13 of 1975

No. 24 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:

CHOP SENG HENG (sued as a firm)
(Fourth Defendants) — Appellants

- and -

(1) THEVANNASAN s/o SINNAPAN
(First Defendant)

(2) SING CHEONG HIN LORRY TRANSPORT CO. (sued as a firm)
(Second Defendants) — First and Second Respondents

- and -

(3) PANG CHEONG YOW (Plaintiff) — Third Respondent

CASE FOR THE THIRD RESPONDENT

RECORD

1. This is an appeal from a Judgment and Order of the Federal Court of Malaysia (Ong C.J. dissenting Ali and Gill F.J.J.) dated the 14th day of March, 1973, which allowed an appeal by the First and Second Respondents herein from a judgment of the High Court of Malaysia at Raub (Suffian F.J.) dated the 17th day of June, 1972, whereby the Federal Court varied a finding that the Appellants were 25 per cent responsible and the First and Second Respondents 75 per cent responsible in respect of negligence occasioning an award of $40,000 as General Damages and $7,125.30 as Special Damages to the Third Respondent, to a finding that the Appellants were solely responsible and determining that the Third Respondents claim against the First and Second Respondents failed.

pp.43-55

pp.27-32

RECORD

p.29, ll.28-31

2. The principal question raised in this appeal is whether on the finding of fact of the learned trial judge (which finding was accepted as correct on appeal) that as the First Respondent's lorry was parked 30 feet from the exit of a blind left hand bend on the left hand side of the road on a main road at 3 or 3.30 a.m., the Federal Court was correct in ruling that the First Respondent cannot be held guilty of negligence for having parked his lorry so near the blind corner.

pp.4-6

3. In his Statement of Claim dated the 2nd day of February, 1970, the Third Respondent averred that on the 4th day of February, 1969, he was travelling as an attendant in the Appellant's motor lorry driven by the Third Defendant (who is not a party to this appeal) who was the servant or agent of the Appellant when it collided with a stationary Motor Lorry which had been driven by the First Respondent who was the servant or agent of the Second Respondent. As a result of this collision the Third Respondent's left leg was amputated above the knee and his right big toe was amputated. He pleaded the accident was caused by the negligence of both drivers alleging against the First Respondent:-

"PARTICULARS OF NEGLIGENCE OF THE 1ST NAMED DEFENDANT

(a) Failing to keep any or any proper lookout;

(b) Driving without any or any sufficient lights;

(c) Failing to notice the presence of Motor lorry BL 5223 which was following behind him;

(d) Failing to give any or any sufficient warning of his intention to stop;

(e) Stopping suddenly when it was unsafe so to do;

(f) Parking his Motor Lorry without any or any sufficient lights;

(g) Placing his Motor Lorry in such a position as to disallow other traffic to pass him safely."

and against the Third Defendant :- RECORD

"PARTICULARS OF NEGLIGENCE OF THE 3RD NAMED DEFENDANT

(a) Failing to keep any or any proper lookout;

(b) Driving at an excessive speed in the circumstances;

(c) Driving with insufficient lights;

(d) Failing to observe the presence of Motor Lorry BL 2715 on the highway;

(e) Failing to allow himself sufficient time or distance in which to stop his lorry from colliding with Motor Lorry BL 2715;

(f) Following Motor Lorry BL 2715 too closely in the circumstances;

(g) Driving into Motor Lorry BL 2715;

(h) Failing to stop, swerve, slow down or otherwise avoid the said collision."

4. In each of their Statements of Defence (in the case of the First and Second Respondents dated the 6th day of March 1970 and in the case of the Third Defendant and the Appellant dated the 26th day of March 1970) the allegations of negligence against them made by the Third Respondent were denied and each Statement of Defence alleged negligence by the other vehicle's driver. pp.7-9

5. By a statement of agreed facts dated the 2nd day of November, 1970, it was admitted that the First Respondent and Third Defendant were respectively servants or agents of the Second Respondent and the Appellant and that the Plaintiff had sustained the injuries pleaded in the Statement of Claim as a result of the relevant collision. pp.5-6

6. The hearing commenced before Suffian F.J. on the 17th day of April, 1972. It appears from his notes (which are annexed to this case as "Annexure A" as they have been omitted from the record) that the Counsel then instructed for the Third Defendant and the Appellant declined to act as the Appellant did not produce the Third p.11

RECORD

Defendant at the trial. The learned trial judge then refused the Appellant an adjournment for an opportunity to get legal representation so that he was obliged to conduct his own Defence.

