No.3 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

MUTHUSAMY S/O THARMALINGAM — Appellant

- and -

ANG NAM CHEOW — Respondent

CASE FOR THE APPELLANT — RECORD

1. This is an Appeal from the Judgment and Order of the Court of Appeal in Singapore (Wee Chong Jin, C.J., Chua and Kulasekaram JJ.) dated the 5th day of August, 1977 whereby an Appeal was allowed by the Respondent herein (the First Defendant at the trial) from the Judgment and Order of the High Court of the Republic of Singapore (D'Cotta, J.) dated the 16th day of March, 1977. By their Order the Court of Appeal in Singapore reversed the findings of fact made by the learned Trial Judge and held that the injuries sustained by the Appellant in a collision on the highway on the 23rd day of May, 1973 were caused solely by the negligence of the Appellant herein rather than, as held by the learned Trial Judge, solely by the negligence of the Respondent herein. Pp.40-44 Pp.29-35

2. The principal question falling for decision in this Appeal is whether or not the Court of Appeal in Singapore applied the correct principles of law in considering findings of primary fact made by the learned Trial Judge.

3. By his Statement of Claim dated the 24th day of April, 1975 the Appellant herein claimed against the Respondent (as First Defendant) and Pp.3-5

RECORD

P.31, 11.3-4

Lee Hung Cheng & Co. (Pte) Ltd. damages in respect of personal injuries and consequential loss. The claim as against Lee Hung Cheng & Co. (Pte) Ltd. was dismissed by the learned Trial Judge at the trial on the basis that at the material time the Respondent was not driving the relevant motor vehicle as the servant and/or agent of the 2nd Defendant although this does not specifically appear in the Judgment of the learned Trial Judge. Before the Federal Court the Appellant herein did not contend that the learned Trial Judge erred in making this finding and it is not now so contended. In his Statement of Claim the Appellant made the following averments of fact and allegations of negligence :

P.3, 1.21-
P.4, 1.25

" On or about the 22nd day of May, 1973 the Plaintiff was riding his motor cycle registration number AN 3892 L along Upper Changi Road when the 1st Defendant as servant or agent of the 2nd Defendant so negligently drove, managed and controlled a motor car registration number E 2002 E that he caused or permitted the same to collide with the said motor cycle and knock the Plaintiff down to the ground.

The said collision was caused solely by the negligence of the 1st Defendant as servant or agent of the 2nd Defendant in the driving of the said motor car E 2002 E.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT AS SERVANT OR AGENT OF THE SECOND DEFENDANT

(a) Driving too fast;

(b) Failing to keep any or any proper look-out or to have any or any sufficient regard to other users of the road;

(c) Colliding with the motor cycle being ridden by the Plaintiff;

(d) Failing to see the Plaintiff in sufficient time to avoid colliding with him or at all;

(e) Failing to stop, to slow down, to swerve or in any other way so to manage or control the said motor car as to avoid the said collision;

(f) Driving on the wrong side of the road."

The Plaintiff alleged that he had suffered extensive injuries to his right side including loss of his right leg and substantial Special Damages. P.4, l.26-P.5, l.20

4. The Respondent and the 2nd Defendants delivered a Defence dated the 24th day of July, 1975 wherein they made the following averments of fact and allegations of negligence by the Appellant Pp. 6-8

"3. Save that the date, the place of and the vehicles involved in a collision as averred in paragraph 2 of the Statement of Claim are admitted the First Defendant denies that he was a servant or agent of the Second Defendants or was driving the said vehicle as their servant or agent at the material time as alleged but says that it was loaned to him and was driving it on his own business and he further denies that the circumstances of the accident and the allegation of negligence as alleged in paragraphs 2 and 3 of the Statement of Claim. P.6, l.23-P.7, l.29

4. The first Defendant contends that the said accident and collision was caused solely or contributed to by the negligence of the Plaintiff.

