

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

TAN CHWEE ANG Appellant
(Plaintiff)

- and -

HSIA KHO ING Respondent
(Defendant)

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a Judgment of the Court of Appeal in Singapore (Wee Chong Jin C.J., Kulasekaram and A. P. Rajah J.J.) dated 4th day of August 1980, allowing the Respondent's appeal from a Judgment and Order of the High Court dated 8th day of February 1980 whereby Choor Singh J. gave judgment for the appellant for \$21500 damages in respect of injuries sustained by him in a road traffic accident. An Order granting leave to appeal to the Judicial Committee of the Privy Council was made by the Court of Appeal in Singapore (Wee Chong Jin C.J. F.A. Chua and Choor Singh J.J.) on 13th day of October 1980. p.21
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pp.22/23
2. The substantial question raised by this appeal concerns the entitlement of an appeal court to vary the findings of a trial Judge as to liability for a road traffic accident, and whether on the facts of the present case the Court of Appeal in Singapore was obliged to vary and reverse the trial Judge's findings.
3. The appellant's Writ, delivered on 13th February 1978, claimed damages for personal injuries and consequential loss suffered by him and caused by the negligence of the Defendant in the driving use and management of motor vehicle No. SM1 371D on 2nd September 1975 at the junction of Paya Lebar Way and Aljunied Road, Singapore. p.1
4. By his Statement of Claim dated 13th February 1978 the Appellant pleaded that on the p.3

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day in question he was riding a motorcycle No. SAL 3749 along Paya Lebar Way intending to turn right into Aljunied Road when he was run into and knocked down by the respondent's motor car, which was travelling along Paya Lebar Way in the opposite direction. The appellant pleaded that the collision was caused solely by the respondent's negligent driving, which he particularised.

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- (a) Failing to keep any or any proper look-out.
- (b) Driving at an excessive speed in the circumstances. 10
- (c) Failing to observe the presence of the Plaintiff (appellant) on his motorcycle on the highway.
- (d) Driving into the Plaintiff.
- (e) Failing to conform to the traffic lights which were red against him.
- (f) Failing to stop, swerve, slow down, or otherwise avoid the said collision.

The appellant pleaded that the respondent's negligence had caused him injuries to his left leg and financial loss. 20

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pp.6/7

5. In his Defence dated 15th May 1978 the respondent admitted that the collision had taken place. He denied that he was guilty of the alleged or any negligence or that the matters complained of were caused as alleged in the Statement of Claim. Further and alternatively, the respondent alleged that those matters were caused wholly or in part by the appellant's negligence, which he particularised. 30

- (a) failing to keep any or any proper look-out or to observe or heed the presence or approach of the Defendant's (respondent's) motor car.
- (b) Driving too fast.
- (c) Turning right in the face of the Defendant's oncoming motor car.
- (d) Failing to apply his brakes in time or at all or so to steer or control his motorcycle as to avoid the collision. 40

The respondent did not admit the loss and damage alleged.

6. The hearing in the High Court took place before Choor Singh J. on 8th February 1980. To begin with, and subject to liability, damages were agreed by the parties at the figure of \$21500.

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10 7. The appellant was the only witness on his own behalf. He said that on 2nd September 1975 he was riding along Paya Lebar Way in the direction of Aljunied Road. At the junction of Aljunied Road he intended to turn right, into Aljunied Road. When he reached the junction, the lights were green. He stopped beyond the stop line and waited for the green arrow (to allow him to turn right). When the traffic lights changed to the green arrow he proceeded to turn right. As he was turning he saw a car coming from the opposite direction. It did not stop. He expected it to stop. It came and knocked into him. He was thrown off and lost consciousness. He was injured.

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20 8. The appellant was then cross-examined when inter alia the following exchange took place.

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Q. I put it to you that in your hurry to cross the road you shot out from behind the lorry?

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A. No.

Q. The traffic lights were still green?

A. Yes.

30 Q. How far was the Defendant's car from you as you moved to turn right?

A. The length of four or five cars.

9. The first witness for the respondent was Sergeant Yeo Ah Bee of the traffic accidents branch of the Singapore Police. He said that he had attended the scene of the accident, he had taken measurements and prepared a sketch plan. He had also recorded statements from the appellant and the respondent.

