

11/79

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR (APPELLATE JURISDICTION)

B E T W E E N :-

LUDHIANA TRANSPORT SYNDICATE -and-
SOMANAIDU s/o BANKARIAH

Appellants
(Defendants)

- and -

CHEW SOO LAN (widow) and
CHONG CHAP SENG the Administratrix
and Co-Administrator of the estate
of CHOONG TUNG CHEONG also known as
CHONG THONG CHONG, deceased.

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

Douglas Goldberg & Co.,
Goldsmiths' House
137-141 Regent Street,
London, W1R 7LD

Solicitors for the Appellants.

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London EC3V 9DU

Solicitors for the Respondents.

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FROM THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR (APPELLATE JURISDICTION)

B E T W E E N :-

LUDHIANA TRANSPORT SYNDICATE -and-
SOMANAIDU s/o BANKARIAH

Appellants
(Defendants)

- and -

10 CHEW SOO LAN (Widow) and
CHONG CHAP SENG the Administratrix
and Co-Administrator of the estate
of CHOONG TUNG CHEONG also known as
CHONG THONG CHONG deceased

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

In the High Court
at Seremban

GENERALLY INDORSED WRIT
OF SUMMONS

No. 1

IN THE HIGH COURT AT SEREMBAN

Generally indorsed
Writ of Summons
15th November 1972

20 WE COMMAND you, that within Twelve (12) days
after the service of this Writ on you, inclusive
of the day of such service, you do cause an
appearance to be entered for you in an action at
the Suit of Chew Soo Lan (f) and Chong Chap Seng,
the Administratrix and Co-Administrator respect-
ively of the estate of Choong Tung Cheong also
known as Chong Thong Chong, deceased, both of No.
12, Hockien Street, Singapore.

30 The Plaintiffs, as Administratrix and Co-
Administrator claim for damages for the estate
and benefit of the dependants of the deceased,
Choong Tung Cheong also known as Chong Thong

In the High Court
at Seremban

No. 1
Generally indorsed
Writ of Summons
continued

Chong, namely, Chew Soo Lan, Choong Yew Siong, Choong Yin Siong, Choong Kai Seong, Choong Choon Kien and Choong Chiong Siong, the deceased's widow sons and daughter respectively, all of whom have suffered damage by reason of the negligence of the 2nd Defendant as servant or agent of the 1st Defendant in the driving of Motor Lorry ND 1969 whereby the said Choong Tung Cheong also known as Chong Thong Chong was killed and interest thereon at the rate of 6% per annum from the 31st day of December, 1970 until the date of realisation.

10

PARTICULARS PURSUANT TO SECTION 7 OF
THE CIVIL LAW ORDINANCE 1956

The names of the persons on whose behalf this claim is filed are :-

- (1) Chew Soo Lan age 44 years.
- (2) Choong Yew Siong age 18 years.
- (3) Choong Yin Siong age 17 years.
- (4) Choong Kai Seong age 15 years.
- (5) Choong Choon Kien age 13 years.
- (6) Choong Chiong Siong age 11 years.

20

The deceased was 50 years of age at the time of his death. He was a Merchant, earning approximately \$1,000-00 per month. The deceased gave \$800-00 to his widow and other dependants for their use, support and maintenance monthly. The deceased was sole supporter of the widow and the dependants who by his death have lost such support to the extent of \$800-00 per month.

30

Dated this 15th day of November 1972.

In the High Court
of Seremban

No. 2.
Statement of Claim
15th November 1972

No. 2.

STATEMENT OF CLAIM

1. The Plaintiffs as administratrix and Co-Administrator of the estate of Choong Tung Cheong also known as Chong Thong Chong, deceased (hereinafter referred to as "the

said deceased") bring this action for the benefit of the estate of the said deceased under the provisions of Section 8 of the Civil Law Ord. 1956 and for the benefit of herself as the widow of the said deceased and the other dependants namely :-

In the High Court
at Seremban

No. 2
Statement of Claim
continued

1. Chew Soo Lan, aged 44 years, the wife of the deceased.
- 10 2. Choong Yew Siong aged 18 years, the natural issue of the deceased.
3. Choong Yin Siong, aged 17 years, the natural issue of the deceased.
4. Choong Kai Seong, aged 15 years, the natural issue of the deceased.
5. Choong Choon Kien, aged 13 years, the natural issue of the deceased.
6. Choong Chiong Siong, aged 11 years, the natural issue of the deceased.

20 Letters of Administration of the estate of the said deceased was granted to the Plaintiffs on the 10th day of August, 1971 and were extracted on the 14th day of May, 1972.

2. The 1st Defendant were at all material times the registered owner of a motor lorry bearing registration No. ND 1969 and the employer and/or principal of the 2nd Defendant.

3. The 2nd Defendant was at all material times the driver of the motor lorry ND 1969 and the servant or agent of the 1st Defendants.

30 4. On or about the 31st day of December, 1970 at about 12.50 p.m. the said deceased was travelling as a passenger in a motor car bearing registration No. NB 5522 which was being driven by one Chia Choo Hoo along Jalan Kuala Pilah/Seremban towards the direction of Seremban, at or near the 13th milestone along the said road, when a motor lorry No. ND 1969 travelling along the opposite direction from Seremban towards Kuala Pilah, which was being driven negligently by the 2nd Defendant when he so
40 negligently drove, managed or controlled the motor lorry No. ND 1969 that he caused it to run into the motor vehicle No. NB 5522 in which the deceased was

In the High Court
at Seremban

No. 2
Statement of Claim
continued

travelling as a passenger, whereby the deceased received fatal injuries and died on the 31st day of December, 1970.

5. The collision was caused solely by the negligence of the 2nd Defendant, as servant and/or agent of the 1st Defendant.

PARTICULARS OF NEGLIGENCE

- a) Failing to keep any or any proper look-out;
- b) Failing to give any or any sufficient warning of his approach; 10
- c) Failing to stop, slow down swerve or otherwise avoid the collision;
- d) Failing to apply his brakes sufficiently or in time or to manoeuvre his said motor lorry so as to avoid hitting the deceased's car.
- e) Failing to observe the presence of the deceased's car on the highway;
- f) Failing to exercise or to maintain any or any proper control of the said lorry; 20
- g) Failing to have any regard for the safety of other road users and in particular the deceased;
- h) Failing to give way to the deceased on seeing the deceased's car approaching from the opposite direction;
- i) Driving at an excessive speed in the circumstances.

The Plaintiffs will further rely on the doctrine of Res Ipsa Loquitur at trial. 30

6. By reason of the matters aforesaid the said deceased was killed and thereby lost the normal expectation of life and his estate and dependants have suffered loss and damage. The widow and children have suffered damages in that they have been deprived of the pecuniary benefits they would have received had the deceased continued

to live.

In the High Court
at Seremban

PARTICULARS OF INJURY

Head injury

No. 2
Statement of Claim
continued

PARTICULARS PURSUANT TO SECTION 7
OF THE CIVIL LAW ORDINANCE 1956

10 The names of the persons on whose behalf this
claim is filed :-

- (1) Chew Soo Lan aged 44 years, the lawful
widow of the deceased.
- (2) Choong Yew Siong aged 18 years, the
natural issue of the deceased.
- (3) Choong Yin Siong aged 17 years, the
natural issue of the deceased.
- (4) Choong Kai Seong aged 15 years, the
natural issue of the deceased.
- 20 (5) Choong Choon Kien aged 13 years, the
issue of the deceased.
- (6) Choong Chiong Siong aged 11 years, the
natural issue of the deceased.

30 The deceased was 45 years of age at the time of
his death. He was a Merchant, earning approximately
£1,000-00 per month. The deceased gave £800-00 to his
widow and other dependants for their use, support and
maintenance monthly. The deceased was the sole
supporter of the widow and the dependants who by his
death have lost such support to the extent of £800-00
per month.

7. The Plaintiffs as Administratrix and Co-
Administrator of the estate of the said deceased also
claim for the benefit of the said estate damages for
the deceased's loss of expectation of life and damages
caused to the deceased's car NB 5522.

PARTICULARS OF SPECIAL DAMAGE

a. Funeral expenses	...	£2,000-00
b. Damages to the car NB 5522	...	£2,950-00
c. Cost of obtaining RIMV Report	..	5-00
d. Cost of obtaining Police Report		
Sketch Plan & Photographs	...	10-00
	Total	<u>£4,965-00</u>

40

In the High Court
at Seremban

No. 2
Statement of Claim
continued

And the Plaintiffs as Administratrix and Co-Administrator of the estate of the said deceased claim damages and costs against the Defendants on behalf of the widow and children as aforesaid and will claim interest at the rate of 6% per annum from the date of accident to the date of realisation.

Dated this 15th day of November, 1972.

In the High Court
at Seremban

No. 3
Statement of
Defence
15th February 1973

No. 3

STATEMENT OF DEFENCE

10

1. Save that the 1st Defendant was the owner and the 2nd Defendant was the driver of the said motor lorry No. ND 1969, these Defendants make no admissions as to any of the matters alleged in paragraphs 1, 4 and 5 of the Statement of Claim.

2. The 1st and 2nd Defendants deny that the 2nd Defendant negligently drove or managed the said motor lorry as alleged or at all. Each and every allegation of negligence set forth in the Statement of Claim is denied as fully as if the same were herein specifically set out and separately traversed.

20

3. Alternatively the said accident was solely caused or in the further alternative contributed to by the negligence of the driver of motor car No. NB 5522.

PARTICULARS OF NEGLIGENCE

The driver of motor car No. NB 5522 was negligent in that :-

30

- (a) He drove at an excessive speed;
- (b) He failed to keep a proper look-out;
- (c) He drove against the said motor lorry when it was stationary;
- (d) He failed to steer, brake or otherwise control the said motor car so as to avoid the said collision;

(e) He gave no or no sufficient warning of his approach or of his intention to do as aforesaid;

In the High Court
at Seremban

(f) He drove on to the wrong side of the road and knocked into motor lorry No. ND 1969 which was on its correct side of the road;

No. 3
Statement of
Defence
15th February 1973

(g) He failed to slow down sufficiently or at all when negotiating a bend and thereby encroached into the Defendant's path.

10

4. The particulars pursuant to the statute are not admitted.

5. No admission is made as to the alleged or any injuries loss or damage.

6. Save as aforesaid the 1st and 2nd Defendants deny each and every allegation contained in the Statement of Claim as though the same were herein specifically set out and traversed seriatim.

20

Dated this 15th day of February, 1973.

No. 4.

In the High Court
at Seremban

NOTES OF EVIDENCE

IN OPEN COURT

This 5th day of December 1975

Coram: AJAIB SINGH J.

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975

30

Foo Sam Ming ... for Plaintiffs

Sanggaran ... for Defendants

Foo Sam Ming: Ask for an amendment at page 9 of pleadings - Statement of Claim - deceased was 45 years of age instead of 50 years.

Agreed special damages - \$1,515 - funeral expenses,

R.I.M.V. report and plan 1 photograph.

Agreed Bundle of Documents, marked "A"

Agreed Statements of Facts marked "B"

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975

PW 1: Chia Chah Hoo affirmed, states in
Hakka: Aged 35 years, unemployed,
live at 82 Jalan Besar, Singapore.

CHIA CHAH HOO
EXAMINATION

On 31.12.70 I was working with Choong
Tung Cheong as a salesman - selling wrist
watches. He was a wholesaler. I
travelled around with him selling watches
in Singapore and Malaysia.

On 31.12.70 I and Choong, the deceased,
were in Kuala Pilah. At about 12.10 p.m. I
drove motor car NB 5522 from Kuala Pilah
towards Seremban. This was a Mercedes car
and the deceased sat beside me. I drove
the car. At about 12½ milestone there was
an accident. I was travelling about 35
miles per hour. One motor lorry was coming
from the opposite direction and encroached
into my path and knocked against my car.
Just before the collision I was travelling
on the left side as one faces Seremban. There
was a slight bend there. 10 20

Yes, it was raining. Yes, just before
the collision I saw the lorry coming from
the opposite direction. That lorry travelled
very fast but I cannot say what speed it was
travelling. When I first saw the lorry it
was about 40 feet away. I could not see it
earlier because of the bend. When I saw the
lorry coming very fast I sounded my horn.
I was still on my side of the road. Soon
after that the lorry dashed into my vehicle.
I felt giddy after the collision. 30

Q. Where did the collision take place?

A. The lorry knocked against the driver's
side - the front mud-guard.

The collision took place on my side of the road.
After the collision my car landed on the edge
of my side of the road. After the collision
I was giddy and I cannot say where the lorry
stopped after the accident. I and deceased
were taken to Kuala Pilah hospital. The
deceased received serious injuries. I do not
know when he died. I also suffered serious
injuries. 40

The road was wet - it was raining. The visibility was good.

