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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 24 of 1970

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :

TAY KOH YAT BUS COMPANY LIMITED

Appellant
(Respondent)

- and -

CHUA CHONG CHER (Appellant)
AND OON LONG KIANG (Respondent)

Respondents

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

LINKLATERS & PAINES,
Barrington House,
59-67, Gresham Street,
London, E.C.2

Solicitors for the Appellant

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

Solicitors for the Respondent

OF THE PRIVY COUNCIL

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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 24 of 1970

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :

TAY KOH YAT BUS COMPANY LIMITED

Appellant
(Respondent)

- and -

CHUA CHONG CHER (Appellant)
AND OON LONG KIANG (Respondent)

Respondents

10

R E C O R D O F P R O C E E D I N G S

No. 1
Writ of Summons
dated 21st January 1967

In the High
Court in the
Republic of
Singapore

IN THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

Suit No. 97)
of 1966)

Between

Oon Long Kiang - Plaintiff

And

1. Chua Chong Cher
 2. Tay Koh Yat Bus Company Limited
- Defendants

No. 1
Writ of Summons
21st January
1967

20

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF
JUSTICE OF THE REPUBLIC OF SINGAPORE, IN THE NAME
AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC OF
SINGAPORE.

To: 1. Chua Chong Cher,
52-6, Holland Road,
SINGAPORE

In the High Court in the Republic of Singapore

No. 1

2. Tay Koh Yat Bus Company Limited, a limited company incorporated in Singapore and having its registered office at No. 57 Beach Road, SINGAPORE.

Writ of Summons
21st January 1967
(continued)

We command you, that within eight 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 a cause at the suit of Oon Long Kiang of No. 149, Syed Alwi Road, Singapore, bus-driver, and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution. 10

WITNESS Mr. Eu Cheow Chye,

Registrar of the High Court in Singapore the 21st day of January 1967.

Sd: MURPHY & DUNBAR
Plaintiff's Solicitors

Sd: Tay Kim Whatt
By Registrar
High Court, Singapore. 20

N.B. - This writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of such renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Singapore.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$5-50 with an addressed envelope to the Registrar of the High Court at Singapore. 30

The Plaintiff's claim is for damages for personal injuries and loss and damage suffered by him and caused by the negligence of the 1st named Defendant and by the negligence of the servant or agent of the 2nd named Defendant or alternatively by the negligence of one or other of them in the driving, use or management of their respective vehicles and for interest on such damages. 40

This Writ was issued by Messrs. MURPHY & DUNBAR of Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, Solicitors to the said plaintiff who resides at No. 149, Syed Alwi Road, Singapore, bus-driver.

In the High Court in the Republic of Singapore

The address for service is at No. H-1 Hongkong Bank Chambers (7th Floor), Battery Road, Singapore.

No. 1
Writ of Summons
21st January
1967

This Writ was served by

(continued)

on the _____ day of _____, 196

10 Signed

Indorsed the _____ day of _____, 196

(Signed)
(Address)

(Filed on 21st January, 1967)

No. 2
Statement of Claim
dated 21st January 1967

No. 2
Statement of
Claim
21st January
1967

20 1. On or about the 9th day of March 1966 the Plaintiff was driving motor bus No. SH. 706 along River Valley Road in the direction of Tank Road when, at or near its junction with Leonie Hill Road, the said bus was run into by bus No. SH. 190 which was being driven by the servant or agent of the 2nd named Defendant, and which said bus had already been in collision with a motor cycle No. SAG.3250 which was being ridden by the 1st named Defendant and both of which were travelling along River Valley Road in the direction of Kim Seng Road in the Republic of Singapore.

30 2. The said collision was caused by the negligence of the 1st named Defendant and/or by the negligence of the servant or agent of the 2nd named Defendant or alternatively by the negligence of one or other of them.

In the High
Court in the
Republic of
Singapore

No. 2

Statement of
Claim

21st January
1967

(continued)

PARTICULARS OF NEGLIGENCE ON THE PART OF
THE 1ST NAMED DEFENDANT

- (a) Failing to keep any or any proper lookout;
- (b) Driving at an excessive speed in the circumstances;
- (c) Failing to observe the presence of either bus on the highway;
- (d) Driving his motor cycle in an unsafe manner;
- (e) Zig-zagging across the road; 10
- (f) Failing to stop, swerve, slow down or otherwise avoid the said collision.

PARTICULARS OF NEGLIGENCE ON THE PART OF
THE SERVANT OR AGENT OF THE 2ND NAMED DEFENDANT

- (a) Failing to keep any or any proper lookout;
- (b) Driving at an excessive speed in the circumstances;
- (c) Failing to observe the presence of motor cycle No. SAG. 3250 or the presence of motor bus No. SH. 706; 20
- (d) Driving into motor cycle No. SAG. 3250;
- (e) Failing to give motor cycle No. SAG. 3250 a sufficient warning of his intention to overtake the said motor cycle;
- (f) Failing to give motor cycle No. SAG.3250 a sufficiently wide berth;
- (g) Failing to notice the fact that motor cycle No. SAG. 3250 was stationary in the middle of the road;
- (h) Failing to pass the said motor cycle on its near side without running into it; 30
- (i) Failing to slow down on the approach of another bus coming from the opposite direction in circumstances when it was dangerous to pass the said motor cycle;

In the High Court in the Republic of Singapore

Sd. Murphy & Dunbar
Solicitors for the Plaintiff

To:

No. 2
Statement of Claim
21st January 1967
(continued)

The abovenamed 1st Defendant,
Chua Chong Cher,
No. 52-6, Holland Road,
SINGAPORE

And To:

The abovenamed 2nd Defendant,
Tay Koh Yat Bus Company Limited,
a limited company incorporated
in Singapore and having its
registered office at
No. 57, Beach Road,
SINGAPORE

10

(Filed on 21st January, 1967)

No. 3
Amended Defence of the First Defendant
9th June 1967

No. 3
Amended Defence of the First Defendant
dated 9th June 1967

Amended as underlined in red this 9th day of June, 1967 pursuant to Order of Court dated the 29th day of May, 1967.

