

5/84

No. 4 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

JAMIL bin HARUN

Appellant
(Defendant)

- AND -

1. YANG KAMSI AH bte. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father MEOR RASDI @ RASHIDI
bin JAMALUDIN

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.

Solicitors for the
Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.

Solicitors for the
Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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FROM THE FEDERAL COURT OF MALAYSIA

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RECORD OF PROCEEDINGS

INDEX OF PROCEEDINGS

No. of Document	Description of Document	Date	Page No.
<u>In the High Court</u>			
1.	Writ of Summons	25th February 1977	1
2.	Statement of Claim	25th February 1977	3
3.	Statement of Defence	11th April 1977	6
4.	Statement of Agreed Facts	10th June 1979	8
5.	Proceedings	18th October 1979	9

No. of Document	Description of Document	Date	Page No.
6.	<u>Plaintiffs' Evidence</u>		
6.	Dr. C. Bala Ratnam	18th October 1979	10
7.	Case for Defendant	18th October 1979	12
8.	Case for Plaintiffs	18th October 1979	12
9.	Reply for Defendant	18th October 1979	14
10.	Judgment	18th October 1979	14
11.	Order	18th October 1979	15
12.	Grounds of Judgment	17th December 1979	16
	<u>In the Federal Court</u>		
13.	Notice of Appeal	30th October 1979	21
14.	Memorandum of Appeal	6th February 1980	22
15.	Judgment	22nd January 1981	25
16.	Order granting Final Leave to Appeal	2nd November 1981	33

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page No.
A (ii)	Medical Report on Yang Salbiah	16th December 1976	35
A (iv)	Further Medical Report on Yang Salbiah	3rd February 1979	36
A (v)	Letter, Sekolah Kebangsaan Setapak to R.K. Nathan & Co.	3rd May 1979	38
SAB (i)	Report of Dr. C. Bala Ratnam	14th June 1979	40

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Description of Document	Date
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In the Federal Court

Order granting Conditional Leave to Appeal	23rd March 1981
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EXHIBITS

Exhibit	Description of Document	Date
A (i)	Medical Report on Yang Kamsiah	11th November 1976
A (iii)	Further Medical Report on Yang Kamsiah	22nd January 1979
A (vi)	School Records of Yang Salbiah	
A (vii)	Hospital Receipts for \$80.	
SAB (ii)	Key to Sketch Plan and translation thereof	
SAB (iii)	Sketch Plan	
SAB (iv)	Hospital Receipt for \$4.	

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

JAMIL bin HARUN

Appellant
(Defendant)

- and -

10

1. YANG KAMSI AH bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father MEOR RASDI @ RASHIDI
bin JAMALUDIN

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO: 494 OF 1977

B E T W E E N :

20

1. YANG KAMSI AH bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
(both infants suing by their
father and next friend, Meor
Rasdi @ Rashidi bin Jamaludin

Plaintiffs

AND

JAMIL bin HARUN

Defendant

30

THE HONOURABLE TAN SRI SARWAN SINGH GILL,
P.M.N., P.S.M. Chief Justice of the High Court
in Malaya, in the name and on behalf of His
Majesty the Yang Di-Pertuan Agong.

In the
High Court

No. 1.
Writ of
Summons

25th February
1977

In the
High Court

No. 1
Writ of
Summons
25th February
1977
(continued)

TO: JAMIL bin HARUN,
NO: 228, KG. BARU MALAYA AMPANG,
KUALA LUMPUR.

WE COMMAND you, that within 8 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 the Plaintiffs abovenamed.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence. 10

WITNESS, Sharkawi Alis Senior Assistant Registrar of the High Court in Malaya this 25th day of February, 1977.

Sgd: M/s. R.K. Nathan & Co. Sgd: Sharkawi Alis
.....
Solicitors for the Plaintiffs Senior Assistant Registrar, High Court, Kuala Lumpur.

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. 20

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 Kuala Lumpur. 30

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 Kuala Lumpur

THE PLAINTIFF'S CLAIM IS FOR damages for personal injuries and consequential loss suffered by them and caused by the negligence of the Defendant in the driving of motor vehicle BA. 7543. 40

The Plaintiffs will further claim interest thereon at the rate of 6% per annum

under Section ii of the Civil Law Ordinance, 1956 on the amount to be awarded by the Court from the date of accident until judgment or payment.

Dated this 25th day of February, 1977.

Sgd: M/s R. K. Nathan & Co.
.....
Solicitors for the Plaintiffs.