In the High Court
at Seremban

Q. Did you take evasive action when you saw the lorry coming towards you?

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975

A. That lorry came in a very fast manner. I was on my correct side of the road so I took no evasive action.

10 On my left was a big drain. The accident took place within seconds.

The deceased was a wholesale dealer in watches in Singapore. He was sole proprietor of his shop Sin Mah. I was the only salesman. His net income per month was more than \$1,000. I was paid \$400 per month salary. His shop Sin Mah was at 26 Oxley Road, Singapore. He was a healthy man. On that day we were in Kuala Pilah doing business and to collect some money.

20 Cross-examination:

CROSS EXAMINATION

I started work with deceased since 1968. We came to Malaysia once a month. To Kuala Pilah - once a month. We arrived at Kuala Pilah at about 11.00 a.m. on the same day. We drove from Malacca then to Tampin and then to Seremban. I have driven from Seremban to Kuala Pilah.

Q. You know the road well?

A. Yes, I am familiar with Seremban-Kuala Pilah road.

30 Q. The accident took place at 12½ milestone?

A. Yes, from Kuala Pilah-Seremban road.

Q. From Seremban what is the road like a few miles before the place of accident?

A. There are a lot of bends.

Q. Can you drive a Mercedes car fast to the place of accident from Seremban?

A. That depends on the driver. An experienced driver can drive fast.

If the road is wet you cannot go fast. Yes, it was

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975

wet that day and it was raining. The lorry encroached my path. Just before the accident my car was on my side of the road. Coming from Kuala Pilah about two miles before the place of accident there are some bends and also straight stretch of road. After the collision my car was on the left on my side. It was facing Kuala Pilah.

My car had spun round.

(Referred to Bundle "A" - page 6) - That is the position of my car after the accident - the first picture. Just before the collision I was on my correct side. I could not go any further to the left because of the drain. After the accident I felt giddy. I do not know where my car landed.

10

Q. Immediately after the collision were you unconscious?

A. I became giddy but was not unconscious.

I remember a passing car took us to hospital. I cannot remember the damage to the car. I was employed as a salesman as well as a driver. I did not keep his accounts. He did tell me about his business dealings.

20

Q. Did he tell you the amount of money he made?

A. Yes.

The watch shop is now closed.

RE-EXAMINATION

Re-examination: No questions.

EXAMINATION
BY COURT

By Court:

There was a left bend in front. It was an 'S' shape bend. At the bend there is also a bridge - over a small river - a stream. I had not reached the bridge yet. The accident took place about 40 feet from the bridge. The bend was in front of me. The road behind me was not very straight - slightly curved. It was raining - not heavy rain, drizzling.

30

CHEW SOO LAN
EXAMINATION

PW 2: Chew Soo Lan, affirmed states in Hakka:

Aged 46 years, live at 400 K River Valley Road, Singapore.

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

10

The deceased was my husband. We had 5 children. The deceased was very healthy. He was 45 years old at the time of the accident. He was a businessman dealing in watches - wholesale. His income was slightly over \$1,000 per month. He used to travel around Singapore and Malaysia. He had been to Hong Kong also on business. All my children were schooling at the time of the accident. The deceased was the sole breadwinner of the family. He used to give me \$800 per month for the household expenditure and children's education. The Oxley Rise house was rented premises. The deceased paid the rent - \$300 per month. Since the death of my husband I was put into financial difficulties. I am not working. My uncle, deceased's brother, has been looking after us.

20

Cross-examination:

CROSS EXAMINATION

My husband had a watch-shop. This was his only business. The shop has been returned to the shop owner. The business - nobody did it after deceased's death. The remaining goods we sold them - bit by bit and I spent the money on the family.

30

When my husband travelled to Malaysia he remained away for about two weeks. In his absence no business was done in Singapore. He took watches which go to Malaysia. His business was registered in Singapore. He started the business in 1962 or 1963. Yes, I have papers pertaining to the business - certificate of registration - (marked Exhibit D 1). He gave me \$800 per month. Yes, he paid income tax in Singapore. I do not know how much he paid. I do not have any income tax papers.

Re-examination:

RE-EXAMINATION

40

Q. There were also debts owing by the deceased when he passed away?

A. I do not know.

In the High Court
at Seremban

By Court:

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

The deceased visited Malaysia every month. He stayed in Singapore for about a week every month. Most of his business was in Malaysia. During the week in Singapore he had his meals at home. From the \$800 he gave me I did not give him any money.

10

EXAMINATION BY
COURT

DEFENDANTS
EVIDENCE
SOMANAIDU
S/O BANKARIAH

CASE FOR PLAINTIFFS

DW 1 - Somanaidu s/o Bankariah, affirmed states in Tamil: Aged 39, lorry Driver with Ludhiana Transport Service, Bahau.

EXAMINATION

On 31.12.70 I was driving motor lorry ND 1969 - from Petaling Jaya to Bahau. My attendant - Sunderaj - was with me - (Witness identifies Sunderaj).

20

I was carrying 45 gallons empty drums - 100 drums. When I reached 12½ milestone from Kuala Pilah I passed a bridge and I saw a Mercedes Benz car coming from the opposite direction and coming onto my way. On seeing this I swerved my lorry to my very left - to the left edge. This car then knocked into the front portion of my lorry and swung round facing the direction of Kuala Pilah. There were two persons in the motor car. Then a car came from Seremban and took the two persons to the Kuala Pilah hospital. It was drizzling at that time. I was doing about 15 to 20 miles per hour because of the rain. I have been driving along this road for the last ten years - driving lorries. I am quite familiar with the road. Two miles before the place of accident coming from Seremban there are many bends. The road after the place of accident towards Kuala Pilah is a straight stretch of road. (Page 6 of Agreed Bundle) - The two photographs show the position of the vehicles after the accident.

30

40

CROSS EXAMINATION

Cross-examination:

I went to Petaling Jaya to bring the empty

drums. I left Petaling Jaya at 10.00 a.m. and arrived at the scene of accident at about 12.30 p.m.

In the High Court
at Seremban

Q. You were anxious to go back to Bahau?

A. No.

No, I could not drive fast because of the load of empty drums.

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

10 Q. Leaving Petaling Jaya at 10.00 a.m. and arriving at the scene of accident at 12.30 p.m. - you were going fast?

A. No I do not agree.

I am paid monthly. I am not paid extra if I carry more drums. I only did one trip. Not every day - other days I carry latex. It was a six ton lorry. I am used to this type of lorry. There were empty drums.

Q. Is it quite difficult to handle the lorry?

20 A. No, the drums were secured by ropes.

Q. Just before the scene the road was very winding?

A. Yes.

Q. With your heavy vehicle it demanded extreme care?

A. Yes, I was very careful.

Q. A slight mistake on your part will land you in the drain or hit an opposite vehicle?

A. Yes.

The road there is quite narrow.

30 Q. Your six tonner would have occupied a great part of the road - 3/4 of the road?

A. I was on my correct side of the road within my own half.

Q. Also on certain sections of the road you tend to stop to allow oncoming vehicles to pass?

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

A. Yes.

Q. It was a narrow bridge?

A. It is a long bridge - not narrow.

Q. Just before you passed the bridge was a nasty left hand bend?

A. Yes.

10

Q. You would not see more than 50 feet ahead of you?

A. Yes.

I did not stop at the bridge. There was no need for me to stop.

Q. Approaching a bridge a vehicle like yours ought to have stopped?

A. I do not agree.

I could see in front. No, I was not travelling fast. It was raining then. I was running slow.

20

Q. You encroached on to the path of the oncoming vehicle?

A. No, the Mercedes car encroached on to my path.

Q. As a result of you not stopping at the bridge you encroached on the other side?

A. No.

Yes, my front part of the lorry was damaged - front off-side.

30

Q. Yours was a heavy vehicle - the other vehicle would be badly damaged?

A. I did not knock into the other vehicle.

Q. You caused the accident by not exercising great care?

A. I exercised extreme care. The car came and knocked into my lorry.

In the High Court
at Seremban

Re-examination:

Just before the bridge is a left-hand bend - about 50 feet.

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

10

RE-EXAMINATION

By Court:

I made a report to the police the same day at about 1.20 p.m.

EXAMINATION BY
COURT

Q. You have made no mention in your report that the mercedes Benz had encroached on to your path?

A. I said that the car knocked into my lorry - by that I meant that the car encroached my path.

20

DW 2: Soundaraju, affirmed, states in Tamil: Aged 22, rubber tapper, live at Jalan Padang, Batu Selepas Estate, Bahau

SOUNDARAJU
EXAMINATION

On 31.12.70 I was attendant on motor lorry ND 1969 driven by DW 1 coming from Petaling Jaya to Bahau. The lorry was carrying empty drums. I was seated at the top of the lorry - behind - on the top of the driver's cabin. There was no other place to sit because there were drums on the lorry.

30

Yes, there was an accident. We were going to Seremban. On reaching the place where there are many bends I was holding on to the empty drums. Immediately after that I heard a sound. And then I saw that there was an accident. I did not see the accident. I was facing the rear. I do not know how the accident took place.

Cross-examination: no questions.

CROSS EXAMINATION

Court adjourns

Court resumes.

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

DEFENCE
SUBMISSION

Counsel submit :-

Sanggaran:

Two versions - as is usual in these sort of cases. Refer to the evidence of Plaintiff and defendant. Conflicting evidence. Necessary to see the neutral evidence - the photographs - the sketch plan. H in the plan is the windscreen - found near the lorry on the lorry's correct side. 10

San Seong Choy & Ors. v. Yuson Bien - (1963) 29 MLJ 235 at 236.

Joginder Kaur & Anor v. Malayan Banking Ltd & Anor - (1971) 1 M.L.J. 98 @ 100. Judgment of Ali F.J. submit the sketch plan clearly shows that the accident occurred on the lorry's side of the road.

Pahang Lin Siong Motor Co. Ltd. & Anor v. Kartar Kaur & Anor - (1969) 1 M.L.J. 137. 20

Which of the two versions does the sketch plan support?

Quantum:

3 children are now of age. Plaintiffs have not proved real loss. Nothing to show what the deceased was earning. Have agreed with Mr. Foo regarding number of years purchase. 12 years less 1/3.

PLAINTIFFS
SUBMISSION

Foo:

Refer to plaintiff's claim. Ample evidence that collision took place on the car's correct side of the road. Two versions in this case - both say that they were in their correct sides. Sketch plan is only an indication of what happened after the accident. Submit that the Court should draw inferences as to how the accident occurred. 30

Goh Ben Seng v. Dol bin Dolah - (1970) 2 M.L.J. 95.

Lim Ah Toh v. Ang Yau Chee & Anor - (1969) 2 M.L.J. 194 - 195 - "unfavourable weather and 40

road conditions" - prima facie negligent.

No proper look out by DW 1.

DW 1 driving a very heavy vehicle in rain.

Question is - did he exercise extra degree of care - carrying 100 drums of 45 gallons each?

10 Quite difficult say where the impact took place - only the evidence of the two drivers to go by.

Inferences that can be drawn.

Submit liability on the part of the defendant very clear.

Contributory negligence if any - In the absence of any other evidence submit 75 : 25 in favour of the plaintiff.

Quantum:

₹800 to deceased's wife - usual support by a reasonable family man.

20 Have agreed on 12 years purchase less 1/3 for contingencies. Ti Huck & Anor. v. Mohamed Yusof - (1973) 2 M.L.J. 62.

Decision:- Quantum

JUDGMENT

12 years purchase at a dependancy loss of ₹600 per month - ₹63,792 less 1/3 - ₹42,628 - general damages Special damages - at the agreed figure of ₹1,515. 6% interest on general damages from date of service of Writ and 3% interest on special damages from date of death.

30 On liability: I find that the Plaintiffs have failed to prove negligence on the part of the defendants.

Suit dismissed with costs.

Sd: Ajaib Singh J.

In the High Court
at Seremban

No. 4
Notes of Evidence
Plaintiffs
Evidence
5th December 1975
continued

In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976

GROUNDS OF JUDGMENT

The plaintiffs in this case brought this action in their capacity as administratrix and co-administrator of the deceased's estate for the benefit of the widow and dependants of the deceased.

