

14

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 5 of 1973

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

B E T W E E N :

HITAM BIN ABDULLAH
CHUA SOON KOW

Appellants

- and -

KOK FOONG YEE (f)
CHIANG NGAN NGU @
CHEONG NEGAN NGOH

Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 4 JAN 1975
25 RUSSELL SQUARE
LONDON, W.C.1.

STEPHENSON HARWOOD & TATHAM,
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Appellants' Solicitors

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Respondents' Solicitors

(i)

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1.

No. 1

WRIT OF SUMMONS

(GENERALLY ENDORSED)

In the High
Court in
Malaya

No. 1

Writ of Summons
29th July 1968

IN THE HIGH COURT IN MALAYA AT KUANTAN

CIVIL SUIT No. 67 of 1968

Between

10 Kok Foong Yee (f) and Chiang Ngan
Ngu @ Cheong Ngan Ngoh,
Administratrix and Co-Administratrix
respectively of the estate of
Cheong Chok Heng, deceased suing
on behalf of the estate and of
herself, her 3 children and the
father of the deceased as
dependants of Cheong Chok Heng,
deceased

Plaintiffs

- and -

1. Hitam bin Abdullah
2. Chua Soong Kow

Defendants

20 TAN SRI AZMI BIN HAJI MOHAMED, P.M.N., D.P.M.K.,
P.S.B., P.J.K., CHIEF JUSTICE OF THE HIGH COURT IN
MALAYA, IN THE NAME AND ON BEHALF OF HIS MAJESTY
THE YANG DI-PERTUAN AGONG

To:

1. Hitam bin Abdullah,
79 Jalan Telok Sisek,
Kuantan.

2. Chua Soong Kow,
A-491 Jalan Telok
Sisek,
Kuantan.

30 WE COMMAND you, that within eight days after
service of this Writ on you, inclusive of the day
of such service you do cause an appearance to be
entered for you in an action at the Suit of Kok
Foong Yee (f) and Chiang Ngan Ngu @ Cheong Ngan
Ngoh both of B-586 Jalan Dato' Lim Hoe Lik, Kuantan.

AND TAKE NOTICE that in default of your so

In the High Court in Malaya doing the Plaintiff may proceed therein and judgment may be given in your absence.

No. 1

WITNESS, ABU MANSOR BIN ALI, Assistant Registrar of the High Court in Malaya, this 31st day of July, 1968.

Writ of Summons
29th July 1968
(continued)

Sgd: MURPHY & DUNBAR

Sgd: Illegible

Plaintiffs' Solicitors

Assistant Registrar,
High Court,
Kuantan.

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 last renewal, including the day of such date, and not afterwards.

10

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 in Malaya at Kuantan.

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 \$3.00 with an addressed envelope to the Registrar of the High Court in Malaya at Kuantan.

20

THE PLAINTIFFS' CLAIMS ARE AS Administratrix and Co-Administratrix respectively of the estate of Cheong Chok Heng, deceased for damages for the estate and for the benefit of the Administratrix, her 3 children and the father of the deceased, the dependants of Cheong Chok Heng, deceased, all of whom have suffered damage by reason of the negligence of the First named Defendant, the servant or agent of the Second named Defendant in the driving, management and control of a motor vehicle whereby the said Cheong Chok Heng was killed.

30

PARTICULARS PURSUANT TO SECTION 7
OF THE CIVIL LAW ORDINANCE NO.5 OF 1956

The names of the persons on whose behalf this claim is filed are :

Kok Foong Yee (f), 43 years, widow of the deceased

40

3.

Chang Yak Ngu @ Cheong Yoke Ngoh, 17 years,
daughter of the deceased.

In the High
Court in Malaya

Cheong Meng Koon, 14 years, son of the deceased.

Cheong Meng Sang, 12 years, son of the deceased.

No. 1
Writ of Summons

Cheong Seok Thong, 76 years, father of the
deceased.

29th July 1968

(continued)

10 The deceased was 45 years old at the time of
his death and was employed with the Chartered Bank
at Kuantan earning an average of \$1,400.00 per
month. The deceased gave his wife \$750.00 per month
and took two meals at home. The cost of the meals
is estimated at \$50.00 and the family has, therefore,
lost \$700.00 per month.

Dated this 29th day of July, 1968.

Sgd: MURPHY & DUNBAR

Plaintiffs' Solicitors

20 This Writ was issued by Messrs. Murphy & Dunbar
whose address for service is at Chartered Bank
Building, (6th Floor), Jalan Ampang, Kuala Lumpur,
Solicitors for the Plaintiffs who reside at B-586,
Jalan Dato' Lim Hoe Lik, Kuantan.

This Writ was served by me at
on the defendant on the _____ day of
196 at the hour of _____
Indorsed this _____ day of _____ 196 .

(Signed)

(Address)

In the High
Court in Malaya

No. 2

STATEMENT OF CLAIM

No. 2
Statement of
Claim
29th July 1968

1. The Plaintiffs as Administratrix and Co-Administratrix respectively of the estate of Cheong Chok Heng, deceased bring this action for the benefit of the estate of the deceased under Section 8 of the Civil Law Ordinance 1956 and for the benefit of the Administratrix, the widow, her 3 children and the father of the deceased under Section 7 of the Civil Law Ordinance No. 5 of 1956, all of whom have suffered damage by reason of the death of the deceased who was killed by Motor Lorry No. C.6867 which was driven by the First named Defendant the servant or agent of the Second named Defendant and which was travelling along the Kuantan/Kemaman Road, Pahang, towards the direction of Kuantan on or about the 13th day of November, 1966. 10

Letters of Administration of the estate of the deceased were granted to the Plaintiffs on the 10th day of June, 1968 and the Grant was extracted on the 1st day of July, 1968. 20

2. On or about the 13th day of November, 1966 the deceased was lawfully driving motor car C 5968 along the Kuantan/Kemaman Road, Pahang, when at or near the 22½ milestone, Sungei Ular, Beserah in the District of Kuantan, he was run into and killed by Motor Lorry C 6867 which was being driven by the First named Defendant, the servant or agent of the Second named Defendant and which was travelling along the same road in the direction of Kuantan. 30

3. The said collision was caused solely by the negligence of the First named Defendant, the servant or agent of the Second named Defendant in the driving, management and control of Motor Lorry C 6867.

PARTICULARS OF NEGLIGENCE
OF THE FIRST NAMED DEFENDANT

- (a) Failing to keep any or any proper lookout;
- (b) Driving at an excessive speed in the circumstances;
- (c) Driving into the motor car driven by the deceased.

40

5.

- (d) Taking a right angled bend on the highway at speed;
- (e) Failing to give any or any sufficient warning of his approach;
- (f) Failing to exercise any or any proper or sufficient control of the Motor Lorry;
- (g) Failing to observe the presence of the motor car driven by the deceased on the highway;
- 10 (h) Encroaching into the path of motor car No. C 5968;
- (i) Driving in a careless, reckless and negligent manner;
- (j) Failing to stop, swerve, slow down or otherwise avoid the said collision.

In the High Court in Malaya

No. 2

Statement of Claim
29th July 1968
(continued)

4. By reason of the aforesaid negligence the deceased was killed and his estate has thereby suffered damage in that he has been deprived of that expectation of life to which he was entitled had he continued so to live.

20

PARTICULARS OF SPECIAL DAMAGES

Funeral expenses	...	₹2,000/-
Costs of taking out Letters of Administration	...	350/-

5. By reason of the aforesaid negligence the Administratrix the widow of the deceased, her 3 children and the father of the deceased have suffered damage in that they have been deprived of the pecuniary and other benefits which they would have received from the deceased had the deceased continued so to live.

30

PARTICULARS PURSUANT TO SECTION 7 OF THE CIVIL LAW ORDINANCE NO. 5 OF 1956

The names of the persons on whose behalf this claim is filed are :

STATEMENT OF DEFENCE
FOR FIRST DEFENDANT

In the High
Court in Malaya

10 1. No admission is made as to any of the matters averred in Paragraph 1 of the Statement of Claim save that Cheong Chok Heng was killed as a result of a collision on the Kemaman-Kuantan Road between a vehicle driven by him in the direction of Kemaman and the motor lorry C.6867 on 13th November 1966, driven by the First Defendant in the direction of Kuantan and owned by the Second Defendant.

No. 3

Statement of
Defence
First Defendant
10th October
1968

2. Save as is expressly admitted in Paragraph 1 hereof, the allegations in Paragraph 2 of the Statement of Claim are denied.

3. It is denied that the collision was caused by the negligence of the First-named Defendant. The collision was caused solely by, or alternatively, was contributed to by the negligence of the deceased.

20 PARTICULARS OF NEGLIGENCE OF THE DECEASED

- (a) Failing to keep any or any proper lookout;
- (b) Driving at an excessive speed in the circumstances;
- (c) Driving into the lorry driven by the First Defendant;
- (d) Taking a left hand bend on the highway at speed;
- (e) Failing to give any or any sufficient warning of his approach;
- 30 (f) Failing to exercise any or any proper or sufficient control of the Motor Car;
- (g) Failing to observe the presence of the motor lorry driven by the First Defendant on the highway;
- (h) Encroaching on to the path of Motor Lorry C 6867

4. Save that the deceased died as a result of the

In the High Court in Malaya collision, the allegations contained in Paragraphs 4 and 5 of the Statement of Claim are not admitted.

Dated this 10th day of October, 1968

No. 3

Statement of Defence
First Defendant
10th October 1968
(continued)

Sgd: SKRINE & CO.

Solicitors for the First Defendant abovenamed

This Statement of Defence was filed by Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the First Defendant abovenamed.

10

No. 4

STATEMENT OF DEFENCE FOR SECOND DEFENDANT

Statement of Defence
Second Defendant
10th October 1968

1. No admission is made as to any of the matters averred in Paragraph 1 of the Statement of Claim save that Cheong Chok Heng was killed as a result of a collision on the Kemaman-Kuantan Road between a vehicle driven by him in the direction of Kemaman and the motor lorry C 6867 on 13th November 1966, driven by the First Defendant in the direction of Kuantan and owned by the Second Defendant.

20

2. Save as is expressly admitted in Paragraph 1 hereof, the allegations in Paragraph 2 of the Statement of Claim are denied.

3. It is denied that collision was caused by the negligence of the First named Defendant. The collision was caused solely by or, alternatively, was contributed to by the negligence of the deceased.

PARTICULARS OF NEGLIGENCE OF THE DECEASED

30

- (a) Failing to keep any or any proper lookout;
- (b) Driving at an excessive speed in the circumstances
- (c) Driving into the lorry driven by the First Defendant;

9.

- | | | |
|----|--|--|
| | (d) Taking a left hand bend on the highway at speed; | In the High Court in Malaya |
| | (e) Failing to give any or any sufficient warning of his approach; | <u>No. 4</u> |
| | (f) Failing to exercise any or any proper or sufficient control of the Motor Car; | Statement of Defence
Second Defendant |
| | (g) Failing to observe the presence of the motor lorry driven by the First Defendant on the highway; | 10th October 1968
(continued) |
| 10 | (h) Encroaching on to the path of Motor lorry C 6867. | |

4. Save that the deceased died as a result of the collision, the allegations contained in Paragraphs 4 and 5 of the Statement of Claim are not admitted.

Dated this 10th day of October, 1968.

Sgd: SKRINE & CO.

Solicitors for the Second Defendant abovenamed

20 This Statement of Defence was filed by Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Second Defendant abovenamed.

No. 5

NOTES OF EVIDENCE

Notes of Evidence

Before me in Open Court,
This 9th day of October, 1970

9th October 1970

Sgd. Syed Othman bin Ali
Judge, Malaya.

C.S. 67/68

30 R. Ho for plaintiff (Sidhu assisting)
P. Mooney for defendants (1st defendant in person)

R. Ho Agreed facts supplied. To these facts following have been agreed upon 1) Funeral expenses \$750/-.

In the High Court in Malaya Damages relating to loss of expectation of life ~~£3500.~~ Agreed bundle of documents 1) letter to Chartered Bank.

No. 5

Notes of Evidence

9th October 1970

(continued)

P.4 relevant tyres 40% - 40%. Double tyres in the rear. Inner side tyre 80% offside rear tyre 40%

P.5 Report on Motor car.

P.6 Translation of Police report.

P.8 and 9 6 photos.

Fact that plaintiff in L/A has not been agreed to.

P. Mooney I only wish to ask a few questions of the lady. 10

R. Ho. P.9 key P.10 sketch plan. Calls.

P.W.1 Kok Foong Yee affirmed, states in Cantonese.

49 years old. Housewife.

Cheong Chok Heng was my husband. He died in a fatal accident on 13.11.66. Photo 6 looks like my deceased husband. I am one of the 2 administratrix of my husband. Co-administratrix is my daughter Chiang Ngan Ngu.

R. Ho. Defendant has agreed that at time of death deceased was a healthy normal person aged 45. 20

Examination continues Deceased was a good provider.

Cross examination by defence counsel I saw husband on day he died before he went to Kemaman. Last time I saw him was at 12.00 noon when he came back for food. I can't remember when actually he left the house but it was past 1.00 p.m. It was a Sunday.

Deceased worked in Kuantan branch of Chartered Bank. It was closed on Sunday. That morning he went out. I do not know where he went. I can't remember time when he came back. I agree I cannot remember exact time he left for Kemaman. I can only say he left past 1.00 p.m. He did not have any drink during lunch. He drank coffee in the morning. He did not normally drink alcohol. 30

Only when he entertained friends he would drink a little.