PARTICULARS OF NEGLIGENCE

(1) Failing to keep any or any proper look-out;

(2) Riding at an excessive speed in the circumstances;

(3) Riding without due care and attention;

(4) Failing to stop at the junction of

the minor road before proceeding into the main road (Upper Changi Road);

(5) Failing to have any or any sufficient regard to traffic that was or might reasonably be expected to be on Upper Changi Road;

(6) Failing to observe the presence or the approach of the Defendant's motor car;

(7) Failing to ascertain or to ensure whether the way was clear before proceeding into the main road;

(8) Failing to give way to traffic on the main road and/or traffic on his right;

(9) Suddenly and without any warning riding out from the minor road into the main road into the path of the Defendant's motor car and thereby colliding with and into the Defendant's said motor car;

(10) Failing to stop, slow down, swerve or otherwise avoid the said collision."

5. At the trial of the action, which commenced before D'Cotta, J. on the 4th day of March, 1977, the quantum of damages which the Appellant would be entitled to receive subject to the question of liability was agreed at $70,000. The first witness to give evidence on behalf of the Appellant was Police Sergeant Low who had attended the scene of the accident. Police Sergeant Low explained that he had found the Appellant's motor cycle lying on the kerb between the Upper Changi Road and the bus bay marked on the sketch plan he produced. In the course of his evidence he marked on the sketch plan where he saw pieces of glass going away from the motor cycle towards the direction of the city along the Upper Changi Road. Police Sergeant Low stated that he had inspected the road surface for tyre marks but had found none.

P.8, l.5

Pp.8-10
P.8,ll.24-26

Separate

Separate

P.9, ll.17-21
P.10, ll.11-12

RECORD

6. The next witness called on behalf of the Appellant herein was Gurdip Singh an Inspector of Police. He stated that he had examined the motor car that was driven by the Respondent at the material time and had noticed extensive damage to the front offside. Inspector Singh also deposed to find pieces of paint in the front wheel rim of the Appellant's motor cycle. These pieces, the Appellant humbly submits, must be inferred to be of similar texture and colour as those found upon the Respondent's motor vehicle. The Inspector further stated that he sent the said pieces of paint to a chemist who made a report.

P.11

P.11, ll. 12-20

P.11, ll. 25-31

7. It is at this stage convenient to notice that Exhibit "AB.7" which was admitted in evidence by agreement refers to analysis of paint. The chemist's Report contained in the said Exhibit refers to receiving from Inspector Singh an envelope containing scrapings for comparison with paint on the Respondent's motor vehicle. The Chemist himself found paint stains on the exhaust pipe on the righthand side of the Appellant's motor cycle. Both the scrapings of paint taken by Inspector Singh and the scrapings of paint taken by the Chemist from the Appellant's motor cycle were compared by the Chemist with scrapings from the mudguard of the Respondent's vehicle and he concluded that all the scrapings had the same elemental composition.

P.8, l.14

P.50, ll. 25-30

P.51, ll.2-5

P.51, ll.9-19

8. The Appellant gave evidence on his own behalf. He explained that at the time of the accident he was a film projector operator at a cinema in Tangmere Road (this is the road which joins Upper Changi Road as the minor road in a "T" junction). The Appellant was accustomed to using his motor cycle to go to work prior to the accident on 22nd May, 1973 that was the subject of the action herein. The learned Trial Judge recorded the evidence of the Appellant (which was given in Tamil) in relation to the accident itself in the following way

Pp.11-18

P.11, l.35- P.12, l.5

"On 22nd May 1973 I finished work at 10.50 p.m.

P.12,l.8 -- P.13, l.1

RECORD

I took my motor cycle and was approaching junction of Tangmere Road and Upper Changi Road at 11.00 p.m. I came along Tangmere Road and arrived at the "Stop Sign". I looked right, then left and again looked right. When I looked right the 2nd time at about 120 yards away I saw lights, it appeared to be from a vehicle. I could not see the vehicle. I proceeded on. I passed the "Stop" sign came 3-4 feet on the main road. Just then a vehicle had come very close to me with the head lights fully on at a full speed.

On seeing the vehicle very close to me I tried to swerve to my left to avoid a collision. I could not avoid the collision so the accident occurred.

Court asks witness to indicate how far 120 yards would be.

Witness indicates from witness box to the opposite side of the court and states it is twice that distance.

From witness box to the opposite side is 29 feet.

The word "Stop" is written on the main road.