In their statement of claim the plaintiffs averred that on or about 31st December, 1970 at about 12.50 p.m. the deceased was travelling as a passenger in motor car No. NB 5522 which was driven by one Chia Choo Hoo along Jalan Kuala Pilah-Jalan Seremban towards the direction of Seremban when at or near the 13th milestone motor lorry No. ND 1969 travelling along the opposite direction from Seremban towards Kuala Pilah and driven by the second defendant who was the servant or agent of the first defendant caused it to run into motor car No. NB 5522 in which the deceased was travelling and as a result of which he received fatal injuries and died on the same day. The plaintiffs alleged that the collision was caused solely by the negligence of the second defendant and they set out particulars of negligence in their statement of claim. The plaintiffs further relied on the doctrine of *res ipsa loquitur*. The plaintiffs also averred that as a result of the death of the deceased his estate and dependants suffered loss and damage. The deceased was a married man with a wife and five children. He was of 50 years of age at the time of his death and was a merchant earning about \$1,000-00 per month out of which sum he paid \$800-00 per month to the widow and his other dependants for their use, support and maintenance. The deceased was the sole supporter of the extent of \$800-00 per month. In addition to general damages the plaintiffs also claimed a total of \$4,965 as special damages in respect of funeral expenses, damage to the car and cost of obtaining the R.I.M.V. and police reports, sketch plan and photographs.

In their statement of defence the defendants denied that the accident was caused

by the negligence of the second defendant and specifically denied all the particulars of negligence alleged against the second defendant in the statement of claim. They averred that the accident was caused solely or in the alternative contributed to by the negligence of the driver of motor car No. NB 5522 and they set out particulars of negligence against that driver. The defendants made no admission as the

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In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

At the commencement of the trial Mr. Foo Sam Ming for the plaintiffs asked for an amendment to the statement of claim that the deceased's age at the time of death was 45 years instead of 50. This amendment was allowed. The parties were also agreed on the quantum of special damages at \$1,515.

Two witnesses gave evidence on behalf of the plaintiffs. The first was Chia Chah Hoo who said that on 31st December, 1970 he was working with the deceased as a salesman selling wrist watches. The deceased was a wholesaler and they both travelled around selling watches in Singapore and Malaysia. On 31st December, 1970 he and the deceased left Kuala Pilah at about 12.10 p.m. in motor car No. NB 5522 for Seremban. This was a Mercedes Benz car. He drove it while the deceased sat beside him. He said he was travelling at about 35 miles per hour and at the 12½ milestone he saw a motor lorry coming from the opposite direction which encroached into his path and knocked against his car. Just before the collision he said he was travelling on the left side of the road as one faces Seremban. There was slight bend in front of him at the scene. He said it was raining at the time and that when he first saw the lorry it was about 40 feet away. He could not see it earlier because of the bend ahead. When he saw the lorry coming very fast he sounded his horn and he was still on his own side of the road. Soon thereafter the lorry dashed into his car and he felt giddy after the collision. He said the lorry knocked against the driver's side of the car - the front mudguard. He said that the collision took place on his side of the road and after the collision his car landed on the edge of his side of the road but he could not remember where the lorry stopped after accident. He and the deceased were then taken to Kuala Pilah hospital. He too received injuries while the deceased received

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In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

serious injuries from which he died. He said the road was wet at the time and it was raining but the visibility was good. To a question by his counsel if he took evasive action when he saw the lorry coming towards him the witness replied that the lorry came in a very fast manner, he was on his correct side of the road so he took no evasive action. On his left was a big drain and he said that the accident took place within seconds.

The witness further stated that the deceased was a wholesale dealer in watches in Singapore and he was the sole proprietor of his shop Sin Mah. The witness was the only salesman and was paid \$400-00 per month as salary. The net income of the deceased was more than \$1,000-00 and he said that the deceased was a healthy man.

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In cross-examination the witness said that the deceased and he visited Malaysia once a month on business. On the day in question they had arrived in Kuala Pilah at 11.00 a.m. driving from Malacca to Tampin and Seremban and then on to Kuala Pilah. He said that he was familiar with the Seremban-Kuala Pilah road. He agreed that a few miles before the place of accident there was several bends on the Seremban side. He said that from Kuala Pilah side before the place of accident there were some bends and also straight stretch of road. After the collision his car was on the left hand side and facing Kuala Pilah. He agreed with the position of his car in the photograph shown at page 6 of Agreed Bundle of Documents. He said just before the collision he was on his correct side and could not go any further to the left because of the drain. In answer to the court the witness said that there was a left hand bend in front - an "S" shaped bend and there was also a bridge over a small river. He had not reached the bridge yet and the accident occurred about 40 feet from the bridge. The road behind him was not very straight and was slightly curved. It was raining not heavily but drizzling.

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The next witness was the first plaintiff the wife of the deceased. She said that she had five children. The deceased was 45 years

old and a healthy man at the time of the accident. He was a businessman dealing in watches and his income was slightly over \$1,000 per month. She said her husband used to travel around Singapore and Malaysia and he had also been to Hong Kong on business. All her children were schooling at the time of the accident and the deceased was the sole bread-winner of the family. She said her husband used to give her \$800 per month for household expenses and children's education. The house in which they lived and where her husband carried on his business was rented premises at \$300 per month. She said that after his death she had been put into financial difficulties. She herself was not working and the deceased's brother was now looking after her and the children.

In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

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In cross-examination she said that the business had been returned to the shop owner and the remaining goods were sold away bit by bit and she had spent the money on the family. She said that when her husband travelled to Malaysia he remained away for about two weeks and during his absence no business was done in Singapore. He had started this business in 1962 or 1963 and she produced the certificate of business registration. She said that the deceased gave her \$800-00 per month and the deceased also paid income tax in Singapore. She had no papers to show how much tax was paid. She was also not aware of any debts owing by the deceased when he passed away.

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The defence also called two witnesses. The first witness was the second defendant the lorry driver of lorry No. ND 1969. He said that on 31st December, 1970 he was driving his lorry from Petaling Jaya to Bahau and had an attendant named Soundaraju with him. He was carrying 100 empty drums of 45 gallon capacity each. When he reached 12½ milestone from Kuala Pilah he said he crossed a bridge and saw a Mercedes Benz coming from the opposite direction and coming on to his path. On seeing this he swerved his lorry to his left edge. This car then knocked into the front portion of his lorry and then swung round and stopped facing the direction of Kuala Pilah. There

In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

were two persons in the motor car. Then a car coming from Seremban took the two persons to Kuala Pilah hospital. This witness said that it was drizzling at that time and he was doing 15 to 20 miles per hour because of the rain. He had been driving lorries along this road for the last ten years and he said that he was quite familiar with the road. About two miles up to the place of accident there were many bends on the Seremban side. The road after the place of accident towards Kuala Pilah he said was a straight stretch of road. He referred to the two photographs shown at page 6 of Agreed Bundle of Documents and said that was the position of the vehicles after the accident.

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In cross-examination he said he went to Petaling Jaya to bring back the empty drums and he left Petaling Jaya at 10 a.m. and arrived at the scene of the accident about 12.30 p.m. He said he was not anxious to go back to Bahau and he could not travel fast because of the load of empty drums. He said he was paid monthly and he was not paid any extra money if he did extra trips. He did only one trip and he carried latex on other days. He said it was a 6-ton lorry and he was quite used to this type of lorry and the load of drums was secured by ropes. He agreed that just before the scene of accident the road was very winding. He agreed further that his was a heavy vehicle and it demanded extreme care and said he was very careful. He also agreed that a slight mistake on his part would have landed him in the drain or hit an opposite vehicle. The road was quite narrow. He said that he was on his correct side of the road within his own half. The bridge was a long bridge but was not narrow and just before he passed the bridge there was a nasty left hand bend and he could not see more than 50 feet ahead of him. He said he did not stop at the bridge as there was no need for him to do so. He could see in front and he was not travelling fast. He denied that he had encroached into the path of the oncoming vehicle and he said that it was the Mercedes Benz car which encroached into his path. He agreed that the front off-side of his lorry was

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10 damaged. He denied knocking into the other vehicle and said that he exercised extreme care and the car came and knocked into his lorry. In re-examination he said that just before the bridge was a left hand bend - about 50 feet away. I asked him from the Bench why he had made no mention in his report made to the Police on the same day at 1.20 p.m. that the Mercedes Benz had encroached into his path and to this the witness replied that he had said in his report that the car knocked into his lorry and by that he meant that the car encroached into his path.

20 The second witness for the defence was the lorry attendant Soundaraju. He said that he was working as an attendant on the lorry on the day in question and the lorry was carrying empty drums and he was sitting on top of the lorry behind on top of the driver's cabin. There was no other place to sit because there were drums on the lorry. He said that there was an accident on the way. Before reaching the place of accident there were many bends and he was holding on to the empty drums. Immediately after that he heard a sound but he did not see the accident as he was facing the rear and he said he did not know how the accident took place.

30 On the evidence before me I held that the driver of the car in which the deceased was travelling was wholly to be blamed for the accident. I accepted the evidence of the second defendant the driver of motor lorry No. ND 1969 that after he had crossed the bridge the oncoming car encroached into his path and collided with his lorry. The second defendant was travelling from Seremban towards Kuala Pilah driving a heavy 6-ton lorry carrying a load of 100 empty drums of 45 gallon capacity each. The lorry had travelled along many bends immediately before reaching the bridge and could not have been travelling fast as alleged by the driver of the car. I accepted the evidence of the second defendant that on seeing the oncoming car encroaching into his path he swerved his lorry to the left edge of the road but the car knocked into the front portion of the lorry and swung around. On the other hand I did not accept the evidence of the driver of the car that it was the

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In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

In the High Court
at Seremban

No. 5
Grounds of
Judgment
12th February 1976
continued

lorry which had encroached into his path. The road up to the place of the accident from Kuala Pilah side was fairly straight stretch unlike the stretch of road from Seremban side up to the place of the accident. On a balance of probabilities I found that it was the driver of the car in which the deceased was travelling who was to be blamed for the accident. The scratch mark on the left side of the road shown on the sketch plan as one comes from Seremban is in between the two vehicles and nearer the lorry which in all probability indicates that the accident occurred on the lorry's side of the road. Also on the grass verge next to the lorry are shown glass fragments from the broken windscreen of the car. This tends to support the evidence of the driver of the lorry that he swerved his lorry to the very left edge of the road in attempting to avoid the oncoming car. As to the speed of the vehicles it was the car rather than the lorry which in all probability was travelling very fast because after knocking into the lorry which was on its correct side the car swung round and ended up facing the direction it had come. The car was approaching a bridge and then a bend ahead and it was also drizzling at that time. In these circumstances I held that the driver of the car had failed to exercise due care and attention by driving fast and encroaching into the other half of the road. I therefore held that the Plaintiffs had failed to prove any negligence on the part of the defendants.

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In the event of a finding of 100% liability I would have made the following awards -

- (1) \$42,628 general damages
- (2) \$ 1,515 agreed special damages

with 6% interest on general damages from the date of service of writ and 3% on special damages from the date of accident.

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However as I held that the driver of the car in which the deceased was travelling was wholly to be blamed for the accident I dismissed the

plaintiffs' claim against the defendants with costs.

In the High Court
at Seremban

Dated this 12th day of February, 1976.

signed

(AJAIB SINGH)
JUDGE
HIGH COURT, MALAYA
SEREMBAN.

No. 5
Grounds of
Judgment
12th February 1976
continued

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No. 6

In the High Court
at Seremban

O R D E R

THIS SUIT coming on for hearing on this day in the presence of Mr. Foo Sam Ming of Counsel for the Plaintiffs and Mr. P.P. Sangarananda of Counsel for the Defendants:

No. 6
Order
5th December 1975

AND UPON READING the Pleadings filed herein:

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AND UPON HEARING the evidence and argument of Counsels as aforesaid:

IT IS ORDERED that the Plaintiffs' claim against the Defendants be and is hereby dismissed:

AND IT IS FURTHER ORDERED that the Plaintiffs do pay to the Defendants the cost of this suit.

GIVEN under my hand and the Seal of the Court this 5th day of December, 1975.

Sgd:
SENIOR ASSISTANT REGISTRAR,
HIGH COURT,
SEREMBAN.

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No. 7.

In the Federal
Court at Kuala
Lumpur

NOTICE OF APPEAL
(Order 58, Rule 1 (3) of
Rules of Supreme Court 1957).

TAKE NOTICE that the Plaintiffs above named

No. 7
Notice of Appeal
9th December 1975

In the Federal
Court at Kuala
Lumpur

No. 7
Notice of Appeal
9th December 1975
continued

being dissatisfied with the decision of the Honourable Mr. Justice Ajaib Singh given at Seremban on the 5th day of December, 1975 Appeals to the Court of Appeal against the whole of the said decision.