pp.6-17

7. The only oral evidence given on behalf of the Third Respondent was his own. In it he said that on the 4th day of February, 1969, he was working as an attendant on the lorry driven by the Third Defendant from Kuala Lumpur towards Bentong when at milestone 4¾ it rounded a left hand corner and banged into the rear of a stationary lorry parked entirely on the roadway 30 feet from the corner which was unlit. He added that there was a mist about and because of a hill there was no view around the sharp corner. He also dealt with his injuries and loss.

pp.18-26

8. The only other witness called was the First Respondent who gave evidence that he was driving the lorry that was parked. He said he had stopped to allow his attendant to urinate, with the vehicle lights on and with his front rearside wheel on the grass but with the lorry at an angle across the road. He said that after the collision he hid as the rubber tappers of whom he was frightened were going to work. He admitted that there was mist around. In cross-examination he said that the attendant had told him that he wished to urinate half an hour before.

pp.27-32

9. The learned trial judge reserved his judgment until the 17th day of June, 1972. In his judgment after relating the issues posed for himself, it is submitted correctly, as the primary matter he had to consider the question :

p.27, ll. 18-19

"Who is to blame for this collision?"

After reviewing the evidence of the Third Respondent and the First Respondent the learned judge found the accident occurred as follows :-

p.28, ll. 37-50

"The road was wide enough to have allowed in the ordinary way the lorry behind to pass the stationary lorry in front in safety. The lorry in front was parked on its correct side of the road. There was no reason why it should not have its lights on while so parked, and I find that it had its lights on, including the offside rear flasher. I find that there was some mist around, which somewhat reduced visibility. I find that the lorry behind was travelling at a moderate

speed with its lights on when it ran into the rear of the stationary lorry."

On the issue of the location of the stationary lorry the learned judge reviewed the evidence and concluded, it is submitted correctly :

> "I find it more probable than not that the accident occurred because the first defendant had parked the stationary lorry 30 feet from the exit of the blind left hand bend."

p.29, ll.28-31

As to the issue of whether or not the Third Defendant's suggested fatigue was relevant the learned judge dismissed that suggestion as follows :-

> "My finding on this is that the driver of the lorry behind had worked long hours, but it was possible for him to rest in between periods of work and the primary cause of the accident was the fact (as found by me) that the driver of the stationary lorry had parked his car too near the exit of a blind corner."

p.30, ll.9-14

The learned judge then concluded that both drivers were negligent in this way :-

> "Now as regards apportionment of blame, I am of the opinion that the driver of the stationary lorry was not wholly to blame. There was mist around, and yet the driver of the other lorry (the absent third defendant) drove round a blind corner at 35 m.p.h. I am of the opinion that that was a bit fast in the circumstances; probably he drove at that speed as his lorry was empty and he thought that it would have been safe to do so in view of the little traffic on the road at that time of the night. In the circumstances, I find that the first defendant was 75 per cent and the third defendant 25 per cent to blame for the accident and therefore the first and second defendants should pay 75 per cent and the third and fourth defendants 25 per cent of the damages and costs awarded to the plaintiff."

p.30, ll.15-30

The Third Respondent respectfully submits that the finding of the learned judge that both drivers were negligent is correct and ought to be affirmed. Thereafter the learned trial judge

RECORD

p.30,l.31-p.32, l.3 reviewed the injuries sustained and concluded that $40,000 was an appropriate sum for general damages with special damages of $7,125-30.

pp.35-43 10. The First and Second Respondents then appealed to the Federal Court challenging the learned trial judge's findings of fact. The Appellant also cross-appealed.

11. The Federal Court (Ong C.J. dissenting) allowed the appeal and dismissed the cross appeal on the 14th day of March, 1973. In the relevant notes of argument of the Judges of the Federal Court (which were omitted from the record but are annexed hereto as "Annexure B") it appears Counsel for the First and Second Respondents argued according to the note of Ong C.J.

> "Submit applts only 25 per cent liable - not more"

and/or according to the note of Gill F.J.

> "At worst appellants only 25 per cent liable and note more"

and/or according to the note of Ali F.J.

> "Submits 20 to 25 per cent liability is a minimum".