In the High Court in Malaya

He was compradore of Chartered Bank. I agree that he used to go out nights to entertain friends. He did not entertain friends regularly. He was paid entertainment allowance. When customers wanted to borrow money then he would entertain them. I do not know if that was a regular event. I do not know that Bank would not pay entertainment allowance if he did not entertain.

No. 5

Notes of Evidence

9th October 1970

(continued)

10

That morning he went to market to buy vegetables. He came back at about 12.00 noon. This is a fact because he did that every morning. I said that I did not know because I was upset after having seen the photo. He left the house at about 9.00 a.m. to go to the market. He brought back vegetables then he went out again. He read newspaper. Then he went out. I do not know where he went.

20 Re-examination Nil

P.W.2 Chua Keng Hock affirmed, states in English.

Police Inspector stationed at Temerloh police station.

Towards end of 1966 I was Investigating Officer Kuantan. On 13.11.66 I investigated a fatal accident which occurred at 22½ milestone Sungei Ulu Kuantan/Kemaman Road. On the day in question at about 3.15 p.m. I was in Kuantan police station. A Probationary Inspector informed me of this accident. I proceeded to scene of accident at about 4.00 p.m. On arrival I saw 2 vehicles at scene. One car C5968 - Ford Falcon - was on the grass verge on left side of road towards Kemaman. A Thames lorry bearing registration No. 6867 was diagonally across the road. I proceeded to take measurements. I drew a sketch plan of the scene. P.10 AB is a copy of plan. I also prepared a key to sketch plan P.9 is copy of key. I prepared plan according to scale. In plan right side from Kuantan. Position of vehicles shown in plan represents correct position as found by me. Kemaman end of sketch shows a big bend. At the time I had been stationed in Kuantan for about a year. I was familiar with this stretch of road including the bend. The bend is quite sharp. A person driving

30

40

In the High Court in Malaya a vehicle from Kemaman should be able to see an oncoming vehicle as soon as he reaches the bend.

No. 5

Notes of Evidence

9th October 1970

(continued)

The width of road 17 feet. A1, A2, A3 is a continuous mark. It is 136 feet. It was a single tyre mark. A4-A5 is a single tyre mark - 80 feet long. I can tell distance between A3 - A4. It is 32 feet 7 inches. There was a faint mark connecting A3 to A4. B1 - B2 50 feet 6 inches. There was superimposed marked. They were a single tyre marks super-imposed by a double tyre mark. There is a mark C at the end of B2. I have also marked on the other side of the lorry C1 and C2. Actually these were 3 tyre marks C, C1 and C2. The end of C which was underneath the lorry was higher than C1. C1 was higher than C2 in similar manner.

10

I have no record of the length of C. The end of C1 was almost at the beginning of C2. I would say C1 and C2 were almost in line. The gap between end of C1 and beginning of C2 was small. I would say about 6 inches. But I am not prepared to swear to this. I did not take measurements. There was also a similar gap between the end of C and the beginning of C1.

20

SM is a scratch mark.

11.00 a.m. Recess for 15 minutes.

Court sits at 11.15 a.m. Parties as before.

Examination continued SM is a fresh scratch mark. SM is 5 feet 9 inches to the side of the road towards Kemaman. F is side of road to Kemaman. B2 to F is 6 feet. B1 to F is equal to 8 feet. A4 to E (right side of road to Kemaman) is 2 feet. A5 - E is 6 feet 5 inches.

30

C1 is 14 feet long. C2 is 11 feet long.

There were 2 scratch marks on the grass verge. They are not shown in P10AB. But they are shown in the original sketch plan prepared by me. This is the original sketch plan which I prepared - produced - defence counsel sees it and marked Exhibit P1. They are shown as 2 faint lines in front of the car.

40

G/s(2) is glass splinters. I examined them.

They appeared to be from the head of the car. G/s(1) is a concentration of glass splinters which I examined. They appeared to be from the windscreen of the car. G/S(1) were in tiny bits of same type used for windscreen. G/s(2) were in pieces consistent with the glass of the headlights. I am looking at photos 1-5 P8AB. The vehicles were in the same position as they appear in these photos.

In the High Court in Malaya

No. 5

Notes of Evidence

9th October 1970

(continued)

10 Photo 5 front offside tyre intact in the sense that it was not deflated.

I checked the instrument panel of the car. The instruments and the facia were quite badly damaged. I saw the speedometer. The meter pointed at 10 m.p.h. The car had a steering column gear. It was in engaged position of 2nd gear forward.

By Court Car had 3 forward gears.

Examination 2nd gear was upward

20 I examined the lorry. I found that it was in the 4th gear. There were four forward gears in the lorry.

The scale of P10 AB is 1 inch to 10 feet.

Width of lorry 7 feet 5 inches length 16 feet.
Width 5 feet 9 inches length 13 feet.

30 Cross examination by defence counsel. I am not saying that sketch plan is a properly surveyed plan. The original sketch plan is with me is the sketch plan which I prepared at the scene. Most of the measurements are shown on plan. Measurements are all there. I agree curve A1, A2 and A3 is a free hand drawing. P.10 AB was prepared in my office on the following day. I signed accuracy of plan as a matter of importance. I did not mark connecting line between A3 and A4 because it could not be seen while standing at the spot. I agree that it is not a rule to make marks of what you see. I appreciate the importance of showing that A4 is a construction of A3. The only reason I did not put it is because you could not see it whilst standing. I agree that

40 in key there is no mention between A3 and A4. I left them out. It is in original sketch plan. It slipped my mind when I prepared the key. I put it in original plan. I was not asked in the previous

In the High
Court in Malaya

No. 5

Notes of
Evidence

9th October
1970

(continued)

proceedings distance between A3-A4. I was cross examined at length during the trial in Sessions Court. I agree that I was asked specifically on the marks. I was asked questions by the P.S.C. on the subject of tyre marks.

I do not remember whether I was asked the connections between A1, A2, A3 and A4 to A5. I agree that I did not mention the connecting mark between A1, A2, A3 and A4-A5. I was not specifically asked about the connecting mark. When I gave evidence I had no papers with me. Court reads out statement to witness. 10

" I can say A1-A2-A2 to A3 and A4 -A5, B1-B2 from that lorry. A1 to A2 -to A3 correspond to one straight line and A3 to A4 there is a gap because it leads to the lorry. Because of this and the width of the tyre marks - I say the said tyre marks belong to the lorry. I agree that my findings are not conclusive. I also agree A3 to A4. I assumed these marks must have been from the same vehicle." 20

I did say that I assumed A1 - A5 made by the lorry. There was a very faint line between A3 and A4. The line was not of the same width as A1 to A1 to A3 and A4 to A5. That's why I said I assumed that A1 to A5 must have been from the same vehicle. I was aware of the faint line. I did not mention it.

I am looking at a photo shown to me. I agree that this photo shows the bend. It is taken from the Kemaman side. Photo produced no objection and marked D2. 30

Adjourned at 12.10 p.m. till 2.30 p.m.

P.W.2 on former oath. Cross examination continued

I recorded the lengths of C1 and C2 but not C underneath the lorry. I did not record C because it went underneath the lorry. It did not occur to me to measure it. I did not measure the two marks in front of the car.

I saw a handbook in the car and saw the illustration about the gear system of the car. The gears were in form of H. Top up reverse. Top down first gear. Down up second. Down down was third; second was directly opposite third. 40

There was a kampong stall near the scene of the accident. It was between the two telephone posts. It is shown in photo 3 page 8AB. This photo is towards Kuantan. There was no shop on left hand side of road towards Kuantan but there was a surau. I am quite sure about this. The surau is in photo 2.

In the High
Court in Malaya

No. 5

Notes of
Evidence

9th October
1970

(continued)

10

I arrived at scene at about 4.30 p.m. There were no vehicles parked at the scene but there were vehicles further down towards Kuantan side. I agree position of vehicle caused obstruction. A number of vehicles passed round the grass verge.

I did measure the width of tyre marks. The width of A1 - A3 and A4 - A5 was almost the same. It varies in certain parts.

I am saying the same thing about the width as I said in the Sessions Court. I did say that the widths A1 - A3 and A4 - A5 were the same (Witness referred to notes recorded in Sessions Court).

20

Q. Would you point out to Court where you said in Court that the marks were the same.

A. As far as I can see there is nothing in the notes of evidence

I am not certain whether A4-A5 was thicker than A1 - A3. It is four years now since the trial. I am looking at record shown to me. I agree that I did say that A4-A5 was thicker. I agree that I said this twice.

30

I measured the width of the mark in the grass, by measuring across the mark. I did not go to scene today or yesterday. It would be possible that there would be a number of marks to be seen on the grass verge today.

Re-examination I remember the distance of the gap between A3 and A4 because I did measure the distance.

I did find other marks on the grass verge left hand side of road towards Kuantan. I did not record those marks. There were numerous marks which had nothing to do with the accident.

40

A4-A5 was thicker than A1-A3. A4-A5, A4 side the marks were thinner. A5 side thicker it ended at

In the High Court in Malaya

No. 5

Notes of Evidence

9th October 1970

(continued)

the near side of rear wheel of the lorry.

By Court No centre line along road at the time. I agree photo D2 shows centre line. I do not know when D2 was taken.

Defence counsel D2 was taken about 2 months.

Defence counsel address Court

Defence case rests entirely on sketch plan. Defence has 4 witnesses. First defendant attendant. There were lorries going up and down doing work. 2 drivers saw the falcon car before accident and would show how it was being driven. Defence counsel calls.

10

D.W.1 Hitam bin Abdullah affirmed, states in Malay. 41 years old.

I was involved in an accident with a motor car on 13.11.66. At the time I was working as a lorry driver. The contractor of the lorry was Chua Soon Kow. About 2.15 p.m. I was driving the lorry from Kemaman to Kuantan. Lorry number was 6867. There was an attendant on the lorry. His name is Ismail bin Mohamed Teh. The accident happened soon after the bend. When I came to the bend I saw a car coming from the opposite direction. I switched on my head lamps. The car was coming towards my direction. The car was on the left. It was on my left. It was on my side of the road.

20

Court Interpreter is now finding difficulties.

New. 2 months.

Mooney It would be better to have experienced Malay interpreter.

30

Mr. Thong to make enquiries to Chambers

In Chambers - Solicitor present.

Thong No interpreter from outstation available.

Till 8th January, 1971.

17.

Certified true copy

In the High
Court in Malaya

Sgd: G.S. Panshi

G.S. PANSHI

No. 5

Setia-usaha Kapada Hakim
Mahkamah Tinggi
Johore Bahru

Notes of
Evidence

9th October
1970

23/12/70.

(continued)

Before me in open Court
This 26th day of March, 1971.

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Sgd. S. Othman Ali

Judge.

C.S. 67/68 (continuation).

Richard Ho for plaintiffs (Sidhu with him).

P. Mooney for defendants.

Richard Ho.

We have agreed on quantum. \$55,000. Sole question to be determined is liability.

P. Mooney

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I confirm. Will inform Court re special damages.

D.W.1 recalled being affirmed, states in Malay.

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When I saw car encroaching on my side of road I sounded my horn. I applied my brakes. My lorry stopped. The car came and hit my lorry. My lorry had come to a dead stop when the car hit it. I stopped on my side of the road. Only after the collision the front of the lorry swung to the other side of the road. The front of the lorry turned to the other side of the road. The front wheels of the lorry faced the grass verge of the other side of the road. The car was crushed from the front lamp to the front door. After the collision people from the kampong came and gave assistance. I got into a lorry and went to Cherating police station and lodged a report.

In the High
Court in Malaya

No. 5

Notes of
Evidence

9th October
1970

(continued)

Before I went to the Police Station I went to the car to open the door. I could not open the door. I do not know who opened the door. I know the driver of the lorry with whom I went to police-station. His name is Zakaria. He worked for the same contractor. I know the road well. During that period I passed that part of the road daily. Before the accident I had been driving along that road for more than a year. At the time the grass verge on the left side of road towards Kuantan was about the width of the bar table (Court about $3\frac{1}{4}$ feet). The accident happened after the bend. At the side of the bend there was a coffee shop. I do not know how long the shop had been there. It is still there. I used to see vehicles stop at the shop. Sometimes I did see vehicles stop at the shop. In front of shop there was a drain and a culvert. Further up the spot of the accident where there was entrance to J.K.R. the grass side table was wide. On that day I saw a motor car on this grass side table. It was stationary. Once I stopped at this coffee shop to drink. That day I did not stop there. I was thinking of stopping. But there was a crowd. So I did not stop. I can't remember what day of the week it was. I was paid according to the number of trips. That day I made \$4.50 for one trip. I made one to 2 trips a day.

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Cross-examination by plaintiff's counsel

I stopped working for the contractor in December last year. I agree up till December last year I had been using that road daily. The road has been damaged. The J.K.R. made repairs. The road has been widened. From the culvert right up to the bridge at Sungei Ular the road has been widened. I agree now that if I came to the spot from Kemaman my view would be better.

30

I agree that there were houses near the coffee shop on the other side of the road. These houses are still there. I agree on the other side of the road from the coffee shop there were coconut trees at the bend. They are still there. There were small plants under the coconut. I do not agree that there were shrubs there. November last year was the last time I passed along the road. I did not pass the road when I came to Court this morning. I live in Tanah Puteh. I do not agree that at the time the bend was a blind one from the Kemaman. I could see what was ahead of me when I got into

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the bend. I agree that as one was getting into one could not see ahead. One could only see ahead just one gets in front of the coffee shop. The coffee shop was at the elbow of the bend. I agree that I saw car only when I reached the elbow of the bend. When I saw the car it was about the distance of 5 posts at the side of the road. I do not know whether there were electric posts or telephone. I would say about 4 chains away. I agree the accident occurred between 2 bends. But the other bend was not so pronounced. I agree that this bend was over the bridge. The accident occurred at a spot near to the coffee shop bend. The Sungei Ular bend was further up.

