*Privy Council Appeal No.* 46 *of* 1964

**Gerald Louis Jeremiah** – – – – – – – – *Appellant*

*v.*

**Lee Yew Kwai and another** – – – – – – *Respondents*

FROM

## THE FEDERAL COURT OF MALAYSIA

## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JULY 1965

*Present at the Hearing:*
LORD HODSON
LORD PEARCE
LORD WILBERFORCE
(*Delivered by* LORD PEARCE)

This is an appeal by the plaintiff from an order of the Federal Court of Malaysia dismissing the plaintiff's appeal from an order of the High Court in Malaya at Ipoh, whereby it gave judgment for the plaintiff against the defendants for 25,930 dollars. The trial judge found that he had been guilty of contributory negligence, and therefore awarded him only 50 per cent. of the damages. The law as to contributory negligence is, by statute, the same as in this country. The grounds of appeal are that the learned judge should not have found on the evidence that the plaintiff was guilty of any negligence, or if he did find him guilty of negligence, he should not have estimated its amount at so high a figure as 50 per cent.

The plaintiff was travelling on a motorcycle along the main road, and into that road, on his nearside, ran a lane down which, unknown to him, a lorry was proceeding. About 10 ft. back from the place where the lane entered the main road a van was drawn up by the side of the road and partly on the verge, leaving about 4 ft. or so projecting into the road. As a result, on the plaintiff's story, he was unable to see the lorry until he came to the front of the vehicle parked on his near side, that is to say, about 10 ft. or 12 ft. from the lorry. The lorry driver's evidence was that he had halted and taken all the necessary precautions, but that was disbelieved by the learned judge.

How far the learned judge believed the details of the plaintiff's account is uncertain. The plaintiff said that he was travelling at 16 miles per hour, and as he was unable to pull up in time to avoid running into the lorry, he swerved to his right and accelerated. The learned judge took the view that if the plaintiff was going at the speed he said, and if he was keeping a proper lookout, it was still very negligent of him to attempt the manoeuvre of going in front of the lorry, and it was extremely dangerous.

He then discussed that matter in more detail, and formed the view that owing to the shortness of distance which the plaintiff had in which to pull up he would probably have collided with the lorry in any event, but he formed the view that had the lorry gone on, and had the plaintiff braked, he would have had adequate room to pass behind the lorry, no doubt swerving as much as was necessary.

The learned judge discounted the agony of the moment which was put forward by counsel, on the ground that it was not the defendant but the stationary van which had created the emergency. He then went on to say: ". . . it is a practical impossibility to apportion the proportions of culpability

which are the cause of the accident, and I have come to the conclusion that the proper award would be that the plaintiff contributed 50 per cent. towards the damage which he sustained ".

In the Court of Appeal the learned Lord President said: " It is not for this Court to substitute its own views as to what happened in a case of this sort which depends so much on credibility for those of the trial Judge but I find comfort in the consideration that my own views do on the whole coincide with the trial Judge's conclusions. On the whole the evidence, to put it at the lowest, suggests that the motor cyclist was keeping a less than adequate lookout ". He then gave some reasons for this view, and pointed out that if the plaintiff had wished to go in front of the lorry he had not only a broad road on which to execute this manoeuvre, but he had a road coming in at 45 degrees on the right up which he might have gone as an escape route.

Leaving aside the question whether the learned Lord President's view of that possibility should be adopted, the fact remains that the learned judge, having heard the witnesses, came to the conclusion that the plaintiff was 50 per cent. to blame. He took the view that had he pursued what one might describe as the normal course in such an emergency, namely that of applying his brakes and seeing whether he could go behind the lorry, there would have been room for him to do so.

This is purely a question of deciding what is the right apportionment, if any, of blame on two persons when they are suddenly involved in a traffic emergency. In their Lordships' view it would not be possible for this Court to intervene and substitute a fresh finding instead of that which was found by the learned trial judge. Their Lordships will therefore report to the Head of Malaysia that the appeal should be dismissed with costs.

(92682) Wt. 8052/124 90 10/65 Hw.

**In the Privy Council**

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GERALD LOUIS JEREMIAH

*v.*

LEE YEW KWAI AND ANOTHER

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DELIVERED BY
LORD PEARCE

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