Notwithstanding what had been said by the First and Second Respondent's Counsel the Majority
pp.43-49 of the Federal Court (Ali F.J. and Gill F.J.) ruled as a matter of law on the facts found by the learned trial judge that the First and Second Respondents had not been in breach of their duty of care to the Third Respondent.

p.44,l.42-p.45,l.28 12. In relation to the cross-appeal by the Appellant, Ali C.J. said :-

> "The case for the third respondent, on the other hand, is that if, as stated by the trial judge in his judgment, the presence of the stationary lorry near the corner had solely caused the accident then there was nothing which the second respondent could do to avoid the collision; in that context the appellants should be held solely liable.
>
> It is necessary to refer again to the passage in the judgment of the trial judge

which forms the basis of the third respondent's cross-appeal. It reads :-

> .... "I find it more probable than not that the accident occurred because the first defendant had parked the stationary lorry 30 feet from the exit of a blind left-hand bend."

If these words mean no more than that the presence of the stationary lorry near the blind corner had partly caused the accident or collision, then I can find no substance in the cross-appeal. It would seem clear to me reading the judgment as a whole that the trial judge was of the view that the appellants and the respondents are to share the blame in the proportion stated. As regards his finding of liability against the respondent, I think it is impossible for the third respondent to challenge it in view of the evidence. I entirely agree with the trial judge that the second respondent was negligent in driving round the blind corner at 35 miles per hour. I would for this reason dismiss the cross-appeal with costs."

With this Gill F.J. agreed. It is respectfully submitted that this is a correct finding of the law applicable to the case. p.48, ll.25-29

13. Ong C.J. in his dissenting judgment proposed to allow the cross-appeal saying :- p.53, l.17-p.54, l.1

> "This driver could not reasonably be required to anticipate an obstruction lying directly in his path, of which there were no warning signs whatsoever. It has to be remembered at all times that an oncoming vehicle betrays its presence long before its arrival by the beam of its headlights. Therefore, when the road beyond the blind bend appeared to reveal no beam of any oncoming vehicle there was no need for any unusual caution. The rear lights of the appellants' stationary lorry cast no beam behind. Rear lights do not function like headlamps. The respondents' driver accordingly must have been taken completely by surprise to see what the learned trial judge found as a fact: that a stationary lorry was blocking its path no more than 30 feet beyond the blind left-hand bend. Could this driver then have taken any evasive action - even were he travelling at 25 m.p.h.? I think not.

RECORD

> At 35 m.p.h. the rate of travel is approximately 52½ feet per second; at 25 m.p.h., it would be 37½ feet per second. The distance of 30 feet in this case would be covered in less than one second - not counting reaction time to translate a visual message into action. In the place of the respondents' driver, I do not think it was humanly possible, on the facts found, for any person, however skilled in driving, to avoid crashing into the stationary lorry."

The Third Respondent respectfully submits that the judgment of Ong C.J. on the cross-appeal is wrong because :-

(a) In stating that it was not humanly possible to avoid the obstruction the learned Chief Justice was without good reason interfering with the findings of fact made by the trial judge.

(b) The proposition of law that a driver is not required to anticipate an obstruction in the road without warning is wrong.

pp.43-49 14. In relation to the Appeal the opinion of the Majority of the Federal Court was expressed by Ali F.J. in his judgment with which Gill F.J. agreed. After reviewing the evidence Ali F.J. concluded :-

p.46, ll.25-30

> "With great respect to the learned trial judge in this case I do not agree with him that the first appellant was guilty of negligence merely because he parked his lorry too close to the corner. I take the view that he did what a reasonable driver would have done in similar circumstances."

It is respectfully submitted that the learned Federal Judge was wrong in substituting his opinion of what was reasonable in the circumstances for that of the trial judge. It is further submitted that he was wrong in his opinion that it was not negligent to park too close to a corner on a main road at night. It is submitted such conduct is prima facie negligent unless there is some reasonable excuse such as an emergency.

After reviewing the authorities in relation to the duties of a driver of a car which is to be parked the judgment of Ali C.J. continues with this proposition of law:

"Accordingly, so far as the case under review involves a claim based on negligence it must fail because on the law as I find it the first appellant cannot be held guilty of negligence for having parked his lorry near a blind corner."

RECORD p.47, ll.38-43

The Third Respondent respectfully submits that this proposition is wrong and that a driver in selecting a place to park is bound to consider whether or not his parked vehicle will constitute any abnormal hazard to other users of the highway.