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40 10. The respondent then gave evidence. He said he was driving his motor car along Paya Lebar Way taking some of his workmen home. He was in the centre lane on his side doing 30 miles per hour and the lights were green as he approached. There was a lorry stationary in the centre of the junction waiting to make a right turn. A motorcycle came behind the lorry from its offside. It

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- was intending to turn right. The respondent said that he could not stop in time, and he knocked into the motorcycle. He said that he applied his brakes but could not avoid the impact. The lorry stopped but then drove off: one of the respondent's workmen noted its number and the respondent gave this to the police. The respondent was then cross-examined and continued to deny that he was to blame for the collision.
- p.11
- p.15 11. Choor Singh J. on 8th February 1980 gave judgment for the appellant and ordered the respondent to pay the agreed damages and costs. 10
- p.16 12. Choor Singh J. gave Grounds of Judgment on 17th April 1980 which so far as material to this appeal were as follows. He first summarised the evidence of the appellant and the respondent and then gave his reasons.
- p.17 "The sketch plan drawn by the police showed that the Defendant's car left brake marks 14 metres long which amount to approximately 46 feet. If the length of the car which was approximately 15 feet is added to the brake marks it makes a total distance of 61 feet. This means that the car travelled 61 feet on seeing the motorcycle before it could pull up. 20
- I accepted the evidence of the Plaintiff because in my opinion he was speaking the truth. In my opinion there was a failure on the part of the Defendant to keep a proper look-out. Furthermore, the Plaintiff had the right of way. The length of the brake marks indicated that the Defendant was travelling at speed and it was more probable than not that he tried to rush through the junction when the traffic lights were against him. In my opinion he was solely responsible for the accident and there was no evidence of negligence on the part of the Plaintiff." 30
14. It is respectfully submitted that the learned trial judge clearly relied on certain particular considerations, which it is further submitted did not support his conclusion that the respondent was solely responsible for the accident. 40
- p.17 15. The first such consideration was the length of the brake marks, added to the length of the respondent's car, and so the distance travelled by the respondent after seeing the appellant before pulling up. It is submitted that the learned Judge was not entitled to draw any inference adverse to the respondent from this stopping distance. There was no evidence of the 50
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reasonableness or otherwise of a stopping distance of 61 feet. If the learned Judge was entitled to make any inference from the stopping distance, it is submitted that the inference he made against the respondent was wrong.

10 16. The next (second) consideration was the learned judge's opinion that the appellant was speaking the truth. The learned Judge's great advantage in seeing and hearing him give evidence is conceded, but it is submitted that there were conflicts in his evidence which the learned Judge did not attempt to resolve, in particular as to the state of the traffic lights when the appellant proceeded to turn right. It is further submitted that the effect of the appellant's evidence in cross examination, if it was believed by the Learned Judge, was to support the respondent's case. The appellant said that the respondent was four or five cars' lengths from him as he moved to turn right. The respondent had therefore crossed the traffic lights when the appellant road across his path, as the respondent claimed in evidence. p.17 pp.8/9 p.9

30 17. The next (third) consideration relied on by the Learned Judge was that the appellant had the right of way. This depended upon his opinion that the appellant was speaking the truth, in particular as to the state of the traffic lights, where it is submitted he gave conflicting evidence. It is further respectfully submitted that even if the appellant's first evidence that the lights had changed to show the green arrows is accepted, then he was nevertheless still negligent in moving to turn right when the respondent's car was four or five cars' lengths away from him. p.17 p.8 p.9

40 18. The next (fourth) consideration relied on by the learned Judge was that the length of the respondent's car's brake marks indicated that he was travelling at speed. There was no evidence to this effect, and such a finding was not open to the learned Judge. Insofar as it may have been open to him to make any inference from the brake marks as to the respondent's speed, the inference he made was wrong. p.17

50 19. The next (fifth) consideration relied on by the learned Judge was his finding that it was more probable than not that the respondent tried to rush through the junction when the traffic lights were against him. It is submitted that from the learned Judge's reasons it is apparent p.17

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that he came to this conclusion together with and because of his conclusion that the respondent was travelling at speed, which conclusion it has been submitted he should not have reached. It is further submitted that the respondent's travelling at speed could not in any event support a finding that he was trying to rush the traffic lights: being equally consistent with the lights being green in his favour.