Witness now says he came on to the main road and was 3-4 feet away from the centre broken white line having crossed the centre broken white line.

When I took off the "Stop" sign I was in 1st gear, at the time of the accident I was in 2nd gear."

P.13, ll.13-14 Separate — The Appellant marked on the plan the route he took. In the course of cross-examination the Appellant stated that he felt he could safely come onto the main road as the approaching vehicle was some distance away.

9. The Case for the Respondent and Second Defendant consisted only of two witnesses. The first witness was Lee Tian Hai a Director of the

Pp.18-20

RECORD

Second Defendant. He stated that he had agreed to lend the Respondent the relevant motor car to go to a wedding. He stated furthermore that the Respondent had told him that he had run into a tree with the motor car. The Respondent then gave evidence himself and said that he had had some beer at a wedding and was driving home along the Upper Changi Road some 1-2 feet from the correct side of the road when he noticed a motor cycle shooting out from a side road at great speed. He said that he tried to swerve to his left to avoid the motor cycle but he failed and collided with it. He said that the motor cycle was on the left-hand side of the road, about eight or nine feet from the kerb. The Respondent stated that after the accident he was about to get down but on seeing a crowd of people he left the scene of the accident.

P.18, ll.19-21
P.18, ll.22-23
Pp.20-24
P.21, ll.14-17
P.21, ll.21-23
P.21, ll.30-32
P.21, ll.32-34
P.21, ll.36-39
P.22, ll.2-5

10. In the course of his cross-examination the Respondent stated initially that of the crowd of ten persons that allegedly emerged from a canteen there came shouts of "assault assault" but he subsequently withdrew this statement. The cross-examination was adjourned part-heard from the 4th day of March 1977 to the 16th day of March 1977 when still under cross-examination the Respondent stated that he had reported the matter to the police at the instance of Lee Tian Hai. The Respondent stated that his front offside headlamp had hit the Appellant in the centre of his motor cycle. In re-examination the Respondent admitted that he had pleaded guilty to a charge of "running away from the scene and not rendering assistance".

P.23, l.7
P.23, l.25
P.24, ll.21-22
P.26, ll.26-27
P.28, ll.2-4

11. The learned Trial Judge then gave Judgment for the Plaintiff for the sum of $70,000 (as the agreed sum of damages) against the Respondent and dismissed the Appellant's claim against the Second Defendant with costs. The said Judgment was drawn up and entered on the 4th April, 1977. The learned Trial Judge reserved the grounds of his Judgment until 21st April, 1977.

P.28, ll.26-29
P.29

RECORD
Pp.30-32

After stating the fact that Judgment had already been entered the learned Judge went on to review the facts in the case giving both the Plaintiff's and the Defendant's accounts. The learned Trial Judge then proceeded to direct himself in accordance with the Judgment in San Seong Choy & Ors. v. Yuson Bien 1962, 28 M.L.J.427 in the following words

P.32, ll. 22-29

> "There is authority however in cases where the witnesses on each side tell conflicting stories, that the photographs, plans and measurements of the scene and the nature of the damage to each vehicle must provide the most reliable guide by which such evidence can be tested."

The learned Judge then proceeded to analyse the evidence both in accordance with the direction that he had given himself set out above and also by testing and credibility of the Plaintiff and the Defendant. It is respectfully submitted that it is apparent from the Judgment of the learned Trial Judge that he decided this case firstly upon the credibility of the Appellant's evidence compared with the Respondent's evidence; in confirmation of the view that he had reached upon his own assessment of the credibility of the parties to the action the learned Trial Judge considered whether or not the other evidence in the case confirmed the view that he reached as to the assessment of the credibility of the oral evidence.

12. In assessing the credibility of the evidence of the parties the learned Trial Judge made the following findings of fact,

(a) as to the Appellant's credibility

P.31, ll. 36-38

> "From his evidence the Plaintiff did not appear to have a good concept of distances"

(b) as to the Respondent's credibility

P.32, ll. 38-41

(i) ". . . it is indeed strange that the Defendant did not go straight to a Police Station at the first opportunity and make a report."

