

19

19 of 1975

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 25 of 1973

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

Between

YAHAYA BIN MOHAMAD (Plaintiff) Appellant

-and-

CHIN TUAN NAM (Defendant) Respondent

RECORD OF PROCEEDINGS

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6/8 Westminster Palace Gardens,
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London WC1R 4LL.
Solicitors for the Respondent.

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

Between

YAHAYA BIN MOHAMAD

(Plaintiff)Appellant

- and -

CHIN TUAN NAM

(Defendant)Respondent

RECORD OF PROCEEDINGS

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Notice of Motion	14th June 1973
Affidavit of Yahaya Bin Mohamad	6th May 1973
Affidavit of Triptipal Singh	15th June 1973
Order granting Conditional Leave to Appeal	25th June 1973

EXHIBITS

Exhibit Mark	Description of Document	Date
P1	Police Report, No. 3282/68 (in Malay)	12th September 1968
	Police Report, No. 3283/68 (in Malay)	12th September 1968
	Key to Sketch plan (in Malay)	
	Key to Photographs (in Malay)	
	Particulars of Motor Car K 9192 (in Malay)	

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No.23 of 1973

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :-

YAHAYA bin MOHAMAD

Appellant
(Plaintiff)

- and -

CHIN TUAN NAM

Respondent
(Defendant)

RECORD OF PROCEEDINGS

No. 1

In the High
Court

Writ of Summons

No. 1

WRIT OF SUMMONS
IN THE HIGH COURT IN MALAYA AT ALOR STAR
STATE OF KEDAH
CIVIL SUIT NO: 137 OF 1969

Writ of
Summons
1st July 1969

BETWEEN

Yahaya bin Mohamad

Plaintiff

And

10 Chin Tuan Nam

Defendant

TAN SRI ONG HOCK THYE, P.S.M., D.P.M.S., Chief
Justice of the High Court in Malaya, in the name and
on behalf of His Majesty the Yang di-Pertuan Agong:

To:

Chin Tuan Nam,
19-C Bakar Arang,
Sungei Patani,
Kedah.

3.

front of the Esso Petrol Station, Sungei Patani.

2. Costs.

3. Such further or other Order.

Sgd. TRIPTIPAL SINGH & CO.

Solicitors for the Plaintiff
abovenamed.

In the High
Court

No. 1

Writ of
Summons
1st July 1969
(continued)

This Writ was issued by Messrs. Triptipal
Singh Co., Solicitors for the Plaintiff above-
named Yahaya bin Mohamad and the address for
service is at No.34, Beach Street, Topfloor,
Penang.

10

A copy of this Writ was served by me at

_____ on
the _____ day
Defendant above-named on _____ the _____ day
of _____ 1969 at the hour of _____ a.m./p.m.

Indorsed this _____ day of _____ 1969

(Signed) _____

(Address) _____

20

No. 2

Statement of Claim

IN THE HIGH COURT IN MALAYA AT ALOR STAR
STATE OF KEDAH
CIVIL SUIT NO: 137 OF 1969
(Writ issued the 1st day of July, 1969)

No. 2

Statement
of Claim
19th
September
1969

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

In the High
Court

—
No. 2
Statement
of Claim
19th
September
1969
(continued)

STATEMENT OF CLAIM

1. The Plaintiff until the said accident was a crab catcher and resides at Kampong Bahru, Baker Arang, Sungei Patani, Kedah.
2. The Defendant is a businessman and resides at No. 19-C, Bakar Arang, Sungei Patani, Kedah.
3. On the 12th day of September 1968 at about 12.30 a.m. the Plaintiff was cycling from his house at Bakar Arang along the left hand side of the road as one faces Sungei Patani and was proceeding towards Sungei Patani to go to the market. The Plaintiff was about 4 ft. from the grass verge. 10
4. As the Plaintiff was so proceeding, he noticed a vehicle coming from the direction of Sungei Patani and travelling in a zig-zag manner travelling from the left hand side of the road to the right hand side of the road.
5. The said car was being driven by the Defendant abovenamed. 20
6. That as a result of the negligent driving of motor car No. K 9192 the Defendant's car knocked into the Plaintiff's bicycle and pushed it to the centre of the road. The Defendant's car went back to its correct side of the road and landed on a ditch.

PARTICULARS OF NEGLIGENCE

- (i) Driving the said car in a zig-zag manner and causing it to go to the wrong side of the road. 30
- (ii) Failing to keep the car on its correct side of the road.
- (iii) Having allowed the car to go to the wrong side of the road, failing to keep a look out for other traffic that might lawfully be on the road and on their correct side.
- (iv) Failing to see the cyclist in sufficient time to take avoiding action.

7. That as a result of the said accident caused as aforesaid the Plaintiff received injuries and was admitted into the District Hospital.

In the High Court

No. 2

Statement of Claim
19th September 1969
(continued)

PARTICULARS OF INJURIES

- (1) Multiple injuries over most of scalp with the skull bone exposed.
- (2) Multiple laceration of the left side of neck.
- (3) Open fracture dislocation of the right knee with the fibula displaced medially.
- 10 (4) Fracture of right femur (mid-shaft).
- (5) Multiple abrasion all over the body.
- (6) Cerebral concussion (severe).

8. The Plaintiff was discharged on the 10th day of January 1969 and continued as out-patient. The Plaintiff's right leg is shortened by one inch and he walks with a limp.

9. The Plaintiff suffered the following Special Damage:

20	(i) Loss of income from 12.9.68 to 1.7.69 @ \$7/- per day (288 days)	... \$2016.00
	(ii) Damage to bicycle	... 50.00
	(iii) Travelling expenses for family to Hospital and back home	... \$ 100.00
	(iv) Special nourishing food	... \$ 250.00
	(v) Travelling expenses for Plaintiff to go to Hospital for out-patient treatment	... \$ <u>20.00</u>
	Total	... <u>\$2436.00</u>

30 10. The Plaintiff underwent great pain and suffering as a result of the said accident and used crutches for many months. He walks with a limp and is unable to pursue his former occupation.

In the High Court

No. 2

Statement of Claim
19th September 1969
(continued)

11. The Plaintiff therefore claims:

- (1) General Damages
- (2) Special Damages in the sum of \$2436/-
- (3) Costs.
- (4) Such further or other relief.

Delivered this 19th day of September 1969.

(Sgd.) TRIPTIPAL SINGE & CO.
Solicitors for the Plaintiff
abovenamed.

No. 3

Defence
29th September 1969

No. 3

Defence

10

IN THE HIGH COURT IN MALAYA AT ALOR STAR
CIVIL SUIT NO. 137 OF 1969

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

D E F E N C E

1. The Defendant has no knowledge of Paragraph 1 of the Statement of Claim and does not admit the same.

20

2. The Defendant admits Paragraph 2 and 5 of the Statement of Claim.

3. Save and except as hereinafter expressly admitted the Defendant denies each and every allegation contained in Paragraph 3 of the Statement of Claim.

4. Save and except as hereinafter expressly admitted the Defendant denies each and every allegation contained in Paragraph 4 of the Statement of Claim.

30

5. Save and except as hereinafter admitted the Defendant denies each and every allegation contained in Paragraph 6 of the Statement of Claim and denies each and every of the alleged particulars of negligence set out therein. The Defendant states that the accident was solely caused by or contributed to by the negligence of the Plaintiff himself.

In the High
Court

—
No. 3

Defence
29th
September
1969
(continued)

10 6. The Defendant avers that at the place and time in question he was driving his car K. 9192 in a proper manner on its correct side of the road going from Sungei Patani to Batu Arang when the Plaintiff who was cycling along the said road and coming from the opposite direction so negligently rode his cycle that he caused the same to collide into the Plaintiff's said car.

PARTICULARS OF NEGLIGENCE

- (i) Failing to keep any or any proper look out for other users of the road.
- 20 (ii) Failing to observe the presence of the Plaintiff's car coming from the opposite direction.
- (iii) Failing to keep to his proper side of the road.
- (iv) Suddenly and without any warning swerving into the path of the Plaintiff's oncoming car and when so close in front of the said car so as to deprive the Plaintiff of any opportunity despite the use of all care and skill to avoid the same or avoiding a collision with the cycle.
- 30 (v) Failing to brake, slow down, or do anything or to so manage and control his cycle as to prevent it colliding into the Plaintiff's car.

7. The Defendant does not admit any of the allegation contained in Paragraph 7 of the Statement of Claim.

40 8. The Defendant does not admit any of the allegation contained in Paragraph 8 of the Statement of Claim.

In the High Court

No. 3

Defence
29th
September
1969
(continued)

9. The Defendant does not admit any of the claim of Special Damages set out in Paragraph 9 of the Statement of Claim.

Delivered this 29th day of September, 1969.

Sgd: LIM EWE HOCK.

Solicitor for the Defendant.

Plaintiff's Evidence

No. 4

Yahay bin Mohamad
Examination
28th June 1972

No. 4

Yahaya bin Mohamad

PLAINTIFF: YAHAYA BIN MOHAMAD (45): a/s in Malay:-

Residing at Kg. Bharu, Bakar Arang, Sungei Patani; unemployed.

10

On 12.9.68 I was involved in an accident. Prior to accident I was a crab catcher for about 6 years. On 12.9.68 at about 12.30 a.m. I was cycling along the main road from my house and going towards Sungei Patani town to get fish as bait for crabs. I was cycling on the left-hand side of the road about 3 feet away from the grass verge. When I arrived in front of the Esso petrol station I saw a vehicle coming from the opposite direction. It was coming fast and in a zigzag manner. When it neared me it encroached into my path and knocked into me. I became unconscious. When the motor car came and knocked into me I was about 3 feet from the edge of the road.

20

I regained consciousness in District Hospital, Sungei Patani. I was discharged from hospital on January 10, 1969. (Ex. P.1(13) and (14). After my discharge I continued to attend as an out-patient about 2 or 3 times a week for many months.

30

Now I am unable to work because of my injuries and pain. The pain is on my right knee. I received injuries as a result of the accident. (Ex.P1(13) for list of injuries). As a result of the said injuries I am unable to perform my work as a crab catcher. This is because of the pain on my right leg. I cannot bend my knee nor can I squat.

Prior to the accident, I used to earn between \$7/- to \$10/- a day. Normally I used to catch from 18 to 20 katties per day. These are river crabs. I used to sell at 40 cents per kati. Crabs with eggs would be sold at \$1/- per kati. I used to sell crabs to a Chinese towkay named Teh Ah Kau at Bakar Arang, Sungei Patani. I did not sell to any other persons. I used to receive my sale money daily.

In the High Court

Plaintiff's Evidence

No. 4

Yahaya bin Mohamad
Examination
28th June 1972
(continued)

10 As a result of the accident I also incurred special damages:-

- (1) Loss of income from 12.9.68 to date of filing writ 1.7.69 at \$7/- a day - \$2,016/-.
- (2) My bicycle was damaged and a total wreck. I bought it for \$160/-. At time of accident it was about a year old. I claim \$50/- for it.
- (3) When I was in hospital, Sungei Patani, for about 3 months my wife and children visited me twice a day by trishaw. I am claiming about \$100/- for travelling expenses. I had to eat extra nourishing food at \$1.50 a day for about 2 months. They were like Milo, milk and cigarettes. It comes to about \$90/-.
- (4) After my discharge I had to go to the District Hospital for treatment for about 2 months. I had to go by tricycle at \$2/- to and fro. That cost about \$20/-.

20
30 When in hospital I experienced pain. My right leg was in plaster of paris. After my discharge I had to use crutches for about 1½ months.

on 19.5.72 I was examined by Mr. Young, Consultant, Penang.

I now claim damages arising out of the accident.

Xxd: Lim

Cross-examination

40 On the night in question I could not go closer to left edge of the road, say about one foot, because regulations for cyclists requires me to be about 3 feet away. There was nothing to stop me and I could have got nearer to my left.

In the High
Court

Plaintiff's
Evidence

No. 4

Yahaya bin
Mohamad
Cross-
examination
28th June 1972
(continued)

When I first saw the car coming from the opposite direction it was a distance of two telephone posts (about 191 feet). What I actually saw were two headlights about 190 feet away. It was already zigzagging from that distance. The lights were coming in a zigzagging manner. I carried on my cycling straight on. I thought there would be no danger to me. Yes, I went closer to the grass verge about 2 feet from the grass verge when I first saw the car zigzagging on my side of the road. It did not occur to me that there would be danger. The car zigzagged twice before the accident. The last zigzag just before the impact was about (points to opposite door) 40 feet from me. By zigzag I mean the car came into my side of the road and then went back to its side. By 40 feet I mean the car was that distance on my side of the road. (Witness demonstrates). The car knocked into the front wheel of my bicycle, on the front part. At time of collision the car was at an angle, diagonally across the road towards my left grass edge. After collision I do not know what happened to my bicycle and myself. Before the collision the car had encroached into my side of the grass verge.

10

20

A statement was recorded by the police when I was in hospital but I was still in a dazed condition.

It was dark at the time of the accident. The street lights were quite far away. There was no other vehicle on the road then apart from the defendant's car and my bicycle.

30

Put to me that I was cycling on the wrong side of the road going to Sungei Patani, I deny and say I was on the correct side.

Put to me that I tried to go back to my left side of the road about 20 feet away from the car, I deny that.