20

Sd. Tay Kim Whatt
Dy. Registrar

A M E N D E D

DEFENCE OF THE FIRST DEFENDANT

1. Save that the 9th day of March, 1966 bus No. SH. 190 whilst travelling along River Valley Road in the Republic of Singapore collided into motor cycle No. SAG. 3250 and then into bus No. SH.706, paragraph 1 of the Statement of Claim is denied.

30

2. The First Defendant denies that the accident alleged or any injuries, pain, loss or expense either as alleged or at all was caused by the alleged or any negligence of the First Defendant. The said accident was caused solely by the negligence

of the servant or agent of the Second Defendant particulars whereof are set out in the Statement of Claim which said particulars the First Defendant hereby repeats and adopts.

3. The First Defendant will further say that the Second Defendant's servant or agent was negligent in regard to the said accident in the following further respects.

10 FURTHER PARTICULARS OF NEGLIGENCE OF THE
SECOND DEFENDANT'S SERVANT OR AGENT

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

30 4. The First Defendant will further say that if the said collision was not caused solely by the negligence of the Second Defendant it was caused solely or contributed to by the negligence of the Plaintiff, the driver of the said bus No. SH. 706 as the servant or agent of the owners of the said bus No. SH. 706 the Hock Lee Amalgamated Bus Company Limited.

In the High Court in the Republic of Singapore

No. 3

Amended Defence of the First Defendant

9th June 1967

(continued)

In the High
Court in the
Republic of
Singapore

No. 3

Amended
Defence of the
First
Defendant

9th June 1967
(continued)

PARTICULARS OF NEGLIGENCE OF THE PLAINTIFF

- (1) Failing to keep any or any proper lookout.
- (2) Failing to stop, slow down, swerve or otherwise avoid the accident.
- (3) Driving at an excessive speed in the circumstances.

5. Save as is herein expressly admitted the First Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth herein seriatim and specifically denied.

10

~~Dated and Delivered this 29th day of April, 1967.~~

Dated and Re-delivered this 9th day of June, 1967.

Sd. Rodyk & Davidson
Solicitors for the First Defendant

TO:

1. The abovenamed Plaintiff and his Solicitors Messrs. Murphy & Dunbar, Singapore.
2. The abovenamed Second Defendant and his Solicitor, A. S. K. Wee Esq., Singapore.

20

(Filed on 9th June, 1967)

No. 4
Defence of the Second Defendant

In the High
Court in the
Republic of
Singapore

No. 4

Defence of the
Second
Defendant

17th March 1967

1. The second Defendants make no admission in respect of the matters set out in paragraph one of the Statement of Claim, save that on or about the date mentioned, the second Defendants' bus registration No. SH. 190 was being driven by their servant or agent along River Valley Road, in the direction of Kim Seng Road and that a collision occurred involving the vehicles therein mentioned.

10

2. As regard to paragraph two of the Statement of Claim, the second Defendants deny that the said collision was caused by the alleged or any negligence of their servant or agent and say that it was caused solely or alternatively contributed to by the negligence of the first Defendant in the management and control of motor cycle No. SAG. 3250.

PARTICULARS OF FIRST DEFENDANT'S NEGLIGENCE

- (a) Failing to keep any or any proper lookout 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;
- (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 second Defendants' bus and notwithstanding evasive action taken by the servant or agent the accident was inevitable;
- (e) Failing to give proper or any signal of his intention to turn left across the path of the second Defendants' bus which was lawfully driven along the said road;
- (f) Failing to exercise or maintain any or any

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30

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In the High
Court in the
Republic of
Singapore

No. 4

Defence of the
Second
Defendant

17th March 1967

(continued)

proper or effective control of the said
motor cycle.

3. The second Defendant further say that if they are held liable to the Plaintiff, which liability is not admitted they claim against the first Defendant to an indemnity against the Plaintiff's claim and the costs of this action or to contribution in respect of such claim and costs to the extent of such amount as may be found by the Court to be just and equitable on the ground that the negligence of the first Defendant caused or contributed to the said accident.

10

4. The alleged injuries, loss and damage are not admitted.

5. Save as herein expressly admitted the second Defendants deny each and every of the allegation contained in the Statement of Claim as if the same were herein set out and specifically traversed.

Dated and Delivered this 17th day of March,
1967.

20

Sd. A. S. K. Wee

Solicitor for the Second Defendants

To the abovenamed Plaintiff
and to his Solicitors
Messrs. Murphy & Dunbar,
Singapore.

To the abovenamed First Defendant
and to his Solicitors
Messrs. Rodyk & Davidson,
Singapore.