		RECORD
(ii)	"why did he not drive straight to the police station and ask them to render first aid to the victim and at the same time lodge his report."	P.32, l.46-P.33, l.1
(iii)	". . . there was nothing to prevent him from going to the police the first thing the next morning and making his report."	P.33, ll.1-3
(iv)	". . . . he . . . informed D.W.1. [Lee Tian Hai] from whom he borrowed the car that he had met with an accident and that the car had crashed into a tree."	P.33, ll.5-8
(v)	"But for the fact that the police had seized the car and D.W.1. [Lee Tian Hai] had asked the Defendant to go to the police station, it is safe to infer that the Defendant had no intention whatever of reporting this accident."	P.33, ll.15-19
(vi)	"Although he alleged in his evidence that the accident was due to the fault of the Plaintiff shooting out of Tangmere Road at great speed, his report strangely enough is completely silent as to this."	P.33,ll.32-36
(vii)	". . . his report [to the police] throws no light whatever as to how the accident occurred."	P.33,ll.37-38
(viii)	"When asked what the shouts [from persons coming out of the canteen] were about, he said they were shouts of 'assault' 'assault'. On being pressed on this point, he admitted that he never heard the words 'assault' 'assault' . . ."	P.33,ll.41-45

13. The learned Trial Judge did not state in terms that he believed the evidence given by the Appellant herein; but it is nonetheless humbly submitted that it is implicit from the Judgment that the learned Judge did

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accept the Appellant's evidence. Sofaras the evidence of the Respondent was concerned the learned Trial Judge reached, it is respectfully submitted correctly, the following conclusions

P.33,l.6-P.34, l.3

> "I did not believe the Defendant at all. I watched him very closely when he was giving evidence and I also watched his demeanour and I was convinced that he was not a witness of truth: I rejected his evidence."

The Appellant respectfully submits that the learned Trial Judge was indeed entitled to make such a finding. It is further respectfully submitted that the learned Trial Judge was entitled to take into consideration for the purpose of making such a finding the Respondent's conduct in failing to properly report the accident; the observation

P.33,ll.19-25

> "This indeed is not the conduct and behaviour of a person who had been involved in an accident through no fault of his own. On the contrary, his conduct is such that it can only be attributed to one who knows full well that the accident occurred as a result of his negligence."

is, it is submitted, a proper, as well as in the circumstances of this case a correct, finding.

Pp.34-35

14. The learned Trial Judge continued his Judgment by considering the evidence placed before him apart from the oral testimony of the parties. The learned Trial Judge considered, it is respectfully submitted correctly, that the following factors were material and that they corroborated the evidence of the Appellant herein.

(a) <u>The damage to the Appellant's motor cycle</u>

Exhibit AB8 Separate P.34,ll.4-11

The learned Trial Judge held that the photograph of the damaged motor cycle which showed that there was no damage to the front portion of the motor cycle indicated that it

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was not a head-on collision; i.e. that the motor cycle ridden by the Appellant and the vehicle driven by the Respondent had not driven straight into each other. The learned Trial Judge found that the damage to the motor cycle indicated that the Plaintiff had swerved left to avoid the accident as he had stated in evidence. P.34,ll. 11-16

(b) Damage to the Respondent's vehicle

The learned Trial Judge held that the damage to the offside mudguard and offside headlamp only on the Respondent's vehicle also indicated that the Appellant's version in evidence was correct in that the Respondent's car had collided with the Appellant's motor cycle whilst the Appellant was moving to the Appellant's left to avoid the Respondent. P.34, ll.16-24 Exhibit AB10 Separate

(c) The position where the Appellant's motor cycle was found

The learned Trial Judge reached two conclusions in relation to this. He held firstly that if the Respondent's evidence was correct that he had collided with the Appellant when the Appellant was some 8-9 feet from the left edge of the road having shot out of Tangmere Road the Respondent's car would have hit the Appellant's motor cycle broadside on and that the motor cycle would have fallen on the Appellant's side of the road. P.34, ll.26-39

(The learned Judge also held in relation to this part of his Judgment that if the collision had occurred in such a way the motor cycle would have sustained greater damage.) P.34, ll.29-33

Secondly the learned Trial Judge held that because of the distance between the point of impact marked on the plan by the Appellant to indicate the position of the impact and the position P.34, ll.39-49

RECORD

where the motor cycle ridden by him was found that the Respondent was travelling at great speed.