Put to me that the collision took place when I was diagonally across the road, I deny it.

40

Put to me that the car collided with the fork of my bicycle and knocked my leg, I say it collided with the front wheel of my bicycle.

Put to me that I was not keeping a proper look-out, I say I did keep a proper look-out.

In the High Court

Put to me that I did not see the car, I say I saw the oncoming car. I say that the car was coming quite fast. I first sensed danger when the car was about 40 feet away from me.

Plaintiff's Evidence

No. 4

Put to me that it is not true the car was zigzagging for about 190 feet away, I say it was.

Yahaya bin Mohamad
Cross-examination
28th June 1972
(continued)

10 Put to me the car was on its correct side all the time, I say it did encroach on my side of the road. When I sensed danger I went in about 2 feet to the grass verge. I was about one foot away from the edge of the grass verge.

After the injuries, I tried to get some job but I could not work. I cannot walk properly. I did not try in my condition. I get pain when I walked (Witness asked for a chair earlier to sit on as he was in pain after standing for about half an hour or so).

20 One kati of crabs depended on the size; sometimes 2 or 3 crabs to a kati. At times I earn more than \$7/- a day. \$7/- is my minimum. I used to catch crabs every day. Daily I used to catch between 18 to 20 katties. (Mr. Lim now not disputing items 9(ii), (iii), (iv) and (v) of special damages. Disputing 9(i)).

On the night in question, I had my bicycle light on, a dynamo front light and a rear red lamp.

30 RXN:

The car had headlights on - big lights. Before the collision I could see the car coming towards me. I moved further to my left. Before I could reach safety, the car came and knocked into me.

To Court:

My house is on the left side of the road as one faces Sungei Patani, i.e. in the low-cost housing scheme, Bakar Arang.

In the High
Court

—
Plaintiff's
Evidence

—
No. 4

Yahaya bin
Mohamad
To Court
28th June 1972
(continued)

No. 5

C. K. Young
Examination

I was going to get fish for bait from Sungei Patani market. I was not carrying any basket but only a plastic wrapper tied on the carrier of my bicycle.

No. 5

C. K. Young

P.W.1. C.K. Young: A/s in English:

Honorary Consultant, Thoracic Surgeon,
Adventist Hospital, Penang. (By consent Mr.
Young's written report is put in and marked Ex.P3). 10

I examined plaintiff on 19.5.72 and this is
my report. (Ex.P3).

Basing on my report I would say the plaintiff
has a fairly limited capacity to do work using
both legs. He has a short right leg by 2 inches
apparent shortening. He also has a stiff and
painful right knee. The apparent shortening is
due to mal-union of fracture of femur, i.e. the
thigh bone, and the tilting of the pelvis, i.e.
the two bones forming the base of the abdomen. 20
Any occupation requiring him to walk for a long
distance will give him pain in the knee. Squatting
with one straight leg is not an easy task. He
will not be able to squat with both legs bent.
He is not likely to fall if he walks for a long
distance but has to stop when he gets the pain.
His chances of remaining as a crab catcher is most
unlikely, e.g. climbing up and down river banks to
catch crabs. That will be a real struggle. I did
not have X-rays taken. He has in fact developed 30
osteo-arthritis of the right knee, i.e. a degenera-
tive process involving the joint. Chronic symptoms
are pain and stiffness and weakness of adjacent
muscle. It gets worse in time.

Xxd: Lim:-

Real shortening is one inch. (Ex.P1(13)). I assume that is the real shortening. Raising sole is one of standard treatment for shortening but pain is still there. As knee is getting more painful he would require to get the two bones joined together, i.e. the femur and the tibia. The leg would be shorter still, may be by another inch because the cartilage will have to be removed before the bones can be joined together.

10

I have the report from Sungei Patani hospital. (Refers to Ex.P1(13)). (Refers to injury (3) in Ex.P1(13)). That tells extent of injury to joint. Apart from report I would not know the actual treatment he had except for immobilisation in plaster cast and reduction of fracture dislocation of knee and prolonged physiotherapy.

20

The thigh bone (femur) would probably have set in better position but the knee would remain the same no matter what treatment he has received. It would be possible there would be less shortening if femur had been treated differently. It cannot be done now as all tissues are set up already.

RXN: No question.

To Court:

What I mean is one inch of real shortening and two inches of apparent shortening.

30

If patient insists in carrying on his former occupation the osteo-arthritis will worsen faster. The pain would increase and may require fusion of the joint.

No. 6

Omar Bin Mat Isa

P.W.2. OMAR BIN MAT ISA (40): a/s in Malay:

Residing at Kg. Bharu, Bakar Arang, Sungei Patani. A trishaw pedaller.

In the High Court

Plaintiff's Evidence

No. 5

G. K. Young
Cross-
examination
28th June 1972

To Court

No. 6

Omar Bin Mat Isa

Examination
28th June 1972

In the High
Court

Plaintiff's
Evidence

No. 6

Omar Bin Mat
Isa
Examination
28th June 1972
(continued)

I know the plaintiff; have known him for about 5 or 6 years. I know he met with an accident early one morning at Kg. Bharu near the Esso filling station.

At the time of the accident I was walking home from Sungei Patani town towards my house. I was walking on the left-hand side of the road. (Witness corrects evidence). As I was walking I saw plaintiff cycling on the other side of the road and going towards Sungei Patani. I did not speak to him. After I had passed him I heard the sound of a vehicle colliding. The sound came from my rear. I turned round. I saw a motorcar diagonally across the road. (Witness demonstrates with toy car). It was in the middle of the road. I saw the plaintiff in front of the car. He had fallen in front of the car near the offside of the car. The plaintiff was on his side of the road about 3 feet away from the left edge of the road. The bicycle was further in front of the plaintiff about 20 feet away. I approached the plaintiff. He was lying down on the road. The car was still moving on the road and went towards the drain on the left side as one faces Bakar Arang. When one of the wheels went into the drain, it came to a stop.

10

20

One Chinese came out from the car. I can recognise him. I used to see him before. (Points to defendant). The defendant came to where the plaintiff was. The defendant came out from the driver's seat. I noticed some others in the car. There were two others. I agreed to carry the plaintiff with one Indian man. He came about one or two minutes after the accident. We lifted the plaintiff to the side of the road. Later on a European lady stopped at the scene. No crowd gathered. The police came and took the plaintiff to hospital.

30

Before the accident I did not notice the plaintiff cycling on my side of the road. He was cycling on the other side.

40

The plaintiff lived in low-cost housing which is on the same side he was cycling. I know the plaintiff was dealing in crabs.

I gave statement about the accident to the police.

Xxd: Lim:-

I did not see the collision myself. I only heard the sound of the collision and immediately turned back. The car was still moving. Yes, I turned back my head in about a second after hearing the collision.

10 I did not see the bicycle being thrown or flung in the air. It was already lying on the road when I saw it. I was about half telephone posts distance when I turned back (about 96 ft.). (32 yds.). I could see the plaintiff lying on the road in front of offside of the car when I turned my head back. I could also see the bicycle. The bicycle was on the plaintiff's side of the road. The car at the time when it was diagonally across the road was about 45° (Witness demonstrates).

When I went up to the scene I saw broken glass pieces on the road. It was on plaintiff's side of the road.

20 Put to me that I am not telling the truth, I say I saw it.

Put to me I came to the scene well after the accident, I deny it.

I made a statement to the police about a month or two after the accident. The police came to see me.

30 I know the plaintiff. No member of the plaintiff or plaintiff himself asked me to make a statement. I did not tell anyone about the accident.

When I carried the plaintiff, he was bleeding from the head and leg. A lot of blood spilt on the road.

Put to me that the car was never in a diagonal position as indicated, I say I saw it like that.

Put to me the plaintiff was cycling on the wrong side of the road, I deny it.

Put to me I did not see the plaintiff at all before the accident, I say I did.

In the High Court

Plaintiff's Evidence

No. 6

Omar Bin Mat
Isa
Cross-
examination
28th June 1972

In the High Court

Plaintiff's Evidence

No. 6

Omar Bin Mat Isa
Cross-examination
28th June 1972
(continued)

I know what the present proceedings is about.

Put to me I never saw the defendant coming out of the car, I say I saw him.

Put to me that there were no others in the car and that the defendant was alone, I say there were two others apart from the defendant in the said car.

I was present at the scene when the police came to investigate. I did not tell them I saw the accident. The police did not ask me but bystanders did.

10

Rxn: No question.

To Court

To Court:

The defendant came out of the car as soon as one of the tyres went into the drain; not at the time when the car was moving towards the drain.

There was blood on the road at the place where I saw the plaintiff lying.

I waited and watched the police examining the scene and taking measurements.

20

Defendant's Evidence

No. 7

Chin Tuan Nam
Examination
28th June 1972

No. 7

Chin Tuan Nam

DEFENDANT: CHIN TUAN NAM (41): A/s in Hokkien:-

Residing at 19C, Bakar Arang, Sungei Patani; a partner in mining company.

On 12.9.68 at about 12.10 a.m. I was driving a car K 9192 along Sungei Patani/Bakar Arang Road, proceeding towards Baker Arang from Sungei Patani.

When I reached near the Esso filling station, an accident happened. I was driving on the left side of the road. The nearside wheels were about 3 feet from the grass verge. My car is an Open Kapitän. I was doing over 20 m.p.h. As I drove along I saw from a distance the light of a bicycle from the opposite direction. The light was on my

30

left side of the road. At that time it was about 100 yards in front of me. I continued driving on.

When my car was about 20 feet away from the bicycle the cyclist suddenly rode across the road to my right. I found he was so close to me that I swerved to my left in order to avoid the cyclist. I knocked into his bicycle at the cyclist's right leg. The front offside headlamp knocked into the cyclist.

10

After the collision one of the wheels of my car landed into a hole on the left side of the road. I then got out of my car. I went to the cyclist and lifted his body from the lying position to a sitting position. Then an Indian came. I told him to remove the injured person to the side of the road and that I wanted to telephone the police at the Shell filling station opposite. I straightaway went to telephone the police.

I did not see F.W.2 at all that night.

20

When I drove my car that night the headlights were on, dipped. It was dark that night. It is not so that I drove on the other side of the road. I was alone in the car that night. I did not see cyclist falling. I only heard sound of 'bom'.

The bicycle was then lying near the centre white line on my side of the road.

Xxd: Triptipal:-

30

My whole case is that the cyclist was travelling on my side of the road and he moved across to the other side.

It was not so cyclist was on my right side of the road and crossed to my left. (Ex.P1(4) referred). I only lifted cyclist to a sitting position. I did not lift him and place him on the side of the road. My report on that part is not correct.

When I knocked the cyclist he was still on my side of the road. I was about 3 feet away from grass verge. The right leg of the cyclist was at an angle when my car knocked into him.

I saw bicycle falling on the same spot where

In the High Court

Defendant's Evidence

No. 7

Chin Tuan Nam
Examination
28th June 1972
(continued)

Cross-examination

In the High Court

it was knocked down. At time of impact I saw the bicycle thrown away towards the front.

Defendant's Evidence

Put to me that I had gone to the wrong side of the road, I deny it. I did not knock into cyclist on his side of the road.

No. 7

Chin Tuan Nam
Cross-examination
28th June 1972
(continued)

I have seen P.W.2 (Omar) before. I know him by sight. No grudge or ill-will. It is not true that Omar was at scene that night.

Put to me I was driving fast, I deny it. I never had an accident before. That was the first time.

10

Put to me there were two others in the car, I say I was alone.

I don't know the male Indian who came to the scene that night.

Put to me that I am not telling the truth, I say I am.

Rxn: No question.

To Court

To Court:

I only saw the bicycle being flung. I did not see where it landed.

20

Adjourned to 2.45 p.m. for submission

Hearing resumes.

As before.

No. 8

No. 8

Defendant's Counsel's Submission
28th June 1972

Defendant's Counsel's Submission

Mr. Lim Ewe Hock submits:-

Issue of facts in Pleadings. Statement of Claim, paragraphs 3 to 6. Particulars of negligence.

30

Speed not been pleaded and not in issue.

Defence - paragraphs 4, 5 and 6.

Only issue whether Court accepts plaintiff's version or defendant's version on balance of probabilities.

In the High Court

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No. 8

Both sides told conflicting version of accident. San Seong Choy & Ors. v. Yuson Bien (1963) 29 M.L.J. 235, at pg. 236, second column - H.

Defendant's
Counsel's
Submission
28th June 1972
(continued)

10 Test where both sides tell conflicting stories photos, plan and measurements of scene, nature of damage to vehicle provide the most reliable guide by which evidence can be tested.

Evidence:

1. Bicycle damaged on its offside, i.e. right-hand side - Ex. P1 - photo (1). Bicycle lying on its nearside but inwards from offside - photo 6. No. (6). Paintwork of car found on offside of bicycle.

2. Plaintiff's injuries:

20 P1 (13) - 3rd and 4th injuries. Both on right side, i.e. right femur and right knee. Submit injuries caused by direct impact with offside headlamp of car.

3. Motorcar - damage on offside - Ex.P.11 R.I.M.V.'s report - paragraph (7) - 3 damages on offside. 4th - front windscreen smashed.

Submit motorcar must have hit plaintiff's leg and then bicycle somewhere near front fork.

Plaintiff's version - collision with front wheel of bicycle. Submit cannot be so.