15. In the Federal Court Gill F.J. who as stated agreed with the Judgment delivered by Ali F.J., delivered a short judgment of his own allowing the appeal. In it he appears to have expressed the law as being that if a vehicle is parked with lights on the driver of such a vehicle cannot generally be guilty of negligence by the use of these words :-

"I have not been able to find a single decided case where the owner or driver of a vehicle leaving it on the highway with its lights on has been held liable in negligence. Each case, of course, must depend upon its own facts."

p.48, ll.31-35

It is respectfully submitted that this proposition is wrong and that the presence or absence of lights is merely one factor to be considered in ascertaining whether or not the parking of a vehicle has been done negligently. It is furthermore submitted that because Gill F.J. said :

p.49, ll.2-5

"In view of the findings of fact made by the learned trial judge in this case, I do not see how the appellants can be held to blame in any way for the accident"

his judgment allowing the appeal is wrong because the facts found by the learned trial judge disclose a negligent want of care by the First Respondent.

When Gill F.J. added the observation :

p.49, ll.5-9

"It is to be observed that the second respondent pleaded guilty to a charge of dangerous driving and he failed to appear

RECORD

at the trial of the action to give evidence as to why the accident happened"

it appears that he was misdirecting himself into thinking that this was conclusive evidence or alternatively relevant evidence on the issue of whether or not the First Respondent (in the Privy Council) was guilty of negligence. It is respectfully submitted that the approach of the learned trial judge on this issue was correct and ought to be affirmed. The trial judge had said :-

p.29, ll.11-21

> "In the lower court when the driver of the lorry behind was charged with dangerous driving he pleaded guilty to the charge and admitted the facts as given by the prosecution officer. This officer had said that the driver of the stationary lorry had stopped that lorry on a stretch of straight road. I consider that evidence as neutral because it is not disputed by the Plaintiff that the collision occurred at a straight stretch of road; all he says is that it was so near after the exit of the bend."

The Third Respondent submits that the conviction of the Third Defendant is only admissible as evidence that the Third Defendant has been negligent; it does not assist in proving either way whether or not the First Respondent has also been negligent. The weight to be attached to the conviction is a matter for the discretion of the learned trial judge. It is further submitted that as the learned trial judge had considered the conviction after having apparently directed himself properly, it was not open to Gill F.J. to reconsider the conviction in the way he has apparently done without rejecting the learned trial judge's findings of fact. (As in the Record the proceedings in Benong Magistrates Court leading to the conviction have not been fully translated or set out and as they formed part of the Record in the Federal Court they are annexed hereto as "Annexure C".)

It is also respectfully submitted that Gill F.J. ought not to have drawn a similar inference by concluding that because the Third Defendant failed to attend the trial it assists in proving that the First Respondent was not guilty of any

negligence.

RECORD

16. In his dissenting judgment for dismissing the appeal Ong C.J. said that the issue was one of fact on which the learned trial judge had found and ought not be disturbed. He also drew the same inferences of fact from the evidence as the learned trial judge had when he reviewed the evidence for himself. The Third Respondent respectfully submits that the findings in the judgment of Ong C.J. in relation to the appeal are correct and ought to be affirmed. pp.49-52

17. The Third Respondent respectfully submits that this appeal should be allowed in part only so that a finding be made that both the Appellant and the First and Second Respondents are liable to him in negligence in respect of the said collision and order that he recover the said damages against the First and Second Respondents as well as the Appellant. The Third Respondent further respectfully submits that a Bullock Order be made for his costs against the First and Second Respondents and further or alternatively an order be made for his costs against the Appellant.

The Respondent so submits for the following among other

R E A S O N S

1. BECAUSE there were concurrent findings of fact in the trial court and on appeal.

2. BECAUSE the said concurrent findings of fact are right on the evidence.

3. BECAUSE the Trial Judge was right in holding that the collision was due to the negligence of both drivers.

4. BECAUSE those parts only of the judgments of Ali F.J. and Gill F.J. dismissing the cross-appeal were right.

5. BECAUSE that part only of the judgment of Ong C.J. dismissing the appeal was right.

6. BECAUSE the Trial Judge and Ong C.J. were right in holding that parking 30 feet from the exit of a blind left hand bend on a main road was negligent.

NIGEL MURRAY

ANNEXURE "A"

NOTES OF SUFFIAN, F.J.

Monday, 17th April, 1972 In Open Court

Before me

(Signed) M. Suffian

David Tay for Plaintiff
R.S. Sodhy for 1st and 2nd Defendants
Albert Lian for 3rd and 4th Defendants.

Lian states:

I appear for 3rd and 4th defendants briefed by the insurers of 4th defendant. I am instructed to discharge myself but to hold a watching brief for the insurers. I am instructed to inform the 3rd and 4th defendants that they are to conduct their own defence if 4th defendant is unable to produce 3rd defendant at the trial - 4th defendant has not produced 3rd defendant today - I have given 4th defendant notice to that effect by A.R. registered letter dated 28.2.72.

