

Respondent's Case on Appeal No. 25 of 1970Record

- P.49 (2) This is an Appeal from the Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated 12th January 1970 pursuant to leave of that Court dated 6th April 1970 whereby the said Court allowed the Appeal of this Respondent (The Appellant in the said Appeal and the 3rd Defendant at the trial) against the Order and Judgment of the High Court of the Republic of Singapore dated 5th November 1969. 10
- P.29 (3) By Order of the said Court dated 5th November 1969 it was ordered that Judgment be entered for the Plaintiff for \$5,500 against the 3rd Defendant (who is this Respondent) and that the claim against the 1st and 2nd Defendants be dismissed and it was further ordered that the 3rd Defendant pay the costs of the Plaintiff and the 1st and 2nd Defendants.
- Nature of the Plaintiff's Claim
- P.59-61 (4) The Plaintiff's claim was for damages for personal injuries arising out of a traffic accident involving 3 vehicles. The 1st Defendants were the owners of a bus described as the Hock Lee Bus SH 706, hereinafter described as the Hock Bus. The Plaintiff was a passenger in the Hock Bus which was travelling along River Valley Road in the direction of Tank Road. The 2nd Defendants were the owners of a bus described as the Tay Koh Yat Bus No. SH 190, hereinafter described as the Tay Bus, which was travelling along River Valley Road in the opposite direction to the Hock Bus and the two said buses(?) collided at a T Junction River Valley Road and Leonie Hill Road. The 3rd Defendant was the driver of motor cycle No. SAG 9250 hereinafter described as the motor cyclist and the motor cyclist was in collision with the Tay Bus momentarily before the collision of the two buses. The Police sketch Plan Exhibit AB(8) together with the Keys to the plan Exhibit AB(9) and AB(10) and the photograph Exhibit PLA show the position of the 3 vehicles after the accident. 30 40
- P.82

Common Ground at the Trial

(5) At the trial it became common ground that the driver of the Hock Bus was not negligent and that the Plaintiff was entitled to recover \$5,500 (agreed damage) against either or both of the 2nd and 3rd Defendants.

Pleadings of 2nd and 3rd Defendants
vis-a-vis each other

10 (6) In paragraph 2 of his Defence, the 2nd Defendant alleged that the accident was caused solely or alternatively contributed to by the negligence of the motor cyclist and set out the following particulars:

P.8
L.16-40

Particulars of 3rd Defendant's Negligence

- 20 (a) Failing to keep any or any proper look-out or to have any or any sufficient regard for other users of the said road;
- (b) Riding the said motor cycle in a dangerous manner to wit by zig zagging along the said road;
- 30 (c) Suddenly and without proper or any warning stopping the said motor cycle abruptly in the middle of a busy road, thereby constituting a danger to other vehicles lawfully using the said road;
- (d) Suddenly and without proper or any warning whatsoever turning left into the path of the 2nd Defendants' bus and notwithstanding evasive action taken by the servant or agent S. Ramasamy the accident was inevitable;
- (e) Failing to give proper or any signal of his intention to turn left across the path of the 2nd Defendants' bus;
- (f) Failing to exercise or maintain any or any proper or effective control of the said motor cycle.

Record

P.9
L.1-10

(7) In paragraph 3 of his Defence, the 2nd Defendant claimed contribution from the motor cyclist.

P.10
L.20-43

(8) In paragraph 4 of his Defence, the 3rd Defendant alleged that the driver of the Hock Bus was guilty of negligence and gave the following particulars:

Further Particulars of Negligence of
the Second Defendants' Servants or
Agent

10

- (a) Failing to observe the presence of the 3rd Defendant's motor cycle on the highway;
- (b) Failing to maintain a safe distance behind the 3rd Defendant's motor cycle;
- (c) Failing to allow a sufficiently wide berth;
- (d) Overtaking or attempting to overtake the 3rd Defendant's motor cycle when it was unsafe to do so;
- (e) Failing to apply his brakes sufficiently or in time to avoid colliding into the 3rd Defendant's motor cycle;
- (f) Colliding into the rear of the 3rd Defendant's motor cycle;
- (g) Failing to exercise reasonable prudence or skill in the circumstances;
- (h) Failing to take reasonable precaution to avoid danger;
- (i) Failing to observe the traffic signals given by the 3rd Defendant indicating that the 3rd Defendant was proposing to turn right.