30 Photo 5 - no damage to front wheel at all; tyre not punctured. No big dent on front wheel. Two possibilities:-

Car went across the road at an angle and collided with bicycle which was parallel to the road, (plaintiff's version).

2. Car was parallel to road but bicycle diagonal to road - according to defendant's version.

In the High
Court

—
No. 8

Defendant's
Counsel's
Submission
28th June 1972
(continued)

If plaintiff's version did happen, then the bicycle would have been flung forward on to grass verge and the car would have followed the bicycle on to right hand grass verge as one faces Bakar Arang.

Glass pieces would have scattered on right edge of road.

P.W.2's evidence as to behaviour of car after accident cannot be accepted.

Reasons - P.W.2 did not see the actual impact. Only turned head back. Not possible for defendant to knock bicycle and cut to the other side of the road. Car travelling over 20 m.p.h.

10

Must be distance and time. In space of one second impossible for P.W.2 to say car diagonally across the road.

P.W.2 must be tested with sketch plan - Ex. P1(5).

1. Glass pieces more on left side of road.
2. Front wheel of bicycle at 'M' on right side of road. Possible wheel pushed to right side.
3. Bicycle fell on plaintiff's side of road.
4. Blood spot 'L' - photo 4 of P.1(8). Agree that triangular spot is the blood - 5'8" from 'C' i.e. right-hand side of the road.

20

'K' - slipper of plaintiff 7ft. 10 ins. from 'B' - left edge.

'F' - bicycle seat - on right edge of road.

Submit probable defendant's version true - bicycle thrown forward, as it did, wheel split, glass pieces show more or less point of impact on defendant's side of the road near centre white line.

30

Plaintiff's version - collision took place one foot from edge of road. Car diagonally across the road. Defendant could not have been 5'8" from right edge of the road.

Sketch plan - no brake marks on road shown.

Photo 3 - facing towards Bakar Arang, showing brake mark went at 2 feet beyond centre white line and not a foot from right-hand side - showing swerve to left.

Submit plaintiff is bound by his pleadings.

Point of collision (impact) not known.

Applying test - clear that car could not go over to right edge of road and on to the grass verge.

Submit P.W.2 unworthy of credit. Did not make statement until 2 months before (sic) accident. Tended to exaggerate in favour of plaintiff. Said bicycle fell on plaintiff's side of the road. So were the glass pieces, he said. Turned his head, could see bicycle on defendant on road when car was blocking view, on a dark night about half chain away.

Question is - why car zigzagged. R.I.M.V. report - all parts satisfactory. Submit car did not zigzag in manner of plaintiff's evidence.

Plaintiff in evidence could not tell much.

Collision not on bicycle front wheel.

Damages:-

Yew Chek Hwa v. Mathews (1970) 1 M.L.J. xvi.; similar injuries \$18,900/-. (\$12,000/- for pain and suffering and \$6,900/- for loss of earnings).

Sia Heng Teng v. Lee King Soong (1970) 1 M.L.J. xvi, general damages \$22,476/-.

Abdul Majid v. Pahang Lin Siong Motor Co. Ltd. (1963) 29 M.L.J. 346. On appeal awarded \$18,000/-.

Kassim bin Gonjong & Anor. v. Pahang Lin Siong Motor Co. Ltd. & Anor. (1964) 30 M.L.J. xlv. General damages \$10,000/-.

Chua Kian Piow v. Pang Kah Soon & Anor. (1965) 1 M.L.J. xii. General damages \$16,000/-.

In the High Court

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No. 8

Defendant's
Counsel's
Submission
28th June 1972
(continued)

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In the High Court

No. 8

Defendant's Counsel's Submission
28th June 1972
(continued)

Plaintiff can do other work which does not require strain on leg, if he succeeds in this case.

£7/- a day for crab catching is too much.

No. 9

Plaintiff's Counsel's Submission
28th June 1972

No. 9

Plaintiff's Counsel's Submission

Triptipal replies:-

1. Did car zigzag as described by plaintiff?
2. Did car go to wrong side of the road?
3. Did car swerve back to its side of the road to land in ditch?

10

Answers - question of fact and credibility attached to plaintiff and P.W.2 (Omar).

Defendant's version of how accident happened impossible because defendant said he was 3 feet from side of road.

3rd photo - brake marks diagonally across road.

Width of road 23ft - about 11 ft. plus on either side. Brake marks support evidence of P.W.2. Saw car moving diagonally across the road. Car had gone to wrong side of road.

20

Plaintiff's version - cycling on his left and car coming in zigzag manner at 20 m.p.h., probable to happen. Car moving, did not stop.

Broken glasses in middle of road. Blood only on plaintiff's side of the road.

Both agreed impact took place near fork.

Plaintiff's evidence corroborated by P.W.2 - brake marks. Defendant cannot explain how brake marks found in photo - Agreed Bundle.

No reason for plaintiff to move on right and cross to left. House is on left side.

In the High Court

Defendant's version re helping plaintiff and different version in report - Pl(4).

No. 9

Defendant not sure in his report - right to left still not clear. Now changed his story.

Plaintiff's Counsel's Submission (continued) 28th June 1972

Plaintiff could have fallen on road and landed where 'L' is on sketch; point 'K' shoe and bicycle seat 'F' and wheel.

10 Defendant's version 3ft. from left edge; could have pulled up his car easily to avoid accident.

If Court accepts that defendant encroached as in plaintiff's version, and that plaintiff had taken all precautions to move on to the road, not guilty of Contributory negligence.

Damages:

20 Three heads: 1. Pain and suffering. 2. Loss of amenities; 3. Loss of future earnings. 1 and 2 in region of \$12,000/- to \$15,000/- depending on view of Mr. Young's evidence.

3. Income average of \$7/- per day because of seasons. Age 45. Life expectancy at 55, i.e. 10 years more to carry on. P.W.1's expert evidence - should come to about \$16,000/-.

Interest be paid from date of writ filed.

30 Ghulam Hussain v. Shaharom & Anor. (1966) 2 M.L.J. 207; G. Sivarajan v. Swee Lam Estates (M) Ltd. (1966) L.M.L.J. xvii.

Lim asked to touch on question of interest:

Interest - section 11, Civil Law Ordinance - should be based on general damages from day of judgment; only then debt is due.

Foong Nan v. Sagadevan (1971) 2 M.L.J. 24 F.C. Case No. (13) on test of cases referred in above case by Federal Court also important.

Sgd: Syed Agil Barakbah.

In the High
Court

No. 10

Judgment

No.10

Judgment
19th August
1972

IN THE HIGH COURT IN MALAYA AT ALOR STAR
CIVIL SUIT NO. 137 OF 1969

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

J U D G M E N T

This is a claim for general and special damages by the plaintiff who was a crab catcher by profession prior to an accident which occurred on September 12, 1968, at about 12.10 a.m. According to the Agreed Statement of Facts, the plaintiff was cycling along Bakar Arang and towards Sungei Patani town. The defendant was driving a motorcar No. K9192 and proceeding towards the opposite direction. There was a collision between the said motorcar and the plaintiff's bicycle. The plaintiff alleges that as a result of the accident he suffered injuries and as a result his right leg is shortened by one inch and he walks with a limp. The plaintiff further alleges the accident occurred due to the negligent driving of the defendant. The defendant, on the other hand, denies negligence and maintains that the accident was solely caused by or contributed to by the negligence of the plaintiff himself.

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Mr. Triptipal Singh appeared for the plaintiff and Mr. Lim Ewe Hock for the defendant.

30

The facts are simple but the evidence conflicting since both sides gave different versions.

According to the plaintiff, he was cycling (sic) above 3 feet away on his side of the road towards Sungei Patani town to get baits for catching crabs. When he arrived in front of the Esso petrol station he saw headlights of a motor vehicle coming from the opposite direction about 190 feet away, in a zigzag manner. He did not sense any danger and

carried on cycling along the road. When the vehicle was about 40 feet or so away from him, it zigzagged a second time, encroached into his path and knocked into him. He became unconscious and recovered later in the hospital. His only witness, Omar bin Mat Isa, testified that before the accident he was walking home from Sungei Patani town on the left side of the road. He saw the plaintiff cycling on the other side of the road towards Sungei Patani. After he had passed him he heard the sound of vehicles colliding. He turned round and saw a motorcar diagonally across the middle of the road. He also saw the plaintiff had fallen in front of the car near its offside. The plaintiff was lying on his (plaintiff's) side of the road about 3 feet away from the left edge. The bicycle had fallen in front of the plaintiff about 20 feet away. He further said the car was still moving on the road and proceeded towards a drain on the left side as one faces Bakar Arang. It came to a stop when one of its wheels went into the drain. The defendant then came out from the driver's seat. He noticed two other persons in the car. Then he and one Indian man who reached the scene later helped to carry the plaintiff to the side of the road.

The defendant testified that he was driving his Opel Kapitän saloon alone that morning at over 20 m.p.h. along the main road. From a distance he saw the light of a bicycle coming towards him on the left side of the road about 100 yards. He continued driving. When his car was about 20 feet away from the bicycle, the cyclist suddenly rode across the road towards the defendant's right. The defendant swerved to the left to avoid the cyclist but the cyclist was so close to him that the front offside lamp of the car knocked the bicycle and the cyclist's right leg. One of the wheels of his car landed in a hole on the left side of the road. He got down from the car, approached the cyclist who was lying on the road bleeding from the head and lifted him to a sitting position. An Indian came and on his request moved the cyclist to the side of the road. The defendant went to telephone the police at a Shell filling station opposite. He denied ever seeing Omar at all that morning. The defendant when tested in cross-examination revealed a vital contradiction to his own testimony. In his police report made

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Court

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Judgment
19th August
1972
(continued)

In the High
Court

—
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Judgment
19th August
1972
(continued)

about forty minutes or so after the accident, he said on reaching in front of the Esso station he saw a male cyclist coming from the right side of the road from Bakar Arang going towards Sungei Patani. When the cyclist was near him he crossed towards the left side of the road and collided with his car. The cyclist fell down. He got out of the car, carried the cyclist and placed him by the side of the road. In his evidence, as stated earlier, the defendant stated the reverse. He appeared to be confused as to the plaintiff's position before the accident. If the version in his report which he made when the accident was still fresh in his mind, though perhaps he could have been excited is true, then his car could not have knocked into the plaintiff's right side causing the injuries on the right. Apparently in the circumstances the injuries would have been sustained on the plaintiff's left side.

10

On that issue alone the defendant's version in rebuttal of the plaintiff's allegation is vague. Nevertheless, it is only proper to examine the other evidence available considering the conflicting stories given on either side, before making any definite conclusion. The test applicable is as approved by the Court of Appeal in San Seong Choy & Ors. v. Yuson Bien, (1) namely, where the parties on either side tell conflicting stories, the photographs, plans and measurements of the scene and the nature of the damage to each vehicle provide the most reliable guide by which such evidence can be tested. The first that should be examined is the sketch plan and the measurements appearing on pages 5 and 6 of the Agreed Bundle of Documents, Ex.Pl. The stretch of road on which the accident occurred appears to be straight with a slight bend to the left towards Tikam Batu. It is 23 feet 6 inches wide with centre line marked. The glass fragments from the defendant's car, a shoe belonging to the plaintiff and the plaintiff's bicycle lying across the road are all shown to be on the left-hand side of the road, i.e. the defendant's side, as one faces towards Tikam Batu. So is the defendant's motorcar which has its front nearside wheel in a drain lying on the grass verge facing Tikam Batu. The bicycle is lying about 20 feet 6 inches away from the shoe, 8 feet away from the left side of the road (marked B). Its rear wheel (G) is 27 feet 10 inches from the right

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(1) (1963) 29 M.L.J. 235.

front wheel of the motorcar and 31 feet from the rear wheel. The plaintiff's shoe is 7 feet 10 inches from the left side of the road. However, a blood spot marked at 'L' is in the plaintiff's portion of the road and is 5 feet 8 inches from the right edge of the road. Thereafter the front wheel of the plaintiff's bicycle is found on the right grass verge 3 feet 3 inches away from the right edge. The seat of the bicycle is also found on the same side at 'F', 2 feet 6 inches away from the right edge.

In the High
Court

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No.10

Judgment
19th August
1972
(continued)

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These alone do not tell much of how the accident happened without recourse to the damages suffered by the vehicle and the photographs. The damage to the defendant's car as described in the Certificate of the Road Transport Department Examiner (Ex. P1(11)) is all on the offside. This is also evidenced by photographs Nos. 7 and 8 of Ex.P1(8). The bicycle is also damaged on its right-hand side with its body bent slightly towards the right as shown in photographs Nos. 1 and 5. The front wheel though detached from it does not show any damage. The apparent damage which would indicate the point of impact appears to be the fork.

30
The sum total of all these pieces of evidence put together shows, to my mind, that the offside front head lamp of the defendant's motorcar had come into contact with the right-hand side of the plaintiff's bicycle probably at its fork causing the front wheel to be dislodged and the seat to be flung out to the right grass verge of the road. This version is claimed by both the plaintiff, as corroborated by Omar, and the defendant in his evidence which, as I have stated, are in conflict with his police report. The main question is in what manner did the accident take place? There are two probable versions, namely:-

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(1) That the defendant's car zigzagged and went across to the wrong side of the road and knocked into the Plaintiff who was cycling straight ahead on the left side towards Sungei Patani; that is the plaintiff's version.