In the High Court in Malaya

No. 5

Notes of Evidence

9th October 1970

(continued)

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That day I intended to stop at the coffee shop. I had the intention far away from the bend. I washed at 26th milestone. At this spot I was thinking of going to the coffee shop. There was a crowd at the coffee shop. As soon as I saw the crowd I changed my mind. I agree that I had unobstructed view of coffee shop for one or two miles.

I slowed down to 20 m.p.h. before reaching the coffee shop bend. I am certain of this. I agree that as I was thinking of stopping at the coffee shop I slowed down further. I agree that at the bend I would have been doing 10 to 15 miles per hour. I agree that as I did not want to stop I accelerated. I did so right in front of the coffee shop. My lorry was a diesel. I agree that it took up sometime to pick up speed. I had travelled for a distance of about $1\frac{1}{2}$ chain when the accident occurred. I can't say how long it was. At the bend I slowed down. Then I changed to third gear and accelerated. If I did not change my engine would have stalled. When accident occurred I was travelling at about 25 miles per hour.

When I first saw the car it was on its wrong side of the road. It was on my side of the road. It was completely on my side of the road. I felt that it was strange. That's why I flicked the headlights. After that I became alarmed. After I passed the culvert I flicked headlights. I agree that I was alarmed when I saw car on my side of road. I stopped my car. I applied brakes. The lorry stopped. The car ran into my lorry.

In the High Court in Malaya

Recess at 10.20 a.m.

Court sits 10.40 a.m. (continuation)

No. 5

Parties as before.

Notes of Evidence

D.W.1. On former oath.

9th October 1970

P. Mooney Agreement is \$55,000 general damages \$750 funeral expenses, \$350 for Letters of Administration in the event of full liability.

(continued)

D.W.1 Cross examination continues.

I don't agree that on that day I was rushing to get home for lunch. I do not agree that I travelled more than 10 - 5 miles per hour past the coffee shop. It is not true that I was on top gear all the time, and that I did not change to 3rd gear.

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I am looking at sketch plan P2. I am looking G/s 1 glass splinters. I also see the position of the lorry with front wheels over the grass verge. I am looking at photos (e). I cannot see here that front screen of car smashed. I don't understand how the glass splinters came to be on the grass verge. Accident happened on my side of road. I am looking at tyre marks B1 and B2. I am looking at A1 A2 and A3 and then A4 - A5. A1 A2 A3 are not my tyre marks A4 to A5 are my tyre marks. B1 B2 also my tyre marks. I applied brakes after passing the coffee shop.

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Re-examination Before the accident I did not drive on the grass verge.

D.W.2 Ismail bin Mohamed Teh affirmed, states in Malay.

75 years old. Labourer in Juang Rubber Estate. I live at Juang.

30

I know D.W.1. I used to work as an attendant for him. During the accident on 13.11.66 I was working in his lorry as an attendant. I had been working for him for 6 months.. The accident occurred near the bend where there was a coffee shop on left side of the road. We did stop at the coffee shop that day. We did not have coffee. We did not get down. We thought of having coffee. The lorry

slowed down near the coffee shop. There was a crowd at coffee shop. I was at the back of the lorry. After the coffee shop I saw a car coming from the opposite direction. The car was travelling on our left side of the road. I did not do anything. The driver D.W.1 sounded the horn. He slowed down the lorry. The car looked like as if it wanted to go to the other side of the road. A collision occurred. The lorry had stopped when the collision occurred. After the collision the lorry was swung to a position at right angles to the road. I was not hurt. D.W.1 too was not hurt. Both of us got down from lorry. I went to give assistance to the injured person - I mean the driver of the car. I carried him so that he could be taken to hospital. I did not do anything to him. There was blood on him. I removed the blood. I used his handkerchief to wipe blood. He had 2 handkerchieves. I got one handkerchief from his right trousers pockets and the other from his shirt pocket. I could get the smell of alcohol. I can't remember what day it was. D.W.1 went off in a lorry to police station. I stayed at the spot.

The position of the two vehicles caused an obstruction on the road. Traffic took the grass verge behind the lorry i.e. on the left side of road towards Kuantan. Many vehicles passed by. There were lorries also. Some of the vehicles stopped.

The coffee shop is still there. Before the accident the coffee shop had been there for a long time.

Cross-examination by plaintiffs' counsel

I agree that we were returning to Kuantan from Kemaman. The lorry was empty. I was at the back of the lorry all the time. I was on the left side near the driver's cabin. The driver was to my right. I agree that I would be about 6 feet from driver. I would say about 4 feet. I was all the time in that position. I agree that from the time we left I did not speak to driver. I knew that driver wanted to stop at coffee shop because he had told me so at the working place.

After taking out the injured person from the car I carried him into a bus. Conductor of bus

In the High Court in Malaya

No. 5

Notes of Evidence

9th October 1970

(continued)

In the High
Court in Malaya

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Notes of
Evidence

9th October
1970

(continued)

helped me to put him in the bus. I went with him to the hospital in Kuantan. I did not go back to the scene of accident. I was there when traffic passed by the rear of the lorry.

Re-examination I was at the scene after the accident for about 10 minutes.

D.W.3 Zakaria @ Abdul Halim bin Raji, affirmed, states in Malay.

31 years old. Lorry driver at Kubang Buaya, Kuantan.

10

I know D.W.1. We were working for the same contractor in 1966. I remember in 1966 I saw a collision between his lorry and a car. I was driving my own lorry on that road. I was travelling from Kuantan to Kemaman. Before the accident I saw the car which later was involved in the accident. I saw the car at 19th milestone. At first it was behind me. It wanted to overtake me. I allowed it. It sounded its horn. I slowed down and allowed it to pass. I saw the car was travelling from side to side. It went along and disappeared. On the 20th milestone I saw the car in an accident. 20

The road at the scene of accident was partly blocked by lorry and car. I saw other vehicles stop at the scene. I can't say what kind of vehicles as I stopped for a short while. I took D.W.1 to police station. Vehicles stopped on both sides of the road.

Cross-examination by plaintiffs counsel

I do not know how accident occurred. I did not see. Now I have been driving for more than 10 years. Before this car overtook me I was not speeding - doing about 30 m.p.h. My lorry had heavy load. It was loaded with premix. I agree that I slowed down further when the car overtook my lorry. I would say that I was doing 25 miles per hour. I would say that the car was doing more than 30 miles per hour. I saw the car going from side to side after overtaking. At times it went to other side of road and then back again. But it did not go into the grass verge. I saw the car travelling in this manner 3 or 4 times. As it moved further away I did not see what it did. There was an attendant in my lorry. He was at the back of the lorry on the top of the premix. It is not correct that he was seated next 40

to me.

The car sounded its horn. So I allowed it to overtake. I agree that before the car overtook my lorry the attendant had signalled that a vehicle wanted to overtake. He knocked the cabin. I looked through rear view mirror, slowed down and allowed car to overtake.

10 I agree that car had to go on other side to overtake and then swerve back to his side of the road. After that the car went to the other side of road. I thought that the driver was playing the fool. It is not true that I exaggerated as to what had happened because I had worked with D.W.1 and under the same contractor.

Re-examination Nil

20 By Court There was nothing unusual in the manner the car overtook my lorry. I came to the spot of the accident about 15 minutes after the car had passed. I stopped at bridge before proceeding towards spot of the accident. I saw D.W.2 there. I saw a bus stopping there. By that time I had already moved with D.W.1 to go to the police station. There were about 4 or 5 other vehicles. I agree that accident had occurred about sametime when I arrived. The car was on left side of road towards Kemaman. The car was partly on the road and partly on the grass verge.

30 I am looking at (b). I agree that the position I saw is the same as this. But I wish to say it was further inside. I cannot remember very much what I saw.

By defendants counsel. I came here. I stopped for a short while. I talked to D.W.1. He wanted to go to police station. I took to police station. I did not remain there.

By plaintiffs counsel Nil.

D.W.4 Ismail bin Othman affirmed, states in Malay.

30 years old. Lorry driver. Live at 4th milestone, Jalan Gambang, Kuantan.

40 I know the first defendant Che Hitam. I

In the High
Court in Malaya

No. 5

Notes of
Evidence

9th October
1970

(continued)

In the High
Court in Malaya

No. 5

Notes of
Evidence

9th October
1970

(continued)

remember he had an accident in 1966. At that time I was working as lorry driver for a different contractor. In my working I drove along Kemaman Kuantan road. Earlier that afternoon before accident I had travelled along that road. I was travelling towards Kuantan. I saw a motor car coming from the opposite side of the road. I drove my lorry close to my side of the road. I did not do anything else. The car when straight on. I moved off the road and drove on the grass verge. I stopped. The car travelled on my side of the road. I saw the number of the car was 5968. There was one person in the car. He was the driver. I came to know about the accident in the evening. I heard about it from my friends. I did not meet first defendant. When I heard about it and came to know the number of the car I pulled out of my pocket the number of the car which I had recorded earlier. It was confirmed that same car had been involved in the accident. I recorded number of car because if I met the car again I wanted to ask why the car had wanted to run into me. I do not know where the car driver lived.

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Cross-examination by plaintiffs counsel

I do not remember where I crossed the other car. I remember where accident occurred. I know where Sungei Ular is. I know that Sungei is at 20th mile. I do not know the spot of the accident.

Re-examination Nil.

D.W.5 Tan Gee Seng affirmed, states in Hockian

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26 years old. Shop assistant.

My father keeps coffee shop at 22½ milestone Kuantan-Kemaman road. My father is now dead. I worked in the shop. The coffee shop is still there. It has been there for the past 11 years. Cars and lorries sometime stop there. Sometimes they stop in front of shop and sometime they stop at the road side. They usually stop on side table of road.

Cross examination by plaintiffs counsel Nil.

Court It is 12.30 p.m. Friday. I will have to adjourn Court. How long will counsel take in address. I have to go to Kota Bahru in the afternoon.

In the High Court in Malaya

No. 5

Both counsel agree to put up submission in writing.

Notes of Evidence

R. Ho I will have to see submission of defendants counsel before I can make my submission.

9th October 1970

(continued)

P. Mooney I will supply copy.

10 Court I will leave it to both Counsel as to time when submission should reach me and to make such arrangements as may be necessary. I hope to give judgment as soon as possible after receiving submissions.

Adjourned to a date to be fixed.

Certified true copy.

Sgd: G.S. Panshi

G.S. PANSHI

Setia usaha Kapada Hakim
Mahkamah Tinggi
Johore Bahru

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SUBMISSION FOR THE DEFENDANTS

No. 6

Damages

Submission for Defendants

General damages are agreed at \$55,000/-.

Special Damages are agreed at \$750/- funeral expenses and \$350/- for Letters of Administration.

Liability

The legal principles involved are clear

30

The principal question is whose act caused the collision

Boy Andrew v. St. Rognvald 1947 A.C.

at 149

(top paragraph)

In the High Court in Malaya

No. 6

Submission for Defendants

(continued)

If one man by his negligence puts another into a position of difficulty, the Court ought to be slow to find the other negligent

The Older 1949 66 T.L.R. at 109

The nature of contributory negligence is explained in

Nance v. British Columbia Railway 1951 A.C.611

If damages are to be apportioned, the relevant factors are

- 1) degree of causation
- 2) blameworthiness

Davies v. Swan Motor Co. 1949 2 K.B. 326

* * * *

It is generally submitted here that

- 1) the Plaintiffs have failed to discharge the onus of proof
- 2) the evidence in any event indicates that the deceased was entirely or, alternatively, principally at fault.

* * * *

Agreed Bundle

Page 8 - Photo A (top photo)

The tyre marks of the lorry are clear
They do not show the lorry in a wrong position
They do not in any way indicate fault
The nearside tyre mark of the lorry does not extend so far back as is shown on the sketch plan.

Page 8 - Photo B (bottom photo)

This shows the tyre marks of the car
If it is the nearside tyre marks which are visible, the car was wholly on

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its wrong side.
If it is the offside tyre marks, the car was substantially on its wrong side.

In the High Court in Malaya

No. 6

Submission for Defendants

(continued)

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Whichever it was, the marks show the car moving back to its correct side at a sharp angle.

This photo bears out DW1's evidence that the car was "on my side of the road"

This evidence is supported by DW2
DW2 also said: "The car looked as if it wanted to go to the other side of the road"

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Photo B also bears this out
The fact that the car was on the wrong side of the road is a probable inference also from the evidence of DW3 or DW4

Curiously the car tyre marks C2 in sketch plan do not in their point of origin correspond with this photo
In any discrepancy between the photos and the sketch plan, the photos, it is submitted, are more reliable.

Page 8(2) - Photo C (top photo)

30

It is difficult to see that this photo conveys anything at all so far as tyre marks are concerned
It does show that the collision blocked the road.

Photo D (bottom photo)

This shows extensive damage involving about 3/4 of the front of the lorry.

Photo E

Shows damage to car - the offside front of the car.