30

(Filed on 17th March, 1967)

No. 5
Court Notes of Evidence and Judgment
dated 5th November 1969

In the High
Court in the
Republic of
Singapore

Coram: Winslow J.

Wednesday, 5th November, 1969

Murphy for plaintiff.

No. 5
Court Notes of
Evidence and
Judgment

5th November
1969

Court: Judgment for plaintiff for \$7,000-00
to Public Trustee for plaintiff
against 1st defendant with costs.
Claim against 2nd defendant dismissed
with costs.
2nd defendant's costs to be paid by
1st defendant.

10

Sgd. A. V. Winslow

No. 6
Oral Judgment of Winslow J. and Submissions
of Counsel on Costs
dated 5th November 1969

No. 6
Oral Judgment
of Winslow J.
and submissions
of Counsel on
costs

His Lordship: Before I proceed to give you my
decision in this case, I should like to
congratulate all Counsel concerned in
these proceedings for the very fair
manner in which they have conducted
their respective cases and for the very
pleasant atmosphere which has prevailed
during the last two or three days.
Each one has done his best without
generating any heat at all, and that
is the kind of spirit I like to see
from the Bar in this Court, and so I
don't think I need say very much more
on that.

20

5th November
1969

30

Now to turn to this case. I have
given the evidence of the witnesses the
most careful consideration right from
the very beginning and I have read
through my notes probably half-a-dozen
times since the case began. Last night
I went through them again, particularly

In the High
Court in the
Republic of
Singapore

No. 6

Oral Judgment
of Winslow J.
and submissions
of Counsel on
costs

5th November
1969

(continued)

the evidence of the 2nd and 3rd defendants. This morning I went through them again in conjunction with the transcript of the notes of the evidence given by the 3rd defendant before the magistrate in the other proceedings. I have had the advantage of these photographs and I have also been through the Agreed Bundle. I think there is very little I have not read through or digested.

10

I have given this case the most anxious thought. As I observed at one stage, the battle was really between the 2nd and 3rd defendants. Before I proceed to deal with them, I will just repeat what I said yesterday: the 1st defendant company is absolved from all responsibility in regard to this accident, and therefore the claim against it is dismissed.

20

Mr. Grimberg: As it pleases you, my Lord.

His Lordship: We will come to the question of costs a little later. Now, the bus driver of the 2nd defendant company, who drove the Tay Koh Yat bus, gave evidence. I was watching him very carefully and it did seem to me at one stage that there probably was no lorry immediately in front of him, but it makes little difference whether there was or was not, because insofar as he is concerned, the lorry did not impede his view in any way as to whatever was on its offside. I accept his version that he could see to the right-hand side of the lorry and that he saw the motor cyclist, the 3rd defendant, in the middle of the road.

30

40

From the evidence, I am quite satisfied that the bus driver was travelling along his correct side of the road. I am quite satisfied that, so far as he is concerned, even if he had in fact been travelling at a slightly higher speed than claimed by

him, he cannot, in all the circumstances, really be blamed for the accident, having regard to the facts which I shall proceed to find with regard to the strange behaviour of the 3rd defendant motor-cyclist.

10 He is the man who was, as Mr. Wee put it, the causa causans of the whole accident. I observed him very carefully during the course of his evidence and the manner in which he gave it. I have also considered what he said before the magistrate. The record speaks for itself. I think his credit has been successfully attacked by Counsel for the 2nd defendant. I am not satisfied that he has told me the whole truth. I find that he did
20 swerve to his left across the path of the Tay Koh Yat bus driven by the 2nd defendant.

30 Having regard to the damage to the motorcycle, the sketch plan showing the course taken by the Tay Koh Yat bus and to the final positions of the vehicles. I don't believe that he fell on the crown of the road as he said here. The motorcycle swung round and faced the opposite direction after the Tay Koh Yat bus had caught it a glancing blow in its attempt to avoid him as he swerved to his left and he must have fallen only a few feet from the nearside of the road. He himself said before the magistrate that he fell towards the left-hand side of the road. That is most probably what happened. I therefore find that he is solely to blame for this accident.

40 I don't think I need say very much more.

So there will be judgment in favour of the plaintiff against the 3rd defendant with costs.

Mr. Grimberg: I assume the costs will follow the

In the High Court in the Republic of Singapore

No. 6

Oral Judgment of Winslow J. and submissions of Counsel on costs

5th November 1969

(continued)

Submissions of Counsel on costs.

In the High
Court in the
Republic of
Singapore

No. 6

Submissions of
Counsel on
costs

5th November
1969

(continued)

event, since there is no
apportionment of liability?

His Lordship: There is no question of apportionment or anything of the sort. What about the 1st defendant's costs?

Mr. Wee: 1st defendant's costs, well, the 3rd defendant is solely to blame and therefore the principle of equity against the defendant, since Your Lordship has found the 3rd defendant solely liable, I think it is only fair the 3rd defendant should pay the costs of the 1st defendant.

10

His Lordship: What do you say, Mr. Grimberg?

Mr. Grimberg: My Lord, when I said the costs would follow the event, I assumed that they would be paid by Mr. Potts' client, in view of the fact that he has been found solely to blame and in view also of the fact that there were allegations of negligence against the 1st defendant in my learned friend, Mr. Potts' defence. He adopted the allegations of negligence which were put forward in the statement of claim. If there had been an apportionment of liability, of course there might then have been some difficulty.

20

His Lordship: So, costs follow the event?