(2) That the plaintiff rode his bicycle diagonally across the road from the defendant's left to the right on the path of the oncoming car which when trying to avoid him by swerving to its left

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Court

No.10

Judgment
19th August
1972
(continued)

knocked into the right side of the bicycle. This is the defendant's version.

Taking into consideration all the evidence before me in the circumstances of the case, I am of the considered opinion that the plaintiff's version is more probable. Even if I put aside the defendant's conflicting stories, and the plaintiff's corroborated version, the following factors support my contention:-

(1) The blood spot on the plaintiff's side of the road clearly indicated without any iota of doubt that the plaintiff had fallen on or near the spot. 10

(2) This is further supported by the finding of the front wheel of the bicycle and the seat well on the plaintiff's side of the road on the grass verge.

(3) The brake marks made by the motorcar as shown in photograph No.3 Ex.P1(8) point clearly that the said motorcar had come from the plaintiff's side of the road, i.e. from its wrong side. The two brake marks appear to emerge from the plaintiff's side of the road as one faces Tikam Batu. That tends to support the evidence of Omar who saw the defendant's car first diagonally across the centre of the road on the plaintiff's side and then moving to its left into the defendant's side to stop with one of its wheels in the drain. In the light of this glaring evidence, to my mind, the impact took place well on the plaintiff's side. Although the glass fragments, the shoes and the bicycle are all on the other side, they are near the centre white line. It is natural during a sudden and unexpected accident of this nature for a heavier vehicle, i.e. the motor car, which was moving, to push the bicycle, a very much lighter vehicle, forward by the force of the impact. On the other hand, if the defendant's version were to be considered, I would expect from the evidence before me that the accident would have taken place well on the defendant's side of the road. According to him, the plaintiff suddenly crossed the road from the defendant's left to the right and in an attempt to avoid the plaintiff he swerved his motorcar to the left but knocked into the plaintiff. As evidenced by the sketch plan, the photographs and the surrounding facts, I am of the opinion that his version in the 20 30 40

circumstances is not in the least probable.

I have no hesitation therefore to conclude on the balance of probability that the defendant was negligent.

In the High
Court

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No.10

Judgment
19th August
1972
(continued)

10 The next point to consider is whether the plaintiff contributed to such negligence. Although in the early part of cross-examination the plaintiff said he was cycling about 3 feet from the left side of the road and could have gone nearer, he did not sense any danger when he first saw the motorcar zigzagging about 190 feet away. The road was clear at that time of the morning and there was no other vehicle about according to evidence. It is only reasonable in the circumstances for him not to expect the car to come to his side of the road as he saw it proceed in a normal manner after the first zigzag. But when the car was about 40 feet away, it zigzagged a second time and on the spur of that moment he rode his bicycle about a foot or so nearer his side of the road. It was at this juncture that the impact took place. I do not think in the circumstances that the plaintiff could have reasonably foreseen that by proceeding along his side of the road and not going further on the grass verge that he would cause danger to himself. I hold therefore that he is not guilty of any negligence or contributory negligence.

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30 As regards liability, the plaintiff, as a result of the accident, suffered six injuries, among which were an open fracture dislocation of the right knee with the fibula displaced medially; fracture of the right femur (midshaft) and severe cerebral concussion. He was hospitalised for about four months and after discharge he had to attend hospital occasionally as an out-patient. His right leg has been shortened by one inch as a result of the fracture of the right femur.

40 The Consultant Surgeon, Mr. C.K. Young, who examined the plaintiff on May 19, 1972, (see his report Ex.P3 which was produced by consent) stated that the plaintiff walked with a bad limp on the right and right knee in straight position but not distressed with pain. The spine showed moderate scoliosis and the para-vertebral muscles of the lumbar spine were taut. The right side of the

In the High
Court

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No.10

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19th August
1972
(continued)

pelvis tilted upwards. The right leg showed two inches apparent and one inch true shortening. The right femur showed marked anterior and outward bowing. The right thigh showed $1\frac{1}{4}$ inches and calf $\frac{1}{2}$ inch wasting. The right knee showed 5 degrees flexion deformity and a flexion movement of only 10 degrees. The plaintiff has a fairly limited capacity to do work using both legs. That means that any occupation requiring him to walk for a long distance will give him pain in the knee. He will not be able to squat with both legs bent but will have to do so with one leg stretched, which is not an easy task. His chances of working as a crab catcher is most unlikely because he would find it difficult to climb up and down river banks for the purpose of catching crabs. He has in fact developed osteo-arthritis of the right knee which will result in chronic symptoms, namely, pain, stiffness and weakness of the adjacent muscles. It will get worse in time. As the knee is getting more painful he would require to get the two bones, i.e. the femur and the tibia joined together. In that case the right leg would be shorter still by about another inch or so because the cartilage will have to be removed before the bones can be joined together. From the nature of the injuries, particularly the ones described above, the patient must during earlier treatment have immobilisation in plaster cast and reduction of fracture dislocation of the knee and prolonged physiotherapy. It is clear that the plaintiff must have suffered considerable pain.

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The plaintiff is 45 years of age. I estimate his daily income in catching crabs, considering the seasons, weather, etc., to be an average of £5/- per day, i.e. about £150/- a month.

Generally when a person gains his livelihood by some kind of manual work and suffers injury which diminishes his dexterity, it is normally necessary for him to take up some other occupation. It is notoriously difficult for a manual worker to change into any form of occupation except the least skilled and the worst paid. His injuries would almost certainly disqualify him for hard and active work. If at all, he may be able to perform much lighter work not involving the use of his leg and squatting and, in the circumstances, will not be able to earn as much as before. That will entail

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probable loss of earnings for which I award a sum of \$10,422/-. This in my view is fair and reasonable.

In the High Court

No.10

Judgment
19th August
1972
(continued)

I would refer to a number of comparable cases as guidance, and in particular to Abdul Majid v. Pahang Lin Siong Motor Co. Ltd. (2) decision of the Court of Appeal. The appellant in that case was a 23 year old hawker who suffered injuries which are similar to those suffered by the plaintiff in the present case, including one inch shortening of the right leg. The award of \$10,000/- for general damages was increased to \$18,000/- on the ground of misapprehension of facts; the court of first instance having paid insufficient regard to the question of probable loss of earnings, That was in 1963.

10

The other is a more recent Singapore case of Yew Chee Hwa v. Mathews, (3) the facts of which are also quite similar to the present case. Tan Ah Tah, F.J. awarded the sum of \$18,900/- as general damages made up of \$12,000/- for pain and suffering and loss of amenities and \$6,000/- for actual loss of earnings.

20

In Sia Heng Tong v. Lee King Soong, (4) Pawan Ahmad J. awarded to a 29 year old rubber tapper whose earning was fixed at \$120/- per month, a sum of \$22,476/- under the head of general damages, the sum being made up of \$15,000/- for pain and suffering and loss of amenities and \$7,476/- for loss of future earnings. The facts involve quite similar injuries as the present one including one inch shortening of the right leg.

30

As regards special damages, paragraph 9(ii), (iii), (iv) and (v) are agreed upon. This comes to \$260/-. (Item (iv) being \$90/- instead of \$250/-). As regards item (i), I assess the loss of income from 12.9.68 to 1.7.69 at \$5/- per day, i.e. \$1,440/-. The total sum under special damages is therefore \$1,700/-.

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Having regard to the above and bearing in mind

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- (2) (1963) 29 M.L.J. 346;
(3) (1970) 1 M.L.J. p. xvi;
(4) (1970) 1 M.L.J. xvi.

In the High
Court

No.10

Judgment
19th August
1972
(continued)

the increase in the cost of living, I award the sum of \$22,422/- as general damages made up as follows:-

- (1) \$10,422/- for loss of future earnings;
- (2) \$12,000/- for pain and suffering and for loss of amenities.

There is therefore judgment for the plaintiff in the sum of \$22,422/- in respect of general damages, and the sum of \$1,700/- in respect of special damages and costs.

10

With regard to interest claimed, I award 6% per annum on \$12,000/- for pain and suffering and loss of amenities but not on the sum of \$10,422/- for loss of future earnings. (See Foong Nan v. Sagadevan,⁽⁵⁾ per Ong, C.J.). The interest should run from the date of service of the Writ to the date of trial.

As regards special damages, it would be with interest at half the rate, i.e. 3% per annum from the date of accident to the date of trial. (See Jefford & Anor. v. Gee⁽⁶⁾ as approved in Foong Nan v. Sagadevan (supra)).

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(Sd) (SYED AGIL BARAKBAH)

JUDGE,

HIGH COURT, MALAYA

Alor Star,
August 19, 1972.

Mr. Triptipal Singh for Plaintiff.

Mr. Lim Ewe Hock for Defendant.

(5) (1971) 2 M.L.J. 24, 26
(6) (1970) 2 W.L.R. 702, 703.

No. 11

In the High Court

Order

No.11

IN THE HIGH COURT IN MALAYA AT ALOR STAR
STATE OF KEDAH
CIVIL SUIT NO. 137 OF 1969

Order
19th August
1972

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

10 BEFORE THE HONOURABLE MR. JUSTICE SYED AGIL BARAKBAH,
JUDGE, MALAYA

IN OPEN COURT

THIS 19TH DAY OF AUGUST 1972

O R D E R

This Action coming up for hearing on the 28th day of June 1972 and adjourned to this day for Judgment in the presence of Mr. Triptipal Singh of Counsel for the Plaintiff abovenamed and Mr. Lim Ewe Hock of Counsel for the Defendant abovenamed
20 AND UPON READING the Pleadings AND UPON HEARING the evidence and the submission of the Counsel This Court doth Order that this case do stand for Judgment And the case coming up for Judgment this day in the presence of Mr. Triptipal Singh Counsel for the Plaintiff and Mr. C. Murugeson on behalf of Mr. Lim Ewe Hock Counsel for the Defendant and the Court finding the Defendant solely liable for the accident IT IS ORDERED that the Defendant abovenamed do pay to the Plaintiff the sum of \$22422/- as General Damages and the sum of \$1700/- as Special Damages AND IT IS FURTHER ORDERED that the Defendant do pay to the Plaintiff interest at the rate of six (6) per cent per annum on the sum of \$12000/- from the date of the service of the Writ to date of trial and interest at the rate of three (3) per cent per annum on the Special damages from the date of accident to date of trial. AND IT IS LASTLY ORDERED that the costs of and incidental to this
30 action be taxed on party and party basis on the
40 Higher Scale of the Second Schedule to the Rules of

In the High Court

No.11

Order
19th August
1972
(continued)

the Supreme Court, 1957 and when taxed be paid by the Defendant to the Plaintiff's Solicitors Messrs. Triptipal Singh & Co.

Given under my hand and the seal of the Court this 19th day of August 1972.

By the Court,

(L.S.)

Sd. Illegible

Assistant Registrar,
High Court,
Alor Star, Kedah.

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No. 12

In the Federal Court

No.12

Memorandum
of Appeal
27th
September
1972

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. X 99 OF 1972

Between

Chin Tuan Nam

Appellant

And

Yahaya bin Mohamad

Respondent

In the Matter of Civil Suit No. 137 of 1969
In the High Court in Malaya at Alor Star

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

MEMORANDUM OF APPEAL

Chin Tuan Nam, the Appellant above-named, appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice Syed Agil Barakbah, given at Alor Star, on the 19th day of August, 1972, on the following grounds:

1. That the Learned Trial Judge having applied

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the principal laid down in *San Seong Choy & Ors. v. Yuson Bien* (1963) 29 M.L.J. page 235 drew wrong inferences from the evidence of the sketch plan and the damage to the vehicles namely that the Plaintiff's version of the accident is more probable.

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2. That having found as a fact that the off-side front headlamp of the defendant's motor car had come into contact with the right hand side of the Plaintiff's bicycle probably at its fork causing the front wheel to be dislodged and the seat to be flung out to the right side grass verge the Learned Trial Judge was wrong in drawing the inference that the collision took place on the Plaintiff's side of the road.

3. That the Learned Trial Judge was wrong in failing to draw the natural inferences

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(a) that if as is alleged by the Plaintiff the collision took place less than 3 feet from the left edge of the road as one faces Sungei Patani town, the Defendant's car would have landed on the left grass verge as one faces Sungei Patani and not on the other side of the road,

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(b) that the Plaintiff's bicycle would have landed on the left grass verge as one faces Sungei Patani and not on the Defendant's side of the road 8 feet from the left grass verge as one faces Tikam Batu,

(c) that the glass pieces could not have been found where they were found that is on the Defendant's side of the road,

(d) there would not have been sufficient space or time for the defendant's car to come back and land on the left grass verge as one faces Tikam Batu.

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4. That the Learned Trial Judge was wrong in holding that the brake marks made by the motor car as shown in photograph 3 Exhibit P.1(8) points clearly that the said motor car had come from the Plaintiff's side of the road that is from its wrong side for reason -

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(1) that there was no evidence that these brake marks were caused by the Defendant's car,

(2) that even if these brake marks were caused by the Defendant's car it did not come from the right edge of the road as one faces Tikam Batu but it started at the most about 2 feet from the centre white line.

5. That the Learned Trial Judge failed to consider 10
that on the Defendant's version of the accident it was highly probable for the blood spot to be where it was found and also for the front wheel of the bicycle to be thrown to the other side of the road and for the glass pieces and bicycle to be found where they were found.

