. Abrasion on right little finger.

20 He was admitted in hospital and later discharged  
on 22.1.61.

Sayunan had the following -

1. Lacerated injury to the left lower jaw  
"3" long up to bone.
2. Compound fracture of the left mixilla.
3. Fracture of the left maxilla.
4. Fracture of the right temporal bone.

Sayunan died on same day of admission at  
7.45 p.m.

30 When he was brought to hospital he was not  
conscious.

Cause of death:-

Shock and haemorrhage following injuries to  
face and skull.

Exhibits  
Exhibit A

Notes of  
 Inquest

17th April  
 1961  
 continued

Injuries Nos. 3 & 4 could be caused by a fall on being crushed. If it were a fall it should be from at least a height of 6 feet. As regard the crush it must be of considerable force.

Wit. No.2.:- Nazar bin Dasuki: a/s (Malay):

I am over 18 years of age - about 19 years. I live at Madrasah Kg. Parit Medan, Gersik - a student.

On 18.1.61. at about 1.40 p.m. I was riding a m/cycle on my way to school - I was a pillion rider. The rider was one Sayunan bin Mosni - He is now dead. At about 1.45 p.m. at Spg. Parit Bengkulu an accident with a lorry happened. The lorry was coming towards us. I cannot remember the number of the lorry. I first saw lorry when it was at the bend at about 1 chain away. I looked down. The distance of the lorry to our m/cycle was about 100 yards (indicates). At that time we were travelling at about 20 m.p.h. The m/cycle was a Honda Cub. When I first saw lorry it was on the laterite part of the road and we were on the tarred part of the road. The lorry was travelling fast. I looked down and then the accident occurred. The accident happened on the laterite part of the road. The lorry caused a stir of the dust on the road. The next thing was that I found myself in hospital. I bent my head to avoid the dust caused by the lorry. The m/cycle was travelling at same speed. I could see the road in front well. I could not see the road at the back of the lorry due to the dust. I stopped my friend on his back and requested to apply the brakes. Both of us were not wearing glasses. I did not know if Sayunan bent down his head also. The m/cycle was still proceeding. I did not know when and how the accident occurred. I became conscious - at 8.00 p.m. in hospital. I cannot ride a m/cycle. That was the first time I sat as pillion rider on Sayunan's m/cycle.

By Singam:

When I first saw lorry it was entering a bend. That was the first and last time I saw that lorry. It was travelling fast because it caused a stir of dust behind it. If a vehicle was to go slow on that road there would be no dust. I saw all these in that one short instance. My estimate of the

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speed of m/cycle was 20 m.p.h. When I first saw lorry our m/cycle was on left side of road. I was travelling steadily. Our m/cycle was going out very near the edge of road. There was grass verge on both sides of road. There is a big dump on the right side of road. I did not know if Sayunan has a D/Licence to ride a m/cycle. I was not aware that m/cycle had a "L" plate. I was riding pillion for about 5 minutes when the accident happened. I road m/cycle from the school. The school is about 2 miles from scene of accident. After bending my head the m/cycle proceeded straight ahead. When I first saw lorry our m/cycle was about 3 feet from edge of grass verge.

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By Court:-

It was about 1 minute from the time I bent down my head to time when accident occurred. Sayunan is of the same size as myself. He is also a student.

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Wit. No.3:- Lau Keng Ching:- a/s (Hokkien);

I am 49 years old - a petty labourer - living at 17, Jalan Bakri, Muar.

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On 18.1.61. at about 1.40 p.m. I was attendant of m/lorry JA 7962 - coming from Gersik to Kundang Ulu. The driver of lorry was Gan Yau Cheng (identified). They were only two of us in that lorry. The lorry at that time was empty. I was at the back of lorry. When lorry was at Simpang Parit Bengkok I noticed a m/cycle coming from the opposite direction. When I saw the m/cycle, our m/lorry was at the bend of road. M/cycle was about 30 yards away - it was travelling on centre of the road. M/cycle was on the laterite road and our lorry was on the laterite road also. On seeing the m/cycle then I paid attention to the rear of my lorry. There was some dust at rear of the m/cycle. M/lorry was on left side of road facing Kundang Ulu - on its correct side - about 2 feet from edge of road. Lorry then slowed down. I don't know why lorry before slowing down was travelling at about 15 m.p.h. It slowed down to about 10 m.p.h. The m/cycle was travelling quite fast. I did not know at what speed. There was no vehicle coming from my rear. On seeing the

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Exhibits

Exhibit A

Notes of  
Inquest

17th April  
1961  
continued

Exhibits  
Exhibit A  
 Notes of  
 Inquest  
 17th April  
 1961  
 continued

m/cycle in front I then raised my hand. When I found that there was no vehicle coming from my rear I then lowered my hand. At that time I could not see to the front as my view was obstructed by the driver's cabin. I was standing. I could see the road in front. At first I saw the m/cycle coming but later I did not see it. Then I heard a banging sound. The lorry then reversed. After the banging the lorry stopped. I and the driver did not get down from the lorry. The driver did not get down from lorry and so I too did not get down. Lorry stopped for a moment and then reversed. The banging sound was that of a collision. Sound came from the front. I did not know what object the lorry knocked into. The collision was between our lorry and m/cycle.- I did now see the collision. It must be a m/cycle - because I saw it before the collision. When lorry reversed I noticed the m/cycle and two persons living in the middle of the road. There was no other vehicle except our lorry and the m/cycle - 20 on that road at scene. Before I heard the sound I felt a jerk of the lorry as a result of the brakes being applied. The brakes applied appeared to be continuous. The brakes were applied due to the danger of negotiating the bend. I was lorry attendant on that day for the first time - my first day. 10