Mr. Grimberg: That is what I meant when I said ---- I don't know whether my learned friend -----?

30

Mr. Potts: I don't think I can say anything against, my Lord.

Mr. Grimberg: My Lord, it might be clearest if your Lordship says: Judgment for Plaintiff with costs; the claim against 1st and 2nd defendants be dismissed with costs.

His Lordship: Claim against 1st and 2nd, just dismissed?

40

Mr. Grimberg: And the costs of the Plaintiff, 1st and 2nd defendants be paid by the 3rd defendant.

In the High Court in the Republic of Singapore

10 His Lordship: Costs for plaintiff, 1st and 2nd defendants to be paid by the 3rd defendant. Judgment will be entered for the plaintiff, in the sum of \$5,500-00 to the Public Trustee on her behalf. Now what about the next case? Incidentally, I included you (Mr. Murphy) in my earlier complimentary remarks, although you didn't figure directly in the other case.

No. 6

Submissions of Counsel on costs

5th November 1969

(continued)

Mr. Murphy: I think I deserve it - I kept very quiet! In this case, I would ask for judgment for the plaintiff against the 1st defendant with costs.

Oral Judgment of Winslow J.

(continued)

His Lordship: Judgment for plaintiff?

20 Mr. Murphy: This is Suit 97 of 1967: Judgment for plaintiff for \$7,000 against the 1st defendant with costs.

His Lordship: He is the 1st defendant in that Suit?

Mr. Murphy: Yes.

His Lordship: This is also to the Public Trustee, is it?

Mr. Murphy: Yes, My Lord, and I suppose the 2nd defendant would have judgment with costs, and I ask that the costs be paid by the 1st defendant.

30 His Lordship: Claim against 2nd defendant dismissed with costs.

Mr. Murphy: And the 2nd defendant's costs be paid by the 1st defendant.

His Lordship: Yes. Thank you all.

SINGAPORE

Wednesday, 5th November, 1969.

In the High
Court in the
Republic of
Singapore

No. 7
Grounds of Decision of Winslow J.
dated 17th December 1969

No. 7
Grounds of
decision of
Winslow J.
17th December
1969

I annex herewith a transcript of a rough shorthand note taken down by my Private Secretary (slightly amended where indistinct) of my oral judgment herein to which I would like to add the following note.

It had been agreed between the parties that the decision in this Suit (No. 2176 of 1966) would bind the parties in Suit No. 97 of 1967 in relation to the same accident.

10

It was conceded by the 3rd defendant (who is the 1st defendant in Suit No. 97 of 1967) during the trial that the driver of the Hock Lee Bus (of the 1st defendant in the present Suit) was not to blame at all. The 2nd defendant in the present Suit similarly attributed no fault to the driver of the Hock Lee bus.

The sole question in issue was whether the bus driver of the Tay 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 along travelling on its own correct side of the road in the opposite direction.

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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 - he was clearly 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

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defendant swerved to his left across his path.

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 feet 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.

10

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 feet 2 inches from the left hand edge of the road. The road is 30 feet 2 inches wide and the bus is 7 feet 2 inches wide. In short, the whole of the rear of the bus after the accident was on its correct side.

20

If the 3rd defendant had been where he said he was in the middle of the road the bus driver's action is only explicable on the basis that he deliberately swerved into the motorcyclist in order to mow him down and that the latter swerved to his left to avoid the bus.

30

All things considered, I found that the 3rd defendant was not stationary in the centre of the road when hit. If he had been he would have been killed on the spot. I found that for reasons best known to himself or as a result of his inexperience he changed his mind about entering Leonie Hill Road to his right and swerved to his left across the path of the bus driver who had no alternative except to swerve to the right himself.

I therefore found a case of negligence clearly established against the 3rd defendant.

40

I might add that I do not accept as accurate the marked across on the plan (AB8) made by the 3rd defendant as the place where he remained stationary. He couldn't very well mark it in the middle of the road because he would then have had to place himself under where the bus was in its final position. He ought to thank his lucky stars that the bus driver took the only action which he could to avoid killing him.

(Sd.) A.V.Winslow JUDGE

SINGAPORE

17th December, 1969

In the High Court in the Republic of Singapore

No. 7

Grounds of decision of Winslow J.

17th December 1969

(continued)

In the High
Court in the
Republic of
Singapore

No. 8
Formal Judgment
dated 30th December 1969

No. 8
Formal Judgment
30th December
1969

5TH NOVEMBER 1969.

This action coming on for trial on 3rd and 4th days of November 1969 before the Honourable Mr. Justice Winslow in the presence of Counsel for the Plaintiff and for the 1st Defendant and for the 2nd Defendants And Upon reading the Pleadings AND UPON HEARING the evidence adduced and what was alleged by Counsel aforesaid THIS COURT DID ORDER that this action should stand adjourned for Judgment and this action standing for Judgment this day in the presence of Counsel aforesaid THIS COURT DOTH ADJUDGE that the Plaintiff do recover against the 1st Defendant the sum of \$7,000-00 agreed General and Special damages and that the claim against the 2nd Defendants be dismissed with costs AND THIS COURT DOTH ORDER that the said sum of \$7,000-00 be paid by the 1st Defendant to the Public Trustee in trust for the Plaintiff AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff's and the 2nd Defendants' respective costs of and incidental to this action as between Party and Party be taxed and paid by the 1st Defendant to the Plaintiff's and the 2nd Defendants' Solicitors respectively AND THIS COURT DOTH LASTLY ORDER that the costs chargeable on a Solicitor and Client basis but not chargeable as between Party and Party be taxed and paid by the Public Trustee to the Plaintiff's Solicitors out of the Plaintiff's monies.

