Privy Council Appeal No. 69 of 1986

Tominam Bte Tukimin *Appellant*

v.

Toh Kai Chup (an infant) *Respondent*

FROM

THE COURT OF APPEAL OF SINGAPORE

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH APRIL 1989

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD OLIVER OF AYLMERTON
LORD GOFF OF CHIEVELEY
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by **Lord Bridge of Harwich**]*

This is an appeal from a judgment of the Court of Appeal of Singapore dismissing an appeal from the judgment of Mr. Justice Chua, the trial judge, who had dismissed the claim of the plaintiff appellant for damages for personal injuries sustained in a road accident when she, a pedestrian, was in collision with the defendant riding a motor cycle.

The learned judge set out in his judgment the evidence which was given by the defendant motor cyclist in these terms:-

> "He was riding along Teck Whye Avenue. He had come from Choa Chu Kang Road and was going to his elder brother's house at Teck Whye Avenue. He was travelling in the middle of the road at a speed of between 40-50 Km/h. There was a slight bend in the road. As he was rounding the bend he saw two women crossing the road from his left to his right and they were close to the centre white line. When he first saw them they were 14 to 15 feet away ahead of him and to his right. He slowed down and steered to his left. Suddenly one of these women, the plaintiff turned around and ran back across the road and in doing so she collided into his motor cycle. The plaintiff fell and he quickly stopped his motor cycle and placed it on its side on the kerb at

> the side of the road. The plaintiff was then carried to the side of the road."

The learned trial judge accepted in substance that account. He expressed his findings in these terms:-

> "The defendant was travelling in the middle of the road and the plaintiff was to his right. He could have passed her without going to the left but he veered to the left. The plaintiff suddenly turned round and walked fast into the motor cycle. That was how the accident happened. It is clear that if the plaintiff had not turned round suddenly to walk back fast in the direction from which she had come this accident would not have happened, because in doing so she collided into the motor cycle. There is no evidence that the defendant was travelling at a fast speed or that the defendant should have seen the plaintiff earlier. It does not matter at what speed the defendant was travelling or whether he could have seen the plaintiff earlier or not as whatever evasive action taken by the defendant would have been in vain. The plaintiff turned around suddenly and walked fast into the motor cycle. The defendant had no opportunity to avoid the accident.
>
> I find that the accident was caused solely by the negligence of the plaintiff."

Those findings of the learned judge were attacked in the Court of Appeal. In particular the Court of Appeal was invited to find that the defendant had, at least in part, been responsible for the accident by his negligence. The Court of Appeal concluded its judgment in these terms:-

> "This morning, it was urged upon us that there is some contributory negligence on the part of the motor cyclist. On the brief facts stated as it was the appellant who had collided into the motor cyclist after the latter had taken evasive action, there was not contributory negligence on the part of the motor cyclist."

In those circumstances counsel for the appellant, who has done his best in a difficult situation, is confronted with the very well established practice of this Board not to entertain appeals against concurrent findings of fact from two courts below in any case where appeal lies to the Judicial Committee of the Privy Council. The scope of this practice and the extremely narrow exceptions to it are very clearly stated in the headnote to the judgment of the Board in the case of *Srimati Bibhabati Devi v. Kumar Ramendra Narayan Roy* [1946] A.C. p.508. Their Lordships do not find it necessary in this judgment to set out the terms of that headnote, which are very familiar.

The only contention advanced on behalf of the present appellant which could possibly have brought this case anywhere near the ambit of any of the exceptions to the general practice was a complaint that the appellant had been denied an opportunity to amend her statement of claim in the course of the trial before Mr. Justice Chua. The case as originally pleaded on behalf of the plaintiff, who unfortunately had lost her memory and therefore was not able to give evidence herself about the circumstances in which this accident happened, set out that she had been standing on the grass verge waiting to cross the road and it was there that the defendant motor cyclist collided with her. In the course of the trial an application was made to amend that pleading to allege alternatively that the accident occurred, as of course on the judge's findings it did, when the plaintiff was crossing the road; but it is noteworthy that the particulars of negligence alleged against the defendant motor cyclist were no different in the proposed amendment from the original pleading in the statement of claim. If their Lordships had thought that the judge's refusal to allow this amendment had in any way affected the outcome of the trial, then possibly (it is unnecessary to say more than that) this case might have been considered as falling within the ambit of the exceptions to the rule against entertaining appeals from concurrent findings of fact.

Their Lordships are quite satisfied that nothing in the event turned on the pleading point. This is not a case where the judge said "I dismiss the plaintiff's case because the only case pleaded is that she was standing on the grass verge when the accident happened and that case has not been established". On the contrary, he went into the facts very fully and found as already stated that the accident happened when the plaintiff, having set out to cross the road, then suddenly, as already described, turned back and effectively walked into the path of the motor cyclist, so that the judge's refusal to allow the proposed amendment in the event did not influence the result in any way.

This case falls to be decided as one which falls fairly and squarely within the practice of this Board not to entertain appeals against concurrent findings of the two courts below. Accordingly the appeal will be dismissed with costs.