Page 10 - Sketch Plan

40

C, C1 and C2 are the tyre marks of the car

Had they been the tyre marks of the offside wheels, there would have been no collision

In the High
Court in Malaya

No. 6

Submission for
Defendants

(continued)

The front of the car was involved in
the collision
See p.5 of the Agreed Bundle
Front bumper o/s knocked backwards
Radiator and grille o/s knocked
backwards
O/s front mudguard crumpled and
ripped off
O/s front suspension assembly
knocked backwards 10
The damage is only consistent with C1,
C2 and C3 representing the nearside
wheels
This fits into all the other evidence
that the car was on its wrong side
and was swerving back at time of
accident
Photo 8 shows the car as having been
much further to its offside than the
sketch plan 20
(The reliability of this plan is
considered later)
The lorry has been turned at right
angles
The tyre marks show this
This proves that the car was going at
a considerable speed
It is impossible for a lorry to turn at
right angles on its own
It also proves that the lorry was not 30
going fast
It is a five-ton lorry and could not
have been turned like this had it
been going at any speed
The fact that neither the driver of
the lorry (DW1) nor the attendant
(DW2) were in any way hurt or injured
also points to the fact that the
lorry was at a halt or very nearly so
All the evidence supports the testimony 40
of the driver (DW1) and attendant
(DW2) as to the manner in which the
accident occurred.
The only adverse evidence is the line
A1, A2 and A3 on the sketch plan: the
reliability of this is examined
below

The position of the glass is curious
It is consistent with the car travelling at

speed and colliding with the lorry
 The broken glass would then be projected
 forward some distance
 But the reasons for the glass being in the
 position shown are a matter of pure
 conjecture
 There is no evidence as to how it got there
 And it would be unsafe to rely on speculation
 on this matter.

In the High
 Court in Malaya

 No. 6

Submission for
 Defendants

(continued)

10 Speed of Car

The tyre marks of the car are irrelevant in
 considering speed
 The car was forcibly brought to a halt by the
 collision
 There is nothing to show how far these marks would
 have continued had there been no collision
 Evidence was given by PW2 that the car was in 2nd
 gear and that the speedometer pointed to 10
 m.p.h.

20 It cannot seriously be suggested that the deceased
 was driving to Dungun from Kuantan at 10 m.p.h.
 in 2nd gear on a hot Sunday afternoon

The question is when and how the car got into 2nd
 gear

It may have been put into 2nd gear just before the
 impact with the clutch still engaged

If the deceased had his hand on the gear lever, it
 might have moved from 3rd gear to 2nd gear,
 which is immediately opposite (PW2 gave
 evidence of this), on impact

30 The speedometer reading is of no value
 The instruments and facts were badly damaged and no
 conclusion can be drawn from the pointer on a
 damaged speedometer

The facts already referred to previously all indicate
 some speed on the part of the car

So does the damage to it.

Lorry Driver

40 The theory which the Plaintiffs are attempting to
 put forward is that he was going too fast and
 misjudged the bend

There is no evidence (ignoring A1 -2 -3 which is
 dealt with later) which supports this

(1) The lorry driver (DW1) knew the bend
 very well

He passed this bend every day and had
 done so for over a year

In the High
Court in Malaya

It is very unlikely that he would misjudge
the bend

No. 6

Submission for
Defendants

- (2) There is no evidence whatever that he was
in a hurry or had any reason to hurry
- (3) It is not a blind bend
- (4) Both he and his attendant state that they
slowed down at the coffee shop

(continued)

There is no reason to disbelieve this.

Driver of Car

What is known about him before the accident?

10

He left Kuantan after 1 p.m.

The accident happened at about 2 p.m.

Place of accident is 22 miles from Kuantan

There is the unchallenged and uncontradicted
evidence of DW2 that one or both of the
handkerchiefs of the deceased smelled of
alcohol

DW3 gave evidence of having been overtaken by the
deceased's car and seeing the car veering from
one side to the other

20

This fits in with the photographs, the sketch plan
and the evidence of DW1 and DW2 as to position
and the smell of alcohol

DW4 gave evidence as to meeting the deceased's car
on the wrong side of the road and being forced
to drive off the road

Again this evidence fits in with all the other
evidence available

The only evidence which would go to show that DW1
was responsible for the collision is the line
A1 to A3 on the sketch plan

30

If this line is ignored, there is no evidence that
DW1 caused the accident

It is submitted that this merits careful scrutiny
since it stands alone

- (1) The sketch plan was drawn by PW2
- (2) He did not get to the scene until two
hours and a half after the occurrence

(3) He prepared the plan exhibited at p.10 of the Agreed Bundle only the day after the accident

In the High Court in Malaya

(4) P.10 of the Agreed Bundle was drawn in PW2's office not at the scene

No. 6

Submission for Defendants

A1 to A3 has no measurements

It is a mere freehand sketch of a line

(continued)

By the time that PW2 got to the scene, the accident had caused an obstruction for over two and a half hours

10

Very many vehicles must have driven over the grass verge

PW2 himself says : "A number of vehicles passed round the grass verge"

"I did find other marks on the grass verge left hand side of the road towards Kuantan.

I did not record those marks.

20

There were numerous marks which had nothing to do with the accident."

DW1 says there was a car on the grass verge before he arrived

DW2 says

"Traffic took the grass verge behind the lorry i.e. on the left hand side of road towards Kuantan.

Many vehicles passed by. There were lorries also. Some of the vehicles stopped."

30

DW3 says

"I saw other vehicles stop at the scene".

"Vehicles stopped on both side of the road."

DW5 says

"Cars and lorries sometimes stop there. Sometimes they stop in front of the shop and sometimes they stop at the roadside. Usually they stop on side-table of road".

40

In the High
Court in Malaya

—
No.6

Submission for
Defendants

(continued)

In fact, an inspection of the spot today will show any number of marks, criss-crossing and overlapping and it is quite impossible to pick out a mark such as A1 to A3 and have any confidence whatever in it.

It is significant that PW2, although he had photographs made of A4 to A5 made no photographs of A1 to A3

On his own admission PW2 has omitted "numerous marks" from his drawing

10

The Court has no knowledge of what he omitted or what the true picture was

PW2 is making a mere assumption and has no backing or corroboration from the evidence

PW2 had no personal knowledge of what vehicles went on to the grass verge during the 2½ hours preceding his arrival or how they drove on and off

PW2's powers of observation are not very reliable

He said there was no shop on the left hand side of the road towards Kuantan

20

It was put to him that there was a shop and he insisted that he was quite sure there was not

According to him there was only a kampong stall and a surau

In fact a coffeeshop has been there for over 11 years

He said that there was a faint mark connecting A3 and A4

This witness had given detailed evidence before in the Sessions Court and had been particularly examined on the gap between A3 and A4

30

He never once in his testimony in the Sessions Court suggested that there was any line connecting A3 and A4

He drew the sketch plan and put in no line connecting A3 and A4

He prepared the key to the sketch plan and mentioned no connecting line and gave no measurement of the distance between A3 and A4

In the High Court in Malaya

He gave two explanations for the discrepancy

No. 6

First he said that he did not put in the line "because you could not see it standing".

Submission for Defendants

He said that was the only reason for not putting it in

(continued)

This reason is clearly absurd

10 He then said that "it slipped my mind when I prepared the key".

This explanation is equally unimpressive and it does not agree with his first and "only reason"

The connection mark if there was one is too important to be omitted

Moreover PW2's mind was specifically directed to the gap in the Sessions Court and surely he would have remembered

20 In the Sessions Court he says that "I assumed these marks (i.e. A1-3 and A4-5) came from the same vehicle"

He then asks the Court to believe that all during his examination in the Sessions Court he was aware of the connecting line but did not mention it.

He was reluctantly driven to admit that he also said twice in the Sessions Court that A4 - 5 was thicker than A1 to 3.

30 Photograph 8A shows the lorry's tyre marks quite clearly

There are no marks at all leading on to the grass verge

Even a magnifying glass reveals no marks

(And C2 as seen in Photo 8 is much further to the right than is shown on the sketch plan)

In the High
Court in Malaya

No. 6

Submission for
Defendants

If the accident had happened as the Plaintiffs are suggesting, namely, by the lorry taking the bend too fast and going round it out of control and on to the grass verge and off again, surely some at least of the people at the coffee shop would have observed this

(continued)

There were many people at the shop but not a single witness was produced to support this story

If it had happened in that manner, it is curious that the driver and attendant suffered no injury whatever

10

Onus

The onus is on the Plaintiffs

The negligence alleged by them :-

(a) Failing to keep any or any proper lookout

Both DW1 and DW2 gave evidence that they saw the car when they got to the bend

There is no evidence to contradict this

(b) Driving at an excessive speed in the Circumstances

20

If A4 to A5 is accurately measured the distance is 80 feet

According to the table given in Bingham's Motor Claims Cases (5th Ed.) at p.45, this would indicate a speed in the region of 40 m.p.h.

This table is not reliable - it takes no account of weight, make of tyres etc.

DW1 said he was doing about 25 m.p.h. before he stopped

30

If he was doing 40 m.p.h. it is not excessive

Clearly lorry either stopped or nearly so when accident occurred

Had it been going at any speed, DW1 and DW2 would surely have suffered some kind of injury

(c) Driving into the motor car driven by the deceased

In the High Court in Malaya

This by itself does not constitute negligence

No.6

It depends on the circumstances

Submission for Defendants

In any event the evidence indicates that it was the deceased who drove into the lorry at speed

(continued)

(d) Taking a bend on the highway at speed

10

There is no evidence at all of this

A1 - A3 cannot be relied on

Photo 8A is against this view

The fact that no witnesses were called from the coffee shop is also against it

So is the absence of injury to DW1 and DW2

(e) Failing to give any or any sufficient warning of his approach

There is evidence that DW1 sounded his horn and flashed his headlights

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There is no evidence to contradict this

(f) Failing to exercise any or any proper or sufficient control of Motor lorry

Not proved

(g) Failing to observe the presence of the car

Not proved

(h) Encroaching into the path of the car

It would appear that there was a degree of encroachment

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Perhaps DW1 had it in mind to avoid the car by going to the other side

He does not say so but the sketch plan

In the High Court in Malaya

No.6

Submission for Defendants

(continued)

suggests that this may have been the position

Possibly he did this in the agony of the moment

If there is negligence there it is submitted that it is a small degree and that the evidence shows the major responsibility rests with the deceased

- (i) Driving in a careless reckless and negligent manner

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There is no evidence of this

- (j) Failing to stop, swerve, slow down or otherwise avoid the collision

The evidence shows that DW1 did slow down and stop

He also moved slightly to his offside

Possibly he should have driven off the road on the left hand grass verge but this can be dangerous with a heavy lorry since there may be holes or bumps or small ditches

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The accident happened very quickly after the lorry came round the corner and if the driver did the wrong thing, it is the fault of the car driver for creating the dangerous situation

Drivers are not expected to be perfectionists :

K.R. Taxi Service v Saharah 1969 1 MLJ at 53B

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DW1 had no reason to expect the car to be on its wrong side and to continue on its wrong side in face of the approaching lorry.

Submission

Plaintiffs' action should be dismissed as not proved

Alternatively, it is submitted that the deceased In the High
was largely to blame for the accident and Court in Malaya
DW1 was only responsible to a minor extent.

No. 6

Submission for
Defendants

(continued)

SUBMISSION FOR THE PLAINTIFFS

No. 7

Submission for
Plaintiffs

May it please your Lordship.

24th April
1971

10 This is an action brought by the Administra-
trices of the estate of Cheong Chok Heng deceased
driver of Motor Car No. C 5968 who met his untimely
death on 13.11.66 at or near the 22nd and $\frac{1}{2}$ mile-
stone Kemaman/Kuantan Road, Pahang, when the vehicle
he drove was in collision with Motor Lorry No. C
6867 driven by the First named Defendant (D.W.1)
the servant or agent of the Second named Defendant.

20 It is brought for damages for loss to the
estate of the deceased and for pecuniary loss
suffered by the Administratrix Madam Kok Foong Yee,
her three children by the deceased, and the
deceased's father all as dependants under Sections
8 and 7 respectively of the Civil Law Ordinance
No. 5 of 1956. It is alleged that the accident and
loss were caused by the negligence of the First
named Defendant (D.W.1) the servant or agent of the
Second named Defendant.

Quantum of damages has been agreed as follows :

Special Damages

(a) Funeral expenses	₹ 750.00
(b) Costs of taking out L/A	₹ 350.00

General Damages

30 (a) Loss of expectation of life	₹3500.00
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In the High
Court in Malaya

(b) Loss of dependency \$55,000.00

No. 7

Submission for
Plaintiffs

24th April
1971

(continued)

As to general damages the \$3,500.00 for loss of expectation of life will merge with the \$55,000.00 for loss of dependency as the recipients under both subjects of these damages will be the same people, with the exception of the deceased's father who does not participate in any of the estate of the deceased. This is to avoid duplication of damages awarded under Sections 7 and 8 of the Civil Law Ordinance No. 5 of 1956. See Davies v. Powell Duffryn Associated Collieries Limited (1942) A.C. 601,623 and Tan Chooi Thin & Anor. v. Teo Whee Hong (1953) MLJ 203, 205.

10

On the question of liability the Plaintiffs rely mainly on the Police Sketch Plan and its Key which appear at pages 10 and 9 on the Agreed Bundle of Documents which it is submitted will show that the accident was caused by the negligence of D.W.1 and that the deceased was not in any way at fault. This Plan was drawn and compiled by P.W.2 the Inspector of Police who investigated the scene of the accident. The Plan was said to have been drawn to scale and although certainly not with the precision expected of "a properly surveyed plan", was nevertheless made upon the basis of actual measurements taken of marks and positions by the witness which were reduced onto paper as nearly proportionate one to another as was practicable. It is respectfully submitted that this was what was meant by the witness when he stated that it was drawn to scale. In this way, therefore, the tyre marks, positions of glass splinters and of vehicles involved in the collision are shown with more accuracy in relativity one with another than they otherwise would have been. For example, when the tyre mark identified as A1 to A3 is stated as being 136 feet long and that identified as A4 to A5 is stated as being 80 feet long, they were actually drawn in lengths to reflect the ratio of these measurements. Thus it is possible to say by looking at the plan itself, as indeed P.W.2 did in fact say in his examination in chief, that the distance from A3 to A4 was about 32 feet 7 inches, and this, quite apart from the fact that it was so recorded by him.