p.17 20. The final (sixth) consideration relied on 10

by the learned Judge was his finding that there was no evidence of negligence against the appellant. It is submitted that this finding was not open to the learned Judge. It ignored almost the whole of the evidence of the respondent, some of which was supported by Sergeant Yeo Ah Bee, and which was not expressly criticised by the learned Judge. It further ignored the appellant's evidence in cross examination as to the traffic lights, and that the respondent's motor car was

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only four or five car's lengths away when he moved to turn right. The learned Judge did not refer to this evidence by the appellant in his Grounds of Judgment, although it confirmed part of the respondent's evidence as the learned Judge summarised it:

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p.17 line 21 "He (the respondent) claimed that when the motor-cycle emerged he had already passed the stop-line"

It is submitted that by reaching the conclusion that there was no evidence of negligence against the appellant, the learned Judge showed that he did not take proper advantage of having seen and heard the witnesses.

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21. By a Notice of Appeal dated 29th day of February 1980 the respondent appealed to the Court of Appeal in Singapore against the whole of the learned trial Judge's decision. In his petition of appeal (16th May 1980) the respondent relied on the following grounds:-

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"(a) The learned trial Judge erred in law and in fact in concluding from the length of the brake marks that the appellant was travelling at speed and trying to rush the traffic lights.

p.21

(b) The learned trial Judge erred in law and in fact in holding the appellant wholly negligent against the weight of the evidence."

p.21

22. The appeal was heard by the Court of Appeal in Singapore (Wee Chong Jin C.J.,

Kulasekaram and A.P. Rajah J.J.) on 4th August 1980. The Court allowed the appeal.

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10 23. The Court of Appeal in Singapore did not record in its Judgment the reasons for its decision. It is understood that the Court did indicate its reasons at the hearing of the appeal, but this does not appear from the Record. The respondent will endeavour to provide at the hearing of this Appeal the best account he can of the views expressed by the Court of Appeal in Singapore, in case the Judicial Committee should think it proper or desirable to consider these.

24. It is respectfully submitted that the Court of Appeal in Singapore come to the correct conclusion on the evidence. It was obliged to interfere with the learned trial Judge's findings in view of the facts that :

20 (i) he did not take proper advantage of seeing and hearing the appellant and the respondent give evidence, in particular in that he ignored part of the appellant's cross-examination;

(ii) he made inferences and findings from the position and measurements of the respondent's motor car's brake marks which were not supported by evidence, and/or he made inferences and findings from the brake marks which were wrong.

30 25. The Respondent also relies on the following matters as tending to support the decision of the Court of Appeal in Singapore.

(i) The appellant's evidence in cross-examination that the respondent's car was four or five car lengths away from him as he moved to turn right was supported by the length of the brake marks and the length of the car. p.9

40 (ii) The position of the brake marks on the road showed that the respondent was well across the stop-line when he was forced to brake, as he claimed in evidence. p.25

(iii) For the appellant to ride across the path of the respondent's motor car in the circumstances was reckless and negligent and the sole cause of the collision.

26. If the learned trial Judge or the Court of

Appeal in Singapore was right, no question of apportionment of liability for the collision now arises in this appeal. If the learned trial Judge was right in finding that the respondent was negligent, but was wrong in finding that there was no negligence by the appellant, then it is submitted that the issue of contributory negligence arises.

27. The Respondent respectfully submits that this appeal should be dismissed with costs for the following among other ... 10

R E A S O N S

- (1) BECAUSE the judgment of the Court of Appeal was right.
- (2) BECAUSE the trial judge failed to take proper advantage of seeing and hearing the witnesses give evidence.
- (3) BECAUSE the trial judge made findings and/or inferences that were not open to him, or made findings and/or inferences that were wrong. 20
- (4) BECAUSE in the circumstances the Court of Appeal were obliged to reverse the trial Judge's findings.
- (5) BECAUSE the collision was caused solely by the appellant's negligence.

JAMES GUTHRIE

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MESSRS. JAQUES & LEWIS,
2 South Square,
Gray's Inn,
London, WC1R 5HR.

Tel: 01-242 9755
Ref: CTL/5331/30.