6. That the Learned Trial Judge was wrong in saying that there was a contradiction between the Defendant's report and his evidence in Court for reason that the Malay version of the police report could mean that the Plaintiff was cycling towards Sungei Patani following the right side of his road that is on the wrong side. 20

7. For all or any of the above grounds, the Appellant says that the Learned Trial Judge should not have entered judgment for the Respondent against him with costs, and the Appellant therefore prays that the said decision of the Learned Trial Judge be set aside accordingly.

Dated this 27th day of September 1972. 30

Sgd. LIM EWE HOCK

Appellant's Solicitor.

To:

The Registrar,
Federal Court,
Kuala Lumpur,

and to -

The Assistant Registrar,
The High Court in Malaya
at Alor Star

and to -

Yahaya bin Mohamad or his Solicitors,
Messrs. Triptipal Singh & Company,
34, Beach Street,
Penang.

The address for service of the Appellant is
at the office of his Solicitor Mr. Lim Ewe Hock of
No.13, Church Street (Top Floor) Penang.

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Appellant's Written Submission

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A. - Submit that Learned Trial Judge did not base
his finding on the credibility of the witnesses;
that his judgment is not on a finding of direct
facts; that in the final analysis he reached his
decision only after testing the evidence of the
plaintiff and his witness by the evidence of the
sketch plan, photographs and damage to the
vehicles and the injury to the plaintiff.

Ref: P. 37 (B 3)

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Submit therefore that this Court is in as
good a position as the Learned Trial Judge to
draw inferences from the undisputed facts as
evidenced in the sketch plan and key; the photo-
graphs, the damage to the vehicles and the injury
to the plaintiff.

Submit Benmax v. Austin Motor Co. Ltd. applies.

Ref: LR 1955 AC pg. 370. Headnote and the
judgments of Viscount Simonds and Lord Reid.

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Ref: Federal Court (Civil Appeals)
(Transitional) Rules 1963. Rule 6(1); Rule 8(4).

B. - Submit that the Learned Judge was quite right
in inferring from the damage to the vehicles that
"the offside front headlamp of the defendant's
motor car had come into contact with the right
hand side of the plaintiff's bicycle probably at
its fork causing the front wheel to be dislodged
and the seat to be flung out to the right grass
verge of the road"

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Ref: Pp. 34 (last line) to 35 (line 6).

The evidence in support of the Learned Judge's finding are as follows:-

Ref: Pp. 34 (lines 21 - 30).

(1) the damage to the Defendant's car is on the offside.

Ref: Certificate of the Road Transport Examiner. Exh. P.1(11). Ref: photos of the damaged car. Exh. P.1(8).

(2) the damage to the bicycle is also on its right hand side. 10

Ref: Photos of bicycle, Exh. P.1(8) Photo 1, 5 and 6. Bicycle in Photo 1 is lying on its near side; it shows bicycle bent inwards from the right. Front wheel in Photo 5 is not damaged at all. Bicycle in photo 6 shows a dent on the chain guard on the offside.

(3) Paint marks of the car was found on the offside of the bicycle - Ref. Exh. P.1(10) paragraph 6. Ref: Exh. P.1(8), photo 6. 20

(4) the major injury to the plaintiff is:

open fracture dislocation of right knee with the fibula displaced medially; fracture of right femur.

Ref: Exh. P.1(13).

Submit the injury was more probably caused by impact with a car than by a fall.

Submit offside front of car collided into right leg at the knee and femur.

C. - Submit that having quite rightly found that the car had come into contact with the right hand side of the plaintiff's bicycle, the Learned Judge was quite right in holding that there were two probabilities. 30

Ref: P. 35(lines 11 - 21).

Submit that this is of paramount importance.

The impact could only be caused if

(a) the car went across the road at an angle and collided with the bicycle which was parallel to the road - plaintiff's version

or

(b) the car was parallel to the road but bicycle was diagonal to the road - defendant's version.

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10 D. - Having so far quite correctly found as aforesaid, submit that the Learned Trial Judge erred in drawing the inference that followed.

Ref: P. 35 (line 23) to P.37 (line 4).

Submit that the Learned Trial Judge forgot that the collision was on the off-side of the bicycle when the car was diagonally across the road and facing the left grass verge as one faces Sungei Patani whilst the bicycle was parallel to the road.

20 If the collision had occurred whilst the bicycle was 3 ft. from the grass verge.

See P. 10 (lines 7 - 9) to P. 14 (line 13).

The Plaintiff actually changed his evidence See p. 13 (lines 1 - 3), P.14 (lines 14 - 16), but this is neither here nor there.

The most probable consequences would have been

(1) the bicycle would have been pushed or thrown forward to land on the left grass table as one faces Sungei Patani.

30 (2) the car would have followed the bicycle to end up on the left grass table as one faces Sungei Patani.

(a) Submit that there would be no time or space for the car to come back onto the road and end up on the left side grass table as one faces Bakar Arang.

Ref: Sketch plan Exh. P.1(5).

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As regards time and space at 30 m.p.h. in one second a car travels 44 ft. Car was travelling at over 20 m.p.h.

At point of collision car was still diagonally across the road facing the left grass table as one faces Sungei Patani. P.13 (lines 11 - 16).

To get back onto the road the driver would have to swerve sharply to the left almost a 90° turn.

Submit if this manoeuvre takes 1 second car would have gone at least 30 feet (i.e. at 20 m.p.h. distance covered in a second is 30 ft.) into the grass table before it could begin to swerve to the left. 10

Grass table is not even 30 feet wide.

Ref: Sketch plan P.1(5) C to D is 17 ft.

(b) Submit that car would probably have hit one of the guide stones or the electric post whilst going into the grass table or coming onto the road again. 20

Ref: Sketch plan P.1(5) N1, N2, N3 are guide stones. E is electric post.

Sketch plan is not quite accurate. Ref: Ex. P.1(8) Photos Nos. 3 and 4.

The lorong kechil in the sketch plan can be seen clearly in photos No. 4 and also in photo No.3.

There is an electric post at the side of the lorong kechil. In between this electric post and the next electric post towards Bakar Arang there are two guide stones. See photo No. 3. Nearer towards Sungei Patani on the other side of the lorong kechil there is another guide stone. 30

Submit that the evidence of the photographs should be preferred to that of the sketch plan as to the number of guide stones and electric post on the left grass table as one faces Sungei Patani. The sketch plan is of help however in respect of the measurements that were taken.

Submit that collision probably occurred at a point below L & O in the sketch plan nearer towards Sungei Patani.

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The blood stains on the road, L. is shown in Photo No.4. It is in the centre of the road. Ref. P.1(10) No.4. It is a trail and not a spot as shown in the sketch plan. L. probably marked the end of the trail nearest to the left edge of the road as one faces Sungei Patani.

10 The blood trail is nearer to the lorong than the tyre marks in P.1(8) Photo No. 3. In photo No. 4 the tyre marks do not appear. They should appear if the tyre marks were nearer towards Bakar Arang and the lorong than the blood trail.

This fact is important when I come later on to test the evidence of the witness Omar P.W.2 with the evidence of the sketch plan and photos etc.

20 For the moment, I would submit that if collision took place at left edge of the road as one faces Sungei Patani on a point below L. nearer towards Sungei Patani, the car in getting into the grass table (as it must do) and coming out again, must hit one of the guide stones or the electric post at the edge of the lorong ketchil.

(c) The distance between G, where the bicycle was found, and L the blood trail is only 29 feet 10 inches. The bicycle fell in front of the car.

Ref: sketch plan P.1(8).

30 If the collision took place 10 ft below L nearer towards Sungei Patani there is a distance at the maximum of 39 ft 10 inches for the driver to swerve violently to the left to bring the car back on the road and then to end up in the ditch of the left side of the road as one faces Bakar Arang.

Submit that this is a physical impossibility bearing in mind the speed at which the car was travelling i.e. more than 20 m.p.h.

40 (3) the glass pieces would have been found on the left grass table as one faces Sungei Patani and

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not on the Defendant's side of the road.

Ref: Sketch plan Exh. P.1(5).

O denote the glass pieces.

Ref: Key P.1.(7).

Most of the glass pieces were on the left side of the road as one faces Bakar Arang.

Glass pieces came from the windscreen of the car and the offside head lamp.

See P.13 R.I.M.V. report.

See P.1(8) Photo No.2.

See P.1(8) Photo 7 and 8.

Submit that in a collision between a car and a bicycle glass pieces from the moving car's windscreen and headlamp (if they were broken) would fall forward of the point of collision and following the direction the car was moving at the time.

Submit that as the collision occurred whilst car was diagonally across the road and facing the left grass table as one faces Sungei Patani, the glass would be thrown forward and on to the grass table.

Submit, it is not possible for the glass pieces to be found where they were found by the Investigating Officer.

E. - Submit that the Learned Trial Judge was wrong in holding that the brake marks made by the motor car as shown at P.1(8) Photo No.3 points clearly that the said motor car had come from the Plaintiff's side of the road i.e. from the wrong side and "tends to support the evidence of Omar".

Ref: P.36 (lines 4 to 15).

Submit that photo 3 at P.1(8) shows that the offside brake mark was at the very most 2 ft from the centre white line. Obviously the Learned Trial Judge did not find that these tyre marks

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were made before the collision. He held that the tyre marks point clearly that the said car "had come from the plaintiff's side of the road" i.e. after the collision and therefore it "tends to support the evidence of Omar" which is at P.18 (lines 1 to 10)

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Submit that Omar is not a witness of truth.

10 (1) Firstly, on his own admission he turned back his head in about a second after hearing the collision.

Ref: P.19 line 7.

Submit it takes Omar less time to turn his head than for the driver to turn the steering wheel violently to the left.

In one second the car could have travelled only 44 ft and if plaintiff's version is true the car would still be moving into the grass table at the time when Omar had turned his head.

20 It could not be diagonally across the middle of the road.

See P.18 (lines 3 to 4).

(2) If Omar's evidence corroborates the Plaintiff's version of the accident then the point of collision was not somewhere before L. nearer towards Sungei Patani,

Ref: Sketch plan P.1(5).

but somewhere, a long way, before the beginning of the brake marks at P.1 (8) Photo 3 nearer towards Sungei Patani.

Ref: P.1(8) photo 3

30 i.e. the point of collision is well out of the picture in photo 3.

Unfortunately there is no measurement of the length of the brake marks by the Investigating Officer. But judging from the photo it covered the distance between more than 3 white sections of the

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broken centre line at least 40 ft.

If Omar's evidence supports the Plaintiff's version

(i) the bicycle must have been thrown 29 ft 10 inches, the distance between the bicycle and the blood trail, plus the space between the blood trail and the end of the tyre marks, see Photo 4, plus the length of the tyre marks, plus the distance between the beginning of the tyre marks at bottom of Photo 3 and the point of collision.

10

(ii) the plaintiff must have been thrown the distance of the bicycle less 29'10".

(iii) the glass pieces must have been thrown about the same distance as the plaintiff.

If these were so why did not Omar see the cycle or the plaintiff in the air.

See P.19 (lines 10 and 11).

(3) In Photo 3 the tyre marks are not 45° diagonally across the centre of the road as Omar testified.

20

See P.19 (line 9).

(4) Omar's evidence is that he saw the plaintiff "fallen in front of the car near the offside of the car".

See page 18 (line 4).

He was on the other side of the road to the Plaintiff

See P.17 (line 11 of P.W.2's evidence)
about 96 ft. back.

See P.19 (line 12).

30

How then could he see the plaintiff when the car was diagonally across the middle of the road at an angle of 45° and obstructing his view?

Submit that Omar's evidence is valueless.

Submit, that the Learned Trial Judge was wrong in finding that the plaintiff's version was corroborated by Omar.

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See P.35,
and that the tyre marks support the evidence of Omar
P.36.

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10 Submit, offside tyre mark in Photo 3 was no more than 2 ft from the white centre broken line, that the tyre marks curved gently to the left; that they did not appear to have come from the left edge of the road as one faces Sungei Patani.

F. - Submit that the incontrovertible evidence of the sketch plan and key and photos and damage to the car and the bicycle support the plaintiff's version of the accident, which is well summarised by the Learned Trial Judge at P.35.

Ref: to Photo 3.

20 Submit the collision took place near the end of the brake marks in Photo 3. At the point of collision the bicycle was diagonally across the road moving back to its proper side of the road. The car was swerving slightly to its left. The collision was between the offside headlamp of the car and the offside of the bicycle where the Plaintiff's right leg was.

30 After impact the plaintiff was thrown forward and to the right to land at the blood spot in photo 4. The glass pieces fell towards the front of the car more or less in line with the plaintiff but on the plaintiff's side of the road.

See sketch plan at Ex.P.1(5)

The bicycle was thrown forward ahead of the glass pieces to land at G in sketch plan.

The broken wheel ran off towards the right to end up near the guidestone.

Ref: Sketch plan.

The seat also was thrown to the right to end

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up at F on sketch plan.

The car ended up on left grass table as one faces Bakar Arang in the direction of the tyre marks in Photo 3.

Submit that this is Defendant's version at the trial.

And in his defence

See Ex.P.1(12) particulars (iii).