By Singam:

I was standing at the left side - at the rear of lorry. From that position I could see anything that was close to the lorry - but I could see objects further away. I could not see the m/cycle once it came close to the lorry. The m/cycle was not steady. There was grass on my right but not on my left. There is a ditch on my left. The ground on my left was soft. 30

By Paramjothy:

There is a corner there - on right hand corner. In view of my position where I stood my view was obstructed by the driver's cabin. As soon as I saw the m/cycle I then paid attention to the rear of my lorry. On seeing the m/cycle travelling unsteadily that was why I paid attention to the rear. The ditch on the left was about 2 or 3 feet from edge of road. The ground on left side was not only soft but also 40

muddy. It was not raining that day. It slopes down from the road.

Wit. No.4: - Mahmud b. H. Dasuki; a/s (Malay):

Cpl: 7161, Police Station, Gersek.

On 18.1.61 at about 2.05 p.m. I was at Police Station, Gersik. I received a report from one lorry driver (Gan Yau Chong - identified). This is a copy of the report (P1). I then commenced investigation. I went to scene with P.C. 2317. The lorry driver came with me to scene. At scene I was pointed out the place by driver. I saw a m/cycle lying on the road - as in photograph (P 2 CDEF). There was no lorry there - I did not find any injured person there. The lorry was driven to Gersik by the driver himself. Lorry was JA 7962. I instructed PC 2317 to take photographs. Then I drew a sketch plan - (P 3 & P 3K) width of road is 16' 9". From P to the m/cycle is 53' 9". Both sides of road has grass verge. The drain near U is 10' 6" from edge of road. U slopes down to the drain. Drain near V is 9' away from edge of road. There was not much grass - V is fresh and soft due to fresh earth being put there. The dotted lines across the road shows the boundary between the laterite and tarred portion of road. It was dry when I arrived - no rain. PO, LK, QR & JXA are brake marks. XA to B is 7 ft. The corner is a gradual curve. From the Gersik end of the corner one could see from 30 yards - and about the same distance from the Kundang Ulu end of the corner.

The m/cycle had a 'L' plate in front. I found broken pieces of glasses at XA - belonging to the m/cycle - the trafficator. I also found broken glass belonging to the headlamp of the m/lorry. (P4 - 2 pieces from m/cycle) & (P5 for m/lorry - 2 pieces). I found a piece of paint (P6) which came off from the mudguard from right of lorry - In P1 A - just above the right headlamp.

I later took m/cycle to Police Station Gersik. I detained JA 7962 and the m/cycle MA 1397 for examination. On 22.1.61 both vehicles were examined by the Vehicle Examiner. Later I

Exhibits

Exhibit A

Notes of  
Inquest

17th April  
1961  
continued

Exhibits  
Exhibit A

Notes of  
Inquest  
17th April  
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continued

received the report of the examiner of vehicle's  
(P7 - on m/cycle) (P8 - on m/lorry).

By Singam:- The bend on the Kundang Ulu side is sharper than that on the Gersik side. It is dangerous to go to left side and on grass verge as one goes towards Kundang Ulu from Gersik. The brake marks were clear - but on the laterite part of road. Without applying anything I could see brake marks. P.O. is a single brake mark - J-XA is a single brake mark.. IK and QR are double brakemarks. 10

12.50 - Court adjourned to 2.30 p.m.

2.40 p.m. Court resumed.

Witness No.3 (Recalled)

By Court:- I heard a banging sound when our lorry was stationary. After the lorry had actually stopped moving then I heard a bang. The lorry had been travelling for 4 hours prior to the time I heard this bang.

Wit. No.5:- Gan Yau Chong: a/s (Hokkien)

I am 37 years old - lorry driver - living at No. 10, Jalan Arab, Muar. 20

On 18.1.61 at about 1.40 p.m. I was driving m/lorry JA.7962 from Gersik towards Kundang Ulu - with witness No.3 as attendant. The lorry was empty. When lorry was at Simpang Parit Bengkok I noticed a m/cycle coming from the opposite direction - about 100 yards distance (indicates). The m/cycle was ridden by two persons. I was on the straight road but the m/cycle was negotiating a bend. I was then on the laterite road when I saw m/cycle coming. The weather was fine - dry and no rain. At time when I saw m/cycle, my lorry was travelling at about 25 m.p.h. Besides the m/cycle and my lorry there was no other vehicle on that road. The m/cycle was travelling very fast - more than my speed about 30 m.p.h. I saw m/cycle passed on from the tar portion on to the laterite part of the road. I saw at that time about 50 yards away from the m/cycle. At this time my lorry was still on the straight portion of the road and I was travelling at about 15 m.p.h. When I was about 50 yards away from the m/cycle I 30 40



slowed down. The speed was reduced to 15 m.p.h. I applied my brakes three times. When I first applied brakes the speed came down to 25 m.p.h. - the second time from 25 m.p.h. to 15 m.p.h. and the third time that stopped the lorry. When I applied the brake my lorry was on its correct side of the road. I applied brakes because I saw the m/cycle approaching towards me - and on its wrong side. The m/cycle came and knocked into my lorry. When m/cycle knocked into my lorry - lorry was stationary - when lorry was on its correct side - and about 2 feet away from edge of road.