(d) The position of the Respondent's vehicle at the time of the impact

P.35, ll.1-15 The learned Trial Judge held that he was satisfied that the impact had occurred 3-4 feet into the Appellant's side of the road and that accordingly the Respondent was some 18-19 feet from his own nearside; he held that the Respondent had no justification for driving in such a position. (It is also clear in the Appellant's respectful submission that the learned Trial Judge rejected the Respondent's evidence as to the place of the collision as 8-9 feet from the side of the road.)

P.21, ll.37-39

(e) The injuries sustained by the Appellant

P.35, ll.15-30 The learned Trial Judge concluded that because all the Appellant's injuries were on the righthand side of his body this supported, like the other matters mentioned above, the Appellant's account of how the accident had occurred. (The word "inconsistent" in line 30 of page 35 of the Record must, the Appellant humbly submits, have been included in the Judgment per incuriam and have been inserted in lieu of the word "consistent" in the context of the observation).

P.35,ll.37-38 15. The learned Trial Judge concluded his Judgment by finding, it is respectfully submitted correctly, that the Respondent was solely to blame for the accident. In reaching his said finding the learned Trial Judge expressed the following view of his assessment of the whole of the evidence

P.35,ll.31-36 "I had no doubt whatever in my mind that the accident was caused by the negligence of the Defendant in that he was driving very fast, failed to observe the Plaintiff's presence on the road and as a result failed to take effective steps to avoid the accident."

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16. By Notice of Appeal dated the 24th day of March, 1977 the Respondent herein, gave notice of his appeal against the whole of the Decision of the learned Trial Judge. In his Petition of Appeal dated the 24th day of May, 1977 the Respondent set out four grounds of appeal all of which were based on fact. The grounds of appeal were as follows

P.36

Pp.37-39

"(a) that the learned Tried Judge was wrong in allowing himself to be influenced by the alleged conduct of the Appellant in order to decide the truthfulness of the Appellant and thereby failed to give due consideration to the Appellant's version of the accident;

P.38,ll. 4-34

(b) that the learned Trial Judge failed to consider or adequately consider the Appellant's case that the Appellant was travelling on a major road while the Respondent came out from a minor road;

(c) that the learned Trial Judge failed to appreciate the impossibility of the Respondent's version in that it was impossible for the Respondent's motor cycle which was in motion to be thrown backwards a distance of some 50 to 60 feet and landed at the position and in the way it did; and

(d) that the learned Trial Judge went against the weight of evidence i.e. the photographs, sketch-plan and medical reports and failed to appreciate the probable point and nature of the impact when considering the damage to the vehicles and injuries to the Respondent which evidence all supports the Appellant's version of the accident."

17. The Respondent's Appeal to the Court of Appeal in Singapore came on for hearing on the 28th June, 1977 when Judgment was reserved until the 5th August, 1977 when the Respondent's Appeal was allowed with costs before the Court of Appeal and at the trial.

Pp.40-41

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18. The Judgment of the Court of Appeal was delivered by Chua, J. with whom Wee Chong Jin, C.J. and Kulasekaram J. concurred. Chua J. commenced the Judgment of the Court by reciting the circumstances in which the Respondent herein had appealed. The learned Judge continued his Judgment by setting out in summary the evidence of the Appellant herein up to the time when having stopped at the junction of Tangmere Road and Upper Changi Road he stated he saw a vehicle about 120 yards away.

P.41, ll. 15-28

P.41, l.30-P.42, l.5

19. The learned Judge then continued his Judgment by stating

P.42, ll. 6-27

"The Respondent then said :-

> 'I proceeded on. I passed the stop sign came 3-4 feet on the main road. Just then a vehicle had come very close to me with the headlights fully on at a full speed: on seeing the vehicle very close to me I tried to swerve to my left to avoid a collision. I could not avoid the collision so the accident occurred.'

The Court then asked the Respondent to indicate how far 120 yards would be and the Respondent indicated a distance of fifty-nine feet. Then the Court made this note:

> 'Witness now says he came on to the main road and was 3-4 feet away from the centre broken white line having crossed the centre broken white line.'