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Entered this 30th day of December 1969 at
3.15 p.m. in Volume CVIII Page 201.

Sd. Tan Kok Quan
Dy. Registrar

(Filed on 30th December, 1969)

No. 9
Notice of Appeal.

In the
Federal Court
of Malaysia
Holden at
Singapore
(Appellate
Jurisdiction)

NOTICE OF APPEAL

10 TAKE NOTICE that the abovenamed Appellant Chua Chong Cher being dissatisfied with the decision of the Honourable Mr. Justice Winslow given at Singapore on the 5th day of November, 1969 appeals to the Federal Court against that part of the said decision which decided that the liability to the Plaintiff as between the 1st and the 2nd Defendants rested wholly on the first defendant alone.

No. 9
Notice of
Appeal
19th November
1969

Dated this 19th day of November, 1969.

Sgd. Rodyk & Davidson

Solicitors for the Appellant

To

20 The Registrar,
Federal Court,
Malaysia
Kuala Lumpur.

And to

- (1) The Registrar,
High Court,
Singapore.
- (2) The abovenamed 1st Respondent and his
Solicitors, Messrs. Murphy & Dunbar,
Singapore.
- 30 (3) The abovenamed 2nd Respondents and their
Solicitor, Mr. A. S. K. Wee,
Singapore.

The Address for service for the Appellant is
c/o Messrs. Rodyk & Davidson, 24, Chartered Bank
Chambers, Singapore.

(Filed on 19th November, 1969)

In the Federal
Court of
Malaysia holden
at Singapore
(Appellate
Jurisdiction)

No.10
Memorandum of Appeal

FEDERAL COURT CIVIL APPEAL NO. Y28 OF 1969

No.10

Between

Memorandum of
Appeal

Chua Chong Cher ... Appellant

And

30th December
1969

1. Oon Long Kiang
 2. Tay Koh Yat Bus Co. Ltd.
- ... Respondents

(In the Matter of Suit No. 97 of 1967 in the
High Court in Singapore at Singapore

10

Between

Oon Long Kiang ... Plaintiff

And

1. Chua Chong Cher
2. Tay Koh Yat Bus Co. Ltd. Defendants)

MEMORANDUM OF APPEAL

Chua Chong Cher, the Appellant abovenamed
appeals to the Federal Court against the part of the
decision of the Honourable Mr. Justice A. V.
Winslow given at Singapore on the 5th day of
November, 1969 with regard to liability on the
following grounds:-

20

1. That the learned trial judge erred in fact and
in law :-

- (a) in holding that it made little difference
whether there was or was not a lorry
immediately in front of the bus driven
by the 2nd respondents.
- (b) in failing to hold that there was no
lorry immediately in front of the said
bus driven by the 2nd respondent.
- (c) in failing to appreciate or appreciate
sufficiently that the presence or absence

30

of the bus did not go only as to ability of the 2nd respondent to see the Appellant on his motor cycle but also to his, the 2nd respondent, veracity and credibility.

In the Federal Court of Malaysia holden at Singapore (Appellate Jurisdiction)

No.10

Memorandum of Appeal

30th December 1969

(continued)

10

(d) in failing to hold that the 2nd respondent was partly to blame in that he only saw the Appellant on his said motor cycle when he was 30 to 40 feet from him when he ought to have seen him much further away.

(e) in failing to hold that the 2nd respondent failed to exercise sufficient care when approaching a junction with a motor cycle stopped in the middle of the road and with an oncoming bus approaching.

(f) in failing to appreciate that the story of the 2nd respondent was impossible if there was in fact a lorry in front of the 2nd respondent's bus.

20 2. The learned trial judge in accepting the 2nd respondent as a truthful witness failed to appreciate that on his own story he had been negligent.

Dated this 30th day of December, 1969.

Sd. Rodyk & Davidson
Solicitors for the Appellant

To:

The Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.

30

And to:

- (1) The Registrar,
High Court,
Singapore
- (2) The abovenamed 1st Respondent and his
Solicitors, Messrs. Murphy & Dunbar,
Singapore
- (3) The abovenamed 2nd Respondents and their
Solicitor, Mr. A. S. K. Wee,
Singapore.

40

The address for service of the Appellant is c/o Messrs. Rodyk & Davidson, 24, Chartered Bank Chambers, Singapore.

In the Federal
Court of
Malaysia
Holden at
Singapore
(Appellate
Jurisdiction)

No. 11
Additional Grounds of Appeal
dated 12th January 1970

ADDITIONAL GROUNDS OF APPEAL

No. 11
Additional
Grounds of
Appeal
12th January
1970

Chua Chong Cher, the Appellant abovenamed
appeals to the Federal Court against that part of
the decision of the Honourable Mr. Justice A. V.
Winslow given at Singapore on the 5th day of
November 1969 with regard to liability on the
following further grounds:-

10

1. That the learned trial Judge erred in fact in
holding that the bus of the 2nd Respondents swerved
to the wrong side of the road because of any
manoeuvre of the Appellant.

2. That the learned trial Judge erred in fact in
holding that the Appellant was the cause of the
accident.

3. That the learned trial Judge erred in fact in
holding that the Appellant swerved to the left after
he had been stationary in the middle of the road.