Exhibits

Exhibit ANotes of  
Inquest17th April  
1961

continued

10

After the collision I noticed a crowd of Malays coming towards the scene. Fearing an assault I then reversed my lorry and went towards Gersik Police Station, when I lodge a report. After that I accompanied witness No.4 to the scene. I was present when measurement were taken and photographs taken. When I went back to the scene the m/cycle was still there.

20

I had been driving this lorry - a 5-tonner - for about 7 or 8 years. I had travelled along Gersik - Kundang Ulu quite often. Wit.No.3 had been on this lorry for the 1st day. This lorry is a 6 wheel lorry. The colour of the bonnet is green. Like this (Witness shown exh. P6). I saw wit. No.4 picking up Exh. P4. & P.5 & P6. The broken pieces of glass were picked up from the back of the rear wheel of m/cycle - in the middle of the road. (Witness shown photograph). The m/cycle knocked the front offside mudguard. I saw the collision. I saw the m/cyclist lying in the middle of the road. I drove my lorry away as I saw a crowd of Malays and I became frightened. I saw the rider of m/cycle looking towards me.

30

By Singam:- The m/cycle besides travelling fast it was proceeding in a zigzag and swerving manner. I applied my brake for first time as I saw m/cycle taking the bend on my side of road. The second I applied my brake because I saw the m/cycle zigsaging - The third time I applied my brake was when I saw the m/cycle dashing towards my lorry. When my lorry was stationary the m/cycle knocked into the lorry. After I had stopped lorry for a couple of minutes the m/cycle

40

Exhibits

Exhibit A

Notes of  
Inquest

17th April  
1961

continued

knocked into the lorry. I could not go more towards my left as the left side of road were freshly made. When I saw Malays coming I reversed my lorry. I reversed from left to right side of road and then went straight. I had reverse lorry for two or three times. When I was on the straight road I saw the m/cycle. I cannot read a sketch plan. After I had a gradual bend there I saw the m/cycle .

By Paramjothy:- I had been driving this lorry for 7 or 8 years for 2 to 3 years in respect of this lorry only. This lorry was newly bought. JA.7962 was recently bought from another owner. I commenced that particular journey from Gersik - just 4 miles away. Prior to that I had been driving this lorry for about 4 to 5 hours. At a distance of 100 yards away I saw the m/cycle and I was on a straight stretch - I was going towards the same bend which the m/cycle was negotiating. The bend was a right hand bend for me. At 100 yards away I estimate the speed of the m/cycle to be 30 m.p.h. It was not going at 10 m.p.h. I was not guessing as regards the speed of my lorry. I was looking on the road. I was guessing as regards my speed. I applied 3 times of the brakes to stop the lorry to a halt. The first and second applications of brakes were not to stop but to slow down. I was not travelling fast. I had to slow down as I was approaching a bend. The road is 16 to 17 feet wide. I am familiar with that road prior to the accident. I knew the road was newly made on the sides. From the brakes marks my offside side wheels were 6 feet from the right and my nearside wheels were 3 feet from the left side of road. I was travelling on my correct side of road. I was travelling on my correct side of road. I left the m/cyclist on the road. I did not know if the m/cyclist were in a serious condition or not. By leaving the place I had moved my lorry from the actual position of impact.

By Court:- I started driving my lorry from 8.00 a.m. that morning from Muar, - with empty lorry from Muar I went to Gersik. I stopped at Gersik for an hour. I then drove my lorry again from Gersik to Kundang. I wanted to get goods from Kundang but there were no goods available. I was on my way to Kundang Ulu when this accident happened. I was not in a hurry. Goods are carried on behalf of my towkay. I had my tiffin at Gersik before I left Kundang Ulu.

This laterite road is not very broad. Driving on a laterite road is not as easy as driving on a tarred road. This laterite road is not smooth but bumpy. Braking on a laterite road is not effective - the wheels may lock but the lorry will not stop. It is not correct to say that I was travelling fast and that I had to apply my brake 3 times to bring the lorry to a standstill. It is not correct that because I knew the side of the road was soft and therefore I had to apply my brakes 3 times to stop my lorry. These brake marks on road - seven brake marks. I applied my brake gently to slow down. I was to return to Muar after I had loaded with goods at Kundang. I did not know if I would be required to do other work after having loaded my lorry with goods at Kundang - up to my towkay.

10

20

M/cycle was encroaching on my part of the road. M/cycle skided to encroach on my way when it was 100 yards away. On seeing this I slowed. The m/cycle entered to be on its wrong side. Then I applied my brake the second time to slow my lorry. Besides slowing down I also drove my lorry more to my left. The actual place of impact was on my side of the road. I was not very busy that day. I did not see m/car at Parit Raja.

Witness No.4 (recalled)

30

By Court:- From D to G is 4' 6" and from B to F is 9 ft. The m/cycle was lying in centre of road but the front wheel was nearer the roadside on left as one faces Kundang.

