

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 OF THE REPUBLIC
OF SINGAPORE

B E T W E E N :

MUTHUSAMY s/o THARMALINGHAM

Plaintiff
(Appellant)

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- and -

ANG NAM CHEOW

Defendant
(Respondent)

CASE FOR THE RESPONDENT

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1. This is an Appeal from an Order of the Court of Appeal of the Republic of Singapore, delivered on the 5th day of August, 1977, whereby that Court (Wee Chong Jin CJ, F.A. Chua and T. Kulasekaram JJ.) allowed an Appeal by the present Respondent from a Judgment of the High Court of the Republic of Singapore delivered on the 16th day of March, 1977 (D.C. D'Cotta J.) whereby it had been adjudged that the Plaintiff Appellant should recover against the First Defendant Respondent damages assessed at the sum of \$70,000.00 and costs to be taxed and that the Plaintiff Appellant's

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claim against the Second Defendants should be dismissed with costs to be taxed. The Court of Appeal allowed the Defendant Respondent's Appeal, ordered that the Judgment of the Honourable Mr. Justice D.C. D'Cotta be set aside and ordered that the Plaintiff Appellant should pay the Defendant Respondent's costs in the Court of Appeal and below.

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2. The amount of damages had been agreed by the parties.

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3. The claim of the Plaintiff Appellant was for damages for personal injuries and consequential loss suffered by him and allegedly caused by the negligent driving of the Defendant Respondent.

4. At about 10.50 p.m. on the 22nd day of May, 1973 the Appellant was riding a motor cycle when the same was in collision with a motor car being driven by the Respondent. The collision occurred at or near the junction between Tangmere Road and Upper Changi Road in Singapore.

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5. The junction is shown in a sketch plan which was prepared by Police Sgt. John Low. He also prepared a Key to this plan. The Appellant was riding from Tangmere Road into Upper Changi Road and he intended to turn right into Upper Changi Road. He was riding home from his place of work and he knew the route. The Respondent was driving along Upper Changi Road from the City towards Changi Point so that the exits from Tangmere Road were on his left-hand side.

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P.24 Ll. 4-7
P.22 Ll. 9&10

6. The evidence of the Appellant indicates that the collision occurred just after he had emerged from the minor road (Tangmere Road) into the major road (Upper Changi Road). At first he said that he passed the "stop" sign, came 3 to 4 feet on the main road and just then the Respondent's motor car had come very close to him. Later he said that he came into the main road and was 3 to 4 feet away from the centre broken white line

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P.22 Ll.19&20

P.23 Ll. 9-11

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(impliedly it is submitted at the moment of collision). Later he said that he was in the centre of Tangmere Road (again it is submitted that which ever of these statements of the Appellant are accurate the collision occurred very shortly after he had emerged from a minor into a major road and that the Respondent was therefore not given any reasonable chance of avoiding colliding with him. When the Appellant came to mark on the plan his course and the point of impact this presented another different account of the positions of his motor cycle.

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7. In cross examination the Appellant stated that he discovered that the lights he had seen were the lights of a vehicle after he had crossed the centre white line on the main road, when he was facing the direction of the City and when the Respondent's motor car was ahead of him and 30 feet away from him. There was no evidence that there was any other traffic on the road. It is submitted that if this was correct there was therefore no reason for the Respondent to move to his offside of the road and yet he did so in an attempt to avoid or minimise the collision.

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8. It is submitted that the Learned Trial Judge failed to take proper account of the fact that he was dealing with a case in which the collision occurred between the Respondent's motor car being driven along the major road and the Appellant's motor cycle which had just emerged from a minor road. It is further submitted that the Appellant, if, as he says he did, he saw the Respondent's motor car before emerging from Tangmere Road, simply misjudged the distance. His judgment of distance was in any case poor since he thought that twice the width of the Court, in fact 58 feet, was 120 yards.

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9. It is submitted that the Court of Appeal correctly concluded that the Learned Judge was unduly influenced by the conduct of the Respondent in not going to render

P.23 Ll. 18

P.24 Ll. 1 & 2
Exh.AB3 P.60

P.24 Ll. 18 - 24

P.25 Ll. 1 - 5

P.49 Ll. 23 - 25

P.28 Ll. 6 - 9

P.23 Ll. 2 - 7

P.65 Ll. 21 - 25

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assistance to the Appellant and in not going straight to the Police Station at the first available opportunity to make a report.

P.45 Ll. 20 - P.46 Ll. 2	10.	It is submitted that the Learned Trial Judge, having correctly stated 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 conflicting evidence can be tested, then failed so to test the evidence but on the contrary tested the Respondent's evidence by considering his failure to render assistance to the Appellant and report the accident to the Police and then considering the Respondent's report to the Police. Further it is submitted that the Learned Trial Judge when he did consider the photographs, plan, damage and injuries, drew the wrong conclusions therefrom.	10
P.46 - 48			
Exh.AB2 P.59			
P.48 L. 6 - P.50 L. 13			20
Exh.AB3&4 Pp. 58-59	11.	It is submitted that the position of the Appellant's motor cycle after the accident was a very relevant factor, which the Learned Trial Judge failed to take properly into account. It was just the Changi Point side of the exit from Tangmere Road the Appellant used. This is where, it is submitted, one would expect to find it if the Appellant was emerging from that exit when he was struck by the Respondent's motor car as the Respondent was swerving to his left in an attempt to avoid the collision, as he stated he was doing. It is submitted that the motor cycle most certainly would not have been found where it was found if there had been, as the Learned Trial Judge concluded, a glancing blow between the vehicles and the motor cycle would not as a result of that blow have been thrown backwards towards Changi Point, a distance of 50 to 60 feet.	30
P.34 Ll. 2 & 3			
P.48 L. 13			
P.49 Ll. 9 - 13			40
	12.	Moreover it is submitted that the damage to the vehicles and the injuries to the Appellant are consistent with the collision described by the Respondent.	

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Police Inspector Gurdip Singh described the damage to the Respondent's motor car as being: front off-side mudguard badly damaged; front offside headlamp smashed; front grille smashed; front bumper damaged and detached; spot light in front damaged. This damage was illustrated in the photographs. The damage to the Appellant's motor cycle is illustrated in the photographs. It is also described in the report of Theng Chye Yam. The Appellant's injuries are precised in Paragraph 4 of the Statement of Claim

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13. It is submitted that, as stated by the Court of Appeal, the real issue is, where did the accident occur. It is submitted that the evidence supported the Respondent's version, as was found by the Court of Appeal and that the Judgment of the Court of Appeal of the Republic of Singapore should not be disturbed.

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14. Furthermore it is submitted that, wherever the collision occurred, the Appellant should not have emerged from Tangmere Road into the Path of the Respondent's motor car if the latter was anywhere near a distance of 60 feet from the junction, for this would have given the Respondent no reasonable chance of avoiding a collision. It is submitted that the sole cause of this accident was this negligence of the Appellant.

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P.21 Ll. 10 - 14

Exh.AB9 P.60

Exh.AB8 Pp.65 & 67

Exh.AB7 P. 64

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P.66 Ll. 23 & 24

P.67 Ll. 16 - 21

P.23 Ll. 2 - 7

P.68

GRAEME HAMILTON Q.C.