It is to be noted that his first version was that the collision took place when he was three to four feet on the main road after passing the stop sign, that is, it took place on the Appellant's side of the road."

The Appellant respectfully submits that the adverse comment made by the learned Judge that the Appellant had said in "his first version" the accident took place on the side of the road upon which the Respondent herein was driving is

unjustified. The Appellant so submits because it is apparent that the learned Trial Judge did not regard that there had been any variation, or alternatively any material variation, in the evidence of the Appellant herein for he had recounted the evidence of the Appellant herein in his Judgment as follows

RECORD

> "The Plaintiff proceeded beyond the stop sign and crossed Upper Changi Road. When he was 3 or 4 feet beyond the centre broken white line having crossed the said white line and had just straightened his motor cycle, he observed the vehicle whose lights he had seen . . ."

P.31, ll. 24-29

If, the Appellant had contradicted himself in his evidence before the learned Trial Judge, as suggested by Chua J., this would be expected to be noticed in the Judgment of the learned Trial Judge and/or the Grounds of Appeal. It is, the Appellant respectfully submits, most dangerous for an Appellate Judge to make findings of fact upon the longhand note of the learned Trial Judge when he has not had the advantage of seeing or hearing the witness; and in so doing in the instant case the Appellant respectfully submits that the learned Judge giving the Judgment of the Court of Appeal fell into error.

20. The Judgment of the Court of Appeal continued by recalling that the Trial Judge had made finding that the collision took place when the Appellant herein had crossed three or four feet beyond the centre broken white line (and by implication, it is submitted wrongly, at that point rejected the said finding). Chua J. then set out a summary of the evidence given by the Respondent herein on his own behalf at the trial by quoting the account given in the Judgment of the learned Trial Judge. Chua J., then went on to consider the extensive criticisms that had been made by the learned Trial Judge of the evidence of the Respondent herein, as set out in sub-paragraphs (i) - (viii) of paragraph 12 hereinbefore. It is significant in the Appellant's submission that the

P.42, ll. 28-33

P.42,l.35-P.43, l.12 and P.31, l.46-P.32, l.20

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rejection of the criticisms of the learned Trial Judge was based solely on one aspect of those criticisms. This relates to the failure of the Respondent herein to give assistance to the Appellant after the accident and the failure of the Respondent to make a prompt report to the police. Chua J. dealt with this aspect of the case in two passages in his Judgment

P.43,ll.13-18 "The Trial Judge was unduly influenced by the conduct of the Appellant in not going to render assistance to the Respondent and in not going straight to the police station at the first available opportunity and make a report."

and

P.43,ll.36-41 "We are of the view that the Trial Judge was wrong in allowing himself to be influenced by the conduct of the Appellant in order to decide the truthfulness of the Appellant and had thereby failed to give due consideration to the Appellant's version of the accident."

21. The Appellant respectfully submits that (a) the Court of Appeal erred in holding that the Trial Judge was wrong to take into account the Respondent's conduct; it is submitted that such conduct is capable of effecting the credibility of a witness and the degree to which it so effects a witness's credibility is a matter for the Trial Judge: alternatively, (b) the continuing failure of the Respondent to report the accident and the inadequacy of the report when it was eventually made together with the different account given to the witness Lee as to how the car had come to be damaged and his retraction of the use of the words "assault" "assault" allegedly used by the crowd coming from the canteen (as adverted to in sub-paragraph (iii) - (viii) of paragraph 12 hereof), which were apparently ignored by the Court of Appeal, were sufficient to justify the learned Trial Judge's rejection of the Respondent's evidence.

P.43,l.42-P.44, l.2 22. The Court of Appeal held that because the Trial Judge did not examine the Respondent's

evidence in the context of the rest of the evidence in the case the learned Trial Judge was not entitled to reject the Respondent's evidence in limine. It is respectfully submitted that in so holding the Court of Appeal fell into error; the question of what evidence a Judge chooses to accept from any particular witness is, it is respectfully submitted, a matter for the Judge himself. In the instant case the learned Trial Judge had for reasons adumbrated very clearly decided that he could place no credence upon the evidence of the Respondent herein and this finding has, it is respectfully submitted wrongly, been rejected by the Court of Appeal. The Appellant submits that this rejection was wrong because the individual factors that the Judge explained in his Judgment as justifying such rejection were also linked with his own assessment of the Respondent as a witness and the rejection of these findings is contrary, in the Appellant's submission, to the principles upon which a Court of Appeal should act.