Court adjourned at 4.45 p.m. -  
To 17.5.61 at 10.00 a.m.

Sd. Tan bin Hussain.

17.5.61:

Mr. Paramjothy for father of the deceased.  
Mr. Sellar for Insurance Coy. in respect of lorry.  
Insp. Ramasamy for Police.

40

Wit No.6:- Chow Teik Koon a/s (English)  
Vehicle Examiner, Johore Bahru.

Exhibits  
Exhibit A

Notes of  
Inquest  
17th April  
1961  
continued

17th May  
1961

Exhibits  
Exhibit A  
 Notes of  
 Inquest  
 17th May  
 1961  
 continued

Notes: Mr. Sellar asks that the m/cycle - if it could be produced for examination. Prosecution informs Court that it had been returned to father of the deceased

On 22.1.61 I examined a m/cycle MA 1397 on the request of the Police at Muar Police Station at 11.15 a.m. It was a Honda Cub-49 c.c. engine. It has the following damages:

1. Frame was bent.
2. Handlebar and fork bent 10
3. Headlamp smashed
4. Front mudguard and front shields were badly damaged.

Brakes were static tested and found to be in order. It was a new machine and road-worthy. On same day I also examined a m/lorry J 7962 and I found the following defects:-

1. Off-side front axle wheel bearing very slack.
2. Front tyres were completely bald. 20
3. Front & rear spring shackle pins were badly worn.
4. Off-side track rod, ball joint were loose.

I road tested this vehicle and found that the handbrake not working - the brakes would not stop the vehicle. Rear floor-board were badly holed.

I noted the only damage to the offside front mudguard. The vehicle was emitting excessive smoke - its a diesel engine. General condition of vehicle: not roadworthy. Lorry is an Austin-a-round 1951 model. 30

By Sellar:

Footbrakes were in order. It was not road-worthy on the following grounds. Bald tyres, hand-brakes not working. The accident could not have caused the inefficiency of the hand-brakes. The off-side track rod and ball joint loose - this could not have been caused by the accident. These are the

three main items which make it not roadworthy.

Vehicles had got to be inspected once every 6 months. The track rod could have become defective within 6 months.

By Paramjothy:- The defects I found on lorry was due to wear and tear and bad maintenance.

By Court:

10 Brakes marks as in plan could have been applied by the driver on and off. I am not in a position to say that the track rod, spring shackle etc. are original ones which were fitted to the lorry. They might have been changed. The slack wheel bearing will make steering the vehicle less accurate - as it tends to sway a bit - however all joint and track rod will not affect the steering of the vehicle. Bald tyres on a laterite road tends to skid. On a laterite road even if the foot-brakes were efficient when applied the vehicle will skid. Badly worn spring shackled 20 will make the body of the lorry to swing but it will not affect the steering of the vehicle.

Wit. No.7:- Mohd. bin H. Latiff: a/s (Malay)

P.C. 2317. Police Station. Pagoh.

On 18.1.61 at about 2.45 p.m. I went with Wit. No.4 to 23 and 3/4 m.s. Gersik. On instructions I took 6 photographs - These are the photographs (P2A to F) - These are the 6 negatives (P9 A to F).

Wit. No.8:- Salleh bin H. Mahadi: a/s (Malay)

30 I am 28 years old - rubber tapper - living at Kg. Parit Raja, Gersik. On 18.1.61 at about 1.30 p.m. I was at a shop at Kg. Parit Raja. I was driving a car SS 4430 to this shop. I went to buy provisions. There I saw a m/lorry coming from Gersik towards Kundang Ulu - I don't know number of the lorry - on my way home driving the same car - after having gone for about 6 or 7 chains I saw the same lorry travelling back towards Gersik. It was about 7 chains away from a m/ 40 cycle. The lorry was travelling straight and about

Exhibits

Exhibit A

Notes of Inquest

17th May 1961

continued

Exhibits  
 Exhibit A  
 Notes of  
 Inquest  
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 1961  
 continued

30 to 40 m.p.h. It was travelling fast. About 6 to 7 chains from place where I had passed the lorry - I saw a m/cycle lying on the road - as one faces Kundang the m/cycle was lying on the right side of the road. I saw 2 persons lying on the grass - on the right side as one faces Kundang. They were unconscious and injured. I know the two persons - one was Sayunan b. Mosni and one was Nazar bin Dasuki. I convey these two injured persons to Hospital, Muar - in the company of one Sukiran and Mersom - (identified) -

10

No. xxm.

To 2.30 p.m.

Court resumed at 2.35 p.m.

Wit. No. 9 - Dr. Chandrasekaran: a/s (English)

Medical Officer, Muar.

On 18.1.61 a patient was brought to hospital by the name Moktar bin Dasuki by one Salleh (Wit. No.8). He had the following:

1. Abrasion of left parietal region.
2. Abrasion on right little finger.

20

He was discharged on 22.1.61.

On same day at about 3.00 p.m. another person was brought by Wit. No.8 - by the name of Sayunan bin Mosni. He was still alive on admission. He died the same day at 7.45 p.m. No post-mortem was done on this person. Cause of death was due to shock and haemorrhage following injuries to the face and skull. The injuries were:

1. Lacerated injury to the left lower jaw "3" long up till bone.
2. Comminuted fracture of the left mandible.
3. Fracture of the left maxille.
4. Fracture of the right temporal bone.