Dated this 9th day of December, 1975.

In the Federal
Court at Kuala
Lumpur

No. 8
Memorandum of
Appeal
27th February 1976

No. 8

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IN THE FEDERAL COURT IN MALAYA
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 169 OF 1975

Between

Chew Soo Lan, widow and Chong
Chap Seng the Administratrix and
Co-Administrator of the estate of
Choong Tung Cheong, also known as
Chong Thong Chong, deceased. Appellants

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And

1. Ludhiana Transport Syndicate,
Ladang Geddes, Bahau,
Negeri Sembilan.
2. Somanaidu s/o Bankariah,
Central Division,
Ladang Gadis, Bahau,
Negeri Sembilan Respondents

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(In the Matter of Seremban High Court
Civil Suit No. 217 of 1972)

Between

Chew Soo Lan, widow and Chong
Chap Seng the Administratrix and
Co-Administrator of the estate of
Choong Tung Cheong also known as
Chong Thong Chong, deceased Plaintiffs

And

1. Ludhiana Transport Syndicate,
Ladang Geddes, Bahau,
Negeri Sembilan.

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2. Somanaidu s/o Bankariah,
Central Division,
Ladang Gadis, Bahau, N.S. Defendants

In the Federal
Court at Kuala
Lumpur

MEMORANDUM OF APPEAL

No. 8

Memorandum of
Appeal
27th February
1976

10 Chew Soo Lan, widow and Chong Chap Seng the
Administratrix and Co-Administrator of the estate
of Choong Tung Cheong also known as Chong Thong,
deceased, the appellants above named appeal the
Federal Court against the whole of the decision
of the Honourable Mr. Ajaib Singh given at Seremban
on the 5th day of December, 1975 on the following
grounds.

1. The learned trial Judge erred in law and in
fact when he speculated, concluded, and drew
wrong inferences from the followings:-

20 (a) "The lorry had travelled along many bends
immediately before reaching the bridge and
could not have been travelling fast as alleged
by the driver of the car".

(b) The scratch mark on the left side of the
road shown on the sketch plan as one comes from
Seremban is in between the two vehicles and
near the lorry which in all probability
indicate that the accident occurred on the
lorry's side of the road.

30 (c) Also on the grass verge next to the lorry
are shown glass fragments from the broken
windscreen of the car. This tends to support
the evidence of the driver of the lorry that
he swerved his lorry to the left edge of the
road in attempting to avoid the oncoming car".

40 (d) As to the speed of the vehicles it was
the car rather than the lorry which in all
probability was travelling very fast because
after knocking into the lorry which was on its
correct side of the road the car swerving
around and ended up facing the direction it
had come. The car was approaching a bridge and
then a bend ahead and it was also drizzling at
that time. Inference favourable to the appellant
ought to have been drawn if due weight had been
assigned to the above evidence.

2. The learned trial judge did not consider the

In the Federal
Court at Kuala
Lumpur

No. 8
Memorandum of
Appeal
27th February
1976
continued

- width and weights of the lorry and the car and the fact that the lorry had immediately before the accident he had crossed a narrow bridge and that the point of impact could not in all probability be on the Second Defendant left side of road. In all probability it was in the middle of the road or on the deceased side of road.
3. The learned trial judge did not consider the damages to both the vehicles in arriving at a decision. 10
4. The learned trial judge ought not to have accepted the explanation of the Defendant driver when he tried to explain why the fact that he had not mentioned in his police report the car encroaching to his side of the road.
5. No due weight was given to the following evidence.
- Q. "You would not see more than 50 feet ahead of you". 20
- A. "yes".
6. The learned trial judge ought to have held that in the absence of cogent and reliable evidence on which he could come to a definite finding it would not be unreasonable to apportion the liability equally in this case.
7. The learned trial Judge ought to have considered all the evidence in this case which was favourable to the appellants' case and on the balance of probabilities ought to have found that the defendant driver was negligent and in particular, the Learned Judge should have attached weight to the evidence of the driver of the car in which the deceased was travelling. 30
8. The learned trial judge has erred in law and in facts to conclude favourably in favour of the Second defendant and rejecting the evidence of the driver of 40

the car and proceed to say "the road up to the place of accident from Kuala Pilah side was fairly straight stretch"

In the Federal Court at Kuala Lumpur

9. The learned trial judge ought to have given due weight to the "neutral evidence" and interpreted it in accordance with precedents as enumerated by this Honourable Court.

No. 8
Memorandum of Appeal
27th February 1976

10. The appellant therefore prays that the Appeal may be allowed with costs.

continued

Dated this 27th day of February, 1976.

Sgd: Foo & Woon
SOLICITORS FOR THE APPELLANTS/
PLAINTIFFS

No. 9

NOTES OF ARGUMENT RECORDED BY GILL C.J.

In the Federal Court at Kuala Lumpur

20 Kuala Lumpur,
7th April 1976
Encik Keith-Sellar with Encik Foo Sam Ming for Appellants
Encik N.H. Chan for respondents.

No. 9
Notes of Argument
by Gill C.J.
7th April 1976

Foo Sam Ming:

We have a motion for enlargement of time (Encik Chan says that he does not oppose it).

Order for enlargement of time as prayed.

Keith-Sellar:

30 An agreed bundle was put in and marked "A" (Refer to page 18 of record). I ask that after the page between pages 43 and 44 of the record be numbered as 43A (List of Exhibits). The list of exhibits sets out the Police Reports and other documents. The only documents mentioned by the parties were the two photographs (See page 21 line C 1 and page 24 line D 3). None of the other documents were referred to since the decision

In the Federal
Court at Kuala
Lumpur

No. 9
Notes of Argument
by Gill C.J.
7th April 1976
continued

of Sharma J. in Yap Choo Hoo v. Tahir bin Yasin & Another (1970) 2 M.L.J. 138, a practice has arisen for parties to mark the documents agreed and admitted. I also refer to Henry Trading Co. Ltd. v. Harun (1966) 2 M.L.J. 281, 282.

The learned Judge based his judgment on a scratch mark as shown in the sketch plan and the mark made on the sketch plan as the place where broken pieces of glass were found. The sketch plan was not proved by the witness who drew it. I refer to practice note in (1969) 1 M.L.J. xii.

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The undisputed facts in this case are as follows. The accident took place at 12½ mile Seremban/Kuala Pilah Road at approximately 12.30 p.m. on 31.12.70 between the two vehicles concerned. Motor lorry ND 1969 was a six-ton lorry, which would be 6 to 6½ feet wide and 16 to 18 feet long. It was laden with 100 empty 45 gallon drums. It carried a driver and an attendant on the back. The other vehicle was a Mercedes-Benz with a driver and a passenger sitting next to the driver who was killed. The lorry had travelled from Petaling Jaya towards Kuala Pilah and according to DW 1 had covered approximately 60 miles in 2½ hours. The motor car had travelled from Kuala Pilah (12½ miles) in 20 minutes. Before the lorry reached the scene of the accident it had crossed a bridge, and it took a right hand (not left hand bend as mentioned in some of the evidence). The road surface was wet at the time of the accident. The visibility between the two vehicles was of a short distance (see page 19 line D⁴ and page 25 line F⁴) because of the bend in the road. The damage to both the vehicles was to the front off-side. The Police Report of PW 1 stated that the lorry encroached on his side of the road. The Police report of DW 1 did not mention that the motor car had encroached into the path of the lorry.

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I would now refer to my grounds of appeal and the decision of Thomson C.J. in Fong Yit Yoon v. Yap Tiam and Another (1963) M.L.J. 104, 108. I would therefore submit that the learned Judge should have apportioned the liability

equally between the two drivers.

Chan:

In this case the judge made a finding of fact after hearing two versions of the accident, and he chose to accept the evidence of the driver of the lorry. Refer to page 38 as to the Judge's finding. The pieces of glass were on the lorry side of the road and so was the scratch mark. Refer to explanation of the lorry driver as to why he did not mention that the motor car encroached on his side of the road at page 26.

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Appeal allowed. Judgment of the Court below set aside and there is substituted in its place an order that the liability for the accident be apportioned equally between the drivers of the two vehicles.

There will therefore be judgment for the plaintiffs for \$22,071.50 with interest at 6% on \$21,314 from date of service of writ and 3% per annum on \$757.50 from the date of the accident. Respondents to pay costs of the appeal and the costs in the Court below. Deposit to be refunded to the appellants.

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Sg. S.S. Gill

TRUE COPY
G.E. Tan
Secretary to Chief Justice
High Court
Malaya
20/7/76

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No. 10

NOTES OF ARGUMENT RECORDED BY WAN SULEIMAN, F.J.

7th April, 1976

Sellar (Foo Sam Ming with him) for appellants
N.H. Chan for respondents.

Foo: Enlargement of time - application not opposed.

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O.I.T.

Sellar:

P.18 F4 - Agreed Bundle "A" of Documents

In the Federal
Court at Kuala
Lumpur

No. 9
Notes of Argument
by Gill C.J.
7th April 1976
continued

In the Federal
Court at Kuala
Lumpur

No. 10
Notes of Argument
by Wan Suleiman
F.J.
7th April 1976

In the Federal
Court at Kuala
Lumpur

No. 10
Notes of Argument
by Wan Suleiman
F.J.
7th April 1976
continued

Ref. P.43A (in Pt.II).

Only document mentioned by the parties were the 2 photos - PW.1 P.21 C1; DW1 P.24 D3. None of the other documents were referred to at trial.

Yap Choo Hoo v. Tahir b. Yasin & Anor. (1970) 2 M.L.J. 138 which refers to Henry Trading Co. v. Harun (1966) 2 M.L.J. 281.

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Learned judge based his judgment on scratch mark on sketch plan which was not properly proved. Also H on sketch plan re glass - Cpl gave "Expert" evidence which judge accepted.

Ref (1969) 1 M.L.J. xii - Practice Note.

Undisputed facts:

(i) Accident took place at 12½ mile Seremban/Kuala Pilah road at 12.30 p.m. on 31.12.70.

(ii) Motor lorry ND 1969 a 6-ton lorry (suggests 6½' x 16' to 18') laden with 100 empty 45 gallon drums, and carried a driver, with attendant at back.

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Other vehicle a Mercedes Benz with driver and passenger sitting by the side of driver.

(iii) Lorry had travelled from Petaling Jaya towards Kuala Pilah and had according to DW1 (driver) had covered 60 miles in 2½ hours, and the motor car had travelled from Kuala Pilah 12½ miles in 20 minutes approximately.

(iv) Before reaching point of accident it had crossed a bridge and taken a right hand bend.

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(v) At time of accident road surface wet.

(vi) Visibility of two vehicles - 19 D4; 25 F4 - bad because of bend.

(vii) Damage to both vehicles - front offside of both - no RIMV report.

(viii) Motor car driver on day of accident said lorry encroached on his side.

On P.44 driver of lorry did not mention driver of motor car had encroached on to his path.

In the Federal Court at Kuala Lumpur

Ground 6: I would now refer to my grounds of appeal and decision of Thomson C.J. in Foong Yit Yoon v. Yap Tiam & Anor. (1963) M.L.J. 104 at 108" all that can be said in equal proportions". This I submit is a similar case.

No.10
Notes of Argument
by Wan Suleiman
F.J.
7th April 1976
continued

10 No cross-appeal on quantum.

Chan:

In this case judge had made a finding of fact after hearing 2 versions of accident and chose to accept that of defendant driver - P.38 G/J.

The pieces of glass were on lorry side of road and scratch marks were on lorry side of road - latter 3'6" on lorry side of road.

See the explanation of lorry driver as to why he did not mention.

20 Intd. W.S.

Order: Appeal allowed.

Judgment of court below set aside and there be substituted in its place an order that liability for accident be apportioned equally between parties. There will therefore be judgment for plaintiff for \$22,071.50 with interest at 6% on \$21,314 from date of service of writ and 3% per annum on \$757.50 from date of accident. Respondents to pay costs of appeal and of court below.
Deposit to be refunded to the appellants.

30

Intd. W.S.

Certified true copy.

Secretary to Judge
Federal Court
Malaysia.
Kuala Lumpur
24/6/76.

No. 11

In the Federal
Court at Kuala
Lumpur

No.11
Notes of Argument
by Ali F.J.
7th April 1976

NOTES OF ARGUMENT RECORDED BY ALI, F.J.

Kuala Lumpur,
7th April, 1976.