23. Chua J. continued his Judgment by stating

> "The real issue in this case is, where did the accident occur?

P.44, ll.3-4

The Appellant respectfully submits that the Court of Appeal in Singapore was posing the said question in reliance on the case referred to by the learned Trial Judge of San Seong Choy & Ors. v. Yuson Bien 1962, 28 M.L.J. 427. The Appellant so submits because the conclusion reached by the Court of Appeal in Singapore that

> "We have no doubt that the accident occurred in the way described by the Appellant, that the Respondent shot out of Tangmere Road."

P.44, ll. 37-39

has been reached with little or no regard to the oral evidence given before the learned Trial Judge. It is respectfully submitted that such an approach is no longer correct in the light of the Judgment in Yahaya Bin Mohamad v. Chin Tuan Nam (Privy Council Appeal No.25 of 1973).

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24. In the premises it is respectfully submitted that the Court of Appeal in Singapore did not apply the correct principles applicable to consideration of an Appeal such as the instant case. The Appellant respectfully submits that the propositions that ought to be applied are as follows

(1) That a Court of Appeal ought not to reject findings of fact made by the assessment of the demeanour of a witness unless there is cogent evidence to show that a trial judge has misused the advantage given to him of seeing and hearing witnesses, and

(2) that a Court of Appeal ought not to reverse the findings of liability unless convinced that the Court below was (and not merely might be) wrong.

25. The Appellant respectfully submits that the said propositions in law arise from, inter alia, the following cases in the House of Lords Clarke v. Edinburgh & District Tramways (1919) S.C. (H.L.) 35, S.S.Hontestroom v. S.S.Sagaporack 1927 A.C.37, Powell & Wife v. Streatham Manor Nursing Home 1935 A.C.243 and Watt or Thomas v. Thomas 1947 A.C. 484. Their application has been approved in the Privy Council in, inter alia, Caldeira v. Gray 1936, 1 All E.R. 540, Tay Kheng Hong v. Heap Moh Steamship Co.Ltd. 1964, 30 M.L.J. 87, Bookers Stores Limited v. Mustapha Ally 1972 19 W.I.R. 230 and Yahaya Bin Mohamad v. Chin Tuan Nam (Privy Council Appeal No.25 of 1973). In the latter case Lord Edmund-Davies giving the Judgment of the Board applied, it is respectfully submitted propositions that are akin to the said propositions and stated

> "The percentage of traffic accident cases which can be satisfactorily decided wholly independently of all testimony must be very small . . . ."

The instant case, it is respectfully submitted is not such a case. By rehabilitating the evidence of the Respondent and discrediting the evidence of the Appellant from the Judge's Note of their testimony the Court of Appeal in

Singapore, it is respectfully submitted fell into error. RECORD

26. The Appellant respectfully submits that the following findings of fact that the Court of Appeal in Singapore have apparently made are wrong for the reasons stated thereafter

(a) "We are of the view that the trial judge was wrong in his finding that the accident occurred after the Respondent had crossed the broken white line and had straightened his motor cycle and that it was a head-on collision." P.44, ll.16-21

The Appellant respectfully submits that it is apparent from the preceding paragraph of the Judgment of the Court of Appeal to the one quoted above that the said reversal of the Trial Judge's finding was based upon what Chua J. regarded as a change in the evidence given by the Appellant; it will be recalled that Chua J. used the words ". . . he [i.e. the Appellant] later changed his story . . .". P.44, l.11 As submitted in paragraph 19 hereinbefore the Appellant contends that Chua J. ought not to have held, having not seen or heard the witness, or had the advantage of seeing a full transcript of his evidence that the Appellant had "changed" his story. It is further respectfully submitted that Chua J. was wrong when he suggested in the passage cited above that the learned Trial Judge had found ". . . that it was a head on collision". P.44, ll.20-21 It will be recalled that the learned Trial Judge had in fact found

> "only the rear of the petrol tank was damaged which would clearly indicate that it was not a head-on collision." P.34, ll.8-11

(b) Chua J. held that there were four "undisputed facts" which supported and were consistent "with the version P.44, l.30 P.44, ll.31-32

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of the accident given by the Appellant [the Respondent herein] and not the version given by the Respondent [the Appellant herein]..." It is respectfully submitted that in relation to each of these "undisputed facts" Chua J. fell into error. The "undisputed facts" were as follows

P.44, ll.22-24 (i) "The damage to the Appellant's motor car and to the Respondent's motor cycle was on the offside of the vehicles."