30

The injuries are consistent with that caused in a motor accident.

XXd. by Paramjothy - Nil.

XXd. by Singam - Nil.

I am satisfied that the deceased Sayunan bin Mosni died on 18.1.61 as a result of a motor accident at the 22 and 3/4 m.s. Kundang Ulu, Gersik. Cause of death; Shock and haemorrhage following injuries to the face and skull. I am satisfied that the lorry driver Gan Yau Chong was criminally responsible for the death of the deceased.

Exhibits

Exhibit A

Notes of  
Inquest  
17th May  
1961  
continued

10

Sd. Tan bin Hussain  
Magistrate, Muar.  
17.5.61.

PROCEEDINGS IN MAGISTRATE'S COURT

FEDERATION OF MALAYA

In the Magistrate's Court of Johore sitting  
at Muar.

Summons MS 417/61

CHARGE SHEET

Name of Accd: GAN YAU CHONG (M) (i.c. J 005734)

20 Address: T.S. No. 10, Jalan Arab, Muar.  
(Gersik Rpt. 80/61)

Charge:

30 That you on the 18th day of January, 1961 at about 1.40 p.m. at the corner of Kampong Parit Bengkok Gersik, in the District of Pagoh, in the State of Johore, being the driver of a motor vehicle No. J 7962 (M/Lorry) did drive the said vehicle on a road without reasonable consideration for other persons using the road and that thereby committed an offence punishable under Section 36 (i) of the Road Traffic Ordinance No. 49/58.

Proceedings  
in Magistrate's  
Court

Exhibits Return date of Summons: July 8th, 1961 Time 9.30 a.m.

Exhibit A Date of issue of Summons:-  
June 27th, 1961.

Proceedings  
in Magistrate's  
Court

Signature of issuing  
authority

Sd. Hussain b. Taib  
Registrar.

Name of Complainant:  
Mohmood Cpl. 7161

Date of  
Complaint. 22.6.61

Address of Complainant: O.C.S. Balai Polis Gersik. 10

If the charge is amended at any state, ) 12/9/61 -  
endorse particulars of the amended ) month -  
charge and insert here the date of ) January and  
amendments. ) not June.

Date of first appearance 8.7.61. Nationality of accd. (M) Hokkien: Age 36 years.

Plea: CRO & U C.T.

Prosecuting Advocate Inspector Ramasamy. Defending Advocate: 20  
or Officer. Mr. Sellar

Findings:

6.8.61 (H) ITD. No case.  
22.8.61 (H) Itd. Sentence and/or other order or bond:

12.9.61 (H) Itd.  
(No time) Itd. Acquitted and discharged without  
calling for defence.

8.10.61  
(No time) Itd.

29.10.61. Ctd. 30  
H. Itd.

Date of termination of  
proceedings 29.10.61.

Signed Mohamed b. Ya'acob.  
President  
Magistrate



6.8.61

Defendant represented by Mr. Manium who appears on behalf of Mr. K. Sellar.

Defendant requests postponement. Prosecuting officer has no objection.

Itd. M.Y.

Exhibits

Exhibit A

Proceedings  
in Magistrate's  
Court

12.8.61

Defendant represented by Mr. Sellar.

10 By consent postponed to 12/9/61. Court Inspector Ramasamy suddenly ill and Inspector Koshy has no time to go through the case. Defence counsel too would want to request for adjournment.

Itd. M.Y.

12.9.61

Defendant represented by Mr.K. Sellar.

Charge read a Explained. Claim Trial.

Prosecuting Officer Inspector Ramasamy.

20 No time. But as there is a witness coming from Pontian and difficult for him to come back, his evidence to be recorded now.

Prosecution case:

P.W.1 - Nazan b. Dasuki: affirmed states in Malay: 18 years, now living at Pontian, a student.

In June, 1961, I was staying at Mederasah Kampong Parit Medan, Gersik.

30 On 18.1.61 at about 1.40 p.m. I left the Mederasah for Gersik to attend religious school, and was travelling as a pillion rider on M/cycle driven by Saiyonan bin Musni, now dead. On the way both or us were knocked down by a lorry. On arrival at a bend I saw a Motor lorry about 2 chains ahead coming from out opposite direction. The motor cycle was travelling on metal road and the lorry on the metal part when I saw it. The lorry came near and there was a cloud of earth

Exhibits

Exhibit A

Proceedings  
in Magistrate's  
Court

dust; I stooped down my head and suddenly lost my consciousness and when I regained my consciousness I realised I was in the hospital. The motor cycle was travelling on laterite part of road just before accident. I did wear sunglasses; neither the deceased driver.

I could not see in front of me when I stooped down. The deceased rider was travelling at about 20 m.p.h. I did not see what driver was doing after I stooped down. I did not hear any sound of horn from the lorry. There was a bend at the scene. I do not know which part of the lorry hit our motor cycle. The accident occurred at the time of 2 vehicles passing each other.

10

It'd. M.Y.