G. - Submit that Malay version of report shows clearly that what was meant was that the bicycle was cycling towards Sungei Patani taking (or following) the right side of the road (i.e. the wrong side of the road). Report does not say that bicycle was taking the right side of Defendant's road or that the bicycle crossed from the Defendant's right to the left.

10

H. - Submit that Plaintiff was caught between the horns of a dilemma. He could explain the position of the bicycle, and glass pieces, and where he fell, only if the car collided into the left side of his bicycle whilst coming out of the grass table, and not going towards the grass table, and the damage to the bicycle and the car and the injury he sustained proved that the collision could not have so happened.

20

See Page 17.

Page 18.

Submit that this is not a case of apportionment of blame between the parties and that Brown v. Thompson 1968 1 W.L.R. 1003 does not apply.

30

Submit that Wong Thin Yit v. Mohamed Ali 1971 2 M.L.J. pg 175 is a case of apportionment.

Also that Gill F.J. dismissal of the appeal was on the ground that "the judgment appealed from was based almost entirely on findings of fact and that it is not open to this court to set aside such findings of fact".

See Page

Submit this appeal is distinguishable in that the Learned Trial Judge's finding is not based on findings of direct facts. It is based on inferences from direct facts.

See page 35.

Ref: Ong C.J.'s judgment at page

Submit that it is clear from the Learned Trial Judge's grounds of judgment that he relied mainly on the sketch plan and photographs.

10 Ref: Page 35.

In Wong Thin Yit's case the judge did not say categorically that he accepted the version of the plaintiff i.e. that the accident happened on the grass verge. The finding of fact which he made was that the accident took place at a point somewhere near the left side of the road. Gill F.J. did not want to set aside this finding of fact.

20 In this appeal the Learned Trial Judge accepted the version of the accident of the plaintiff.

See Page 35.

Submit that if it can be shown that the Learned Trial Judge was wrong in his inferences then this court should put the matter right.

See Benmax v. Austin Motor Co. Ltd. 1955 A.C.370.

See Kerry v. Carter 1969 1 W.L.R. 1372 at p.1376.

30 See Ong C.J.'s judgment in Wong Thin Yit v. Mohamed Ali 1971 2 M.L.J. p.174.

See Lim Soh Meng v. Krishnan 1967 1 M.L.J. p.8.

See 1970 2 M.L.J. p.28, p.235.

Submit, it is for plaintiff to prove his case and that he had failed to prove it and that if the Defendant had elected not to give evidence and to

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submit no case, the claim ought to have been
dismissed because it is inherently improbable.

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See Yeoh Cheng Han v. Official Administrator
Malaya 1972 2 M.L.J. p.7.

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Sgd. LIM EWE HOCK.

Solicitor for the Appellant.

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No. 14

Respondent's
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Respondent's Written Submission

San Seong Chey v. Yuson Bien (1963) MLJ p.235.

Road Collision - vehicles travelling in
direction. Conflicting stories - the photos,
plans and measurements of the scene and the nature
of the damage to each vehicle must provide the
most reliable guide by which such evidence can be
tested.

10

The Learned Trial Judge had held at page 32 -
33 that "on that issue alone the defendant's
version in rebuttal of the Plaintiff's allegation
is vague and earlier he said "he appeared to be
confused as to the Plaintiff's position before the
accident.

20

Nevertheless the Learned Trial Judge goes on
to consider the other evidence. Submit this was
not necessary because Plaintiff's evidence
corroborated by the witness (p.35).

After describing the damages etc. he states
that the version of the accident claimed by
Plaintiff is supported by Omar, and Defendant whose
evidence is in conflict with his police report.

The Learned Trial Judge at p.35 states: Even
if I put aside the Defendant's conflicting stories
and the Plaintiff's corroborated version the factors
set out thereunder support this contention.

30

Read p.35,

let us test the Defendant's version with the
damage found.

(1) P. - I was about 3 ft. away from grass verge. He first states: I saw bicycle falling on the same spot where it was knocked - - but then changed this - at the time of impact I saw the bicycle thrown away towards the front. Then at p. he states in answer to the Court: I only saw the bicycle being flung. I did not see where it landed.

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Respondent's
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Firstly:

Width of road is 23'6".

10 Therefore $\frac{1}{2}$ side of the Defendant's side is 11'8".

If Defendant knocked into Plaintiff when he was 3 ft. and let us say that the car is 6' wide then the entire accident must have taken place at least 3 ft. inside the Defendant's side from the centre white line. If this is correct how did we find brake marks in photo 3 (p.8 and p.11).

Defendant's Counsel himself at p. submitted in Lower Court - See

20 Secondly:

If Defendant's version of accident is correct the bicycle would have been found near the drain on the left because he alleged he knocked the cyclist when he (Defendant) had swerved his car to the left. Demonstrate position of car and bicycle. (P.

30 The Plaintiff demonstrated in Court how the accident took place. At p.13 he said: At time of collision the car was at an angle, diagonally across the road towards my left grass edge - Before the collision the car had encroached into my side of the grass verge.

See Foong Nan v. Sagadevan (1971) 2 MLJ.

p 24 * 27 1st Col. pp E

regarding the conflicting stories etc.

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Coi Choon Lye v. Lim Boon Kheng & ors. (1972)
1 MLJ 153 FC.

Statement to Police admissible for purpose of
impeaching credit of witness under Sec. 145.
155(c) of Evidence Ordinance 1950.

Yeoh Cheng Han v. Off Admin. (1972) 2 MLJ p.7 & 9.

- as has been said in these courts again and
again, the position of the vehicles after the
accident can afford absolutely no proof as to
their respective positions on the road immediately
before or at the moment of collision unless there
is the clearest evidence to show that the
vehicles stopped dead upon impact.

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Wong Thin Yit v. Mohamed Ali (1971) 2 MLJ 175 &
179 E. FC.

"To sum up on the question of liability, it
would seem clear that the judgment appealed from
was based almost entirely on findings of fact and
that it is not open to this Court to set aside
such findings of fact. I would therefore dismiss
the appeal as regards liability.

20

Tay Koh Yat Bus Co. Ltd. v. Chua Chong Cher & ors.
(1972) 1 MLJ p.183 (P.C.)

When findings of primary fact by the Learned
Trial Judge had been based on his view as to the
comparative credibility of opposing witnesses and
that view has been reached by observation of the
witnesses as they gave their evidence, the
appellate tribunal needs very strong grounds to
justify a reversal of such findings.

30

- (i) p 36 G
- (ii) p 37 B2
- (iii) p 39 B
- (iv) p 39 F.

Yeoh Cheng Han v. Off Admin. (1972) 2 MLJ p.7 @
p.10 B

"In the absence of anything to show that

there are inherent improbabilities about the Plaintiff's evidence, I do not see how it can be said that he had not proved his case on the balance of probabilities.

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Uval & Anor v. Zainal (1970) 1 MLJ p.74

The Court (C.A.) will not interfere with the apportionment of liability made by the Judge at the trial unless there is some error of law or fact in this judgment.

Defendant's
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10 Chew Boon Ee v. L. Ramanathan Chettiars & ors.
(1959) MLJ p.235 PC.

A Court of Appeal has no doubt jurisdiction to reverse a trial Court on all questions of fact and law but it is only in rare cases that an appeal Court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness.

Keppel Bus Co. Ltd. v. Sa'ad bin Ahmad (1972)
2 MLJ p.121 @ 123 E

20 The principles which an appellate tribunal ought to bear in mind when considering a complaint that the trial Court has made wrong findings of primary facts have been stated by numerous authorities but it will be sufficient to cite a passage from Lord Sumner's opinion in the Montestroom case at p.40 (1927) AC 37 @ p.40).

30 "Of course, there is jurisdiction to retry the case on the shorthand note, including in such retrial the appreciation of the relative values of the witnesses It is not, however, a mere matter of discretion to remember and take account of this fact; it is a matter of justice and of judicial obligation. None the less, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived
40 at, merely on the result of their own comparisons

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and criticisms of the witnesses and of their own
view of the probabilities of the case."

Gulwant Singh v. Abdul Khalik (1965) 2 MLJ p.55.

Held with regard to the findings of fact, the
questions which arose were essentially questions
of credibility. In the circumstances it would be
wrong for the Federal Court not to accept the
Judge's findings.

Government of Malaysia & Anor. v. Chin Keow (1965)
MLJ p.91.

10

Where there was no question of credibility
involved at the trial, the appeal Court could form
an independent opinion about the case and draw its
own inference from the facts.

Sgd. TRIPTIPAL SINGH.

.....
Triptipal Singh
Advocate & Solicitor,
Penang.

No.15

Judgment
14th April
1973

No. 15

Judgment

20

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

FEDERAL COURT CIVIL APPEAL NO. 99 OF 1972

Between

Chin Tuan Nam ... Appellant

And

Yahaya bin Mohamed ... Respondent

(In the Matter of Civil Suit No. 137 of 1969.
In the High Court in Malaya at Alor Star

	Between		In the
Yahaya bin Mohamed	...	Plaintiff	Federal Court
	And		—
Chin Tuan Nam	...	Defendant)	No.15
Coram: Azmi, L.P.			Judgment of
Suffian, F.J.			Ong Hock Sim
Ong Hock Sim, F.J.			F.J.
			14th April
			1973
			(continued)

JUDGMENT OF ONG HOCK SIM, F.J.

10 This is an appeal from the judgment of the High Court at Alor Star awarding damages to the respondent who was knocked down while riding his cycle by motorcar No. K.9192 driven by the appellant.

20 On September 12, 1968 at about 12.30 a.m. (given as 12.10 a.m. in the Agreed Statement of Facts) the respondent was cycling from Bakar Arang towards Sungei Patani. The appellant was driving his motor-car from Sungei Patani in the direction of Bakar Arang. A collision occurred between the two. The only issue to be decided is whose version is more probable adopting the test in San Seong Choy & others vs Yuson Bien (1).

30 The main ground of appeal was that the learned judge drew wrong inferences from the evidence of the sketch plan and the damage to the vehicles in holding the respondent's version to be more probable. It was urged also if the accident happened in the manner described by him, the cycle, the car and the glass fragments should not be where they are shown in the sketch. These two and another ground that the judge erred in holding that there was a contradiction between the Police report and the appellant's evidence in Court will be dealt with later in the examination of the evidence produced.

40 It is convenient however here to dispose of another ground and to say it is agreed that there is no evidence whatsoever to support the finding that the brake marks on photograph 3 of Exhibit P.1(8) were made by the motor-car and for the conclusion that impact took place on respondent's

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Federal Court

—
No.15

Judgment of
Ong Hock Sim
F.J.

14th April
1973

(continued)

side. The other ingerence as to the front wheel and the seat being on the respondent's side of the road had been explained by the judge himself when he said that the front wheel was probably dislodged by the car knocking the cycle at its fork, causing at the same time the seat to be flung out to the right grass verge. The blood spot only indicated the respondent might have fallen there but would not be conclusive as to the place of impact.

According to the respondent, he was cycling along his left side about 3 feet from the grass verge. He saw the headlights of a motor vehicle coming from the opposite direction about 191 feet away in a zigzag manner. When some 40 feet away, it zigzagged a second time, encroached onto his path and knocked into him. The car knocked into the front wheel of the bicycle, on the front part. At the time of collision, the car was at an angle, diagonally across towards the grass verge on respondent's side of the road. The respondent called a witness, Omar bin Mat Isa. In his judgment, the learned judge said "Omar testified that before the accident he was walking home from Sungei Patani town on the left side of the road. He saw the plaintiff cycling on the other side of the road towards Sungei Patani." It does not appear that the evidence in Court is clear on this point. The witness is recorded as saying: "At the time of the accident, I was walking from Sungei Patani town towards my house. I was walking on the left-hand side of the road. (Witness corrects evidence)." No note was made what was the nature of the correction. I am inclined to think ~~tht~~ the witness changed his testimony to say he was walking along his right-hand side of the road, following section 71 of the Highway Code which advises pedestrians: "At night it is most important to walk facing the traffic and not with your back towards it." I shall refer to this aspect of the evidence later. He went on to say he saw the respondent cycling on the other side of the road going towards Sungei Patani. After passing he heard the sound of a collision and turned round. He saw a car diagonally across the road in the middle of the road, and the plaintiff in front of the off-side of the car. The respondent was about 3 feet from his left edge of the road with the cycle 20 feet further in front. When he turned round and saw all this, the car was still moving and went towards the drain on the

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other side, that is, the left side of the road as one faces Bakar Arang.

In the
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No.15

Judgment of
Ong Hock Sim
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14th April
1973

(continued)

10 The appellant gave a version diametrically opposed to that of the respondent. According to him, he was proceeding towards Bakar Arang. He saw ahead of him the light of a bicycle coming from Bakar Arang on his (appellant's side of the road. When it was 20' away, the cyclist suddenly rode across in front of his car to go towards
20 appellant's right side of the road. He swerved to his left but was unable to avoid knocking the cyclist. The offside head lamp knocked into the cycle. In cross-examination the appellant said "My whole case is that the cyclist was travelling on my side of the road and he moved across to my right. It was not so (true?) cyclist was on my right side of the road and crossed to my left. (Ex.P.1(4) of report referred)." I may here refer to the relevant portion of the report and
30 translation. "Apa bila sampai tentang Esso dapat satu laki2 penunggang basikal datang dari ara Bakar Arang menghala ka Sg. Patani mengikut jalan di-sabelah kanan jalan, apa-bila dekat dengan saya ini penunggang basikal potong ka-kiri Jln. dan bertoh dengan M/Car saya." "On reaching in front of the Esso station, I saw a male cyclist coming from (riding on) the right (-hand) side of the road from Bakar Arang going towards Sungei Patani. When the cyclist was near me, he crossed towards
30 the left side of the road and collided with my car."