20

30

Main Issues in this Appeal

(9) The issue in this Appeal is whether or not the accident was caused solely by the negligence of this Respondent as the trial Judge held or solely by the negligence of the Appellant as the Court of Appeal held or whether or not both the Respondent and the Appellant were both partly to blame and, if so, in what proportions.

10 (10) The action came on for hearing before the Hon. Mr. Justice Winslow on the 3rd and 4th November 1969.

Evidence at the Trial

(11) The only evidence which is relevant to the issues in this case was that given by the drivers of the three vehicles. The first of these witnesses was Oon Long Kiang, the driver of the Hock Bus.

20 (12) In examination-in-chief he stated that he had stopped at a bus stop just over a 100ft. short of the Junction of River Valley Road and Leonie Hill Road and was proceeding on the near side. At this moment his speed was 10 to 15 mph. The Tay Bus was travelling along River Valley Road in the opposite direction at about 30 mph. and when about 25ft. away it suddenly swerved to its right and collided into his bus. He stated that there was no other vehicle in front of him in the same direction before impact. He further stated that there were other vehicles, motor cycles, motor cars and cycles but he did not see
30 any other vehicle involved in the accident.

P.14

(13) In cross-examination by Counsel for 2nd Defendant (Tay Bus) he stated that he could not see any reason why the Tay Bus swerved to its right. He stated that all sorts of vehicles were on the road then - moderate traffic. He stated that motor cars, cycles, motor cycles were approaching him on their side of the road. These vehicles were in their own lane on the near
40 side of the Tay Bus. He further stated that he first saw the Tay Bus when it was two hundred

P.15

Record

feet away. It was then travelling about 5 to 6 feet from the edge of the road and it travelled parallel to the edge of the road for some 175 feet and for some inexplicable reason it swerved to the right. He stated that he was not aware that there was a collision with the motor cyclist.

P.16
L.22
P.17
L.5

(14) In cross-examination by Counsel for 3rd Defendant (the motor cyclist) he stated that Tay Bus overtook two cyclists. He then corrected this statement and said that the Tay Bus only overtook one cyclist when it was at that stage about 100 feet away. 10

P.18

(15) The 2nd relevant witness was Ramasamy S/O Sellapan the driver of the Tay Bus. He stated that 200 to 300 feet before the accident he had stopped at a bus stop to pick up passengers. He stated that there was plenty of vehicles ahead of him and that he was travelling behind a lorry.

P.18
L.19 -
P.22
L.16

(16) His evidence continues:- 20

"I saw motor cycle in centre of the road waiting (Stationary) to turn right into Leonie Hill Road. It was 30 or 40 feet from me. My speed was then between 15 to 20 mph. I was 3/4 feet from edge of road. Lorry was in front of me. After lorry had passed the motor cyclist the motor cyclist suddenly swerved left across my path.

Lorry overtook motor cyclist on left side of motor cyclist. 30

When motor cyclist suddenly swerved to its left it was 7 to 10 feet of me on a slope.(sic)

P.18
L.19 -
P.22
L.16

When motor cyclist swerved left I swerved right to avoid a collision. I don't know if I collided with motor cyclist.

I swerved violently to right and on seeing vehicles approaching from front I again swerved left. There was a collision with Hock Lee Bus in front.

I applied my brakes and then swerved right.

If I had not swerved right I do not know if motor cyclist would be alive if my bus went over him.

10 I suffered injuries mainly to my right leg (fractured) right hand (fractured) injury on my back

.....
.....

Lorry was about 20 ft. in front of me.

I could see road ahead of lorry as well. Motor cycle was 10 to 20 feet ahead of lorry at that stage.

Lorry was smaller than the bus. It did not impede my vision.

20 I had just left a bus stop 200 to 300 ft. away.

My speed was not 30mph. Bus stop was on top of the hill.

I could see motor cyclist 30-40 ft. away.

I did not see it "so long ago" (?)

I saw the motor cyclist on the right side of the lorry.

30 There were other vehicles - oncoming traffic - I had to look at them too.

.....
.....

There were no motor cycles in front of me proceeding in the same direction.

Record

P.18
L.19 -
P.22
L.19

There were no bicycles which I overtook.

.....
.....

Q. Motor cyclist had his right hand out indicating he was going to turn right?

A. I did not see the signal. He merely remained stationary at centre of road. Maybe he wanted to turn right. I thought he was going to turn right. Motor cyclist had his leg on ground.

10

Q. The story that he swerved left is complete nonsense?

A. He did swerve left.

.....
.....

Q. Why should motor cyclist swerve left?

A. You must ask him. Don't know if he wanted to commit suicide.

.....
.....