20

Dated this 12th day of January, 1970.

Sd. Murphy & Dunbar
Solicitors for the Appellant

To,
The Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.

And to,

1. The Registrar,
High Court,
Singapore.

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2. The 1st Respondent, Oon Long Kiang,
No. 146, Syed Alwi Road,
Singapore

3. The 2nd Respondents, and their Solicitor,
Mr. A. S. K. Wee,
Singapore

The address for service of the Appellant is c/o
Messrs. Murphy & Dunbar, H1 Hongkong Bank Chambers,
Battery Road, Singapore.

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In the Federal Court of Malaysia Holden at Singapore (Appellate Jurisdiction)

D.W.3 Tay Koh Yat Bus driver p. 22, 23

Motor cyclist could not have had time to do anything which would have caused the Tay Koh Yat driver to swerve to the right. Motor Cyclist did not really contradict himself. I submit he was not evasive. He told substantially the same story.

No.12

Court Notes of Argument before the Court of Appeal

12th January 1970
(continued)

D. W. 3's version - it was impossible for the accident to have happened in the way he described.

Abraham Ho Ah Loke v.. William Manson-Hing (1949) M.L.J. 37 at p. 42 per Laville J.

10

Coghlan v. Cumberland (1898) 1 Ch. 704 - how far is manner, demeanour and tone important or relevant in assessing the credibility of a witness?

The burden was on Tay Koh Yat Bus Company to show that the motor cyclist was negligent. They have failed to discharge that burden.

Adjourned to 2 p.m.

Murphy (continuing) : I submit a plan showing the positions of the two buses. Each square is one foot square.

20

If the motor cyclist moved five feet he would not have been hit. He must move four to five feet to bring it to the notice of D.W. 3 that he was swerving left.

Speed of D.W.3's bus 15 - 20 - 30 m.p.h. p. 18B, 19 24C.

Distance - p. 19E, 20A, 20E, 5-6, pointed 6 to 7 feet, 22E.

D.W.3's evidence p. 22E - motor cycle was 30 to 40 feet in front of D.W.3's bus.

30

D.W.3's evidence 24C, 24D.

p.26E, stationary 10 or 20 feet.

p. 223 7 to 10 feet

Judge said the motor cyclist was evasive and shifted his ground. I submit Judge was wrong. The

motorcyclist did not shift his ground and was not evasive. Judge was relying on the written notes of evidence and not on demeanour.

D.W.3 might have swerved to the right for some reason not known to us.

I submit that D.W.3 was solely responsible for the collision.

Wee : In the agony of the moment D.W.3 had no alternative but to swerve right.

10 D.W.1 (driver of Hock Lee bus) p.18, 19, 20B2.

Judge at p.36 accepted D.W.3 as a truthful witness.

Bus was 7 feet 2 inches wide. If motor cyclist's version is the true one, it remains unexplained how the motor cycle came to rest where it did - 3 feet 10 inches from the edge of the road.

The plan submitted by Murphy is not complete. The speed of D.W.3's bus is not stated. The distance between the motor cycle and bus is not shown.

20

Murphy: I apply for leave to amend the memorandum of appeal. (Tenders additional grounds of appeal).

Wee : I have no objection.

The application is granted.

(Sd.) Tan Ah Tah

Wee : We do not know how far the motor cyclist moved.

I submit that the distances were not correctly stated.

30

In any event, I submit the bus driver saw the motor cyclist swerving to the left and to avoid him swerved to the right.

Court: Appeal allowed with costs here and in the court below. 3rd Respondent to pay the costs of the other parties in the court below and also to pay \$150 costs to the 1st Respondent and \$150 costs to the 2nd Respondent being their costs for today's proceedings. Deposit to be paid out to the Appellant or his solicitors. Reasons to be given later.

40

(Sd) Tan Ah Tah

In the Federal
Court of
Malaysia Holden
at Singapore
(Appellate
Jurisdiction)

No.12

Court Notes of
Argument before
the Court of
Appeal

12th January
1970

(continued)

In the Federal
Court of
Malaysia Holden
at Singapore
(Appellate
Jurisdiction)

No. 13
Judgment of the Federal Court
dated 9th February 1970

CORAM: WEE CHONG JIN, C.J.
TAN AH TAH, F.J.
CHUA, J.

No.13
Judgment of the
Federal Court
9th February
1970
Read by F.A.
Chua, J.

JUDGMENT FOR Y.27/69

At the conclusion of the hearing we allowed the appeal indicating that we would give our reasons at a later date. We now proceed to do so.

10

The first respondent, a passenger in a bus No. SH. 706 belonging to the second respondent, was injured as a result of a collision between bus No. SH. 706 and a bus No. SH. 190 belonging to the third respondent. She brought an action in the High Court against the first and second respondents as well as against the appellant, the owner and rider of motor cycle No. SAG. 3250 which was also involved in the same collision. The first respondent alleged her injuries were caused by the negligent driving of the servant of the second respondent, or alternatively by the negligent driving of the servant of the third respondent, or alternatively by the negligent riding of the appellant or alternatively on the part of any two or all of them.

20

The High Court gave judgment for the first respondent in the sum of \$5,500-00 against the appellant the owner of the motor cycle and dismissed with costs the claim against the second and third respondents. It was ordered that the first, second and third respondents' costs of the action as between party and party be taxed and paid by the appellant.