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It is, therefore, proposed to invite reference to this plan in some detail in relation to the evidence adduced. It shows a straight stretch of the Kemaman/Kuantan Road immediately after a right

hand bend from the point of view of traffic from Kemaman.

In the High Court in Malaya

10 It is submitted that this bend played a most important part in this accident, and so would be dealt with before the other relevant details recorded. It is abundantly clear from the evidence that a driver of a vehicle arriving from Kemaman would only be able to see oncoming traffic when he reached the elbow of this bend, as his forward view before arrival at the elbow would be effectively obstructed by vegetation on his off side at the elbow. This was a sharp bend. P.W.2 so testified in his examination in chief. So did D.W.1 when he clarified in cross-examination in these words,

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Submission for Plaintiffs

24th April 1971

(continued)

20 "..... I could see what was ahead of me when I got into the bend. I agree that as one was getting into (the bend) one could not see ahead. One could only see ahead just (as) one gets in front of the coffee shop. The coffee shop was at the elbow of the bend. I agree I saw car only when I reached the elbow of bend....."

30 In the vicinity of the elbow of this bend on the Kuantan side of the elbow a tyre mark A1-A3 is stated to be 136 feet long. It is of utmost importance to note that this mark began on the metal portion of the road some small distance towards the Kuantan side of the elbow of the bend, and had traversed about one fifth of it's total length before it entered upon the grass verge at point A2, if one made a rough estimation by comparing the respective lengths of A1 to A2 and A2 to A3 as drawn, bearing in mind that these were drawn to scale. At any rate this mark began on the metal portion of the road at a point into the middle of the road. In the light of this, it is submitted that any attempt to show that this mark was made by other vehicles whose drivers might have stopped for refreshments at the coffee shop at the elbow of the bend " at the road side " or " on side table of the road " as would appear to have been suggested by the evidence of D.W.5 the keeper of the coffee shop, must strain the credulity. Similarly any attempt to show that it was left by traffic which sought to detour around the rear of the motor lorry No. C. 6867 when it came to rest after the collision, as would appear to have been suggested

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In the High
Court in Malaya

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Submission for
Plaintiffs

24th April
1971

(continued)

by the cross examination of P.W.2 and the evidence of D.W.2 cannot bear the light of even superficial examination. This mark was too far and away from the lorry's position.

Tyre mark A4 to A5 which is 80 feet long and tyre mark B1 to B2 which is 50 feet 6 inches long are admitted in cross examination by D.W.1 as having been made by the motor lorry he drove.

As to the gap A3 to A4, P.W.2 testified quite unequivocally in his examination in chief that there was in fact a faint connecting line between the two points which, he later clarified in cross examination was left out of the Plan because "you could not see it whilst standing". It is submitted that this was a very straight forward statement which was a perfectly reasonable explanation for the omission. The witness has no reason to say this other than that it represented facts as observed by him at the time. 10

It is respectfully submitted therefore, that the readily visible tyre marks A1 to A3 and A4 to A5 were parts of one continuous tyre mark, joined in fact by a faint mark not readily visible from A3 to A4 and that this entire mark A1 to A5 was left by Motor Lorry No. C 6867 from the time its brakes were applied upon emerging from the elbow of the bend, up till the time it came to standstill after collision. As to why the line A3 to A4 was not as pronounced as A1 to A3 or A4 to A5, it is not proposed to hazard a guess but suffice it to say that it is not unknown that brakes have been for a variety of reasons applied intermittently, as a vehicle hurtles along in moments of uncertainty felt by its driver. 20 30

The motor lorry came to rest after the collision at approximately right angles to road facing the right hand side as one faces Kuantan. A large concentration of glass splinters marked G/S (1) said to be fragments of the motor car's windscreen was recorded as found entirely on the right hand grass verge as one faces Kuantan and was midway between B1 and B2. Item 5 of paragraph 7 of the Vehicle Examiner's Report at page 5 of the Agreed Bundle shows that the motor car's windscreen was in fact smashed as indeed is shown in photograph E on page 8 of the Agreed Bundle, although D.W.1 professed to deny that it was 40

smashed and was unable to explain the position of these splinters. It is submitted that the correct conclusion to be drawn from this, is that the point of impact was on the motor car's correct side of the road that it occurred when the motor lorry was still in motion and that the motor lorry came to rest as it did only after it travelled about 25 feet after impact, that being roughly half of the distance between B1 and B2. It being a much heavier vehicle than the motor car, it simply pushed the latter off the road after impact. Indeed the two scratch marks found by P.W.2 leading up to the front portion of the motor car as shown in Exhibit P.1 tendered in his examination in chief corroborates decisively this conclusion. Furthermore, it is to be observed that the motor lorry must be regarded as having been driven at a far greater speed than the motor car was, just before the collision, as after the collision the former was found to have been in top i.e. 4th gear whilst the latter was in 2nd gear with its speedometer jammed at 10 miles per hour. There appears no mention of the motor lorry's speedometer which might have indicated its speed but it is submitted that the length of the tyre marks speak more eloquently of the speed than any other evidence, as does the extent of damage to both vehicles as shown in photographs D and E from which the extreme violence of the impact was obvious. The motor car's off side front door could be seen sticking to the front bumper of the motor lorry in photograph D.

In further support of my contention that the collision occurred on the motor car's correct side of the highway, it is submitted that there can be no other plausible conclusion to be drawn from the evidence. Assuming that Your Lordship is with me on the point of impact as being approximately midway between B1 and B2 as supported by the position of G/S (1), then it must be correct to say that the motor lorry's off side wheels were about 7 feet from the right hand side of the road edge as one faces Kuantan when the impact occurred, bearing in mind that B1 is 8 feet and B2 is 6 feet from the edge. The road was 17 feet wide at the place of the accident and the motor lorry was, therefore, clearly on its wrong side of the road at the moment of impact. The motor car's off side front was destroyed, indicating that it was on its correct side of the road. If it was more towards to the

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No. 7

Submission for
Plaintiffs

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1971

(continued)

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1971

(continued)

centre of the road, it would have been the entire car front which would have been damaged. Also, if it was on its wrong side of the road, its near side would have been hit instead of its off side as was the case here.

Regarding the position of G/S (1) it is submitted that they fell when the windscreen shattered on impact as the motor car on 2nd gear and at 10 mile per hour or thereabouts, having been thrown only slightly forward owing to the slow speed of the motor car. As it was the off side front of the motor car which was hit, owing to the angle at which it was hit, there was nothing to obstruct the path the shattered windscreen glass travelled. As the off side front headlamp of the motor car was closer to the ground than the windscreen, when hit and shattered, the main bulk of its splinters would have been carried ahead by the front of the motor lorry before they fell to the ground, until the motor lorry came almost to a stand still a split second later, causing them to fall at the position marked G/S (2) on the Plan, as the motor lorry slowed round into the position in which it was later found. Indeed it was not only the splinters from the motor car's off side headlamp which was swept and pushed ahead, but the motor car itself as submitted earlier on. 10 20

May it please Your Lordship

It is contended that that was how the accident occurred as at the moment of impact. It is submitted that D.W.1's version of the accident in this regard to the effect that his motor lorry had come to a dead stop on his correct side of the road when the motor car hit it, pushing it, the lorry, out of position, cannot be believed when tested against the Police Sketch Plan examined above. He cannot explain why G/S (1) were found where they were found, so far away from his motor lorry. Besides, it is clear beyond a doubt that it was a motor car which was pushed away, in all circumstances considered. 30 40

It is to be noted that the case for the defence is that affirmatively, D.W.1 did nothing wrong and that without qualification the deceased when first sighted was on his wrong side of the road, and continued to be on the wrong side of the road until

collision. There has been a conspicuous absence of any suggestion in D.W.1's evidence that there was any manoeuvre on the part of the deceased such as weaving from side to side of the highway as would have caused him D.W.1 to go onto his wrong side of the road, as he evidently did, though denied. It bears repeating, that D.W.1 in his evidence has not suggested that he had to change course because of any manoeuvre on the part of the deceased. If one accepts what D.W.1 says namely that the deceased drove into his lorry then it must be correct to say that he D.W.1 knowing that the deceased and he were on a collision course did nothing to avoid it. He did not slow down. He did not swerve to avoid the motor car. He did not stop, as indeed he had ample time to do so if he wanted to at the low speed he was then purportedly driving his motor lorry. He first saw the motor car about 4 chains away. He did not one single prudent thing which would have easily avoided the collision. He had so much space to go on to his left side table. He did not do so. Simply because the deceased was on the wrong side of the road (which is not admitted) it does not give D.W.1 the right to insist on his right of way. It must have been abundantly clear to D.W.1 that in the event of a collision between his large motor lorry with the motor car driven by the deceased, the motor car and its driver will come out second best, so that D.W.1 should have acted with much more caution than his evidence has shown.

It is submitted that for some reason best known to himself, when D.W.1 drove his empty Motor Lorry C 6867, he lost control of it when he arrived at the elbow of the bend in front of the coffee shop where he had intended to stop for refreshments, as he was proceeding towards Kuantan. The position of beginning of tyre mark A1 to A3 indicates that he had begun to apply his brakes well before that point and it is probably just before he entered the bend as "thinking time" must be provided for. In other words, there is a distinct probability that he had applied his brakes before he ever sighted the oncoming car so that the position of the car as alleged, but is not admitted, had little or nothing to do with the way the motor lorry was being driven. It is all too easy for a surviving party to make allegations in his own interest, which cannot be refuted by oral evidence of the party who died.

In the High
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Submission for
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(continued)

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(continued)

It is respectfully submitted that it is evident that D.W.1 drove his motor lorry on to his left grass verge, and attempted to swerve back on to the highway, but found that the manoeuvre was unsuccessful owing to the speed at which he was travelling thereby running into the oncoming motor car driven by the deceased on his proper side of the highway. When mention was made earlier on regarding the jamming of the motor car's speedometer at 10 mile per hour, it was not intended to say that the deceased had been driving along on second gear. It is entirely possible that when the deceased saw the oncoming lorry, he put his motor car into second gear as most prudent motorists would do to effect better control over the vehicle.

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There has been no explanation of marks C1 and C2. Whose marks were they? This question remains unanswered. One thing is clear. They are not made by the motor lorry. There is a possibility that there (sic) were the motor car's but this would be mere guess work. Even if they can be regarded as such, it is submitted that they were made by the motor car's off side tyres, indicating that it was on its proper side of the highway in order to be consistent with the nature of the damage to it. The deceased must have swerved to his left hand road edge in vain bid to avoid the collision.

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The defence has sought to show that the deceased prior to the accident on that day had driven badly. However, D.W.3 driving a lorry laden with pre-mix had said that the deceased was not speeding. He said in response to a question by Your Lordship, " There was nothing unusual in the manner the car overtook my lorry ". He had arrived at the scene of the accident about the same time as it had happened. He could not have been very far behind the deceased as deceased drove on to his death. It is submitted that this witness contributed nothing of significance towards the defence case.

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If D.W.3 contributed little, then D.W.4 did even less. This witness said some extraordinary things in his examination in chief. He said among other things, " I saw a motor car coming from the opposite side of the road. I saw the number of the car was 5968. There was one person in the car. He was the driver. I came to know

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about the accident in the evening.I did not meet first Defendant when I heard about it and came to know the number of the car I pulled out of my pocket the number of the car which I had recorded earlier..... I recorded number of car because if I met the car again I wanted to ask why the car had wanted to run into me."

In the High Court in Malaya

No. 7

, Submission for Plaintiffs

24th April 1971

(continued)

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From all of this, it was obvious, if he is to be believed, the incident which he had remembered so much in detail must have been to his mind an incident of some moment and yet, he could not remember where he crossed the car driven by the deceased. He did not know the spot of the accident.

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Mention was made of the smell of alcohol on the person of the deceased. Is the suggestion that the deceased was so intoxicated with drink that he drove drunkenly to his death? Such a contention cannot be supported in the instant case. The post mortem report at page 3 of the Agreed Bundle of Documents makes no mention of either stomach contents or blood sample having been taken for analysis to determine alcohol content. This would certainly have been done if there was any evidence at all of intoxication at the time.

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It is submitted therefore that in all the circumstances of this case, it is much more probable that the accident was caused by the bad driving of D.W.1 rather than that of the deceased. The whole case for the defence in fact is comprised in the evidence of D.W.1. His evidence does not at all square with the police Sketch Plan with Key which I had described as a very reliable document, particularly so in view of the great pains P.W.2 took in preparing.

On behalf of the Plaintiffs, therefore, I ask judgment for the Plaintiffs, costs, and such other ancillary orders which will follow as a matter of course.

Dated this 24th day of April, 1971.

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Sgd: xxx

RICHARD HO UNG HUN

Counsel for the Plaintiffs.

In the High
Court in Malaya

JUDGMENT OF SYED OTHMAN, J.