40 The judge was quite correct when he said that the main question is in what manner the accident took place. There is the respondent's version, namely that appellant's car zigzagged and went across to the wrong side and knocked into the plaintiff who was cycling straight ahead on the left side facing Sungei Patani. Then there is the appellant's version, namely that the respondent road his bicycle diagonally across the road from the appellan't left to the right on the path of the on-coming car which when trying to avoid him by swerving to its left knocked into the right side of the bicycle.

The judge was also correct in holding that the offside front head lamp of the motor car came into contact with the right-hand side of the bicycle. The Certificate of the Road Transport

In the
Federal Court

—
No.15

Judgment of
Ong Hock Sim
F.J.
14th April
1973
(continued)

Department Examiner of the damage to the motor-car, photographs of the cycle and the injuries sustained by the respondent fully support this finding. Where however the judge erred, in my view, is where he concluded that the appellant when tested in cross-examination revealed a vital contradiction to his testimony. I have already quoted the relevant portion of the report and translation with bracketed interpolations of my own and also the cross-examination. With respect, I am unable to find any contradiction between them and his evidence in Court. There was no confusion as to the plaintiff's position and the inference drawn by the learned judge that "If the version in his report which he made when the accident was still fresh in his mind, though perhaps he could have been excited is true, then his car could not have knocked into the plaintiff's right side causing the injuries on the right. Apparently in the circumstances the injuries would have been sustained on the plaintiff's left side," arose from the judge's taking the view that the respondent was riding along his proper side of the road when in fact he was riding on the right-hand (incorrect) side of road from Bakar Arang to Sungei Patani.

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I have earlier said I would return to Omar, the witness. If he was walking along the right-hand side of the road towards Bakar Arang, then his evidence "As I was walking, I saw plaintiff (the respondent) cycling on the other side of the road and going towards Sungei Patani" would confirm what the appellant said in his police report. The witness can hardly be believed when he lied so brazenly. Turning round, after hearing impact, he said, he saw the car diagonally across at an angle of 45° in the middle of the road, plaintiff (the respondent) in front of the offside about 3' from left edge, the cycle 20 feet further away and the car still moving towards the drain on the left side. Now the car did that reversal of direction, when it should have charged straight on after impact, if plaintiff was at the time only 2' from his left grass verge, and turned round to go to the other side without hitting the guide (mile) stones and electric lamp post (see sketch plan), is not in evidence. It is, I think, quite unexplainable. In cross-examination, this witness continued to lie. He said "The bicycle was on the plaintiff's side of the road" when the sketch plan showed its

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10 rear wheel as 8' from the appellant's side and 15½' from the plaintiff's. The broken glass was, he said, also on plaintiff's side. The learned judge had himself found "The glass fragments from the defendant's car, a shoe belonging to the plaintiff and the plaintiff's bicycle lying across the road are all shown to be on the left hand side of the road, i.e. the defendant's side, as one faces Tikam Batu." This could not be so if, as the respondent claimed, he was knocked about 2' from his left grass verge. He had even exaggerated in his evidence and said "Before the collision, the car had encroached into my side of the grass verge." If this was so and if he was cycling straight ahead on his left side, the car would have to turn out from the grass verge and would knock him on his left side. It has to be remembered that the second zigzag when the car and bicycle were 40' apart was the one which caused the collision. There was no traffic at the time and I do not think it matters whether the appellant was travelling along the centre or more on the other side. The respondent has to substantiate his story. It was for him to prove his case. That, in my view, he failed to do and the physical evidence photographs, plans, measurements and the damage do not bear out his story.

30 Paragraph 6 of his Statement of Claim stated "the Defendant's car knocked into the Plaintiff's bicycle and pushed it to the centre of the road". This would seem to detract from his version in Court. The unreliability of his witness has been demonstrated. I find therefore his version unacceptable on the balance of probabilities. The appellant was penalised for one "vital contradiction", which I think was due to a misreading of the report and to the mistranslation. I am of the opinion that his version is in the light of the sketch plan and other evidence the more probable.

40 I would allow the appeal and set aside the judgment with costs here and in the Court below. The deposit will be refunded to the appellant. The sum of \$24,122/- paid into Court pending appeal will also be returned to the Appellant.

TAN SRI DATOS JUSTICE H.S.ONG
(ONG HOCK SIM)
JUDGE
FEDERAL COURT

In the
Federal Court

—
No.15

Judgment of
Ong Hock Sim
F.J.

14th April
1973
(continued)

In the
Federal Court

PULAU PINANG
14th April, 1973.

No.15

Azmi, L.P. and Suffian, F.J. concurred.

Judgment of
Ong Hock Sim
F.J.
14th April
1973
(continued)

Solicitors:

Mr. Lim Ewe Hock of 13, Church Street,
(Top Floor), Penang for Appellant.

Mr. Triptipal Singh of Triptipal Singh & Co.,
34, Beach Street (2nd Floor),
Penang for Respondent.

10

No.16

No. 16

Order
14th April
1973

Order

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT PENANG
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 199 OF 1972

Between

Chin Tuan Nam

Appellant

And

Yahaya bin Mohamad

Respondent

(In the Matter of Civil Suit No.137 of 1969
in the High Court in Malaya at Alor Star

20

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant)

CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT, MALAYSIA
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT
THIS 14TH DAY OF APRIL, 1973

30

O R D E RIn the
Federal Court

No.16

Order
14th April
1973
(continued)

THIS APPEAL coming on for hearing on 19th December 1972 in the presence of Mr. Lim Ewe Hock of Counsel for the Appellant and Mr. Triptipal Singh of Counsel for the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING the Submissions of Counsel as aforesaid IT WAS ORDERED that this Appeal do stand for Judgment AND the same coming on for Judgment this day in the presence of Mr. Lim Ewe Hock of Counsel for the Appellant and Mr. Triptipal Singh of Counsel for the Respondent That this Appeal heard is hereby allowed AND IT IS ORDERED that the Judgment of the Honourable Mr. Justice Syed Agil given on the 19th day of August 1972 at the High Court in Alor Star be and is hereby set aside AND IT IS ORDERED that the costs of this Appeal and the costs in the Court below be paid by the Respondent to the Appellant AND IT IS FURTHER ORDERED that the sum of \$24,122/- paid into Court pending Appeal be paid back to the Appellant.

AND IT IS LASTLY ORDERED that the \$500.00 paid into Court as security for costs of this Appeal be refunded to the Appellant.

GIVEN under my hand and the seal of the Court this 14th day of April, 1973.

(L.S.) Sd. E.E. SIM
Chief Registrar,
Federal Court,
Malaysia.

No. 17

No.17

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

Order
granting
Final Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agung
3rd September
1973

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO.99 OF 1972

Between

Chin Tuan Name

AppellantAnd

Yahaya bin Mohamed

Respondent

In the
Federal Court

No.17

Order
granting
Final Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agung
3rd September
1973
(continued)

(In the Matter of Civil Suit No.137 of 1969
in the High Court in Malaya at Alor Star

Between

Yahaya bin Mohamed

Plaintiff

And

Chin Tuan Nam

Defendant)

CORAM: SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA.
GILL, JUDGE, FEDERAL COURT, MALAYSIA.
ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

10

IN OPEN COURT
THIS 3RD DAY OF SEPTEMBER 1973

O R D E R

UPON MOTION made unto Court this day by Mr. Ranjit Singh on behalf of Mr. Triptipal Singh as counsel for the Respondent abovenamed in the presence of Mr. Lim Fve Hock as Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated 24th day of August, 1973, the Affidavit of Mr. Triptipal Singh affirmed the 9th day of August 1973 and filed herein, the Affidavit of Rajaswary d/o Kumarasamy affirmed the 1st day of September 1973 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave be and is hereby granted to the Respondent to Appeal from this Honourable Court to His Majesty the Yang Di-Pertuan Agung from the Judgment or Orders of this Court given at Penang on the 14th day of April, 1973, AND IT IS ORDERED that the costs of and incidental to this Motion be costs in the cause.

20

30

GIVEN under my hand and the seal of the Court
this 3rd day of September 1973.

Sd: E. E. SIM (L.S.)

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

EXHIBITS

Exhibit P1(2) - Translation, Police
Report No. 3282/68

Translation

ROYAL MALAYSIAN POLICE

REPORT

Exhibits

P1(2)

Translation,
Police Report
No. 3282/68
12th
September
1968

Report No: 3282 Police Station: Sungei Patani

At: 12.20 a.m. on: 12. 9.1968

Complainant: Kok Yook Chin i/c No.0112333

10 Sex: Male Race: Chinese Age: 51 yrs.

Occupation: District Office S/Patani.

Living at: No.14 Padang Kg. Baharu, Sungei Patani.

Complainant states

At about 12.10 a.m. on 12.9.68 I arrived at the Esso Station and found there has been an accident between a lorry and a bicycle at Jalan Kg. Baharu Sungai Patani. There were injuries.

I have come to police station to enter it as a report.

20 Copied by: Signature: Illegible Sgd: of Complainant:
PC 40483 Yook Yook Chit

Checked by: Signature: Illegible Sgd: of Receiver of
Report: Cpl
5389

CERTIFIED TRUE COPY

Signature: Illegible

O.C.P.D. Sg. Patani 16.2.69

Translation No. PR 1969

Folio - Fee \$

Translated by me.

Sgd. Illegible

Sworn Interpreter

High Court, Alor Star

30

Exhibits

Pl(4)
Translation
Police Report
No.3283/68,
12th
September
1968

Exhibit Pl(4), Translation, Police
Report No.3283/68

Translation

ROYAL MALAYSIAN POLICE

REPORT

Report No: 3283/68 Police Station: Sungei Patani

At: 12.50 a.m. On: 12.9.1968

Complainant: Chin Tuan Nam i/c No.3698036

Sex: Male Race: Chinese (Kongfoo) Age: 38 Yrs.

Occupation: - Living at: No.190, Bakar Arang, 10
Sungei Patani

Complainant states

At about midnight on 11.9.68, I was driving motor car (No.K 9192) from Pekan Lama returning to Bakar Arang. On reaching in front of the Esso Station, I saw a male cyclist coming from the right side of the road from Bakar Arang going towards Sungei Patani. When the cyclist was near me, he crossed towards the left side of the road and collided with my car. The cyclist fell down. I got out of the car and carried the cyclist and placed him by the side of the road. 20

I have come to police station to lodge a report.

Copied by: Signature: Illegible Sgd: of Complainant: PC 40483 Chin Tuan Nam

Checked by: Signature: Illegible Sgd: of Receiver of Report: Cpl. 5389

CERTIFIED TRUE COPY

Signature: Illegible 30

O.C.P.D. Sg. Patani 16/2/69
Translation No: PR 1969
Folio - Fee \$
Translated by me.

Sgd: Illegible
Sworn Interpreter, High Court, Alor Star.

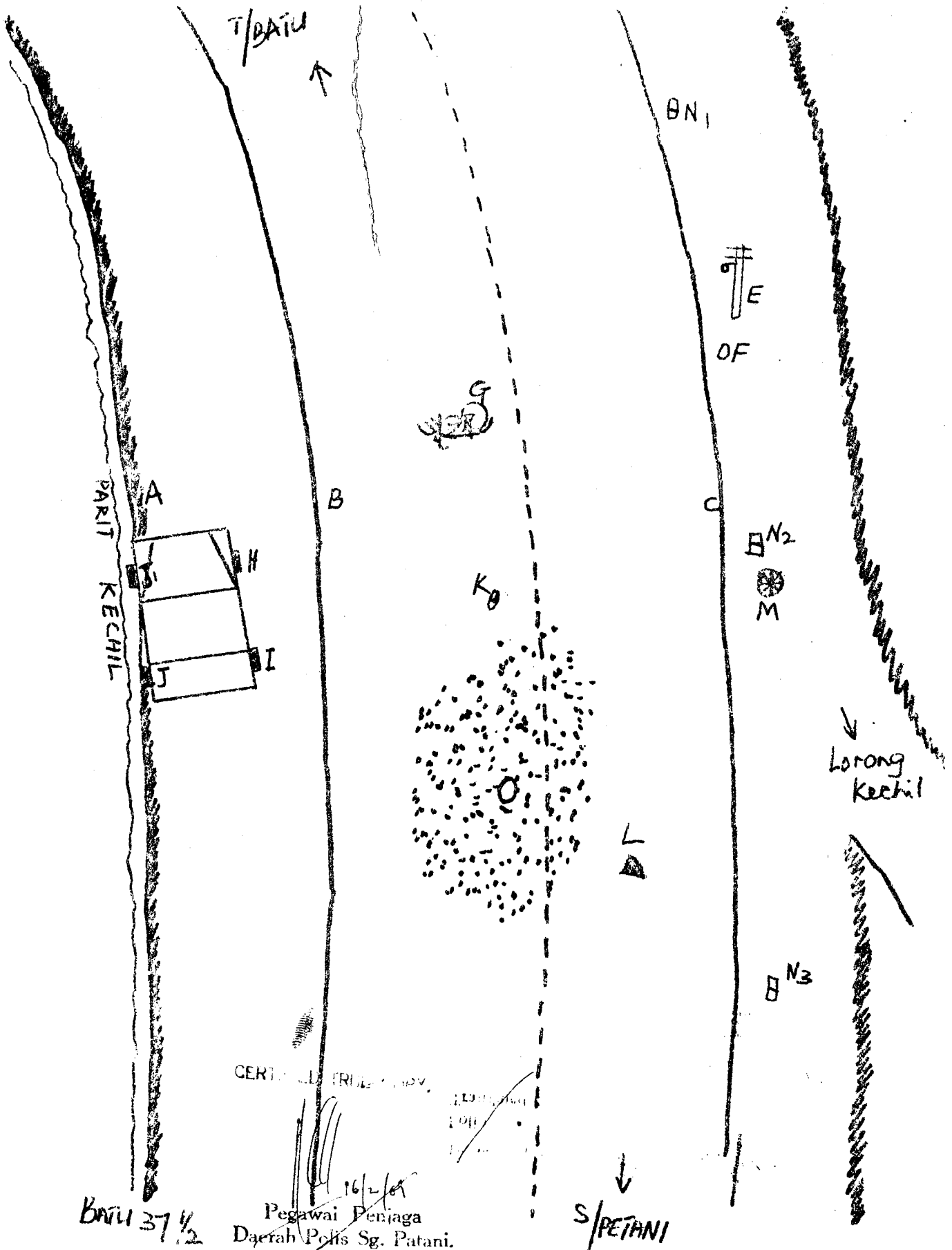
Exhibit P1(5) - Sketch Plan of scene of accident