30

The appellant appeals against that part of the learned Judge's decision with regard to liability.

The undisputed facts were shortly these. The appellant stopped his motor cycle in the middle of River Valley Road intending to turn right into Leonie Hill Road. Bus SH. 706 (hereinafter referred to as the Hock Lee Bus) was coming from the opposite direction along River Valley Road. Bus SH. 190 (hereinafter referred to as the Tay Koh Yat Bus) was coming along River Valley Road behind the

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appellant's motor cycle. On reaching the appellant's motor cycle the Tay Koh Yat bus suddenly swerved to its right colliding with the motor cycle and went to the wrong side of the road and collided into the Hock Lee bus. As a result of the collision between the two buses the first respondent, who was a passenger in the Hock Lee bus, sustained personal injuries.

In the Federal Court of Malaysia Holden at Singapore (Appellate Jurisdiction)

No.13

Judgment of the Federal Court

9th February 1970

Read by F.A. Chua, J.

(continued)

10 During the trial it was conceded by the appellant that the driver of the Hock Lee bus was not to blame at all. The third respondent similarly attributed no fault to the driver of the Hock Lee Bus. The contest was then between the appellant and the third respondent. The learned trial Judge said:

20 " The sole question in issue was whether the bus driver of the Tay 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, motorcyclist, 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 along travelling on its own correct side of the road in the opposite direction."

30 The evidence of the appellant was that he was stationary in the middle of the road. He heard a loud sound behind him. When he turned his head round to look, the Tay Koh Yat bus came and collided into him and then went to the other side of the road and collided into the Hock Lee bus.

40 The driver of the Tay Koh Yat bus said that he was travelling behind a lorry at a speed of between 15 to 20 m.p.h. He saw a motor cycle in the Middle of the road waiting to turn right into Leonie Hill Road. After the lorry had passed the motor cycle, on the motor cycle's left, and when he was 7 to 10 ft. from the motor cycle, the motor cycle suddenly swerved left across his path. He swerved violently to the right to avoid colliding with the motor cycle and went to the wrong side of the road and on seeing vehicles approaching from

In the Federal Court of Malaysia Holden at Singapore (Appellate Jurisdiction)

No.13

Judgment of the Federal Court

9th February 1970

Read by F.A. Chua, J.

(continued)

the front he swerved to the left and there was a collision with the Hock Lee bus which was coming from the opposite direction.

The driver of the Hock Lee bus said that he did not see any other vehicle involved in the accident and he did not know why the Tay Koh Yat Bus swerved to its right.

The learned trial Judge found that the appellant swerved to his left across the path of the Tay Koh Yat bus and he found that the appellant was solely to blame for the accident. In his Grounds of Decision the learned Judge said:

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" All things considered, I found that the 3rd defendant was not stationary in the centre of the road when hit. If he had been he would have been killed on the spot. I found that for reasons best known to himself or as a result of his inexperience he changed his mind about entering Leonie Hill Road to his right and swerved to his left across the path of the bus driver who had no alternative except to swerve to the right himself."

20

It must be borne in mind that this claim is by a passenger who was travelling in the Hock Lee bus and that the collision was between the two buses. It was the Tay Koh Yat bus that went to the wrong side of the road and collided into the Hock Lee bus. The onus, therefore, rests upon the third respondent to show that the Tay Koh Yat bus went to the wrong side of the road without any negligence on the part of their driver.

30

The main question is, has the third respondent discharged that onus? In our view they have not.

The trial Judge accepted the evidence of the driver of the bus and rejected the evidence of the motor cyclist on the ground that if the motor cyclist had remained stationary he would have been killed on the spot and also that he was a most evasive witness who continuously shifted his ground. The trial Judge accordingly preferred the

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version given by the driver of the bus.

10 It is clear, therefore, that the trial Judge did not base his preference for the version of the driver of the bus on demeanour and furthermore this Court, as an appellate Court, is under a duty to re-hear the case by examining the evidence and arriving at its own finding, but always bearing in mind it has neither seen nor heard the witnesses and paying due regard to the trial Judge's finding and his reasons therefor. The fact that the motor cyclist would have died on the spot had he remained stationary is a conclusion which, in our opinion, cannot be supported on the evidence before him. That conclusion seems to us to be a matter of pure conjecture. Again the conclusion of the trial Judge that the motor cyclist continuously shifted his ground in his evidence cannot be supported. He told a simple story from beginning to end namely that he remained stationary on the middle of the road waiting to turn right into Leonie Hill Road when he was hit by the bus and thrown clear to the left.

20

30 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 m.p.h., his bus not more than 7 to 10 feet 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.

40 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 is inherently improbable or not.

For all these reasons, we had no hesitation at

In the Federal
Court of
Malaysia Holden
at Singapore
(Appellate
Jurisdiction)

No.13

Judgment of the
Federal Court

9th February
1970

Read by F.A.
Chua, J.

(continued)

In the Federal
Court of
Malaysia Holden
at Singapore
(Appellate
Jurisdiction)

the conclusion of the hearing in coming to the
conclusion that the motor cyclist's version was the
more probable one and accordingly we allow the
appeal.

No.13

Judgment of the
Federal Court

9th February
1970

Read by F.A.
Chua, J.