20

To Court:

Q. You made no mention of lorry in your report AB4?

A. I did. I don't know English. My Malay is not so good.

I first noticed the Hock Lee Bus when it was 10 to 50 ft. from scene of collision - 40 or 50 ft.

Motor cycle was then stationary in centre of road about 10 or 20 ft. from me.

30

The lorry was in front of me about 15 or 20 ft.

Speed of Hock Lee Bus when I saw it was 10 or 20 or 30 mph. Could be 10 or 20 mph."

Record

(17) The last relevant witness was the Respondent, the motor cyclist. He stated in examination-in-chief that he was riding along River Valley Road and passed the Tay Bus whilst it was stationary at the Bus stop. On approaching Leonie Hill Road he reduced speed as he intended to turn right and gave a signal with his right hand. There was a grey car approaching from the opposite direction. He stated that he heard a loud sound behind him and turned his head and the Tay Bus then collided with him. He then saw the collision between the two buses.

P.22
L.17 -
P.23
L.10

(18) In cross-examination he stated that he estimated the Bus stop as 50 to 60 ft. short of the point of impact. He stated that the grey car had passed him before the accident and that he was stationary for more than a second before the accident. He stated that he did not see a lorry pass him on the near side. He stated that he was on the crown of the road as he passed the Bus and thereafter he kept a straight course. He stated that the Tay Bus was in the middle of the road and he estimated its speed as 30 mph.

(19) During the evidence of the motor cyclist the Trial Judge made the following note

[Potts - (Counsel for the motor cyclist) says bus stop is 150/200 yards from Leonie Hill Road Junction - saw it last night]

(20) Mr. Justice Winslow found that the accident was caused solely by the negligence of the motor cyclist. In the course of his Judgment he said:

"The sole question in issue was whether the bus driver of the Kay Koh Yat Bus (of the 2nd Defendant) who was travelling along his correct side of the road down River Valley Road away from the City down a slight slope or the 3rd Defendant, motor cyclist, who had previously been travelling down the same slope ahead of the bus or both were to blame for the collision which occurred between the two buses. The Hock Lee Bus had been all

P.35
L.5 -
P.36
L.1

Record

along travelling on its own correct side of the road in the opposite direction.

I had no hesitation in substantially accepting the version given by the driver of the 2nd Defendant in preference to that of the 3rd Defendant who was a most evasive witness who continually shifted his ground. I did not believe the 3rd Defendant at all on any disputed fact. This is far from saying that the driver of the 2nd Defendant was a perfect witness in every way - clearly he was a little shaky on exact distances and speeds - as indeed most witnesses in these cases tend to be but he was a better witness than all the other motorists concerned in the case and I accepted him as a truthful witness as to the crucial issue in this case, i.e. whether the 3rd Defendant swerved to his left across his path.

10

If the 3rd Defendant had been stationary in the centre of the road giving a signal with his right hand as he claimed and if the 2nd Defendant's bus had been travelling on its correct side at a distance of 5 or 6 ft. from its nearside edge of the road there was nothing to prevent the 2nd Defendant's driver from continuing his journey with absolute safety to all concerned unless that one or the other has been lying outrageously.

20

From the final position of the Tay Koh Yat Bus it is clear that it must have been on its correct side before it swerved right. After the collision its offside rear ("H" on AB8) was 7 ft. 2 inches from the left hand edge of the road. The road is 30 ft. 2 inches wide and the bus is 7 ft. 2 inches wide. In short, the whole of the rear of the bus after the accident was on its correct side."

30

(21) This Respondent appealed and the Appeal came on for hearing before Mr. Justice Wee Chong Jin C.J., Mr. Justice Tan Ah Jay J. and Mr. Justice Tan Ah Tah, F.J. and Mr. Justice Chua J. On the 30th December and on the 12th January 1970

40

the said Court made an Order allowing the Appeal and holding that the driver of the Tay Bus was wholly to blame.

Record
P.49

(22) The said Court delivered a joint Judgment which concluded with the following passages:

10 "The question remains, which version is the more probable of the two? It is impossible to accept as true or possible the bus driver's evidence that travelling at a speed of between 15 to 20 mph. his bus not more than 7 to 10 ft. from the motor cyclist, stationary on the middle of the road, that the motor cyclist could swerve left suddenly and be across the path of his bus and that he could manage to, at the same time, swerve violently right and manage to strike a mere glancing blow on the motor cycle.