Exhibits

P1(5)

SG PETANI RPT: 3282-3283/68
PEP(T) 87/68

Sketch Plan of scene of accident



Exhibits

P1(7)Translation
of key to
Sketch PlanExhibit P1(7) - Translation of key
to Sketch PlanKEY TO SKETCH PLAN IN CONNECTION WITH S/P
REPORT NOS. 3282-83/68 P.E.P.(T) 87/68

- A. Grass verge on the left side of the road.
- B. The edge of the road on the left side.
- C. The edge of the road on the right side.
- D. Grass verge on the right side.
- E. Electric lampost No. JKB 15.
- F. Bicycle seat which had been dislodged. 10
- G. Rear bicycle wheel.
- H. Right front wheel of motor-car No. K 9192.
- I. Right rear wheel of motor-car No. K 9192.
- J. Left rear wheel of motor-car No. K 9192.
- Jl. Left front wheel of motor-car No. K 9192.
- K. The cyclist's shoes which had been dislodged.
- L. Blood spot found on the road.
- M. Bicycle wheel which had been dislodged.
- N1, N2, N3. Milestone on the right side of the
road. 20
- O. Fragments of glass on the left side of the
road.

MEASUREMENTS

A to B = 15'	B to K = 7'10"
B to C = 23'6"	B to H = 12'9"
C to D = 17'	B to I = 9'
B to G = 8'	B to J = 13'
G to H = 27'10"	L to E = 56'

G to I = 31'

L to K = 21'

G to K = 20'6"

L to C = 5'8"

G to L = 29'10"

C to M = 3'3"

G to E = 27'6"

C to F = 2'6"

F to E = 6'6"

Exhibits

Pl(7)

Translation
of key to
Sketch Plan
(continued)

Certified true copy

Translation No. PR 1969

Folio = Fee §

Translated by me.

Sgd: Illegible

Sworn Interpreter

High Court, Alor Star.

Signature: Illegible

O.C.P.D. Sg. Patani

16.2.69

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Exhibit Pl(10) - Translation of key
to photographs

Pl(10)
Translation
of key to
photographs

Translation

KEY TO PHOTOGRAPHS IN CONNECTION WITH
SUNGEI PATANI REPORT NOS. 3282/1968

1. Photograph taken from Jalan Bakar Arang facing Sungei Patani showing the bicycle at the scene of the accident.

20

2. Photograph showing motor-car (No.K9192) by the side of the drain at the scene of the accident.

3. Photograph showing the road from Sungei Patani leading to Bakar Arang and also brake marks.

4. Photograph showing blood in the middle of the road leading to Bakar Arang.

5. Photograph showing the damaged bicycle.

6. Photograph showing motor-car paint marks on the bicycle.

30

7. Photograph showing motor-car (No.K9192) taken at the police compound, Sungei Patani.

8. Photograph showing the damage to the front offside headlamp of motor-car No.K9192.

Exhibits

Translation No. PR 1969

Pl(10)

Folio - Fee \$

Translation of key to photographs (continued)

Translated by me

Sgd: Illegible

Sworn Interpreter,
High Court, Alor Star.

Pl(11)

Exhibit Pl(11) - Vehicle Examiner's Report on motorcar K9192

Vehicle Examiner's Report on motorcar K9192 12th September 1968

Form PG.14

Ref.No.RT.(VE)EPW.9/68/117

Police Report No.3282,3281/68

10

To, O.C.P.D. Sungei Patani,
Sungei Patani, Kedah.

ROAD TRANSPORT DEPARTMENT

MALAYA

Certificate of Examination of a Motor Vehicle

Section 143(6) of the Road Traffic Ordinance, 1958

I hereby certify that I E.P.Wong, a Road Transport Officer attached to the RIMV's office, Kedah, have examined motor vehicle No.K.9192, Make: Opel Kapitan, Class: Private m/car on 12.9.68 at RIMV Office and that the result of my examination is as under:-

20

- *(1) That owing to accident damage the vehicle could not be tested by driving it on a road.
*A static test of the condition of the brake and steering was carried out with the road wheels raised off the ground.
- (2) The condition of the Foot Brake was Satisfactory (Road tested)
- (3) The condition of the Hand Brake was Satisfactory (3)
- (4) The condition of the Steering was Satisfactory

(5) The condition of the tyres was:-

Near-side front 60%	Off-side front 40%
Near-side intermediate outer/solo -	Off-side intermediate outer/solo -
Near-side intermediate inner -	Off-side intermediate inner -
Near-side outer/solo 60%	Off-side outer/solo 60%
Near-side rear inner -	Off-side rear inner -

Exhibits

Pl(11)

Vehicle
Examiner's
Report on
motorcar
K9192
12th
September
1968
(continued)

10

(6) The condition of other components was Satisfactory.

(7) Damage which appeared to have been caused in an accident was:-

1. Front bumper bar dented slightly at o/s front Portion.
2. O/S Head lamp & Flasher Indicator glasses smashed and unit damage.
3. O/S Front mudguard dented at front side & top Portion.
4. Front windscreen glass smashed.

20

(8) General condition of the vehicle (discounting the effects of accident damage) was:-

Roadworthy.

Sgd: Illegible

Signature: E.P. Wong

PENDAFTAR DAN PEMEREKSA,

Examiner

KERETA2 MOTOR,

ROAD TRANSPORT
DEPARTMENT,

KEDAH PERLIS

Kedah/Perlis

Salinan yang di-sahkan

Date 12.9.68

*Delete where not applicable

Exhibits

Pl(13)

Medical
Report
24th February
1969

Our Ref: R/N 9108-68

Rumah Sakit Saerah,
Sungei Patani.

24th February, 1969.

Mr. G. Ramasamy,
Claim's Adjustment,
No.3611, Jalan Pa'Abu,
Butterworth, P.W.

Dear Sir,

Re: Accident to Yahaya bin Mohamad on 12.9.1968

The above named was admitted to this hospital on 12.9.68 following a motor vehicle accident. At the time of admission he was in a state of shock.

10

The following injuries were noted:-

- (1) Multiple injuries over most of scalp with the skull bone exposed.
- (2) Multiple laceration of the left side of neck.
- (3) Open fracture dislocation of the right knee with the fibula displaced medially.
- (4) Fracture of right femur (mid-shaft).
- (5) Multiple abrasion all over the body.
- (6) Cerebral concussion (severe).

20

In view of the above injuries and the clinical state of the patient he was admitted to the Surgical Ward for further management. He was discharged from the hospital on 10.11.68. I had the occasion to re-examine the patient on 18.2.69 with reference to your letter GR/KK/3/69. The right leg had been shortened by one inch as a result of the fracture of right femur.

Saya yang menurut perintah,

30

Sd: R. Mahathevan
(Dr. R. Mahathevan)
PEGAWAI PERHUBATAN
RUMAH SAKIT DAERAH,
SUNGEI PATANI.

Rm/an.

Exhibit P1(14) - Correction to Medical Report

Exhibits

P1(14)

Your Ref: TSC/TS/mvm/A/18/69/32

Correction to
Medical
Report
5th July 1969

District Hospital,
Sungei Patani.

5th July, 1969

Messrs. Triptipal Singh & Co.,
Advocates & Solicitors,
34, Beach Street, 2nd floor,
Penang.

10

Dear Sir,

Re: Accident to Yahaya bin Mohamad on 12.9.68

With reference to your letter dated 23.6.69 we regret to inform you that there was a clerical error in typing and that the dates mentioned by you are correct, that is he was admitted on 12th September, 1968 and was discharged on 10th January 1969.

Yours faithfully,

Sd: R. Mahathevan
(Dr. R. Mahathevan)
PEGAWAI PERHUBATAN
RUMAH SAKIT DAERAH,
SUNGEI PATANI.

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Exhibit P2 - Agreed Statement of Facts

IN THE HIGH COURT IN MALAYA AT ALOR STAR
STATE OF MEDAH

CIVIL SUIT NO. 137 OF 1969

P2
Agreed
Statement of
Facts
17th January
1972

Between

Yahaya bin Mohamad

Plaintiff

And

Chin Tuan Nam

Defendant

30

Exhibits

AGREED STATEMENT OF FACTS

P2
 Agreed
 Statement of
 Facts
 17th January
 1972
 (continued)

1. On the 12th day of September 1968 at about 12.10 a.m. the Plaintiff was cycling along Bakar Arang.
2. On the same date and time the Defendant was driving motor car No. K 9192 along Bakar Arang and proceeding in the opposite direction.
3. There was a collision between the said motor car K 9192 and the Plaintiff's cycle.

Dated this 17th day of January, 1972.

10

Sgd: Lim Ewe Hock Sgd: Triptipal Singh & Co.,
 Defendant's Solicitors Plaintiff's Solicitors.

P3

Exhibit P3 - Report of Mr. C.K. Young

Report of
 Mr. C.K. Young
 19th May 1972

C.K. YOUNG, M.S. M.D. F.R.C.S.
 Consultant Thoracic Surgeon,
 Hospital Advent,
 Penang.

4 China Street,
 Penang,
 Malaysia.
 19th May, 1972.

MEDICAL REPORT

Name: Inche Yahaya bin Mohamad

Age: 45 years

I.C. No.: 0779433

20

Occupation: Crab fisherman

Examination requested by: Messrs. Triptipal Singh
 & Co.,
 Advocates & Solicitors,
 34, Beach Street,
 Penang.

History: He stated that he was knocked down by a car while riding a bicycle on 12th September, 1968 admitted to the Sg. Patani District Hospital, but that he had no recollection of how and when he arrived there. He further stated that he was only conscious of his environment two weeks later, and found himself in a plaster cast. He was discharged

30

from hospital on 10th January, 1969 five days after removal of his plaster cast and walked with a pair of crutches. He thereafter attended out-patient department for physio-therapy and is still doing so monthly. He has not worked since his accident.

Exhibits

P3

Report of
Mr. C.K.Young
19th May 1972
(continued)

10 Complaints: He states that since his discharge from hospital, he still has pain in the right knee and to a lesser extent the right thigh and lower leg. The right knee is still stiff making walking difficult and squatting impossible. He is only able to walk up to half a mile because of pain and weakness in the right knee.

20 On examination: He walked with a bad limp on the right and the right knee in straight position, but not distressed with pain. Very inconspicuous scars were seen on the scalp, left neck and the upper extremities. The reflexes of the upper extremities and eyes were normal. The spine showed moderate scoliosis and the para-vertebral muscles of lumbar spine were taut. Spinal movements were slightly restricted in all directions but not painful. The right side of the pelvis tilted upwards. The right leg showed 2" apparent and 1" true shortening. The right femur showed marked anterior and outward bowing. The right thigh showed 1 $\frac{1}{4}$ " and calf $\frac{1}{2}$ " wasting. There was no rotational deformity. The right hip movements were full and painless. The right knee showed 30 5 degrees flexion deformity and a flexion movement of only 10 degrees. There was no lateral or antero-posterior instability. The ankle movements were normal.

40 In my opinion, this man has now recovered completely from his concussion. His main deformities are malunion of his femur and marked stiffness of his right knee. The right leg has an apparent shortening of 2" causing tilting of the pelvis and scoliosis of his spine. The leg shortening and knee stiffness are permanent and pain in the knee and lower back will later worsen from osteo-arthritis and strain respectively. His chances of resuming his former occupation as a fisherman are most unlikely.

Sd: C.K. Young

(C.K. YOUNG)

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 25 of 1973

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

Between

YAHAYA BIN MOHAMAD (Plaintiff) Appellant

-and-

CHIN TUAN NAM (Defendant) Respondent

RECORD OF PROCEEDINGS

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