No. 8

Judgment of
Syed Othman J.
14th October
1971

The plaintiffs, administratrix and co-administratrix of the estate of Cheong Chok Heng, deceased, claim damages for negligence for the estate and for the benefit of the administratrix and dependant children and father of the deceased. The deceased was killed as a result of an accident at 22½ milestone, Sungeo Ular, Kuantan, involving a car driven by the deceased and a lorry driven by the first defendant, the servant or agent of the second defendant. 10

The defendants admit that the deceased died from the collision.

The parties agree that the collision occurred at 2.00 pm. on 13th November, 1966 and that the dependants have suffered loss of dependency as a result of the deceased's death.

In adducing their case the plaintiffs mainly rely on the evidence of a police inspector who investigated the accident and the sketch plan which he had drawn. I shall deal with all this when considering all the evidence. 20

The main points in cross-examination of the inspector are to show some inaccuracies in the sketch plan and what was said by the witness in the Sessions Court as to the width of the tyre marks at A1 to A3 and then A4 to A5. The inspector agrees that the position of the vehicles after the accident caused obstruction and that a number of vehicles passed the road along the grass verge. 30

The case for the defence may be put briefly as follows.

Two lorry drivers, D.W.3 and D.W.4, who are friends of the first defendant, met the car driven by the deceased sometime in the afternoon before the accident. D.W.3 says that he had been travelling from Kuantan to Kemaman; after the car had overtaken his lorry at the 19th milestone he saw the car being driven from side to side; then he came to the scene of the accident. 40

D.W.4 says that about the same afternoon he was driving a lorry from Kemaman to Kuantan when he

saw the car coming from the opposite direction; the car encroached his side of the road forcing him to stop at the grass verge; he took the number of the car which was the same as that of the deceased's car.

In the High
Court in Malaya

No. 8

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Syed Othman J.

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(continued)

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The evidence as to how the accident occurred comes from the first defendant and his attendant, D.W.2. According to the first defendant when he came to the bend from Kemaman to Kuantan he saw the car on his side of the road; he switched on his headlamps, sounded his horn, applied his brakes and stopped his lorry when the car hit it; it was after the collision that the front of the lorry swung to the other side of the road with the front wheels of the lorry facing the grass verge on the other side of the road; the car was crushed from the front lamp to the front door.

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In cross-examination he says that he slowed down to 20 mph before reaching the coffee shop at the bend where he had been thinking to stop for coffee and that when the accident occurred he was doing about 25 mph; he denies that tyre marks A1, A2 and A3 had been caused by his lorry but admits that tyre marks A4-A5 and B1 and B2 had been caused by his lorry.

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D.W.2 says that he and D.W.1 were thinking of having coffee at the coffee shop at the bend; the lorry stopped at the bend but on seeing a crowd, it moved on; then he saw the car travelling on their side of the road; the lorry slowed down; the car looked as if it wanted to go to the other side of the road; the lorry had stopped when the collision occurred.

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The sketch plan shows that the width of the road where the accident occurred is 17 feet, the width of the grass verge on the lorry side i.e. Kemaman - Kuantan is 9 feet and on the car side i.e. Kuantan - Kemaman 10 feet. There are two tyre marks running almost parallel to the car which is stationary at the edge of the grass verge on its side of the road with the left rear wheel in a shallow drain. These tyre marks are marked C1 and C2. They appear to be continuous if not for a break. It runs in a curve starting at a point 9 feet 8 inches from the edge of the road on the lorry side and 7 feet 4 inches from the edge of the road on the car side. At the end of the curve where it is

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(continued)

shown nearest to the lorry and among glass splinters the distance from the edge of the road on the lorry side is given as 11 feet while the distance from the edge of the road on the car side is given as 6 feet. The length of these tyre marks C2 is given at 14 feet and C1 at 11 feet. On the lorry side of the road there is a long tyre mark starting at A1 on that part of the road over a culvert and almost at the end of the bend; it runs for a short distance on the road entering at point A2 the grass verge on which it runs in a wide curve for a distance of 136 feet; it enters the road at point A3; then there is a break for some distance. At A4 the tyre mark is shown to be at 2 feet from the edge of the road on the lorry side. As it progresses on the road the path is more to the centre of the road till point A5 somewhere at the left rear wheel of the lorry. Running partly parallel to this tyre mark is another mark B1 - B2. B2 stops just before about the middle part of the lorry; the lorry is shown to be stationary across the road with the cabin part over the edge of the road and on the grass verge on the car side of the road. The car is to the left of the lorry facing the left side of the lorry at an angle. There are glass splinters on this grass verge, the nearest point is about 21 feet from the right side of the lorry. 10 20

Considering the evidence, particularly the sketch plan, I find that the accident occurred well on the car side of the road. The glass splinters on the road showing the spot of collision are all on the car side of the road. Both vehicles were damaged on the offside. The tyre marks C1 and C2, (25 feet) which could only have been caused by offside wheels of the car, show that the car must have been on the correct side of the road immediately before the accident. The tyre marks start somewhere near the centre of the road but still on the car side and then curve towards the edge of the road on its side. The indications are that the deceased must have applied his brakes and at the same time swerved more to the left before the collision. Having regard to the position of the two vehicles on the sketch plan the force must have come from the lorry pushing the car off the road and into the drain at the end of the grass verge on its side of the road. In the sketch plan it stands almost parallel to the beginning of the tyre mark C2 and about 11 feet from the lorry. My conclusion is 30 40

that the impact must also have been such as to cause the windscreen of the car to have been dislodged, fly off past over the front of the lorry and smashed on the grass verge on the car side at a distance of more than 30 feet from the car.

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(continued)

10 The first defendant says that when coming to the bend he was thinking of stopping to have coffee at the shop there. D.W.2, the attendant, says that the lorry had in fact stopped. If in fact the lorry had been doing 25 mph just before the accident as the first defendant claims, he should have been able to stop his lorry immediately when, according to him, he saw the car coming to his side of the road. If the lorry had indeed stopped at the bend, as D.W.2 claims, when the car came on it then the accident would have occurred there. Even assuming after stopping, it had moved forward, the lorry could not have travelled far when the car is alleged to have come upon the lorry. But the sketch plan shows that the distance from the culvert where the bend ends from the Kemaman side to the spot where the lorry had stopped is nearly 250 feet, taking into account the distance from A3 to A4 which is 32 feet 7 inches according to the inspector. See also photo D2 as to the position of the culvert. The first defendant himself admits that tyre marks A4-A5 and B1-B2 had been caused by the lorry. Tyre mark A4-A5 measuring 80 feet could only have been caused by the offside wheels, and tyre mark B1-B2 measuring 50 feet 6 inches could only have been caused by the nearside wheels of the lorry. They curve into the path of the car. As against this evidence, the car left much shorter tyre marks, C1-C2, which curve to the edge of the road on its side. There is nothing in the sketch plan to show that the accident could have occurred on the lorry side of the road. All the glass splinters are on the car side of the road and none on the lorry side. I do not therefore agree with the defence submission that the tyre marks A1-A3 are the only evidence which would go to show the first defendant was responsible for the accident. I cannot accept the testimony of the first defendant and D.W.2 as to what happened at the bend particularly when they say that the lorry had stopped and slowed down at the bend for the reasons stated above. Leaving aside A1-A3 from consideration, if the lorry had been travelling about 25 mph or had been moving forward from a stop before the accident, it would not

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(continued)

have left tyre marks as long as and in such a pattern as A4-A5 or B1-B2. These tyre marks by themselves indicate that the first defendant must have driven the lorry at a very fast speed losing control of the lorry and causing it to go into the path of the car, which had been trying to avoid it by swerving more to the left. Considering the evidence up to this point only I am convinced that the first defendant was at fault.

To go further, I do not accept the defence suggestions that the tyre marks A1, A2 and A3 could not have been caused by the lorry and that they could have been caused by another vehicle passing by the back of the lorry after the accident.

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As to the first suggestion, the first defendant himself says that he started to apply his brakes when he came to the bend. A1 starts at the end of the bend. The whole curving pattern of A1, A2 and A3 and then A4 and A5 shows a continuity pointing to the tyre marks having been made by the lorry. I cannot see why the inspector should want to make up evidence, as the defence suggest, when he says that there was a faint tyre mark between A3 and A4 though not shown in the sketch plan. I accept his evidence. As to the tyre marks being of different widths, there are many factors which could have caused them to be so e.g. the nature of the surface and the pressure that had been applied in braking.

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As to the second suggestion, point A3 is about 100 feet away from the lorry and point A2 is more than 200 feet away. I do not think any vehicle wanting to pass round the lorry which had been obstructing the road would have done so at these points. It would have done so when coming up near the lorry. Any tyre marks on the grass verge from any such vehicle would have been at the back of the lorry.

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It is also suggested that these tyre marks could have been made by a vehicle which had stopped at the bend for the purpose of going to the coffee shop. But the evidence of D.W.5 is that the coffee shop was at the bend itself, and not at the stretch past the bend. In any case, I cannot accept that such a vehicle should have left such a long tyre mark and in such pattern.

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I now deal with the other defence evidence. D.W.3 says in effect that after the deceased had overtaken his lorry at the 19th milestone he saw the car being driven from side to side. D.W.4 says that at a spot along the same road, which he cannot remember, the car came to his side causing him to stop his lorry. Now both D.W.3 and D.W.4 are friends. Before the accident they had been travelling in the opposite direction. Traffic on the road along the east coast even at the present day is not heavy compared with that in the west coast. It is an occasion to meet friends on the road here. Both claim to have met the car. Yet one did not meet the other on the road. The testimony of D.W.4 amounts to an allegation that the deceased had driven his car in an inconsiderate manner. He took the trouble of recording the number of the car. But he did not report the matter to the police. His purpose in doing so, according to him, was to meet the driver of the car whose address he did not even know. The testimony of D.W.2, the attendant, that the deceased smelt of liquor when he came to assist the deceased after the accident is not supported by the report from the doctor who examined the deceased's body. I am inclined to believe that the evidence of these witnesses as to the conduct of the deceased has been made up for the purpose of mitigating the fault of the first defendant. In any case, whatever these witnesses may say about the deceased, I can find nothing from the evidence which shows that the deceased could have been at fault immediately before the accident or that the deceased could have done any more than what he had done to avoid the accident.

On the whole defence story, I am more convinced than ever that the first defendant must have driven the lorry at great speed when coming to the bend and lost control of it when negotiating the bend resulting in the lorry making the tyre marks A1, A2 and A3 and then A4-A5 and B1 and B2, and then running into the car which had been trying to avoid it, by swerving more to the edge of the road on its side, having regard to the car tyre mark C1-C2.

The evidence that the first defendant was wholly responsible for the accident is overwhelming.

Judgment for the Plaintiffs. I award them in

In the High
Court in Malaya

No. 8

Judgment of
Syed Othman J.

14th October
1971

(continued)

In the High Court in Malaya

the sums that have been agreed upon: general damages \$55,000, funeral expenses \$750, cost of taking letters of administration \$350; and costs.

No. 8

Judgment of Syed Othman J.

14th October 1971

(continued)

Dated 14th day of October, 1971 at Kuantan.

Sgd: xxx

(Syed Othman bin Ali)

Judge, High Court,

Malaya.

Solicitors:

R. Ho of Murphy and Dunbar
P. Mooney of Skrine & Co.

10

No. 9

ORDER OF HIGH COURT

Order of High Court

14th October 1971

BEFORE THE HONOURABLE MR. JUSTICE SYED OTHMAN BIN

ALI THIS 14TH DAY OF OCTOBER, 1971

IN OPEN COURT

O R D E R

THIS ACTION having come on for trial on the 9th day of October 1970 in the presence of Mr. Richard Ho Ung Hun of Counsel for the Plaintiffs and Mr. Peter Mooney of Counsel for the Defendants AND having heard the evidence adduced and arguments of Counsel aforesaid IT WAS ORDERED that this Suit be adjourned for the 8th of January 1971 for further arguments AND was postponed to the 26th of March 1971 AND IT WAS ORDERED that judgment be reserved AND THIS ACTION coming on this 14th day of October 1971 for delivery of Judgment in the presence of Mr. S.M. Appaduray mentioning on behalf of Mr. Richard Ho Ung Hun of Counsel for the Plaintiffs and also mentioning on behalf of Mr. Peter Mooney of Counsel for the Defendants IT IS HEREBY ORDERED that Judgment be entered for the Plaintiffs against the Defendants in the agreed sum of \$56,100/- (Dollars Fifty-six thousand and one hundred only) comprising of \$55,000/- as General Damages \$750/- as Funeral expenses and \$350/- as costs for taking out Letters of Administration AND IT IS FURTHER ORDERED that the Party and Party costs of this

20

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action be taxed by a proper officer of the Court and such taxed costs be paid by the Defendants.

In the High Court in Malaya

GIVEN under my hand and the Seal of the Court this 14th day of October, 1971.

No. 9

Order of High Court

14th October 1971

(continued)

Sgd: Illegible
Assistant Registrar,
High Court,
KUANTAN.

NOTICE OF APPEAL

In the Federal Court

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
(APPELLATE JURISDICTION)

No.10

FEDERAL COURT CIVIL APPEAL NO.117 OF 1971

Notice of Appeal

4th November 1971

Between

- 1. Hitam bin Abdullah
 - 2. Chua Soon Kow
- Appellants

And

- 1. Kok Foong Yee (f)
 - 2. Chiang Ngan Ngu @ Cheong Ngan Nghoh
- Respondents

20 (In the matter of Civil Suit No. 67 of 1968 in the High Court in Malaya at Kuantan

Between

- 1. Kok Foong Yee (f)
 - 2. Chiang Ngan Ngu @ Cheong Ngan Nghoh
- Plaintiffs

And

- 1. Hitam bin Abdullah
 - 2. Chua Soon Kow
- Defendants)

30

NOTICE OF APPEAL

TAKE NOTICE that Hitam bin Abdullah and Chua Soon Kow, the Appellants abovenamed, being dissatisfied

In the Federal Court

No.10

Notice of Appeal
4th November 1971
(continued)

with the decision of the Honourable Dato Justice Syed Othman bin Ali given at Kuantan on the 14th day of October, 1971 appeal to the Federal Court against the whole of the said decision.