P.48
L.16 -
L.40

20 As often happens, a Court on the evidence before it, has to decide which of two conflicting versions is the version to accept. In such a case, a Court in considering which is the more probable one, ought to try and derive what assistance it can get from undisputed facts, if any, which are relevant for the purpose. A court also ought to consider, from undisputed facts, whether a version put forward as evidence is one which inherently improbable or not.

30 For all these reasons, we had no hesitation at the conclusion of the hearing in coming to the conclusion that the motor cyclist's version was the more probable one and accordingly we allowed the appeal."

Respondent's Contention

40 (23) The Respondent accepts the view expressed by Counsel for the Tay Bus that little weight can be given to the evidence of the driver of the Hock Bus "who has chosen not to see what actually happened". On the other hand it is contended that his evidence is valuable in emphasising how narrow was the road and in indicating the nature of the

P.27
L.34 -
L.35

Record

traffic on the road and stating that the slow traffic kept to an inside lane and the faster traffic kept to an outer lane and there was plenty of traffic about at the time of the accident.

(24) It is common ground that when the Tay Bus was 30 to 40 ft. from the point of the collision, the motor cyclist was stationary in the middle of the road with his right foot on the ground. The middle of the road was only 15 ft. 1 inch from the kerb and the stationary motor cyclist would have a spread. Attention is invited to Exhibit P.1(i) which is a photograph of the motor cycle. It is contended that a motor cyclist sitting on such a motor cycle with his hands on the handle bars and his right foot on the ground would have a spread of approximately 2 ft. 6 inches. If at this stage the Tay Bus was travelling, as the trial Judge found, 5 to 6 ft. from the kerb, there would not be ample room to pass the motor cycle on the near side. It is contended that the minimum clearance which should be allowed without drastically reducing speed should be 3 ft. But if the near side of the Tay Bus was 6 ft. from the kerb, the offside of the Tay Bus would be 1 ft. 11 inches from the crown of the road.

10

P.70

20

(25) If the Tay Bus was travelling at 30 mph., the moment when the driver first saw the motor cyclist would be .15 second to 1 second before the accident. There is no mention by the Tay Bus driver that at this moment he scented danger and braked. His story is that he proceeded on a straight course and was within 7 to 10 ft., of the back of the motor cyclist before he was alerted to the danger. If he was travelling at 30 mph., this would be .15 of a second to .26 of a second. If he was travelling at 20 mph., the time would be half as long again. It is contended that such minute moments do not even allow time for a driver to react.

30

P.18
L.30

40

(26) Given this hypothesis, the only rational explanation of the conduct attributed to the motor cyclist by the driver of the Tay Bus was that he

10 did intend to commit suicide. This is contrary to common sense. Further if at this moment the driver of the Tay Bus was travelling parallel to the kerb at a distance of about 3 to 4 feet from the kerb, the motor cyclist would undoubtedly have been killed, which he was not. It is contended that the Court of Appeal were correct in saying that it was impossible for the accident to have happened in the manner stated by the driver of the Tay Bus.

20 (27) Attention is now called to the Police Sketch AB(8). It is contended that the effect of this Exhibit has been misread by the trial Judge. He concludes that as the distance "H" on the Exhibit was only 7 ft. 2 inches the whole of the Tay Bus must have been on the near side of the road. It is contended that the distance to measure is not from the kerb to the near side of the bus, but from the kerb to the near side rear wheel and on a true reading of the Exhibit, this would be approximately 10 ft. from the kerb. Nor should one assume that the front near side wheel would only be 10 ft. from the kerb because the course of the Tay Bus must have been away from the kerb.

P.59

30 (28) As it is common ground of both the driver of the Tay Bus and the 3rd Defendant that when the Tay Bus was 30 to 40 feet from the point of collision, the motor cyclist was stationary in the middle of the road waiting to turn right into Leonie Hill Road, it should be presumed that the intention of the 3rd Defendant to turn right into Leonie Hill Road continued unless the evidence of the driver of the Tay bus is so cogent that it must be accepted that there was a change of intention.

40 (29) If one looks at the evidence of the driver of the Tay Bus, he says that the lorry was about 20 ft., in front of him and the motor cycle 10 to 20 ft., in front of the lorry. One is therefore asked by the driver of the Tay Bus to believe that into a 20 foot gap between the bus and the lorry, the motor cycle so suddenly projected itself from the standing position

Record

that the bus driver had time to react and swerve. It is contended that even if the speed of the bus was as low as 15 to 20 mph as the bus driver says, there would have been no sufficient time for the motor cycle to move into what had been the path of the lorry and (assuming the motor cycle had been able to do so) there would have been no sufficient time for the bus, if it was following in the direct path of the lorry, to have taken any avoiding action before running over the motor cycle.