(continued)

Sd. Wee Chong Jin
CHIEF JUSTICE

Sd. Tan Ah Tah
JUDGE

Sd. F. A. Chua
JUDGE

10

Dated this 9th day of February, 1970

(The Judgment of the Court was read
by Chua, J.)

No. 14
Order of the Federal Court
Dated 12th February 1970

In the Federal
 Court of
 Malaysia Holden
 at Singapore
 (Appellate
 Jurisdiction)

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
 CHIEF JUSTICE OF THE REPUBLIC OF SINGAPORE;
 THE HONOURABLE MR. JUSTICE TAN AH TAH;
 and
 THE HONOURABLE MR. JUSTICE CHUA.

No.14

Order of the
 Federal Court
 12th February
 1970

IN OPEN COURT

THIS 12TH DAY OF JANUARY, 1970 (sic)

O R D E R

THIS APPEAL coming on for hearing this day in
 the presence of Mr. Denis Hubert Murphy of Counsel for
 the Appellant/1st Defendant and Mr. A. S. K. Wee of
 Counsel for the 2nd Respondents/2nd Defendants and in
 the absence of 1st Respondent/Plaintiff although duly
 served AND UPON READING the Record of Appeal filed
 herein on the 30th day of December, 1969 AND UPON
 HEARING what was alleged by Counsel as aforesaid IT
 IS ORDERED that this appeal be allowed and that the
 Judgment of the Honourable Mr. Justice Winslow dated
 the 5th day of November, 1969 be wholly set aside
 AND IT IS ADJUDGED that the Plaintiff do recover
 against the 2nd Defendants the sum of \$7,000-00 agreed
 General and special damages and that the claim
 against the 1st Defendant be dismissed AND IT IS
 ORDERED that the said sum of \$7,000-00 be paid by
 the 2nd Defendants to the Public Trustee in trust
 for the Plaintiff AND IT IS FURTHER ORDERED that the
 Plaintiff's and the 1st Defendant's respective costs
 of this action in the Court below as between party
 and party be taxed and paid by the 2nd Defendants to
 the Public Trustee in trust for the Plaintiff's
 former solicitors and to the solicitors for the
 1st Defendant respectively AND IT IS FURTHER ORDERED
 that the 1st Defendant's costs of this appeal as
 between party and party be taxed and paid by the
 2nd Defendants to the 1st Defendant's solicitors
 AND IT IS FURTHER ORDERED that the Plaintiff's costs
 of this action in the Court below chargeable on a
 solicitor and client basis but not chargeable as
 between party and party be taxed and paid by the
 Public Trustee to the Plaintiff's former solicitors
 out of the Plaintiff's monies AND IT IS LASTLY
 ORDERED that the sum of \$500-00 paid by the 1st
 Defendant into Court as security for the costs of this
 Appeal be paid out to the 1st Defendant's solicitors.

GIVEN under my hand and the Seal of Court this
 12th day of January, 1970.

Sd. Tan Kok Quan Asst. Registrar

In the Federal
Court of
Malaysia Holden
at Singapore
(Appellate
Jurisdiction)

No. 15
Order granting leave to Appeal to the
Judicial Committee of the Privy Council
Dated 6th April 1970

CORAM: THE HONOURABLE MR. JUSTICE TAN AH TAH,
ACTING CHIEF JUSTICE, SUPREME COURT:

THE HONOURABLE MR. JUSTICE WINSLOW,
JUDGE, SUPREME COURT; AND

THE HONOURABLE MR. JUSTICE D'COTTA,
JUDGE, SUPREME COURT.

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No.15
Order granting
leave to Appeal
to the Judicial
Committee of
the Privy
Council
6th April 1970

IN OPEN COURT

THIS 6TH DAY OF APRIL, 1970

O R D E R

UPON MOTION made before this Honourable Court
this day by Mr. Mohamed bin Abdullah of Counsel for
the abovenamed Second Respondents/Second Defendants
in the presence of Mr. Dennis Hubert Murphy of
Counsel for the abovenamed Appellant/First Defendant
and the First Respondent/Plaintiff although having
been served with the Notice of Motion, Motion Paper
and Affidavit in support but not appearing, AND
UPON reading the Notice of Motion and Motion Paper
both dated the 27th day of February, 1970 and the
Affidavit of Ng Seng Hua affirmed on the 25th day of
February, 1970 and filed herein on the 27th day of
February, 1970 AND UPON hearing Counsel as aforesaid
IT IS ORDERED that leave be and is hereby granted
to the abovenamed Second Respondents/Second
Defendants to appeal to the Judicial Committee of
Her Britannic Majesty's Privy Council AND IT IS
ORDERED that the costs of this Motion be costs in
the said Appeal AND IT IS FURTHER ORDERED that the
Judgment of the Court of Appeal dated the 12th day
of January, 1970 be carried into execution.

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GIVEN UNDER my hand and the Seal of the Supreme
Court this 6th day of April, 1970.

Sd. Tan Kok Quan
Asst. Registrar
Supreme Court, Singapore

(Filed on 5th May 1970)

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 24 of 1970

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :

TAY KOH YAT BUS COMPANY LIMITED

Appellant
(Respondent)

- and -

CHUA CHONG CHER (Appellant)
AND OON LONG KIANG (Respondent)

Respondents

R E C O R D O F P R O C E E D I N G S

LINKLATERS & PAINES,
Barrington House,
59-67, Gresham Street,
London, E.C.2

Solicitors for the Appellant

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

Solicitors for the Respondent