In the
High Court

No. 1
Writ of
Summons

25th February
1977

(continued)

NO. 2

STATEMENT OF CLAIM

No. 2
Statement
of Claim

25th February
1977

10 IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO: 494 OF 1977

B E T W E E N :

- 1. YANG KAMSI AH bt. MEOR RASDI
- 2. YANG SALBIAH bt. MEOR RASDI
(both suing by their father
and next friend, MEOR RASDI
@ RASHIDI bin JAMALUDIN. Plaintiffs

AND

JAMIL bin HARUN Defendant

20 STATEMENT OF CLAIM

1. Both the First and Second Plaintiffs are infants and sue by their father and next friend, Meor Rasdi @ Rashidi bin Jamaludin.

2. On or about the 22nd day of July, 1975 the Plaintiffs were lawfully at Batu 3 $\frac{3}{4}$, Jalan Gombak, Setapak when they were collided into and knocked down by motor bus BA. 7543 driven by the Defendant and which said motor bus was travelling in the direction of Gombak and as
30 a result of which said collision, the Plaintiffs suffered injuries.

3. The said collision was caused solely by the negligence of the Defendant in the management and control of motor bus BA. 7543.

In the
High Court

No. 2
Statement
of Claim
25th February
1977
(continued)

PARTICULARS OF DEFENDANT'S NEGLIGENCE

- (a) Failing to keep any or any proper look out;
- (b) Driving the said motor bus at an excessive speed in the circumstances;
- (c) Failing to notice the Plaintiffs at all or in time to avoid the said collision;
- (d) Driving in the early hours of the morning without any or any sufficient lights;
- (e) Colliding into the Plaintiffs;
- (f) Failing to exercise or to maintain any or any sufficient or adequate control of the said motor vehicle; 10
- (g) Failing to exercise reasonable prudence and skill in the circumstances;
- (h) Driving without due care and attention and thereby causing the Plaintiffs to be run down;
- (i) Failing to give any or any sufficient warning of his approach;
- (j) Failing to stop, swerve, slow down or otherwise to avoid the said collision; 20
- (k) Failing to comply with such provisions of the Highway Code as are applicable to motorists.

So far as may be necessary, the Plaintiffs will rely on the doctrine of *res ipsa loquitur*.

4. By reason of the aforesaid negligence, the Plaintiffs have suffered injuries, have endured pain and have been put to loss and expense.

PARTICULARS OF FIRST PLAINTIFF'S INJURIES 30

Medical report from Hospital Besar, Kuala Lumpur dated 11th November, 1976

The abovenamed patient was admitted to A & B on 22.7.75 after she was involved in an accident. She was conscious, but drowsy and restless. She opened her eyes on call. Pupils were equal and reactive. Chest and abdomen were normal. She

had sustained (L) facial swelling with haematoma including upper lip. She was transferred to Neurosurgery and treated conservatively. X-ray skull showed no fracture. She recovered uneventfully and was discharged on 25.7.75.

In the
High Court

No. 2
Statement
of Claim

25th February
1977

(continued)

PARTICULARS OF SECOND PLAINTIFF'S INJURIES

Medical report from Hospital Besar, Kuala Lumpur dated 16th December, 1976

10 The abovenamed patient was admitted to the Casualty Ward on the 22.7.75 following a motor vehicle accident in which she sustained multiple injuries. She was referred to the Neurosurgical Ward on the same day. When I saw her, her clinical status was as below:

20 Conscious level: Unconscious, respond only to painful stimuli. Vital signs were within normal limits. Respiration was very rapid.

Head and Spinal Injuries:

1. Abrasion (L) side of face with swollen lower lip.
2. Bleeding from both nostrils and from (R) ear.

30 Positive neuro findings: Pupils (R) normal size, reacting briskly. (L) pupil bigger, reacting sluggishly. Going into decerebrate rigidity. Plantars were going up bilaterally.

Other injuries: Abdomen was soft and lungs were clear.

Skull X-ray : no fracture seen.

Chest X-ray : aspiration pneumonitis.

(R) brachial angiogram : no mass lesion.

40 Patient was treated conservatively. A tracheostomy was done. Patient showed gradual improvement over the days and on the 4.9.75, patient was sent home for further recuperation. At the time of

In the
High Court

No. 2
Statement
of Claim
25th February
1977
(continued)

discharge, patient was only vegetative in function. She did not respond purposefully to pain.

The last review at the Neurosurgical Clinic on 31.12.75, showed moderate improvement in the general condition of patient. She was alert and ambulatory though her higher functions (e.g. calculations, etc.) has still not returned. We anticipate further improvement in time.

10

PARTICULARS OF BOTH PLAINTIFFS'
SPECIAL DAMAGES

(a) Travelling expenses for
outpatient treatment ... \$ 100.00

AND the Plaintiffs claim damages and interest thereon at the rate of 6% per annum under Section 11 of the Civil Law Ordinance, 1956 from the 22nd day of July, 1975 until judgment or payment and costs.

