No. 24 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

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

- and -

1. THEVANNASAN s/o SINNAPAN (First Defendant)

2. SING CHEONG HIN LORRY TRANSPORT (Second Defendants) — Respondents

3. PANG CHEONG YOW (Plaintiff)

RECORD

CASE FOR THE 1st & 2nd RESPONDENTS

1. This is an Appeal from a Judgment and Order of the
p.43 Federal Court of Malaysia, dated the 14th day of March, 1973, whereby the Court allowed the Respondents' appeal and
p.27 dismissed the Appellants' cross-appeal from a Judgment of the High Court of Malaya at Raub (Suffian, F.J.), dated the 17th day of June, 1972, whereby Suffian, F.J. held the 1st Respondent (1st Defendant in the action) 75% to blame and the 3rd Defendant (a servant of the Appellants herein) 25% to blame for an accident which took place on the 4th February, 1969, at about 3.00 a.m. between motor lorries belonging to the Appellants and the 2nd Respondent.

2. The details of the collision and the issue as to liability are summarised at the beginning of Suffian, F.J.'s Judgment as follows:-

p.27 " On 4th February, 1969, Pang Cheong Yow the Plaintiff was riding in lorry BL 5223 as an attendant. The Lorry had left Kuala Lumpur and was on its way towards Bentong. The time was about 3.00 in the morning and there was mist about and the road was a winding one. The lorry rammed into the rear of a stationary lorry. As a result of the collision the Plaintiff was injured and he sues Thevannasan s/o Sinnapan, the driver of the stationary lorry (first defendant), and his employers, the Sin Cheong Hin Lorry Transport Co. (second defendant) and he also sues Kow Chai alias Chew Chin, the driver of the lorry in which he was travelling (third defendant) as well as his employer, Chop Seng Heng (fourth defendant).

The first issue to be determined is: who was to blame for this collision?

The Plaintiff alleges that both lorry drivers were to blame, or alternatively one or the other of them was to blame.

The driver and owner of the stationary lorry (first and second defendants) deny liability and instead blame the driver of the lorry that rammed into the rear of the stationary lorry. They say that the accident was caused either wholly or in part by the negligence of the driver of the other lorry.

The driver of the other lorry and his employer

(third and fourth defendants) deny liability and allege that the driver of the stationary lorry was wholly or partly to blame.

At the trial the driver of the lorry in which the plaintiff was riding as an attendant was not available to give evidence, nor was the attendant of the stationary lorry, and in the event only two eye-witnesses were called - the plaintiff attendant and the driver of the stationery lorry (first defendant).

Their evidence, needless to say, is conflicting."

3. The learned trial judge then summarised the said evidence and found the following facts:-

p.28 l.37 - p.29 l.31 " The facts as I find them are as follows. 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 question whether the collision occurred 30 feet after the exit of the left-hand bend, as contended by the plaintiff, or four or five chains

after, as contended by the driver of the stationary lorry (the first defendant) and by the second defendant, the evidence is as follows. The plaintiff is adamant that the collision occurred because the stationary lorry had parked too close to the bend. The first defendant denies this. The police sketch is unfortunately silent as to this very important point. 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 this evidence as neutral, because it is not disputed by the plaintiff that the collision occurred at a straight stretch of the road; all he says it that it was so near after the exit of the bend. Each of the reports made by the two drivers to the police on the day of the accident (neither mentions a bend at or near the scene) is also in my view neutral; because it is not to be expected that a person reporting to the police should go into details. Having given all this evidence the best consideration I can give it, I find it more probably 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."

On the issue whether the driver of the lorry behind was fatigued because of long hours of continuous work, the judge found:-

p.30, ll.9-15

" 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."

4. As regards apportionment of liability, the learned judge found that the 1st Defendant was 75% to blame and the 3rd Defendant 25%.

p.30, ll.16-30

5. The 1st and 2nd Defendants, Respondents herein, appealed to the Federal Court contending

(a) that on the facts as found by the trial judge, judgment for the whole amount should have been entered against the 3rd and 4th Defendants; and

(b) that the judge's findings that the stationary lorry was parked 30 feet from the exit of a blind corner, and that this is what caused the accident, were wrong.

6. The fourth Defendants, Appellants herein, cross-appealed, contending that if, as found by the trial judge, the accident was caused due to the parking of the stationary lorry 30 feet from the bend, then there was nothing that the driver of the other lorry could do to avoid the accident.

p.42

7. The appeal was heard in the Federal Court by Ong, C.J., Gill, F.J., and Ali, F.J. Gill, F.J., and Ali, F.J. both
pp.43-49 held, it is submitted correctly, that on the facts as found by the trial judge, the driver of the lorry in motion, the 3rd defendant, was fully to blame for the accident. No liability could be attributed to the driver of the stationary lorry, the 1st defendant, for parking 30 feet away from a
pp.49-54 blind corner. Ong, C.J., in a dissenting judgment, held (it is submitted wrongly) that no liability could be attached to the 3rd Defendants and the driver of the stationary lorry was 100% to blame for the accident.

8. In the result, the appeal of the 1st and 2nd Defendants
p.55 was allowed and the cross-appeal of the 4th Defendants dismissed and the costs between the parties in the action was ordered to be in terms of the Bullock Order.

pp.56-57 9. On the 3rd September, 1973, an Order was made granting the 4th Defendants, Appellants herein, final leave to appeal to His Majesty the Yang Dipertuan Agong.

10. The Respondents respectfully submit that the trial judge's judgment and the dissenting judgment of Ong, C.J. in the Federal Court are wrong. They submit that the majority judgments of Gill, F.J., and Ali, F.J. are right for the reasons stated therein and on the additional ground that the trial judge's finding that the accident took place 30 feet from a blind corner is erroneous for the detailed
pp.37-61 reasons given in the Memorandum of Appeal to the Federal Court.

11. The Respondents humbly submit that this appeal should be dismissed with costs for the following among other

REASONS

1. BECAUSE on the facts as found by the trial judge, no liability could be attributed to the driver of the stationary lorry.
2. BECAUSE Gill, F.J., and Ali, F.J. were right in so holding.
3. BECAUSE, in the alternative, the learned trial judge was wrong in holding that the stationary lorry was parked 30 feet from the corner of a blind corner and that this was the primary cause of the accident.
4. BECAUSE the accident was wholly due to the negligence of the driver of the lorry in motion.
5. BECAUSE the judgments of Gill, F.J., and Ali, F.J. are right and the judgments of the trial judge and of Ong, C.J. are wrong.

EUGENE COTRAN

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Respondents

3. PANG CHEONG YOW
(Plaintiff)

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