XXD. Counsel

The motor cycle was bearing on 'L' plate. It was a new motor cycle which my deceased friend had just bought. I do not know for how long deceased had the motor cycle. The road where accident took place was under repair. There were piles of stones on my right. When I first saw lorry, it was on the metal part of road. The road at this stretch was under repair. I agree that the lorry was travelling more to the right side of road. I tapped on deceased shoulder and asked him to slow down. I did this because the road was narrow. I agree if my friend stopped, accident would not take place. I suggested deceased to slow down and proceeded on in the dust. True I bend down my head to avoid dust. The road was level as the side table. Our motor cycle hit lorry not on metal part of road.

20

30

It'd. M.Y.

Re X:

Deceased was driving steadily at the time when I stooped down. Not true the car zig sagging. I felt my motor cycle was standing. Motor cycle was 3 feet away from left hand side of road when I stooped down.

It'd. M.Y.

40

P.W.l. released -  
As no time postponed  
to 29.10.61.

It'd.M.Y.

It'd. M.Y.

29.10.61.

Continued hearing.

Court as before.

P.W.2:- Mohamed b. Hj. Dazuki; affirmed states in Malay; Cpl. 7161; stationed Gersek, Muar.

ExhibitsExhibit A

Proceedings  
in  
Magistrate's  
Court

10 On 18.1.61 at about 2.45 p.m. I received a report from the defendant - certified true copy report No. 9/61 Gersek produced and tendered as Ex.P.(1). I proceeded to the scene at 22 and 3/4 m.s. Kampong Parit Bengkok of Kundang Ulu. Defendant led me to the scene and PC 3217.

20 At the scene I saw a motor cycle lying in the middle of road. Motor cycle bore Np. MA 1397. I did not see anything else on the road. I then drew a plan and prepared its key - produced and tendered as Ex. P (2) & P (2) (K) respectively. I examined the motor cycle. I found the handle was bent; glass of front lamp broken; signal red lamp broken; front mudguard torn. It was a gradual bend but further up a sharp bend. The rider of motor cycle had died - His name was Saiyonan. I requested PC. 2317 to take 6 photos in my presence.

Width of road marked C-D-E = 16'6".

P-O = 8'9" = grazed mark.

L-K = 16' = grazed mark and

C & R = 8'

B & C - wheel of motor cycle.

30 I also served a notice to prosecute on defendant on 20/1/61 and acknowledged by him - produced and tendered as ex: P (3).

It'd. M.Y.

XXD:-

The marks appeared to have been made by wheels of lorry. I believed they were made by defendant's lorry because at the end of 3rd mark were broken glasses. Defendant pointed out all the 3 marks to have been made by his lorry.

It'd. M.Y.

Exhibits

P.W.3: Ahmad b. H. Latiff: affirmed states in Malay:

Exhibit A

P.C. 2317; stationed Pagoh Police.

Proceedings  
in  
Magistrate's  
Court  
continued

On 18.1.61 at 2.45 p.m. I accompanied PW (2) to Kampong Parit Gersek. On his instructions I took 6 photos - produced and tendered as ex. P (4) (A) - (F) - and their negative as P (5) (A) - (F).

It'd. M.Y.

XXD. - Nil.

It'd. M.Y.

Prosecution case closed.

10

Defence Counsel's submissions:-

- (1) P.W. (1)'s evidence - deceased did not take necessary precaution.
- (2) Motor cyclist a learner carrying a pillion.
- (3) Defence's report corroborates PW (1)'s story.

Rubic v. Faulkner (1940) 1 K.B. 571.

Prosecuting Officer's submission - Nil.

It'd. M.Y.

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EXHIBIT A

LETTER, SAULT, KEITH SELLAR  
& CO. TO YEO BENG CHONG

SAULT, KEITH SELLAR & CO., No. 64 First Cross Street,  
Advocates & Solicitors. Malacca.

21st August, 1961.

Mr. Yeo Beng Chong,  
18, Jalan Mariam,  
Muar.

10 c.c. to  
Mr. Gan Yau Chong,  
T.S. No. 10 Jalan Arab,  
Muar.

Dear Sir,

Re: Muar Magistrate Court Summons Case  
Nos. MS/417/1961

20 With reference to the abovementioned case which  
is due to come on for hearing tomorrow morning we  
would draw your attention to the fact that at the  
hearing of the Muar Inquest No. 13 of 1961 evidence  
was adduced to show that at the time of the  
relevant accident your Motor Vehicle No. JA 7962  
had not been maintained in an efficient condition  
and that you are therefore in breach of condition  
3 of your Policy No. MV (C) 615/04/08748/60.

30 In view of the above fact we would wish to  
make it clear that our Defence of your Driver Gan  
Yau Chong in the above Summons Case is undertaken  
with your permission but without prejudice to  
our clients' right to deny liability to you and  
to recover any damages from you which our clients  
may become liable to pay in respect of any Third  
Party claims.

Yours faithfully,

Sd. Sault, Keith Sellar & Co.

Exhibits

Exhibit A

Letter, Sault,  
Keith Sellar  
& Co. to Yeo  
Beng Chong

21st August  
1961

Exhibits

EXHIBIT A

Exhibit A

LETTER, SAULT, KEITH SELLAR & CO.  
TO YEO BENG CHONG, WITH ENDORSEMENT

Letter, Sault  
Keith Sellar &  
Co. to Yeo Beng  
Chong, with  
endorsement

SAULT, KEITH SELLAR & CO.,  
Advocates & Solicitors.