Dated this 4th day of November, 1971.

Sgd: Skrine & Co.

Solicitors for the Appellants

- To: The Registrar,
The Federal Court,
Kuala Lumpur. 10
- And to: The Assistant Registrar,
The High Court in Malaya at Kuantan
- And to: Messrs. Murphy & Dunbar,
Chartered Bank Building, 6th Floor,
Jalan Ampang,
Kuala Lumpur,
Solicitors for the Respondents
abovenamed.

The address of service for the Appellants is Messrs. Skrine & Co., Advocates & Solicitors, Straits Trading Building, 4-8 Leboh Pasar Besar, Kuala Lumpur. 20

No.11

Memorandum of Appeal
17th December 1971

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 117 OF 1971

Between

- 1. Hitam bin Abdullah
- 2. Chua Soon Kow Appellants

And 30

- 1. Kok Foong Yee (f)
- 2. Chiang Ngan Ngu @
Cheong Ngan Nghoh Respondents

(In the matter of Civil Suit No. 67 of 1968 in the High Court in Malaya at Kuantan

In the Federal Court

Between

No. 11

1. Kok Foong Yee (f)
2. Chiang Ngan Ngu @
Cheong Ngan Ngoh Plaintiffs

Memorandum of Appeal

And

17th December 1971

1. Hitam bin Abdullah
2. Chua Soon Kow Defendants)

(continued)

10

MEMORANDUM OF APPEAL

20

1. The learned trial Judge erred in holding that the tyre marks C1 and C2 could only have been caused by the offside wheels of the car and erred, in any event, in holding that the car must have been on its correct side immediately before the accident. The tyre marks show that the car was wholly or substantially on its wrong side until a split second before the collision when it tried to move sharply to its correct side. This is clear from photograph B2 and the learned Judge ought so to have held.

30

2. There is no factual basis for the finding of the learned Judge that the lorry could not have travelled far from the bend before the car "is alleged to have come upon it". DW1's evidence showed that he expected the car to move back to its own side of the road when he flashed his headlights and sounded his horn. The distance, from the bend, in any event, is only about 80 yards.

3. The learned Judge was wrong in holding the tyre marks A4 - A5 and B1 - B2 by themselves indicate that the first defendant must have driven the lorry

- a) at a very fast speed; and
- b) losing control of the lorry and causing it to go into the path of the car.

40

4. The learned Judge entirely failed to consider that numerous vehicles had driven on to the grass verge on the left hand side of the road facing Kuantan and that there were and are any number of tyre marks to be found there from which any desired pattern can be selected. His judgment is based on

In the
Federal Court

No.11

Memorandum of
Appeal

17th December
1971

(continued)

the double assumption that there was one set of tyre marks and this must have been made by the defendants' lorry.

5. The learned Judge failed to consider sufficiently the significant difference between PW2's evidence in the Sessions Court and before him and was wrong in speculating, in the absence of any evidence whatsoever, on reasons for the difference in width and clarity between the alleged line joined A3 - A4 and the line A4 - A5. The learned Judge failed to understand that only A4 - A5 was an established fact, that A2 to A3 was a freehand sketch based on a mere conjecture of PW2, and that A3 to A4 was not, on the evidence, established as a probability

10

6. The learned Judge was wrong in rejecting the evidence of DW3 and DW4 on the grounds that -

- a) they did not meet each other on the road, as to which there is no evidence whatever;
- b) that DW4 did not report the inconsiderate driving of the car to the police, which is something a lorry driver would be unlikely to do.

20

7. The learned Judge, in considering the plan, failed to test its accuracy by comparing it with the photographs which show that the plan is not reliable.

8. The learned Judge failed to consider the speed of the car and ought to have held that the proven facts indicate that the car was travelling at a considerable speed and the lorry was not.

30

9. The learned Judge ought to have held on the evidence as a whole that the Plaintiffs had failed to discharge the onus of proof or that the collision was caused by or alternatively contributed to by the negligence of the deceased.

Dated this 17th day of December, 1971.

Sgd: Skrine & Co.

Solicitors for the
Appellants.

57.

To: The Registrar,
Federal Court,
Kuala Lumpur.

In the Federal
Court

and to: Messrs. Murphy & Dunbar,
Chartered Bank Building, 6th Floor,
Jalan Ampang,
Kuala Lumpur,
Solicitors for the Respondents
abovenamed

No.11

Memorandum of
Appeal

17th December
1971

(continued)

10

The address for service of the Appellants is
c/o Messrs. Skrine & Co., Straits Trading Building,
4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for
the Appellants abovenamed.

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

No.12

Cor: Ong, C.J.
Gill, F.J.
Ali, F.J.

Notes of
Argument by
Ong, C.J.

21st March 1972

21st March
1972

20

Chin Yoong Chong for applts.
Richard Ho for respts.

Extension of time - allowed.

Chin: case decided largely on documentary evidence.
There is evidence of D.W.1 and D.W.2 saying
car was on wrong side of road.
Sketch plan showed the car veered back.

Ho: not called on to reply.

Appeal dismissed with costs here & below
Deposit to respts to a/c taxed costs.

Sgd. H.T. Ong.

=====

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Johor Bahru, 6th May 1972

Cor: Ong, C.J.
Gill, F.J.
A. Hamid, J.

In the Federal Court

No.12

Notes of
Argument by
Ong, C.J.

21st March 1972
(continued)

Dominic Puthucheary for applts.
Also on behalf of M. & Dunbar for respts.

Conditional leave not opposed.
Conditional leave granted on usual terms.
Stay of execution except as to \$25,000/-
costs in cause.

Sgd. H.T. Ong
TRUE COPY

Sgd: Theh Liang Peng
Secretary to Chief Justice 10
High Court, Malaya.

No.13

NOTES RECORDED BY GILL F.J.

Notes of
Argument by
Gill F.J.

21st March 1972

Cor: Ong, C.J.
Gill, F.J.
Ali, F.J.

21st March, 1972

Enche Chin Yoong Chong for appellants.
Enche Richard Ho for respondent.

Extension of time for filing.

Chin:

20

Grounds of appeal are in the Petition of Appeal. I will take them as a whole. The case was based largely on documentary evidence such as the sketch plan. My submission is that the inferences drawn by the trial Judge were wrong. He did not take into consideration what could have happened. He relied on his own view as to how the accident happened.

Both drivers were on the wrong side of the road. Each party then tried to get back to its correct side.

30

In any event there was contributory negligence on the part of the car driver. I would say that the impact took place somewhere near C. If both were on the wrong side of the road and the accident

took place when each one of them was getting back to his correct side, then both of them were equally to blame for the accident. In the Federal Court

There is the evidence of D.W.1 and D.W.2 saying that the car coming from the opposite was travelling on the wrong side and that D.W.1 veered back to avoid the accident.

No.13
Notes of
Argument by
Gill F.J.
21st March 1972
(continued)

Enche Richard Ho not called on.

10 Appeal dismissed with costs. Deposit to be paid out to respondent to account of taxed costs.

S. S. Gill.

Certified true copy

Sgd: xxx
Setia-usaha kapada Hakim
Mahkamah Persekutuan
Malaysia,
Kuala Lumpur.

NOTES RECORDED BY ALI, F.J.

No.14
Notes of
Argument by
Ali, F.J.
21st March
1972

20 Cor: Ong, C.J.
Gill, F.J.
Ali, F.J.

21st March, 1972

Chin Yoong Chong for appellants
Richard Ho for respondents.

Extension of time agreed to.

Chin - Refers to Memorandum of Appeal
Case rests on documentary evidence.

30 Submits there is evidence of
defence that car was travelling on the
wrong side of the road. Car veered.
Even if rejecting this - question of
contributory negligence.

Richard Ho not called
Appeal dismissed with costs.
Deposit to respondent to a/c of taxed
costs. Sd. Ali.

Certified copy
Sgd. xxx Secretary to Judge.

In the Federal Court

FOUNDATIONS OF JUDGMENT OF ONG, C.J.

No.15
Judgment of
Ong, C.J.
15th May
1972

At about 2 p.m. on November 13, 1966 a collision took place when a Ford Falcon saloon car met an empty Ford Thames 5-ton tipper lorry at the 22½ milestone of the Kemaman-Kuantan highway. The driver of the car sustained fatal injuries. In the High Court at Kuantan his widow and daughter were awarded damages in the sum of \$56,100/- and costs against the driver and owner of the lorry, the judge holding that the lorry-driver was wholly to blame. The defendants' appeal to this court was dismissed on March 21, 1972. Since there is a further appeal I now state the grounds of my decision.

10

Before us it was contended, on behalf of the appellants, that the learned trial judge had erred in relying largely on the evidence of the sketch plan, which was contradicted by affirmative evidence of the defendant driver and his lorry attendant that the car was on its wrong side of the road, thereby causing the accident. On the evidence the judge had been convinced that the defendant driver's sole responsibility for the accident was overwhelming. For my own part I was equally satisfied that all the evidence irresistibly supported that conclusion.

20

It was purely a question of fact whether the deceased's car encroached on its wrong side of the road or it was the lorry that did so. The road was 17 feet wide at the stretch where the accident occurred. The width of the lorry was 7 feet 5 inches and that of the car 5 feet 9 inches. On this narrow highway, therefore, all motor-vehicles passing each other ought to have been driven with a high degree of care. In order to remain on its own half of the roadway the lorry had only 13 inches to spare - or 6½ inches of room on either side. Even if its near-side wheels were as little as 2 feet from the grass verge this lorry would have been encroaching almost 18 inches over the middle line of the road. It was for this very reason that counsel for the defendants was forced to admit (at page 49 of his written submission) as follows :-

40

"Encroaching into the path of the car

It would appear that there was a degree of encroachment.

Perhaps D.W.1 (the lorry driver) had it in mind to avoid the car by going to the other side. In the Federal Court

He does not say so, but the plan suggests that this may have been the position." Judgment of Ong, C.J.

(The underlining is mine).

No.15
15th May
1972

(continued)

10 I do not think the judge could properly have accepted the above explanation for the lorry driver going across the road unless this driver alleged that such was his intention. By his own account the oncoming car was observed from about a distance of 4 chains. As may be seen from the plan and photographs, even had the car been travelling along the crown of the road, all that the lorry-driver had to do was to take the simple course of moving further left on to the grass side-table to avoid a collision.

20 In the next place, the judge had to choose between believing the police inspector who drew the sketch plan or preferring the evidence of the lorry-driver and his witnesses. He accepted the police inspector's evidence and in my opinion he rightly held that the evidence of two defence witnesses as to the manner the car was being driven by the deceased before the accident was "made up for the purpose of mitigating the fault of the first defendant". As to the lorry-driver and his attendant, both of them categorically stated, in examination-in-chief, that the lorry
30 "had come to a dead stop when the car hit it". In cross-examination, however, the driver said, "When the accident occurred I was travelling at about 25 miles per hour". After such self-contradiction, revealing a blatant untruth, is it any wonder that the learned trial judge considered him unworthy of credit? The tyre-marks A4-A5 and B1-B2 were admitted by him to be those made by the lorry - they were obviously marks of the rear wheels, which by no means
40 retraced the course of the front wheels, except where a vehicle was going perfectly straight ahead. It was, in my view sufficient to take note only of the tyre-mark A4-A5. At its commencement it was 2 feet from the grass verge, 80 feet further on it was 4 feet 7 inches and at A5 it was 8 feet 1 inch from the grass. At all stages along A4-A5, therefore, it was beyond dispute that this lorry 7 feet

In the Federal
Court

No.15

Judgment of
Ong, C.J.

15th May
1972

(continued)

5 inches wide was progressively encroaching over the middle line on to its wrong side of the road. It was impossible for a stationary lorry to have made those marks. They could only have been made by a vehicle exceeding 25 m.p.h. The glass splinters (GS1 and GS2) should indicate approximately the point of impact as somewhere in between. That the two vehicles did not collide fully head on, but on their offside, showed that the car must have been well inside its own half when the lorry was over the crown of the road. Hence the judge came to a conclusion which, in my opinion, was irresistible.

10

I do not think it necessary to go into further details. The learned trial judge had seen and heard the witnesses and there was nothing in the evidence which suggested that his conclusions were erroneous. The deceased, a bank comprador, was certainly not drunk and it was incredible that a middle-aged sober man could have driven to his death in the manner described when he must have seen the oncoming lorry as soon as it rounded the bend. In my opinion the defendant lorry-driver must have ran into the car in the manner and for the reason the judge believed it did. I had no hesitation, therefore, in dismissing this appeal with costs.

20

Kuala Lumpur,
15th May, 1972

(Sgd.) H.T. Ong
CHIEF JUSTICE
HIGH COURT IN MALAYA.

=====

Chin Yoong Chong Esq. of Messrs. Skrine & Co.
for appellants.

30

Richard U.H. Ho Esq. of Messrs. Murphy & Dunbar
for respondents.

Gill & Ali F.JJ. concurred.

TRUE COPY

Sgd: Tneh Liang Peng
Secretary to Chief Justice
High Court, Malaya.