It is respectfully submitted that had the accident occurred as suggested by the Respondent herein the whole of the front of the Respondent's car and to the Appellant's motor cycle would have been damaged more extensively.

P.44,ll.24-25 (ii) "The Respondent suffered injuries to his right leg."

The Appellant respectfully submits that had the collision occurred in the way described by the Respondent herein besides being injured on his right side he would have been thrown onto his left side and suffered extensive injuries to his left side as well.

P.44, ll.25-27 (iii) "After the accident the Respondent's motor cycle landed on the opposite side of the road."

The Appellant respectfully submits that had the accident happened in the way described by the Respondent herein the Appellant's motor cycle would have landed either on the side of the road on which the Respondent ought to have been driving, or alternatively, in the centre of the road.

P.44,ll.27-30 (iv) "The Respondent, when he was at the stop sign, saw the lights of the Appellant's car fifty-nine feet away."

The Appellant respectfully submits that

RECORD

this was not an "undisputed fact". It will be recalled that the learned Trial Judge in his summary of the Appellant's case accepted the figure of 120 yards which the Appellant had referred to in evidence as being the distance at which the Respondent's vehicle's lights were when the Appellant crossed Upper Changi Road.

27. On the 14th day of November, 1977 the Court of Appeal in Singapore granted the Appellant leave to appeal to the Judicial Committee of the Privy Council. P.45,l.18-P.46, l.20

28. The Appellant respectfully submits that the Courts below ought to have given consideration to two additional factors as tending to show that the said collision was caused by the negligence of the Respondent herein. The said factors are

(i) The fact that the Respondent had been, upon his own admission, at a Chinese wedding dinner where he had consumed a quantity of beer which he was unaccustomed to drinking. The Appellant respectfully submits that the Respondent may have been so affected by the alcohol that he had consumed that he failed to notice and/or heed the presence of the Appellant upon the highway. Further or alternatively it could have been inferred that the reason that the Respondent failed to report the accident to the police until after he had spoken with Lee was that he well knew he ought not to have been driving whilst affected by alcohol that he had consumed. P.21, ll.10-17

(ii) The fact that Sergeant John Low had searched for brake marks and discovered that there were none. It is respectfully submitted that if, as the Respondent alleged, he had braked and swerved left he would probably have left brake marks upon the highway. P.10, ll.12-13 P.21, ll.33-34

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29. The Appellant respectfully submits that this Appeal should be allowed with costs before the Privy Council and the Court of Appeal in Singapore and that the Judgment of the learned Trial Judge be restored for the following among other

R E A S O N S

(1) BECAUSE the Court of Appeal in Singapore failed to apply the correct principles of law in their consideration of the instant case.

(2) BECAUSE the Court of Appeal in Singapore wrongly exercised their power to make findings of fact.

(3) BECAUSE the Court of Appeal in Singapore failed to give due consideration to the findings of fact made by the learned Trial Judge.

(4) BECAUSE the learned Trial Judge was entitled to make the findings of fact that he did.

(5) BECAUSE the findings of fact of the learned Trial Judge are correct on the evidence.

(6) BECAUSE the learned Trial Judge was right.

(7) BECAUSE the Court of Appeal in Singapore was wrong.

NIGEL MURRAY

No. 3 of 1978

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN
SINGAPORE

B E T W E E N :

MUTHUSAMY S/O THARMALINGAM

Appellant

- and -

ANG NAM CHEOW

Respondent

CASE FOR THE APPELLANT

JAMES & CHARLES DODD,
13 Old Square,
Lincoln's Inn,
London, WC2A 3UA.