No. 64 First Cross Street,  
Malacca,

21st August 1961

21st August  
1961

Mr. Yeo Beng Chong,  
18, Jalan Marima,  
Muar.

10

c.c. to  
Mr. Gan Yau Chong,  
T.S. No.10, Jalan Arab,  
Muar.

Dear Sir,

Re: Muar Magistrate Court Summons  
Case Nos. MS 417 of 1961

With reference to the abovementioned case which  
is due to come on for hearing tomorrow morning we  
would draw your attention to the fact that at the  
hearing of the Muar Inquest No. 13 of 1961 evidence  
was adduced to show that at the time of the relevant  
accident your Motor Vehicle No. JA 7962 had not  
been maintained in an efficient condition and that  
you are therefore in breach of condition 3 of your  
Policy No. MV (C) 615/04/08648/60.

20

In view of the above fact we would wish to make  
it clear that our Defence of your Driver Gan Yau Chong  
in the above Summons Case is undertaken with your  
permission but without prejudice to our clients'  
right to deny liability to you and to recover any  
damages from you which our clients may become liable  
to pay in respect of any Third Party Claims.

30

Yours faithfully,

Sd. Sault, Keith Sellar & Co.

I agree to your defending the  
accused Gan Yau Chong in the  
above case.

Read over and explained in  
Hokkien dialect to the said  
Yeo Beng Chong by me. 40

Sd. Yeo Beng Chong  
22.8.61

Sd. Toh Chong Tong  
22.8.61.

EXHIBIT A

LETTER, SAULT, KEITH SELLAR & CO.  
TO GAN YAU CHONG

SAULT, KEITH SELLAR & CO., No. 64 First Cross Street,  
Advocates & Solicitors. Malacca.

7th September 1961.

Mr. Gan Yau Chong,  
T.S. No. 10 Jalan Arab,  
Muar.

A.R. REGISTERED

Exhibits

Exhibit A

Letter Sault,  
Keith Sellar  
& Co. to Gan  
Yau Chong

7th September  
1961

10 Dear Sir,

Re: Muar Magistrates' Court Summons  
Case No. MS. 417 of 1961

We write to inform you that we have been instructed by our clients The New India Assurance Company Limited, that they do not wish us to defend you in respect of the abovementioned Summons which is due to come on for hearing on the 12th instant.

20 We have therefore written to the Magistrate, Muar, that we are no longer acting on your behalf and enclose herewith the charge which you have left in this Office.

Kindly acknowledge receipt.

Yours faithfully,

Sd. Sault, Keith Sellar & Co.

c.c. to  
Mr. Yeo Beng Chong,  
13-5 Grisek Panchor,  
Muar.

Exhibits

EXHIBIT A

Exhibit A

LETTER, YEO BENG CHOW TO SAULT,  
KEITH SELLAR & CO.

Letter, Yeo  
Beng Chow to  
Sault, Keith  
Sellar & Co.

Mr. Yeo Beng Chow @  
Yeo Beng Chong,  
T.S. Grisek Transport Service,  
No. 13-5 Grisek,  
Panchor, Muar.

17th January  
1962

17th January, 1962.

Messrs. Sault, Keith Sellar & Co.,  
Advocates & Solicitors,  
Malacca.

10

Dear Sirs,

The New India Assurance Co. Ltd.  
Re: Fatal Accident involving  
Lorry J 7962 and a motor cyclist  
at Parit Bengkok on 18.1.61

With reference to the pending Civil Claim  
against me and my driver, Gan Yau Chong arising out  
of the above accident I would wish your Mr. F. Keith  
Sellar to defend myself and my driver in respect of  
this claim.

20

I confirm that I understand that you are the  
Insurance Company's lawyers and that if you do act  
for me in this matter it will be completely without  
prejudice to the terms of the notice of repudiation  
of liability which you sent to me on behalf of the  
Company dated the 21st August, 1961.

Yours faithfully,

Sd. Yeo Beng Chow

30

Read over and explained by me,

Sd. Illegible

Witnessed by:

Sd. Illegible.



EXHIBIT A

JUDGMENT IN CIVIL SUIT NO. 21 OF 1963

IN THE HIGH COURT IN MALAYA AT MUAR  
CIVIL SUIT NO. 21 OF 1963

Between

Moskatin Binte Hidayat and  
H. Shamsudin Bin H. Redwan  
Administrators of the Estate  
of Sayanan Bin Mosni, deceased  
Plaintiffs

And

Yeo Beng Chow @ Yeo Beng Chong,  
T/A Grisek Transport Service,  
Muar  
Defendant

Exhibits

Exhibit A

Judgment in  
Civil Suit  
No. 21 of  
1963  
4th December  
1966

10

BEFORE THE HONOURABLE  
MR. JUSTICE ALI BIN HASSAN,  
JUDGE: MALAYA.