Encik Keith-Sellar with Encik Foo Sam Ming
for Appellants.
Encik N.H. Chan for respondents.

Foo Sam Ming refers to Motion for enlargement
of time. 10

Not opposed.

Order in terms of Motion for enlargement
of time as prayed.

Keith-Sellar

Asks for a ruling - p.18. To number sheet
between 43 & 44 as 43A.

(Chan agrees).

Except for photos none of the other documents
were referred to. 20

Refers to Yap Choo Hoo v Tahir bin Yassin
& Anor (1970) 2 M.L.J. 139

Also refers to Henry Trading Co. Ltd. v.
Harun (1966) 2 M.L.J. 281

In this case trial Judge based judgment on
scratch mark shown in sketch plan which has
not been proved.

Refers to Practice Note in (1969) 1 M.L.J.
xii.

Undisputed facts:

(1) Accident happened between two vehicles
at 12 $\frac{1}{2}$ milestone Seremban/Kuala Pilah Road at
12.30 p.m. on 31.12.1970.

(2) Motor lorry 6 ton lorry. Suggests 6
to 6 $\frac{1}{2}$ ft. wide - 16 to 18 ft long. Laden with
100 empty 45 gallon drums, with driver and
attendant at the back. The other vehicle a

Mercedes Benz with driver and deceased, a passenger in the car sitting next to driver.

(3) Lorry had travelled from Petaling Jaya towards Kuala Pilah. D.W.1. (driver) had covered 60 miles in $2\frac{1}{2}$ hrs. Evidence at p.24. Motor car from Kuala Pilah to $12\frac{1}{2}$ mile approximately in 20 minutes.

10 (4) Before the lorry reached the scene of the accident it had crossed a bridge and taken a right hand bend - not left hand bend as sometimes referred to in the evidence.

(5) Time of accident road surface wet.

(6) Visibility was of short distance because of the bend.

(7) Damage to both vehicles - front offside.

20 (8) Police Report of PW 1 - driver of car - lorry encroached on his side of the road. Police Report of DW 1 did not mention of any encroachment by car.

I refer to ground (6) - Fong Yit Yoon v Yap Tiam & Anor (1963) M.L.J. 104,108. I would submit that trial Judge should apportion liability equally between the two drivers.

Chan:

30 Submits trial Judge made a finding of fact after hearing two versions. He chose to accept evidence of defendant - page 38 of Record. Pieces of glass on lorry's side of the road. Scratch mark on lorry's side of the road - 3'6".

Appeal allowed with costs. Judgment of the Court below set aside and there is substituted in its place an order that the liability for accident be apportioned equally between the parties.

40 There will therefore be judgment for plaintiffs for \$22,071.50 with interest at 6% on \$21,314/- from date of service of writ. Also 3% per annum on \$757.50 from date of accident. Respondents to pay costs of appeal and costs in Court below. Deposit to appellants.

Certified copy.

Sd. Ali

Secretary to Judge.

In the Federal Court at Kuala Lumpur

No. 11
Notes of Argument
by Ali F.J.
7th April 1976
continued

In the Federal Court at Kuala Lumpur

No. 12

ORDER

No. 12
Order
7th April 1976

CORAM: GILL A.G. LORD PRESIDENT. FEDERAL COURT, MALAYSIA:
ALI, AG. CHIEF JUSTICE, HIGH COURT, MALAYA;
WAN SULEIMAN, JUDGE FEDERAL, FEDERAL COURT, MALAYSIA

10

IN OPEN COURT

THIS 7TH DAY OF APRIL, 1976

ORDER

THIS APPEAL coming on for hearing this day in the presence of Encik F. Keith Sellar (Encik Foo Sam Ming with him) of Counsel for the Appellants and Encik N.H. Chan of Counsel for the Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING the submissions of Counsel as aforesaid;

20

IT IS ORDERED that this Appeal be and is hereby allowed to the extent that the Liability herein be and is hereby apportioned at 50% against the 2nd Respondent and 50% against the driver of the deceased's motor car.

AND IT IS ORDERED that the Order of the Honourable Mr. Justice Ajaib Singh given on the 5th day of December, 1975 in so far as it relates to the question of liability be and is hereby set aside:

30

AND IT IS ALSO ORDERED that Judgment be and is hereby entered for the Appellants in the sum of \$21,314-00 (Ringgit Twenty One Thousand Three Hundred and Fourteen only) being 50% of the total General Damages and \$757-50 (Ringgit Seven Hundred and Fifty Seven and cents fifty only) being 50% of the total Special Damages:

AND IT IS ALSO ORDERED that the Respondents do pay to the Applicants interest on the award of General Damages of \$21,314-00 (Ringgit Twenty One Thousand Three Hundred and Fourteen only) at 6% per annum from the date of service of the Writ

40

of Summons on the Respondents which was on 7th February, 1973 and interest on the award of Special Damages of \$757-50 (Ringgit Seven Hundred and Fifty Seven and cents Fifty only) at 3% per annum from the date of accident which was on the 31st December, 1970 until realisation:

In the Federal Court at Kuala Lumpur

No. 12
Order
7th April 1976
continued

10

AND IT IS FURTHER ORDERED that the costs of this Appeal and the costs of the Court below be taxed by the proper officer of the Court and paid by the Respondents to the Appellants:

AND IT IS LASTLY ORDERED that the sum of \$500-00 (Ringgit Five Hundred only) deposited in Court as security for costs of this Appeal be refunded to the Appellants.

GIVEN under my hand and the seal of the Court this 7th day of April, 1976.

20

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

No. 13

In the Federal Court at Kuala Lumpur

NOTES OF ARGUMENT RECORDED BY SUFFIAN L.P.

Monday, 7th June, 1976

N.H. Chan for appellants.

Foo Sam Ming for respondents.

No. 13
Notes of Argument
by Suffian L.P.
7th June 1976

30

Damages \$44,000. Reduced to \$21,314.

Order in terms - usual conditions.

Sd. M. Suffian.

Certified true copy

Mahkamah Persekutuan
Malaysia
Kuala Lumpur
24 Jun 1976

In the Federal
Court at Kuala
Lumpur

No. 14

NOTES OF ARGUMENT RECORDED BY LEE
HUN HOE, C.J.

No. 14
Notes of Argument
by Lee Hun Hoe
7th June 1976

Monday, 7th June, 1976

N.H. Chan for appellants.
S.M. Foo for respondents.

Damages \$44,000.

10

Federal Court allowed appeal by reversing
finding of facts of trial Judge and assessed
damages at 50/50.

Plaintiff passenger.

How could there be apportionment as
plaintiff was passenger.

Submit wrong in law.

Foo.

Section 74 of Courts of Judicature Act,
1964.

20

Less than \$25,000/-. No right to appeal
to Privy Council.

No merit disclosed.

New ground should have been brought up in
the Federal Court.

Chan.

He was the appellant. So not for me to
raise it.

Court.

Adjourned till 2.30 p.m.

30

(Sgd) Lee Hun Hoe

2.30 p.m.

Court.

Leave granted.

(Sgd) Lee Hun Hoe

Certified true copy:

.....
(Puan Valerie Kueh)
P.A. to Chief Justice,
Borneo.
7.7.76.

In the Federal
Court at Kuala
Lumpur

No. 14
Notes of Argument
by Lee Hun Hoe
7th June 1976
continued

10

No. 15

NOTES OF ARGUMENT RECORDED BY WAN SULEIMAN,
F.J.

In the Federal
Court at Kuala
Lumpur

No. 15
Notes of Argument
by Wan Suleiman F.J.
7th June 1976

7th June, 1976:

N.H. Chan for applicants.
Foo Sam Ming for respondents.

Chan:

20

Federal Court wrong in law - plaintiff a
passenger.

Foo:

General Damages reduced to about \$21,000 -
less than the \$25,000 (i.e. final judgment and
order less than \$25,000).

Affidavit does not show merits.

Chan:

Subject matter in dispute is \$44,000.

Adjourned to 2.30 p.m.

30

Order: Application allowed on usual terms.

Intd. W.S.

Certified true copy.

Secretary to Judge
Federal Court
Malaysia, Kuala Lumpur.
8/7/76.

In the Federal Court at Kuala Lumpur

No. 16

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

No. 16
Order Granting Conditional leave to Appeal to His Majesty the Yang di-Pertuan Agong

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT MALAYSIA:
LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN BORNEO;
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA

10

IN OPEN COURT

THIS 7TH DAY OF JUNE 1976

O R D E R

UPON MOTION preferred unto this Court this day by Encik N.H. Chan of Counsel for the Respondents in the presence of Encik Foo Sam Ming of Counsel for the Appellants AND UPON READING the Notice of Motion dated the 21st day of May 1976 and the Affidavit of P.P. Sangarananda affirmed on the 18th day of May 1976 all filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondents to appeal to His Majesty the Yang di-Pertuan Agong from the Order of the Federal Court dated the 7th day of April, 1976 upon the following conditions :-

20

- a) that the Respondents do within 3 (three) months from date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of \$5,000.00 (Ringgit Five Thousand only) for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Appellants in the event of the Respondents not obtaining an Order granting final leave to appeal or of the Appeal being dismissed for non-prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Respondents

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40

to pay the Appellants costs of the Appeal as the case may be; and

- b) that the Respondents do within the said period of 3 (three) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and despatch thereof to England;

In the Federal Court at Kuala Lumpur

No. 16
Order Granting Conditional leave to Appeal to his Majesty the Yang di-Pertuan Agong continued

10

AND IT IS ORDERED that execution hereof be stayed until the Appeal is heard and disposed of AND IT IS LASTLY ORDERED that the costs of this Motion be costs in the cause.

GIVEN under my hand and the Seal of the Court this 7th day of June, 1976.

Sgd.

CHIEF REGISTRAR
FEDERAL COURT
MALAYSIA.

20

No. 17

JUDGMENT

In the Federal Court at Kuala Lumpur

No. 17
Judgment
19th July 1976

30

This was an appeal by the plaintiffs from the dismissal by Ajaib Singh J. of their action against the respondents as defendants for damages arising out of the death of one Choong Tung Cheong in a motor accident on 31st December 1970. The action was brought by the plaintiffs in their capacity as administratrix and co-administrator of the estate of the said Choong Tung Chong deceased for the benefit of his widow and dependant children.

40

The deceased, a wholesale dealer in watches with a shop known as Sin Mah at 20 Oxley Road, Singapore, used to visit Malaysia once a month of business. On 31st December 1970 he arrived in Kuala Pilah at about 11 a.m. in a Mercedes Benz motor car bearing registration No. NB 5522, travelling from Malacca via Tampin and Seremban. He had with him his only salesman named Chia Chah Hoo. After doing their business and collecting some money at Kuala Pilah the two of them left in the car for Seremban at about 12.10 p.m. Chia

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

drove the car and the deceased sat beside him as a passenger. When they arrived at the 12 $\frac{1}{2}$ milestone from Kuala Pilah their car came into collision with motor lorry ND 1969 belonging to the first defendants and being driven by the second defendant as their servant or agent from the opposite direction, resulting in the deceased being killed and Chia being seriously injured.

In due course the plaintiffs issued a writ in the action against the defendants from the High Court at Seremban. In their statement of claim the plaintiffs alleged that the collision was caused solely by the negligence of the second defendant and they set out therein various particulars of such negligence. They further relied on the doctrine of *res ipsa loquitur*. The defendants by their statement of defence denied that the accident was caused by the negligence of the second defendant. They averred that the accident was caused solely or in the alternative contributed to by the negligence of the driver of the motor car NB. 5522, setting out the particulars of negligence on the part of the driver. 10 20

At the trial of the action Chia Chah Hoo (P.W.1) gave evidence on behalf of the plaintiffs as to how the accident took place. What he said was this. Just before the collision he was travelling on the left side of the road as one faces Seremban at about 35 m.p.h. It was raining at the time. He saw a lorry coming from the opposite direction. It was travelling very fast although he could not say at what speed it was travelling. When he first saw the lorry it was about 40 feet away. He could not see it earlier because of a bend in the road. On seeing the lorry he sounded his horn. He was still on his side of the road. Soon after that the lorry knocked against the front mudguard of his car on the driver's side. The collision took place on his side of the road. He could not say where the lorry stopped after the accident. The lorry came in a very fast manner. The accident took place within seconds. He took no evasive action because he was on his correct side of the road and there was a big drain on his left. He felt giddy after the accident. Later he and the deceased were taken to Kuala Pilah hospital. 30 40

Under cross-examination his evidence was as follows. He was familiar with Seremban/Kuala Pilah Road. For a few miles before the place of accident there are a lot of bends on the Seremban side of the road. Coming from Kuala Pilah, for about 2 miles before the place of accident, there are some bends and also straight stretches of road. Just before the collision he was on his correct side. He could not go any further to the left because of the drain. The lorry encroached into his path. After the collision his car was on the left of his side facing Kuala Pilah.