ORDER OF FEDERAL COURT

In the Federal
Court

CORAM: ONG, CHIEF JUSTICE, HIGH COURT, MALAYA;
GILL, JUDGE, FEDERAL COURT, MALAYSIA;
AND
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

No.16
Order of
Federal Court
21st March
1972

IN OPEN COURT

THIS 21ST DAY OF MARCH 1972

O R D E R

10 THIS APPEAL coming on for hearing on the 21st
day of March 1972 in the presence of Mr. Chin Yoong
Chong of Counsel for the abovenamed Appellants and
Mr. Richard Ho Ung Hun of Counsel for the above-
named Respondents AND UPON READING the Record of
Appeal filed herein AND UPON HEARING the arguments
of Counsel aforesaid IT IS ORDERED that this
Appeal be and is hereby dismissed AND IT IS ORDERED
that the Respondents' Party and Party costs be taxed
by a proper officer of the Court and be paid by the
20 Appellants AND IT IS LASTLY ORDERED that the sum
of \$500/- paid into Court by the Appellants as
security for the costs of this Appeal be paid out
to the Respondents towards their taxed costs.

GIVEN under my hand and the Seal of the Court
this 21st day of March 1972.

(SEAL)

Sgd:
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

In the Federal Court

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

No.17

Order Granting Conditional Leave to Appeal to His Majesty the Yang di-Pertuan Agong
6th May 1972

CORAM: ONG, CHIEF JUSTICE, HIGH COURT IN MALAYA;
GILL, JUDGE,
FEDERAL COURT, MALAYSIA;
ABDUL HAMID, JUDGE,
HIGH COURT IN MALAYA.

IN OPEN COURT,

THIS 6TH DAY OF MAY, 1972

10

O R D E R

UPON MOTION made unto Court this day by Mr. Dominic Puthuchearry of Counsel for the Appellants abovenamed and mentioning on behalf of Counsel for the Respondents AND UPON READING the Notice of Motion dated the 12th day of April, 1972 and the Affidavit of Chin Yoong Chong affirmed on the 5th day of April 1972 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Appellants abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of this Court given on the 21st day of March 1972 upon the following conditions:

20

(1) that the Appellants abovenamed do within three months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of appeal, and the payment of all such costs as may become payable to the Respondents abovenamed in the event of the Appellants abovenamed not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Appellants abovenamed to pay the Respondents' Costs of the Appeal as the case may be; and

30

(2) that the Appellants abovenamed do within

In the Federal Court

No.18

Between

- 1. Kok Foong Yee (f)
 - 2. Chiang Ngan Ngu @ Cheong Ngan Ngoh
- Plaintiffs

And

Order Granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong

- 1. Hitam bin Abdullah
 - 2. Chua Soon Kow
- Defendants)

7th August 1972

(continued)

CORAM: ONG, CHIEF JUSTICE,
HIGH COURT IN MALAYA:
GILL, JUDGE,
FEDERAL COURT, MALAYSIA;
ONG HOCK SIM, JUDGE,
FEDERAL COURT, MALAYSIA.

10

IN OPEN COURT

THIS 7TH DAY OF AUGUST, 1972

O R D E R

UPON MOTION made unto Court this day by Mr. Thayalan Kanapathippillai of Counsel for the Appellants abovenamed in the presence of Mr. David Tay of Counsel for the Respondents herein AND UPON READING the Notice of Motion dated the 21st day of July, 1972 and the Affidavit of Chin Yoong Chong affirmed on the 19th day of July, 1972 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the Appellants abovenamed be and are hereby granted final leave to appeal to His Majesty the Yang di-Pertuan Agong from the decision and Order of this Court given on the 21st day of March, 1972 AND IT IS ORDERED that the costs of and incidental to this application be costs in the cause.

20

30

GIVEN under my hand and the seal of the Court this 7th day of August, 1972.

Sgd. MOKHTAR BIN HJ.SIDIN
 DEPUTY REGISTRAR,
 FEDERAL COURT, MALAYSIA.

1. STATEMENT OF AGREED FACTS

Exhibits

1. The dependants have suffered loss of dependancy of \$700/- per month as a result of the deceased's death.

No.1.

2. The costs for taking out Letters of Administration amounts to \$350/-.

Statement of Agreed Facts

3. At the time of the accident the First named Defendant was acting as the servant or agent of the Second named Defendant.

10

4. At the time of the collision the weather was good and the road was dry.

5. The collision occurred at about 2.00 p.m. on 13th November, 1966.

Dated this day of , 1970.

Sgd: Skrine & Co.

Sgd: Murphy & Dunbar

Solicitors for the
Defendants

Solicitors for the
Plaintiffs

TRANSLATION OF POLICE REPORT

No. 6

SALINAN REPORTTranslation of
Police Report13th November
1966

20

No. Report: 163/66 Rumah Pasong: Beserah

Pada: 2.30 petang 13.11.1966 Fasal: -

Aduan: Hitam bin Abdullah i/c TR166200/1472375
Laki 2.

Bangsa: Melayu Umor: 37 tahun. Kerja: Pemandu
Lory

Dudok di - 79 Jalan Telok Sisek, Kuantan

Jurubahasa - daripada - kepada -

Saksi-nya

Kata aduar:

Exhibits

No. 6

Translation of
Police Report
13th November
1966

(continued)

Di-salin & di-
semak samula
oleh Mohd. Desa
Sjn. 4346.

Sd. Mohd.Des.
Sjn. 4346.

At about 2.00 p.m., 13.11.66
I left 25 milestone Kuantan/
Kemaman Road on my way back to
Kuantan. I drove M/Lorry No. C.
6867 myself and my attendant by
the name of Ismail bin Mohd.Teh
was seated at the rear. When I
arrived at 23 milestone Kuantan/
Kemaman Road, about 30 yards
ahead, I saw an on coming M/Car. 10
I could not remember the
Registration Number. I saw the
M/Car had gone into my side of the
road. I applied my brake and
collided with that M/Car. I was
thrown to the right side of the
road. Then I came down from the
lorry. I saw the driver of that
M/Car was injured. I saw the
front portion of my M/Lorry was 20
damaged. My attendant and I did
not receive any injury. Then I
went to the Cherating Police Post
and lodge a report.

T. Tangan Aduan: Hitam.

T.T.Terima Rpt: Abdullah
M/M:22958.

CERTIFIED TRUE COPY.

Sd: (IBRAHIM KHAN) T.P.P. 17.12.66

Officer-in-charge of the Police 30
District,

KUANTAN.

No. 9 POLICE KEY TO SKETCH PLAN

Exhibits

	<u>ABBREVIATION</u>	<u>PARTICULARS</u>	<u>MEASUREMENT</u>	<u>No. 9</u>
	A1 to A2	Tyre marks on road seen	136 feet	Police Key to Sketch Plan
	A2 to A3	Double tyre marks on grass surface		
	A4 to A5	Tyre marks seen on road	80 feet	
	B1 to B2	Single tyre marks imposed on double tyre marks	50 feet 6 inches	
10	C, C1, C2	Tyre marks seen	(C1-14ft. C2-11ft.)	
	D to E	Grass verge (right)	9 feet	
	E to F	Width of road	17 feet	
	F to G	Grass verge (left)	10 feet	
	O/S to H	off side of lorry to Calvert	267 feet	
	C to f	Tyre marks to edge of road (left)		
20	S/M to F	Scratch marks to edge of road (left)	5 feet 9 inches	
	C1 to F	Tyre mark nearest lorry to edge of road (left)	6 feet	
	C1 to E	Tyre mark nearest lorry to edge of road (right)	11 feet	
	B1 to F	Tyre mark to edge of road (left)	8 feet	
	B2 to F	Tyre mark to edge of road (left) nearest to lorry	6 feet	
30	A4 to E	Tyre mark (beginning) to edge of road	2 feet	
	A5 to E	End of tyre mark to edge of road (right)	6 feet 5 inches	
	N/S (1) to (1)	Near side of lorry to off side of car	11 feet	
	G/S	Glass splinters		
	S/M	Scratch marks on road		
	T/P	Telephone Post		

<u>Exhibits</u>	<u>ABBREVIATIONS</u>	<u>PARTICULARS</u>	
No. 9	O/S (1)	Off side lorry front	
Police Key to	O/S (2)	Off side lorry rear	
Sketch Plan	N/S (1)	Near side lorry front	
(continued)	1	Off side of Motor car (front)	
	1	Off side of Motor car (rear)	
	J	Near side of Motor car (front)	
	J1	Near side of Motor car (rear)	
	H	Calvert	
	C, C1, C2	Tyre marks of Car	10
	(i)	Width of tyre marks C1, C2 - approx. 4.5 inches.	
	(ii)	Width of tyre marks B & A - approx. 6 inches.	

Dimension of M/Lorry C 6867

7 feet 5 inches (Width)
16 feet (Length)

Dimension of Car

5 feet 9 inches wide
13 feet length

BESERAH RPT NO. 163/66

FOR POLICE / DPP PERUSAL ONLY

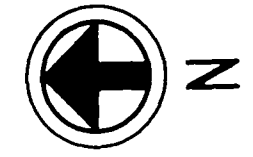


EXHIBIT " P 2 " IN KUANTAN
SESSIONS COURT CRIMINAL
CASE NO. S.A. 32/66
DATE 15-9-67

MAGISTRATE

SKETCH PLAN

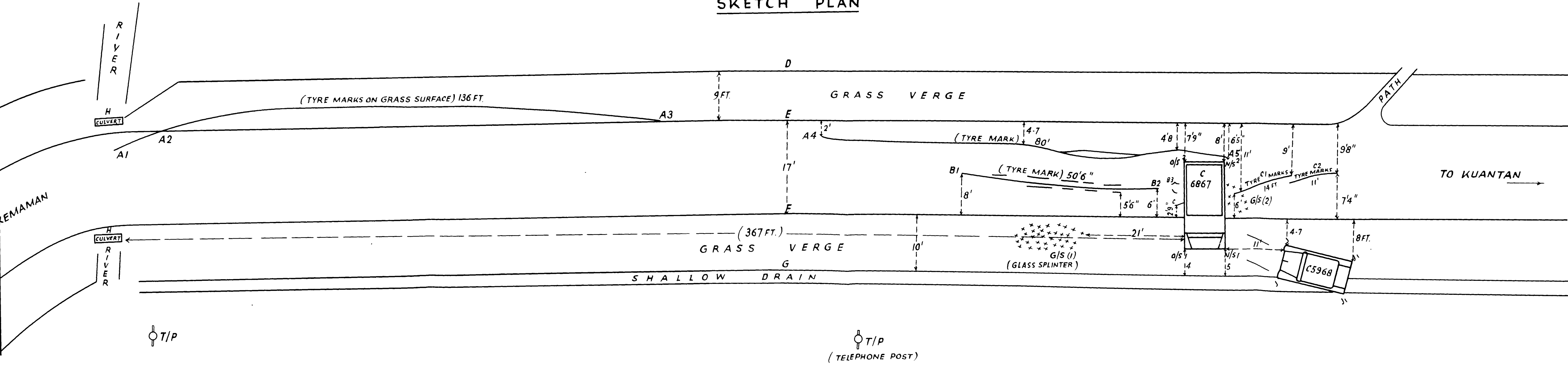
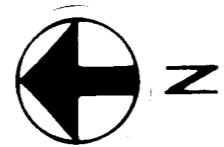


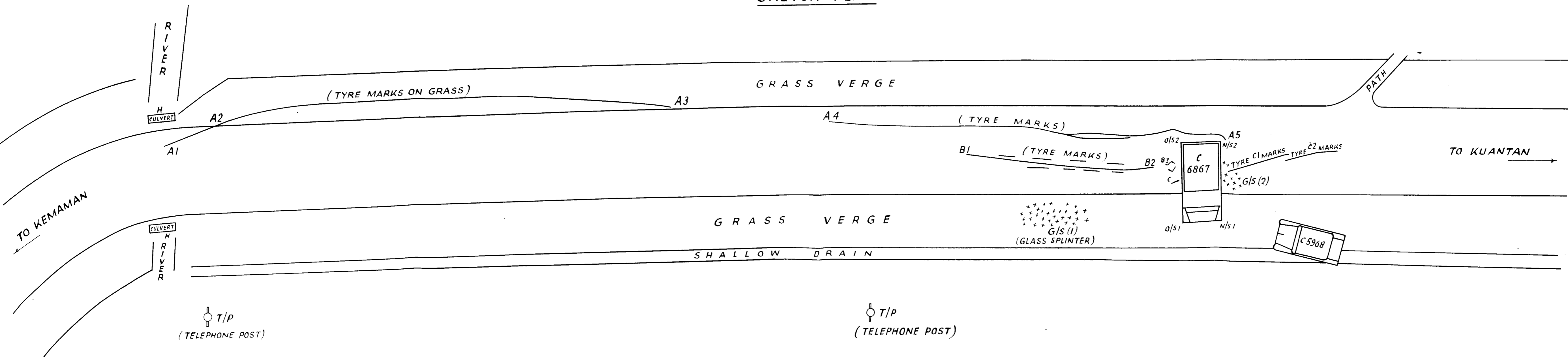
EXHIBIT " P 1 " IN KUANTAN
HIGH COURT CRIMINAL
CASE NO. 67/68
DATE 9-10-70

MAGISTRATE



BESERAH RPT. NO. 163/66

SKETCH PLAN



O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

B E T W E E N :

HITAM BIN ABDULLAH
CHUA SOON KOW

Appellants

- and -

KOK FOONG YEE (f)
CHIANG NGAN NGU @
CHEONG NEGAN NGOH

Respondents

RECORD OF PROCEEDINGS

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