Above statement explained to 4th defendant in Hokkien by interpreter.

4th Defendant states:

I have given 3rd defendant's address to Mr. Lian. I ask for an adjournment so that I can get a lawyer.

Tay:

I object to application for adjournment because same thing happened before (3rd Defendant supposed to be in Indonesia).

Sodhy:

I leave it to Court.

4th defendant states:

But then 3rd defendant was here (in Raub). He is in Indonesia.

Court notes discharge for Mr. Lian.

4TH defendant's application for adjournment refused.

ANNEXURE "B"

NOTES OF ARGUMENTS RECORDED BY ONG, C.J.

2nd October 1972

R.S. Sodhy for applts.
Chooi Mun Sou for 2nd & 3rd respondents

Notice of X-appeal allowed.

Sodhy: basic criticism is finding as to the bend at the scene of the accident.

Pf. did say there was bend & lorry was parked 30 feet. Trailer of respts lorry was 31 ft 3" - lorry was 30 feet. "NO" was apparently made by stationary lorry. Sketch plan didn't show bend.

Pleadings: pp.11-12 no mention of bend. Judge never took into a/c fact that there was no ref. to the bend till the trial.

Submit applts only 25% liable - no more.

Chooi: If court agrees and does not disturb finding of fact of trial judge - then whether 25 or 35 m.p.h. the following lorry is not to blame.

C.A.V.

Sgd. H.T.Ong.

14th March 1973

Anuar for applts.
David Tay for 1st respt.
Wong Soon Foh for 3rd respt.

I read my judgment - dismissing appeal and allowing 3rd respts cross-appeal. Applts to satisfy whole of 1st respt's claim with costs of the action and this appeal..

Gill reads Ali J's judgment, contra,
Gill agrees with Ali.

By majority, order in terms as prayed by Ali - deposit of applts to be refunded.

Sgd. H.T. Ong.

Notes of Arguments recorded by Ong,C.J.

TRUE COPY

(TNEH LIANG PENG)
Secretary to Chief Justice
High Court
Malaya 11 JUL 1973

NOTES OF ARGUMENTS RECORDED BY GILL,F.J.

2nd October, 1972

Encik R.S. Sodhy for Appellants.
Encik David Tay for 1st Respondent.
Encik M.S. Chooi for 2nd and 3rd Respondents.

Sodhy:

The cross-appeal was filed out of time, but the Court has discretion to consider it.

The basic ground is the finding of a bend at the scene of the accident. The finding of judge as to where the lorry was parked. There were criminal proceedings in this matter. The trailer of the Respondents' lorry was 31 feet long. The lorry was 23 feet long. Refer to sketch plan at page 59 as to position of lorry. The sketch plan does not show a bend. If there was no bend how can the sketch plan show it. The judge's finding is an inference. The judge disbelieved the plaintiff on a number of points. The judge does not say which witness he believed and which he did not believe.

No mention of the bend in the Police reports. No where in the pleadings is there any mention of a bend. Refer to Statement of Claim at page 11 of record. Also what was pleaded by the Defendants at page 16. The learned judge never took these points into consideration. The Police have said that the accident took place on a straight stretch of road.

No resting period for the driver of the rear lorry. He was not keeping a proper look out. 35 miles

per hour was not just a little too fast round the bend.

At worst appellants only 25% liable and not more.

Chooi:

If the Court upholds the finding of the Court below that this accident happened at a bend, then the second and third respondents are not entirely to blame. (Mr. Sodhy refers to Kelly v. W.R.N. Contracting Ltd. & Anor (Burke, Third Party) 1968 1 W.L.R. 921).

C.A.V.

S.S. Gill

14th March, 1973

Encik Annuar for Appellants
Encik David Tay for first and second Respondents
Encik Wong Soon Foh for third Respondent.

C.J. delivers his written judgment.
I read the judgment of Ali, F.J. and my judgment.
Appeal allowed and third respondent's cross-appeal dismissed with costs. Costs as between the parties in terms of the Bullock order. Deposit to be refunded to appellants.

S.S. Gill.

Certified true copy.
Sgd.

Secretary to Judge
Federal Court
Malaysia
Kuala Lumpur 10/7/73.

NOTES RECORDED BY ALI, F.J.

2nd October, 1972

Encik R.S. Sodhy for appellants.
Encik David Tay for 1st respondent.
Encik M.S. Chooi for 2nd and 3rd respondents.