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

In answer to questions put to him by the court P.W. 1 stated as follows. There was a left bend in front. It was an "S" shaped bend. At the bend there is also a bridge - over a small river - a stream. He had not reached the bridge yet. The accident took place about 40 feet from the bridge. The bend was in front of him. The road behind him was not very straight - slightly curved. It was raining - not heavy rain, drizzling.

The evidence on behalf of the defence consisted of the evidence of the second defendant, Somanaidu s/o Bankariah (D.W. 1), and that of the lorry attendant Soundaraju (D.W. 2) who said that he did not know how the accident took place as he did not see it because he was facing the rear. The second defendant's version as to what happened was as follows. On the day in question he drove lorry ND. 1969 from Petaling Jaya and was on his way to Bahau. He was carrying a hundred 45-gallon empty drums in the lorry. When he reached the 12 $\frac{1}{2}$ milestone from Kuala Pilah he passed a bridge and saw a Mercedes Benz car coming from the opposite direction on to his side. On seeing this he swerved his lorry to his very left - to the left edge. The car then knocked into the front portion of his lorry and swung round facing the direction of Kuala Pilah. He was doing about 15 to 20 miles per hour because of the rain. He had been driving lorries along this road for about 12 years and was therefore familiar with it. Two miles before the place of accident coming from Seremban there were many bends. The road after the place of accident towards Kuala Pilah was a straight stretch of road.

Under cross-examination he said that he arrived at the scene of the accident at about 12.30 p.m. His was a 6 ton lorry. He was used to this type of lorry. The drums were secured by ropes. Just before the scene

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

the road was very winding. A slight mistake on his part would land him in the drain or hit a vehicle coming from the opposite direction. The road was quite narrow. He was on his correct side of the road within his own half. He did not agree that on approaching a bridge a vehicle like his ought to have stopped. He could see in front. He was not travelling fast. He denied that as a result of not stopping at the bridge he encroached on the other side. The front offside part of his lorry was damaged. When asked whether the other vehicle would be badly damaged because his was a heavy vehicle, he replied that he did not knock into the other vehicle. He said that he exercised extreme care and that the car came and knocked into his lorry.

10

In answer to a question put to him by the court he said that he made a report to the police on the same day at about 1.20 p.m. When it was put to him that he had made no mention in his report that the Mercedes Benz had encroached on to his path, he replied that he said that the car knocked into his lorry, by which he meant that the car encroached his path.

20

On the evidence before him the learned trial Judge held that the driver of the car in which the deceased was travelling was wholly to blame for the accident. In doing so he accepted the evidence of the lorry driver that after he had crossed the bridge the oncoming car encroached into his path and collided with the lorry. In stating in his grounds of judgment his reasons for arriving at that finding the learned Judge said:

30

" The lorry had travelled along many bends immediately before reaching the bridge and could not have been travelling fast as alleged by the driver of the car. I accepted the evidence of the second defendant that on seeing the oncoming car encroaching into his path he swerved his lorry to the left edge of the road but the car knocked into the front portion of the lorry and swung around. On the other hand I did not accept the evidence of the driver of the car that

40

it was the lorry which had encroached into his path. The road up to the place of the accident from Kuala Pilah side was a fairly straight stretch unlike the stretch of road from Seremban side up to the place of the accident. On a balance of probabilities I found that it was the driver of the car in which the deceased was travelling who was to be blamed for the accident".

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

10 It would seem clear that the learned Judge made a finding that the lorry driver could not have been travelling fast because he had travelled along many bends immediately before reaching the bridge. With respect to the learned Judge, he was speculating when he drew this inference on the evidence before him. There was no evidence that the lorry driver had either stopped or slowed down before going over the bridge and negotiating the bend. For him it was a right hand bend and it is
20 common knowledge that there is a greater tendency for the driver of a vehicle to cut corners when negotiating such a bend. The fact that after the impact the car turned right round and landed on the left side of its road facing Kuala Pilah was highly indicative of the speed of the lorry. Had the lorry been driven at 15 or 20 miles per hour, as alleged by the driver, it would have been extremely unlikely for the car to have been swung right round. The lorry driver persisted in saying
30 that it was the car which knocked into his lorry. The truth of course was that the two vehicles collided with each other. The lorry was a much heavier vehicle. The probability therefore was that the lorry was travelling faster than 15 or 20 miles per hour. In our judgment the learned trial Judge did not consider the width and the weight of the lorry and of the car, and he made no allowance for the fact that the lorry had immediately before the accident crossed a narrow
40 bridge.

The learned trial Judge went on to state in his grounds of judgment:

" The scratch mark on the left side of the road shown on the sketch plan as one comes from Seremban is in between the two vehicles and nearer the lorry which in all probability indicates that the accident occurred on the lorry's side of the road. Also on the grass

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

verge next to the lorry are shown glass fragments from the broken windscreen of the car. This tends to support the evidence of the driver of the lorry that he swerved his lorry to the very left edge of the road in attempting to avoid the oncoming car. As to the speed of the vehicles it was the car rather than the lorry which in all probability was travelling very fast because after knocking into the lorry which was on its correct side the car swung round and ended up facing the direction it had come. The car was approaching a bridge and then a bend ahead and it was also drizzling at that time. In these circumstances I held that the driver of the car had failed to exercise due care and attention by driving fast and encroaching into the other half of the road. I therefore held that the Plaintiffs had failed to prove any negligence on the part of the defendants".

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Again with respect to the learned Judge, there was no evidence as to how the scratch mark on the road, as shown in the plan, came to be there. There certainly was no evidence that the scratch mark was made by the car. The learned Judge's inference that the scratch mark in all probability indicated that the accident occurred on the lorry side of the road was therefore not supported by evidence. The finding of glass fragments on the grass verge next to the lorry could not be said to support the evidence of the lorry driver either that they were broken pieces of glass from the windscreen of the car or that the driver swerved his lorry to the left edge of the road in attempting to avoid the oncoming car. There was obviously such a violent impact between the two vehicles that pieces of glass would have been scattered all over. As the car was turned right round, starting from its off-side with the impact, the falling of pieces of glass, even if they were from the windscreen of the car, all to the side of the lorry would not be a strange phenomenon. It would certainly not be something which would be inherently improbable.

30

40

The lorry driver did not say in his report to the police that the car had encroached on to his side of the road. His explanation for not

doing that was that his report that the car knocked into his lorry meant that the car had encroached into his path. The driver of the car also made a report at about 9.30 p.m. on the date of the accident. In his report he clearly stated that the lorry had encroached on to his side of the road. In the circumstances the learned Judge ought not to have accepted the explanation of the lorry driver as to why he had not specifically mentioned in his report that the car encroached on to his side.

10

It appeared to us from the learned Judge's grounds of judgment that in arriving at his decision he did not consider the damage to both the vehicles. The damage was to the front offside of each vehicle. It was in evidence that the road at the place of the accident was rather narrow. Neither of the vehicles had gone off the road before the impact. The evidence before the learned Judge was therefore clearly indicative of the fact that the accident took place at or very near the middle of the road.

20

Counsel for the respondents submitted to us that the learned Judge had made a finding of fact after hearing the two versions of the accident, and that he had chosen to accept the evidence of the lorry driver. He also submitted that the pieces of glass and the scratch mark were on the lorry side of the road. As we have already said, neither the position of the scratch mark on the road nor the place at which the broken pieces of glass were found gave clear indication as to the point of impact. Moreover, the learned Judge's finding was clearly not based entirely on the demeanour of the witnesses as they gave evidence. Therefore, to use the words of Thomson C.J. (as he then was) in Foong Yit Voon v. Yap Thian & Anor (1963) M.L.J. 104, 108 in all the circumstances of the case we thought that we were in as good a position, or as bad a position, as the trial Judge to form a view as to what happened.

30

It was stated by Lord Edmund-Davis in delivering the judgment of their Lordships of the Privy Council in Yahaya Mohamad v. Chin Tuan Nam (1975) 2 M.L.J. 117, 123 that the percentage of traffic accident cases which can be satisfactorily decided wholly independently of oral testimony must be very small. In this case, however, the oral testimony of the two witnesses was well-balanced. If anything, the evidence of the driver of the car was consistent with what he stated in his report to the police about the accident. The learned trial

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In the Federal Court at Kuala Lumpur

No. 17
Judgment
19th July 1976
continued

In the Federal
Court at Kuala
Lumpur

No. 17
Judgment
19th July 1976
continued

Judge clearly did not decide the case wholly on the oral testimony of the witnesses. In our judgment nothing very much turned on the evidence as regards the mark on the road or the pieces of glass on the grass verge on the lorry side of the road. The balance of probability therefore was in favour of the view that the drivers of both vehicles were to blame and that it was impossible to say in what proportion the blame should be allocated between them.

10

One of the grounds of appeal on behalf of the appellants in this case was that the learned trial Judge ought to have held that in the absence of cogent and reliable evidence on which he could come to a definite finding it would not be unreasonable to apportion the liability equally between the drivers of the two vehicles. We found ourselves in full agreement with that ground of appeal. We therefore allowed the appeal, setting aside the judgment of the court below and substituting in its place an order that the liability for the accident be apportioned equally between the two drivers. The learned Judge assessed general damages on the basis of full liability at \$42,628/- and special damages were agreed at \$1,515/-. We therefore gave judgment for the plaintiffs for half of those amounts together with interest as claimed and costs.

20

Kuala Lumpur,
19th July, 1976.

S.S. GILL
CHIEF JUSTICE
MALAYA.

30

Encik Foo Sam Ming for Appellants, Encik Keith-Sellar with him.

Solicitors: Foo & Woon

TRUE COPY

Encik N.H. Chan for respondents.
Solicitors: Chor Pee & Hin Hiong.

G.E. Tan
Secretary to
Chief Justice
High Court
Malaya
20/7/76

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No. 18

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

In the Federal
Court at Kuala
Lumpur

CORAM: GILL, AG. LORD PRESIDENT, FEDERAL COURT
MALAYSIA;
ALI, AG. CHIEF JUSTICE, HIGH COURT IN
MALAYA;
ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

No. 18
Order Granting
Final Leave to
Appeal to His
Majesty the
Yang Di-Pertuan
Agong

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IN OPEN COURT

THIS 13TH DAY OF SEPTEMBER 1976

O R D E R

UPON MOTION preferred unto Court this day by Encik N.H. Chan of Counsel for the Respondents and also mentioning on behalf of Messrs. Foo & Woon of Counsel for the Appellants who art absent AND UPON READING the Notice of Motion dated the 26th day of August 1976 and the Affidavit of P.P. Sangarananda affirmed on the 25th day of August 1976 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Respondents to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court dated the 7th day of April, 1976 AND IT IS FURTHER ORDERED that execution hereof be stayed until the appeal is heard and disposed of AND IT IS LASTLY ORDERED that the costs of this Application be costs in the cause.

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30

GIVEN under my hand and the Seal of the Court this 13th day of September, 1976.

L.S.

Sgd.

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

EXHIBITS

No.1
Royal Malaysian
Police Report
139/70
31st December
1970

EXHIBITS

No.1
ROYAL MALAYSIAN POLICE

COPY OF REPORT

Report No. 139/70 Police Station Terachi
At 1.20 p.m. on 31.12.70 In respect of
Complainant Somanaidu s/o Bankariah I/C 2014923
A male Race Indian Tamil Age 37 years
Occupation M/Lorry Driver Residing at Central
Division Ladang Gadis, Bahau
Interpreter Personally from Malay to Malay

10

Complainant's Statement At about 10.00 a.m. on 31.12.70 I was driving Motor Lorry No. ND 1969 from Kuala Lumpur loaded with empty drums to return to Bahau Estate and there was an attendant at the rear named Soundaraju.

20

Copied and checked by Sgt. 8575 Onar and found correct

Sgd:
.....

At about 12.50 p.m. on 31.12.70 I reached the 13th milestone Seremban Kuala Pilah road where there is a slight bend. I saw a car coming from Kuala Pilah going towards Seremban and this motor car knocked into my lorry. I stopped and examined the damages. The mudguard on the right side was broken. I could not see the other damages. The attendant was slightly injured. I do not know the loss. This is why I came to the Police Station to lodge a report.