10

(30) Even if one attempts to help out the story of the driver of the Tay bus by stretching his estimates of distance between the bus and the lorry and the distance from the bus to the motor cycle when it was seen to be in the middle of the road, it is contended that it makes the Tay bus driver's story no more worthy of belief. If the Tay bus driver was, as he says, travelling 3 to 4 ft., from the left hand side of the road at this point of time it is contrary to common sense to believe that an accident would have occurred. Therefore this statement of the Tay Bus driver must be rejected.

20

(31) It is contended that a rational explanation of the accident is to be found by relying partly on the evidence of the driver of the Tay bus and partly on the exhibits themselves. One has to rely wholly or not at all on the evidence of the motor cyclist. It is contended that the Court should accept the admission of the driver of the Tay bus that he was trailing a lorry at about a distance of 20 ft., and that he first saw the motor cyclist when he was between 30 to 40 ft., (p.24) away from the motor cyclist. We have to assume that the motor cyclist was stationary anyway at that time because that is the evidence of both the motor cyclist and the Tay bus driver. It is not known how far from the near side of the road the motor lorry was travelling at this stage. The only person to have mentioned the motor lorry was the driver of the Tay bus and he does not say the distance from the side of the road at which the lorry was travelling but only the distance in front of him which was 20 ft.

30

40

10 (32) It is contended because it is the evidence of the motor cyclist that the motor cyclist overtook the Tay bus at the bus stop a short distance before the point of impact and it is contended that the lorry overtook the bus at a later period, possibly when the bus was just beginning to move and that thereafter, the Tay bus was catching the lorry up until it was within 20 ft. of the lorry. It is also contended that the Tay bus Driver first saw the motor cycle when he pulled out behind the lorry, which was obscuring his view and that at this time he was travelling in the middle of the road and being only 30 to 40 ft., away from the motor cycle, he swerved to the right to avoid it; probably because he was already in the process of swerving to the right and certainly because this was the only means of avoiding hitting the cyclist with the front of the bus.

20 (33) If contrary to the contentions of the Respondent, the Appeal is allowed on the grounds that the Respondent was partly to blame for the accident, the Respondent will ask that an apportionment of blame will be made.

(34) Accordingly, the Respondent hereby contends that the Appeal shall be dismissed for the following among other

R E A S O N S

- 30 A. THAT the trial Judge was wrong in holding that the Respondent was negligent.
- B. THAT the Court of Appeal were correct in holding that the Appellant was entirely to blame for the accident.
- C. THAT the accident could not have happened in the manner described by the Appellant.
- 40 D. THAT the cause of the accident was the failure of the Appellant to keep a proper look-out.

Record

E. THAT the cause of the accident was that the Appellant ran down the Respondent who was waiting in the middle of the road to turn right.

Case for the Respondent on Appeal No. 24 of 1970

(35) This Appeal arises out of an action in which Oon Long Kian, the driver of Hock Bus was claiming damages for personal injuries and loss arising out of the accident the subject matter of Appeal No. 25 of 1970. The Plaintiff's damages were agreed at \$7000 and both Defendants agreed to be bound by the decision in what is now Appeal No. 25 of 1970.

10

(36) Accordingly the appropriate Order to be made will follow from the Order made on Appeal No. 25 of 1970. The 1st Defendant was the motor cyclist and the 2nd Defendants were the owners of the Tay Bus.

IAN BAILLIEU

No. 24 of 1970
No. 25 of 1970

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :-

TAY KOH BUS COMPANY Appellant
LIMITED (Respondent)

- and -

CHUA CHONG CHER (Appellant
and OON LONG KIANG (Respondent)
Respondents

A N D BETWEEN:

TAY KOH YAT BUS Appellant
COMPANY LIMITED (Respondent)

- and -

CHUA CHONG CHER

- and -

TEO LAN KEOW (m.w.) (1st Respondent)

- and -

HOCK LEE AMALGAMATED
BUS COMPANY LIMITED (2nd Respondent)

C A S E FOR THE RESPONDENT
CHUA CHONG CHER on Appeal
No. 24 of 1970 and Appeal
No. 25 of 1970

LIPTON & JEFFERIES,
39 Jermyn Street,
London, S.W.1.