Sodhy: Basic issue finding of bend.
No mention of a bend.
Submits 20 to 25% liability is minimum.

C.A.V.

10 Ali.

Salinan yang di-akui benar.

Sgd.

Setia-usaha Makim
Kuala Lumpur

ANNEXURE "C"

MALAYA
STATE OF PAHANG

IN THE MAGISTRATE'S COURT AT BENTONG

SUMMONS CASE NO. BMS 354/1969

Name of accused: Kow Chai alias Chew Chin Swee
IC 1318825.

Address of accused: T-42 Kampong Sempalit, Raub.

CHARGE Bentong Report No. 608/1969

That you on the 4th day of February 1969 at about 3.00 a.m. at 4¾ Milestone, Bentong-Kuala Lumpur Road, in the District of Bentong, in the State of Pahang, being the driver of motor lorry trailer No. BL 5223, did drive the said vehicle on a public road, in a manner which having to all the circumstances (including the nature, condition and size of the road and the amount of traffic which was or might be expected to be on the road) was dangerous to the public and that you have thereby committed an offence punishable under Section 35(1) of the Road Traffic Ordinance No. 49 of 1958.

Name of complainant: Sergeant 5406 Mahmood.
Date of complaint: 9th May 1969.
Address of complainant: Balai Polis, Bentong.
Nationality of accused: Chinese.
Plea: Charge read, explained and understood - claims trial.
Prosecuting Advocate of Officer: Inspector Ismail.
Defending Advocate: In person
Findings: Found guilty and convicted.
Sentence and/or other orderand/or bond: Fined $200.00 or one month's imprisonment. Licence endorsed.
Date of termination proceedings: 12th January 1970.

Sgd. Enche Halim bin Haji Mohamed
Magistrate.

1st December 1969

Chief Inspector Dhillon for Prosecution. Accused in person. Charge read, explained and understood - claims trial. Prosecution requests postponement of hearing as two important witnesses have not yet been served with subpoenas. Defendant has no objection. Approved. To 12th January 1970 (for trial).

Sgd: Enche Halim bin Haji Mohamed.

12th January 1970

Chief Inspector Dhillon for Prosecution. Defendant in person. Charge read, explained and understood. Pleads guilty - understands nature and consequences of his plea.

Facts of case

On 4th February 1969 complainant Theverasan drove a motor lorry No: BL 2715 loaded with cement from Kuala Lumpur to Kuantan.

At 3.00 a.m. on that day when the lorry reached the $4\frac{3}{4}$ mile of Bentong - Kuala Lumpur Road, the attendant reauested the complainant to stop the lorry as he wanted to urinate. The complainant stopped the vehicle on a stretch of straight road on the left side of the road facing Bentong.

At that time a motor-lorry No. BL 5223, which was empty (not loaded with goods), was driven by the Defendant in this case from the direction of Kuala Lumpur. It knocked straight into the rear part of the first lorry.

Both the lorries were badly damaged. The attendant of the lorry driven by the Defendant was seriously injured, causing his right leg to be amputated.

On 4th February 1969 at 8.15 a.m. complainant made a report at the Police Station vide Bentong Report No. 206/1969.

From police investigation conducted by Sergeant 5406 it was found that the Defendant drove the motor lorry in a manner which was dangerous to the public.

The surface of the road at the time (of accident) was dry and there were no other vehicles.

Sgd: Enche Halim bin Hj. Mohd.

Facts admitted as correct. Found guilty and convicted.

Sgd: Enche Halim bin Hj. Mohd.

Appeal (plea in mitigation)

1. There was mist at that time.

2. The rear light of the lorry was not lighted - I did not see the light until I got near to it. 10

3. I am now unemployed. I have been dismissed by my employer.

4. I ask for consideration.

Sgd: Enche Halim bin Hj. Mohd.

Driving Licence clean.

Sgd: Halim bin Hj. Mohd.

No. 24 of 1973

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 :

CHOP SENG HENG
(sued as a firm)
(Fourth Defendants)

Appellants

- and -

(1) THEVANNASAN
s/o SINNAPAN
(First Defendant)

(2) SING CHEONG HIN
LORRY TRANSPORT CO.
(sued as a firm)
(Second Defendants)

First and Second Respondents

- and -

(3) PANG CHEONG YOW
(Plaintiff)

Third Respondent

CASE FOR THE THIRD RESPONDENT

LE BRASSEUR & OAKLEY,
71 Great Russell Street,
London, WC1B 3BZ.