30

This is the True Translation of the Original Document produced in Serial No. 422 of 1976 Sgd. Interpreter High Court Kuala Lumpur

Complainant's signature:
Somanaidu

40

Officer's signature:
Hassan PC 22598

Sgd:

.....
MOHAMED BIN HJ MOHD NOOR (PPP)
OFFICER IN CHARGE OF POLICE
DISTRICT KUALA PILAH

EXHIBITS
No.2
ROYAL MALAYSIAN POLICE

COPY OF REPORT

EXHIBITS
No.2
Royal Malaysian
Police Report
140/70
31st December
1970

10 Report No. 140/70 Police Station Terachi
At 4.55 p.m. on 31.12.1970 In respect of
Complainant Hashim bin Din PC 27285 A male
Residing at Terachi Police Station
Race Malay Age 49 years Occupation Royal Malaysian
Police
Interpreter Personally from Malay to Malay

20 Complainant's Statement At 4.50 p.m. on 31.12.70 I, PC
27285 of the Enquiry Office at
Terachi received a telephone call
from one Kanapathy, a hospital
Dresser at Kuala Pilah Hospital.
Copied and checked by Sgt. 8585 and found correct.
He informed me that one Chinese
named Chong Pon Chong aged 50 years
had died in the Seremban hospital
in connection with Terachi Report
139/70. This is my report with
my signature below.

Sgd:
.....

Complainant's signature:
Hashim PC 27285

30 This is the
True Trans-
lation of
Original
Document
produced in
Serial No. 424
of 1976
Sgd.
Interpreter
High Court
Kuala Lumpur

Sgd:
.....
MOMAMED BIN HJ. MOHD NOOR
(PPP)
OFFICER IN CHARGE OF
POLICE DISTRICT KUALA
PILAH

EXHIBITS

No.3
Royal Malaysian
Police Report
141/70
31st December
1970

EXHIBITS

No.3
ROYAL MALAYSIAN POLICE

COPY OF REPORT

Report No. 141/70 Police Station Terachi
At 9.30 p.m. on 31.12.70. In respect of
Complainant Chia Chah Hoo I/C 1110555
(Singapore) A male Race Chinese Age 30
years Occupation Watch Shop Residing at
No. 26 P. Oxley Road. Singapore 9

10

Interpreter Personally from Malay to Malay

Complainant's
Statement

At 12.10 p.m. on 31.12.70 I
was driving Mercedes Motor Car
NB 5522 with Choong Tung
Cheong (Singapore 0434386) by
my side. I left Kuala Pilah
to Seremban at a speed of 35
m.p.h.

Copied and
checked by
Sgt. 8575
and found
correct.

20

Sgd:
.....

At 12.35 p.m. on 31.12.70 I
reached the 12½ milestone
Seremban Terachi road. I saw
a Motor Lorry ND 1969 from the
direction of Seremban towards
Terachi. When at a bend there
is a bridge and at a fast
speed it encroached into my
path. I immediately braked
my M/Car NB 5522. At that
time the Motor Lorry ND 1969
had knocked into the front
portion of my car. I was
unconscious. This is my report.

30

This is the
True Trans-
lation of
Original
Document
produced in
Serial No. 425
of 1976
Interpreter
High Court
Kuala Lumpur

Complainant's signature: CHIA
CHAH HOO

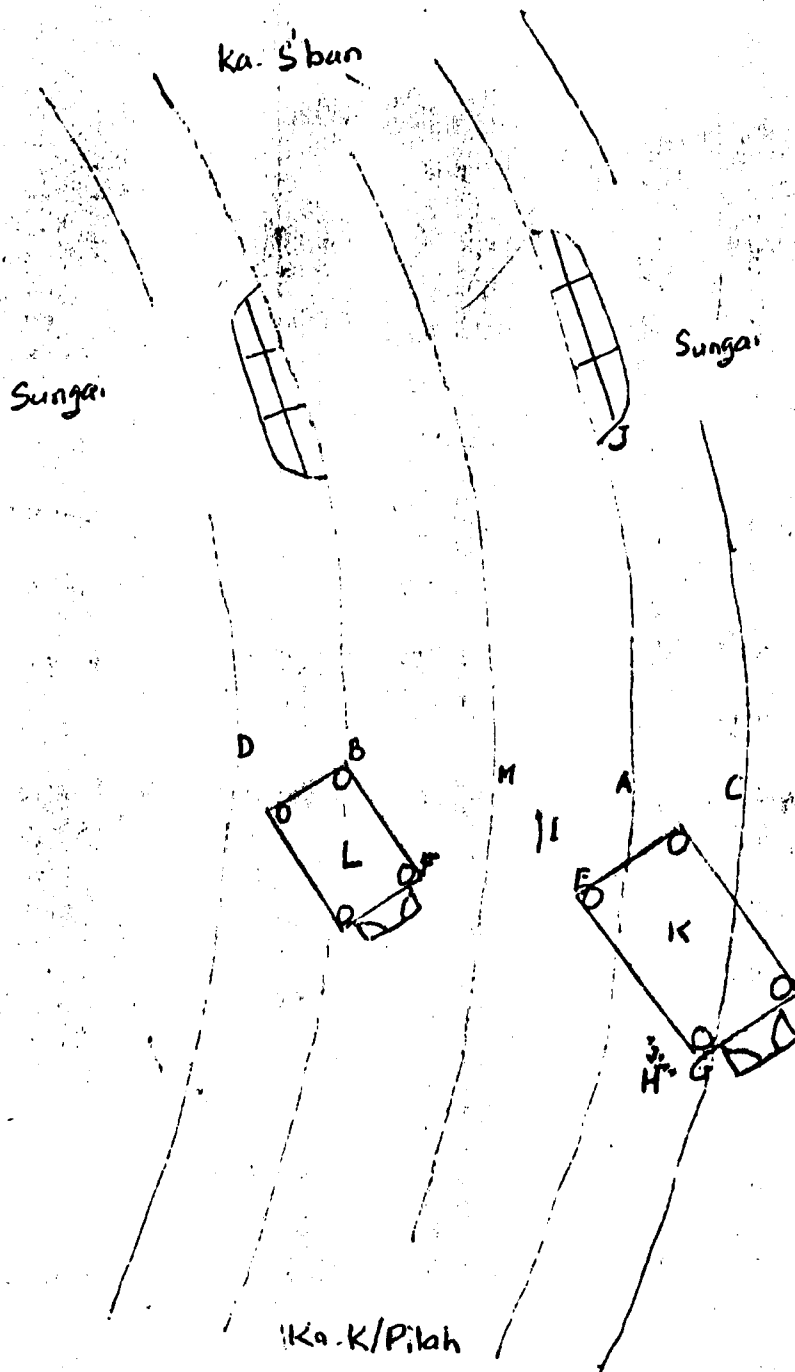
Officer's signature: Zulkifly
Mohd Said (P.I.)

40

Sgd:
.....
MOHAMED BIN HJ. MOHD NOOR (PPP)
OFFICER IN CHARGE OF POLICE
DISTRICT KUALA PILAH

PETA KASAR TERACHI RRF. NO 139/70
KEJADIAN DI BAWA 12 1/2 JLN. SBAN/K. PILAH

SKETCH PLAN



certified true copy
 (MOHAMED BIN HJ. MD. NOOR) PTT 4/8/72

21/7/72
 Arif bin Kota KPR. 2016.

No.4

EXHIBITS

KEY TO SKETCH PLAN IN TERACHI REPORT NO. 139/70

Indications in plan :-

No. 4.
Key to
Sketch Plan

- | | | |
|--------|---|----|
| A..... | Edge of road on the left hand side towards Kuala Pilah. | |
| B..... | Edge of road on the right hand side towards Kuala Pilah. | |
| C..... | Grass verge (near swamp) on the left side towards Kuala Pilah. | |
| D..... | Grass verge (drain) on the right hand side towards Kuala Pilah. | 10 |
| E..... | Rear offside tyre of M/Lorry No. ND 1969. | |
| F..... | Front nearside tyre of M/Car No. NB 5522. | |
| G..... | Front offside tyre of M/Lorry No. ND 1969. | |
| H..... | Broken pieces of the windscreen of M/Car No. NB 5522 near the front of M/Lorry No. ND 1969 on the right hand side of the lorry. | 20 |
| I..... | Depression mark on the road on the left hand side of the centre white line. | |
| J..... | Bridge near the scene of the accident. This bridge had passed the scene of incident towards the direction of Seremban. | |
| K..... | M/Lorry No. ND 1969 with its front portion plunged to the left side of the road. | 30 |
| L..... | M/Car No. NB 5522 which was slightly across the road with its front portion facing Kuala Pilah. | |

MEASUREMENT:-

A to B 19 feet

A	to	C	5 feet
B	to	D	5 feet
A	to	G	8 feet 2 inches
B	to	F	4 feet
E	to	F	11 feet 7 inches
F	to	I	12 feet 7 inches
I	to	White line (M)	3 feet 6 inches
E	to	J	59 feet
A	to	H	3 feet 4 inches

EXHIBITS

No.4
Key to Sketch
Plan

10

Sgd: Ariff bin Kota Cpl. 8516
Chief Police Officer,
Tanjong Ipoh.

This is the True Translation of the
Original Document produced in
Serial No. 423 of 1976
Sgd.
Interpreter
High Court
Kuala Lumpur.

EXHIBITS
No.6

MALAYA

EXHIBITS
No. 6

Grant of
Letters of
Administration
Estate of
Choong Tung
Cheong
14th May 1972

IN THE HIGH COURT AT JOHORE BAHRU.

STATE OF JOHORE

PETITION NO. 67 of 1971

IN THE ESTATE OF CHOONG TUNG CHEONG also
known as CHONG THONG CHONG DECEASED.

GRANT OF LETTERS OF ADMINISTRATION

10

BE IT KNOWN THAT CHOONG TUNG CHEONG also known
as CHONG THONG CHONG of No. 12 Hockien Street
Singapore died on the 31st day of December 1970
intestate

AND BE IT FURTHER KNOWN THAT on the 10th day
of August 1971, administration of all the
movable and immovable property in the States
of Malaya which by law devolves to and vests
in the personal representative of the said
intestate was granted by this Court to CHEW
SOO LAN (w) and CHONG CHAP SENG both of No.
12 Hockien Street, Singapore, the lawful widow
and relict and the natural and lawful brother
respectively of the said intestate

20

AND BE IT FURTHER KNOWN THAT on the date
hereunder written these Letters of Administration
were issued to the said administrators, they
having given the security required by this Court
for the due administration of the said property,
a schedule whereof is hereunto annexed.

30

GIVEN under my hand and the seal of the Court
at Johore Bahru, Johore this 14th day of May
1972.

L.S.

Sgd:
Registrar

Malaya
Johore Bahru.

P.H.P. F. 543/71

Choong Tung Cheong also known as Chong Thong Chong

Borang No. 12 Form No. 12

Harta Pesaka Estate of

Si-mati Deceased

PEJABAT PENDAFTARAN THE

DI JOHORE BAHRU REGISTRY AT

PERMOHONAN No. 67 TAHUN 19 71 PETITION No. OF 19

(Affidavit di-serahkan pada 15th haribulan June, 19 71) (Affidavit delivered the day of 19 71)

Jadual harta si-mati yang tersebut nama-nya di-atas: Schedule of the property of the above-named deceased:

NILAI BESAR— GROSS VALUE—	<u>A S S E T S.</u>	\$	c.
1.	Claim for damages for loss of expectation of life of the deceased	3,000	00
2.	Amount payable by National Insurance Co., Ltd., under Policy No.08/3/PC.64246	15,250	00
		<u>\$18,250</u>	<u>00</u>
TANGGONGAN— LIABILITIES—			
1.	Joo Lee Finance Co.	2,299	80
		<u>\$15,950</u>	<u>20</u>
	NILAI BERSEH ... NETT VALUE		

Pencatat Pendaftar Mahkamah Tinggi, Johore Bahru

14 MAY 1972

PERAKUAN BAYARAN CERTIFICATE OF PAYMENT

DENGAN INI SAYA MEMPERAKUI bahawa wang sa-banyak \$ 154.75 , kerana bayaran duti harta pesaka yang kena di-bayar mengenai harta yang tersebut di-atas telah di-bayar

I HEREBY CERTIFY that \$, being the estate duty payable in respect of the property aforesaid has been paid or that I have allowed payment of the estate duty payable in respect of the property aforesaid to be postponed.

Bertarikh di- Dated at KUALA LUMPUR , pada this 17th haribulan day of

DECEMBER, 19 1972

Pendaftaran, Mahkamah Tinggi, J. B.