IN OPEN COURT

THIS 4th DAY OF DECEMBER 1966

J U D G M E N T

20

THIS SUIT coming on for trial this day before  
the Honourable Mr. Justice Ali in the presence of  
Counsel for the Plaintiffs and the Defendant and  
UPON READING the Pleadings herein and UPON HEARING  
the evidence adduced and what was alleged by Counsel  
THIS COURT DOTH FIND that the degree of negligence  
of the Plaintiffs is one-half AND THIS COURT DOTH  
ADJUDGE that the Defendant do pay to the Plaintiffs  
the sum of Dollars Two Thousand Seven hundred and  
nine and cents Sixty (\$2,709-60) only being general  
and special damages AND THIS COURT DOTH ORDER that  
the costs of this action be taxed and paid by the  
Defendant to the Plaintiffs' Solicitors.

30

Given under my hand and the Seal of the Court  
this 4th day of December, 1966.

Sd. MEHAR SINGH  
ASSISTANT REGISTRAR:  
HIGH COURT, MALAYA,  
MUAR.

Exhibits

EXHIBIT A

Exhibit A

REGISTRAR'S CERTIFICATE

Registrar's  
Certificate  
23rd February  
1967

I hereby certify that I have taxed the above bill and have allowed the same at the sum of \$1791.85 plus \$27.50 for fees Allocatur.

Dated this 23rd day of February, 1967.

Sd. Mehar Singh,  
Assistant Registrar,  
High Court, Malaysia,  
Muar.

10

Receipt

EXHIBIT A

21st February  
1967

RECEIPT

No. 1730

SAULT, KEITH SELLAR & CO.,  
Advocates & Solicitors,  
ACCOUNT No. 1

Office No. 83/63 MALACCA/MUAR 21st Feb. 1967.  
\$2,022.10 cheque

Received from M/s. The New India Assurance Co. Ltd., the sum of Dollars Two thousand ? Twenty-two Cents ten only being to account of fees in Bill No. 323/66 Exclusive of Court Fees, Transport Charges and All other Disbursements.

20

(for) SAULT, KEITH SELLARS & CO.

21/2/67

Stamp 6c

SAULT, KEITH SELLAR & CO.

EXHIBIT ARECEIPTExhibits

Exhibit A

Our Ref. 26/61

Your Ref. CL/MT/61/5/53 Dated 8th March, 1967.

A/C No. 2 A. No. 0750

Receipt

8th March  
1967

Received from Messrs. New India Assurance  
Comp. Ltd. of Singapore

10

the sum of Dollars Two Thousand seven hundred  
and nine and Cents Sixty only being settlement  
of Claim by Moskatun bte Hidayat and H.  
Shamsudin bin H. Redwan in respect of the  
death of Sayunan bin Mosni in an accident at  
16th m.s. Bukit Gambir, Muar.  
Muar C.S. 21/63.

₹2,709.60 Stamp 6c Sd. Wong & Paramjothy

RECEIPT

Receipt

Our Ref. 26/61

Claim No. CL/MT/61/S53

Your Ref. SKS/PL/83/63

27th April  
1967

Date 27th April, 1967.

20

A/C No. 2 A No. 1034

Received from Messrs. New India Assurance Co.,  
Ltd., of Singapore the sum of Dollars One thousand  
eight hundred and nineteen and Cents thirty five only  
being party and party costs pursuant to order of  
Court in Muar Civil Suit No. 21/63.

₹1,819-35.

Stamp 10c

Sd. WONG &amp; PARAMJOTHY

EXHIBIT A - REPORT OF CHOW  
TEIK KHOON

Exhibit A  
Report of Chow  
Teik Khoon  
26th January  
1961

Form R. 14  
Police Report No. ....

Ref. No. 57962

ROAD TRANSPORT DEPARTMENT  
FEDERATION OF MALAYA

REPORT ON THE EXAMINATION OF A VEHICLE

Requested by C. C. P. D., Pagoh

Vehicle No. J 7962 Make: Austin (CLASS Goods

was inspected\* and road tested by the undersigned CHOW TEIK KHOON

at Muar Police Stn: on 22 - 1 - 61 I found as follows:-

\* ~~.....~~

2) The condition of the Foot Brake was In Order

3) The condition of the Hand Brake was Not working

4) The condition of the Steering was O/S Track rod ball joints worn

5) The condition of the tyres was:-  
Near side front Bald Near side rear 90%  
Offside front Bald Offside rear 90%

6) The condition of other components was 1. Front & Rear spring shackles pins & bushes worn. 2. O/S. Ft. wheel bearing very slack; 3. Vehicle discharges excessive smoke. 4. Rear floorboards holed.

7) Damage which appeared to have been caused in an accident was:-  
1. O/S. Ft. mudguard panel badly dented.

8) The General condition of the vehicle (discounting the effects of accident damage) was :- Not Roadworthy, Items 3, 4, 5, 6 above refer.

Signature: Sgd: Chow Teik Khoon

Appointment: ROAD TRANSPORT DEPARTMENT

Date: 26 - 1 - 61  
\*Delete where not applicable

CERTIFIED TRUE COPY

(YAP TAIN HO)  
Ketua dan Pengerusi  
Kereta Motor  
24 NOV 1961

No. 9 of 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N     A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE NEW INDIA ASSURANCE  
COMPANY LIMITED

Appellant  
(Plaintiff)

- and -

YEO BENG CHOW alias YEO  
BENG CHONG

Respondent  
(Defendant)

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,  
6/8 Westminster Palace Gardens,  
London, SW1P 1RL.

Solicitors for the  
Appellant.