TERIMA

Stamp: TANGGAPAN DUTI HARTA PESAKA, MELAYU STATES OF MALAYA

PHOTOSTAT COPY
BIRTH CERTIFICATE
CHOONG YEW SIONG
19th JANUARY 1953

DUPLICATE (For Informant)
COLONY OF SINGAPORE
REGISTRATION OF BIRTH

No 315321

Registration Area _____
Registration Sub-Area _____
Full Name of Child CHOONG YEW SIONG

4287-400/100-12/51
Sex Male

FATHER'S		MOTHER'S	
Name	CHOONG TUNG CHEONG	Maiden Name	CHOONG SOO LAIK
Occupation	Shop-assistant	Age	25 years
Race	Teck Chinese	Race	Teckhee Chinese
Country of Birth	Singapore	Country of Birth	China
Nationality	British Subject	Nationality	Chinese

Date of Birth 24th January, 1953

Hour of Birth 11.20 a.m.

Name of Informant Choong Tung Cheong

Address of Informant 12, Hokien Street, Singapore

Name of Informant Choong Tung Cheong

Address of Informant 12, Hokien Street, Singapore

Race of Informant Teck Chinese

[Handwritten Signature]

[Handwritten Signature]
Signature of Informant

Checked by Registrar

Signature of Deputy Registrar

19.1.53



VACCINATION NOTICE

QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
(CHAPTER 186, SECTION 44)

NOTICE

CHOONG YEW SIONG

I, the undersigned hereby give you notice to have the child _____ whose birth is now registered, vaccinated within six months from the date of its birth, pursuant to the provisions and directions of the Quarantine and Prevention of Disease Ordinance (Chapter 186) and that in default of your doing so you will be liable to a penalty of ten dollars.

Dated the 19th day of January, 19____, 53

Registrar of Births and Deaths, for the Colony of SINGAPORE.

اسم اولاد دا داغتنك دالام ام بولن عسرن كانق ابن مستي دوجو ليكن اولاد

佈 此 痘 種 要 即 內 之 月 個 六 兒 嬰 凡

இதனால் தெரிவியுது யாதெனில் பிள்ளைபிறந்த ஆறு மாதத்திற்குள்ளாக அம்மை வைக்கவேண்டும்

NOTICE

Parents are advised to have this child's NAME or NAMES registered at the earliest possible moment. You cannot register a child's name after the lapse of 7 years from the date of its birth.

This is not a Legal Certificate of Birth. A Legal Certificate of Birth may be obtained at the Office of the Registrar of Births and Deaths on payment of \$2.

PHOTOSTAT COPY
BIRTH CERTIFICATE
CHOONG YIN SIONG
22nd MARCH 1954

SDH
DUPLICATE (For Informant)
COLONY OF SINGAPORE
REGISTRATION OF BIRTH
S. 322A

Registration Area	S. 322A	
Registration Sub-Area	S. 322A	
Full Name of Child	CHOON G. YIN SIONG	
<i>(In Roman Block Characters including Surname, Sex or Father's Name)</i>		
FATHER'S	Name	CHOONG TUNG CHEONG
	Occupation	Shop Assistant
	Race	Khek
	Country of Birth	Singapore
	Nationality	British Subject
MOTHER'S	Maiden Name	CHW SOO LAN
	Age	26 years
	Race	Khek
	Country of Birth	China
	Nationality	Chinese
Date of Birth	17th March, 1954	
Hour of Birth	10.20p.m.	
Name of Informant	Choong Tung Cheong	
Address of Informant	3, Oxford Rd, Singapore.	
Race of Informant	Khek	
Signature of Deputy Registrar and Date	<i>[Signature]</i>	22.3.54
Checked by Registrar and Date	<i>[Signature]</i>	
Signature of Informant and Date	<i>[Signature]</i>	

QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
 (CHAPTER 186, SECTION 44)

NOTICE

新加坡
 警察學校
 1954年1月1日

I, the undersigned hereby give you notice to have the child _____ whose birth is now registered vaccinated within six months from the date of its birth, pursuant to the provisions and directions of the Quarantine and Prevention of Disease Ordinance (Chapter 186) and that in default of your doing so you will be liable to a penalty of ten dollars.

Dated the _____ day of _____, 1954

Registrar of Births and Deaths for the

Colony of _____

اسماء اداوا دايعكن دادالم ابن عمر كاسق ابن مسيني دبركلكن اداوا

佈 此 種 要 即 內 之 月 個 六 兒 嬰 凡

இதனால் தெரிவிப்பது யாதெனினால் பிள்ளைபிறந்த ஆறு மாதத்திற்குள்ளாக அம்மை வைக்கவேண்டும்

NOTICE

Parents are advised to have this child's NAME or NAMES registered at the earliest possible moment. You cannot register child's name after the lapse of 7 years from the date of his birth.

This is not a Legal Certificate of Birth. A Legal Certificate of Birth may be obtained at the Office of the Registrar of Births and Deaths on payment of fee.

DUPLICATE (For Informant)
COLONY OF SINGAPORE

No 485781

REGISTRATION OF BIRTH

Kuanay Keng Singapore

Registration Area

Registration Sub-Area

Full Name
of Child

CHOONG KAI SEONG

W 017-955

3 1712.

Sex Male.

(In Roman Block Characters including Surnames, Sex or Father's Name)

FATHER'S		MOTHER'S	
Name	CHOONG TUNG CHEONG.	Name	CELIN GO LANG.
Occupation	Shop Assistant.	Age	27 years.
Race	Khek.	Race	Khek.
Country of Birth	Singapore.	Country of Birth	China.
Nationality	British Subject	Nationality	Chinese.

Date of Birth

27th January, 1956.

Place of Birth

Kuanay Keng Singapore

Hour of Birth

9a.2

Street and Town

Name of Informant

Choong Kai Seong,

Home Address
of Parents

3, Oxford Rd, Singapore.

Address of Informant

3, Oxford Rd, Singapore.

Race of Informant

Khek.

Signature of Deputy Registrar
and Date

8.2.56.

Checked by Registrar
and Date

Signature of Informant
and Date

Choong Kai Seong

5-522/8
29/3/56

NR 117425/A

IP. No.		MOOSE	
REG.	REG.	Small-pox	TAIAD
Small-pox	Small-pox	Small-pox	Small-pox
Small-pox	Small-pox	Small-pox	Small-pox
Small-pox	Small-pox	Small-pox	Small-pox

VACCINATION NOTICE
 QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
 (CHAPTER 186, SECTION 44)

NOTICE

MAY 1962

I, the undersigned hereby give you notice to have the child CHOONG KOI SEONG whose birth is now registered, vaccinated within six months from the date of its birth, pursuant to the provisions and directions of the Quarantine and Prevention of Disease Ordinance (Chapter 186) and that in default of your doing so you will be liable to a penalty of ten dollars.

Dated the 8th day of February, 1956.

Registrar of Births and Deaths for the Colony of Singapore

佈 此 痘 種 要 即 內 之 月 欄 六 兒 嬰 凡

இதுவரை கொடுக்கப்படாத பிறந்த குழந்தைகளுக்கு இப்படிப்பட்ட விவரம் குறித்து அறிவிக்கப்படுகிறது.

NOTICE

Parents are advised to have this child's NAME or NAMES registered at the earliest possible moment. You cannot register a child's name after the lapse of 7 years from the date of its birth.

This is not a Legal Certificate of Birth. A Legal Certificate of Birth may be obtained at the Office of the Registrar of Births and Deaths on payment of fee.

3011
DUPLICATE (For Informant)
STATE OF SINGAPORE
REGISTRATION OF BIRTH
No 795012

Registration Area
Registration Sub-Area

Full Name of Child
Sex

FATHER'S		MOTHER'S	
Name	LAN	Name	LAN
Occupation		Age	XXXX
Race		Race	
Country of Birth		Country of Birth	
Nationality		Nationality	

Date of Birth
Hour of Birth

Place of Birth
Street and Town
Home Address of Parents

Name of Informant
Address of Informant
Place of Informant

Handwritten signature

PRIMARY			
R.O.G.	ADU		
Small pox			
1961			

I, the undersigned hereby give you notice to have the child CHOONG CHIONG SIONG whose birth is now registered, vaccinated

within six months from the date of its birth, pursuant to the provisions and directions of the Quarantine and Prevention of Disease Ordinance (Chapter 186) and that in default of your doing so you will be liable to a penalty of ten dollars.

Dated the 26th day of November, 1960

Register of Births and Deaths for the
 Singapore
 Colony of

بواسم اداله دابجتنك ددالم اسم بولن عمرو كانك ۲ اين مستي دجو غكلكن ادان

備 此 痘 種 要 即 內 之 月 個 六 兒 嬰 凡

இதனால் தெரிவிப்பது ஸ்தலத்தில் பிள்ளைபிறந்த சிறு வயதில் பிள்ளைகளை அழிக்கும் வைக்கோவைக்கொடு

NOTICE

Parents are advised to have this child's NAME or NAMES registered at the earliest possible moment. You cannot register a child's name after the lapse of 7 years from the date of its birth.

This is not a Legal Certificate of Birth. A Legal Certificate of Birth may be obtained at the Office of the Registrar of Births and Deaths, Singapore.

VACCINATION NOTICE
 QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
 (CHAPTER 186, SECTION 44)

NOTICE

10.11.61
 KICEL

DUPLICATE (For Informant)

COLONY OF SINGAPORE

No 636673

REGISTRATION OF BIRTH

Registration Area

Registration Sub-Area

Full Name of Child

CHOONG CHOON KIEN

(In Roman Block Characters including Surname, Sex or Father's Name)

Name CHOONG TUNG CHEONG.

Occupation

Merchant

Race

Khek.

Country of Birth

Singapore.

Nationality

British Subject.

Date of Birth

25th June, 1958.

Hour of Birth

8.30 a.m.

Name of Informant

Choong Tung Cheong,

Address of Informant

12, Hokien Street, Singapore.

Race of Informant

Khek

Signature of Deputy Registrar

25.6.58

Checked by Registrar

VIDEP.R.F.

Signature of Informant

166

SINGAPORE

Identity Card No. 1298572Z

Issued on 19 APR 1958

Registration Authority

S890A,

W 011-308

Female

Maiden Name

CHEW 800 LAN.

Age

30 years.

Race

Khek.

Country of Birth

China.

Nationality

Chinese.

Place of Birth

Landing Airbase Maternity Hospital, Singapore.

Street and Town

12, Hokien Str., Singapore

F. No.	
PRIMARY	BOOST

B.C.G.	B.C.G.	
Small-pox	Small-pox	3/11
T.A./AD course complete	T.A./AD 1st Booster	
Tetanus Toxoid	T.A./AD 2nd Booster	
Polio course complete	Polio	3/11

If, the undersigned hereby gives you notice to have the child vaccinated within six months from the date of its birth, pursuant to the provisions and directions of the Quarantine and Prevention of Disease Ordinance (Chapter 186) and that in default of your doing so you will be liable to a penalty of ten dollars.

Dated the 25th day of May 1962

KIM KE...
 4 MAY 1962

NOTICE

VACCINATION NOTICE
 QUARANTINE AND PREVENTION OF DISEASE ORDINANCE
 (CHAPTER 186, SECTION 44)

whose birth is now registered,

Registrar of Births and Deaths for the

Colony of Singapore

باسم ادااله دايشكن ددالم ام بولن عمره كاتنق ۲ اين مستني دجوغىكلين اداي

佈 此 痘 種 要 期 內 之 月 個 六 兒 嬰 凡

இதனால் தெரிவிப்பது யாதென்பில் பிள்ளைபிறந்த ஆறு மாதத்திற்குள்ளாக அம்மை வைக்கவேண்டும்

NOTICE

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR (APPELLATE JURISDICTION)

B E T W E E N :-

LUDHIANA TRANSPORT SYNDICATE -and-
SOMANAIDU s/o BANKARIAH

Appellants
(Defendants)

- and -

CHEW SOO LAN (widow) and
CHONG CHAP SENG the Administratrix
and Co-Administrator of the estate
of CHOONG TUNG CHEONG also known as
CHONG THONG CHONG, deceased.

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

Douglas Goldberg Co.
~~OLIVESTONE HANSON & PELTZ,~~
~~15 Clifford Street, Goldeniths' House~~
~~Bond Street, 137-141 Regent St~~
~~London W1X 1RF~~ *London W1R 7LD*

Solicitors for the Appellants.

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London EC3V 9DU

Solicitors for the Respondents.