DATED this 25th day of February, 1977.

20

Sgd: M/s R. K. Nathan & Co.
.....

Solicitors for the Plaintiffs.

No. 3
Statement
of Defence
11th April
1977

NO. 3
STATEMENT OF DEFENCE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO: 494 OF 1977

B E T W E E N :

1. YANG KAMSI AH bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
(both suing by their father
and next friend, MEOR RASDI
@ RASHIDI bin JAMALUDIN

30

Plaintiffs

and

JAMIL bin HARUN

Defendant

STATEMENT OF DEFENCE

In the
High Court

No. 3
Statement
of Defence

11th April
1977

(continued)

1. The Defendant has no knowledge of the matters alleged in Paragraph 1 of the Statement of Claim.

2. Save in so far that on or about the date and at or near the place stated, a collision occurred between motor bus BA. 7543 and the Plaintiffs, Paragraph 2 of the Statement of Claim is denied.

10 3. The Defendant denies Paragraph 3 of the Statement of Claim and the Particulars of Negligence pleaded thereunder in seriatim and puts the Plaintiffs to strict proof thereof.

4. The Defendant contends and will contend that the said collision was caused solely or in the alternative contributed to by the negligence of the Plaintiffs.

PARTICULARS OF NEGLIGENCE

20 (a) Failing to keep any or any proper look out;

(b) Running across the Defendant's lawful path suddenly and/or without any adequate warning;

(c) Failing to observe the simplest elements of kerb drill;

(d) Crossing the road without first ascertaining that it was safe so to do;

30 5. The Defendant denies Paragraph 4 of the Statement of Claim and the Particulars of Injuries and Special Damages pleaded thereunder and puts the Plaintiffs to strict proof thereof.

6. Save as hereinbefore expressly admitted the Defendant denies each and every allegation in the Statement of Claim as if the same had been set forth herein and traversed seriatim.

Wherefore the Defendant denies that he is liable to the Plaintiffs and prays that the Plaintiffs claim herein be dismissed with costs.

40 DATED this 11th day of April, 1977

In the
High Court

No. 3
Statement
of Defence
11th April
1977
(continued)

Sgd: Messrs. Sri Ram, Chan & Chin
.....
Solicitors for the Defendant

This Statement of Defence is filed by Messrs.
Sri Ram, Chan & Chin, Advocates & Solicitors,
6th Floor, Bangunan Yee Seng, Jalan Raja
Chulan, Kuala Lumpur.

No. 4
Statement
of Agreed
Facts

10th June
1979

NO. 4
STATEMENT OF AGREED FACTS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(PERSONAL CLAIMS DIVISION)

10

CIVIL SUIT NO: 494 OF 1977

B E T W E E N

1. YANG KAMSI AH bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
(both suing by their father
and next friend, MEOR RASDI
@ RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

STATEMENT OF AGREED FACTS

20

1. On the 22nd day of July, 1975 a collision
occurred between the Plaintiffs and motor bus
BA. 7543 driven by the Defendant.

2. The said collision occurred at Jalan
Combak, Batu 3¼, Setapak.

3. At the material time, the Defendant was
travelling in the direction of Gombak.

4. As a result of the said accident, the
Plaintiffs sustained the injuries as stated in
the medical reports.

30

5. The Plaintiffs incurred \$50/- as
travelling expenses for out patient treatment.

DATED this 10th day of June, 1979.

Sgd: R. K. Nathan & Co.
.....
Solicitors for the Plaintiffs

In the
High Court

No. 4
Statement
of Agreed
Facts

10th June
1979

(continued)

This Statement of Agreed Facts is filed
by Messrs. R. K. Nathan & Co., Solicitors for
the Plaintiffs abovenamed and whose address
for service is at 78B, Jalan Pudu, Kuala Lumpur.

NO. 5

PROCEEDINGS

No. 5
Proceedings

18th October
1979.

IN OPEN COURT

10

BEFORE ME

THIS 18TH DAY OF OCTOBER, 1979.

C.S.494/77

Mr. R. K. Nathan for Plaintiffs.

Mr. Sri Ram with Mr. C. S. Kumar for the
Defendants.

Liability has been conceded by the
Defendant at 100%.

Court to decide on question of quantum.

Agreed Bundle marked as AB.1-9.

20

Supplementary Agreed Bundle marked as
SAB.1-6.

Birth Certificate of 2nd Plaintiff
marked as BC.

1st Plaintiff's claim settled at \$1,000/=
General Damages.

2nd Plaintiff's special damages settled at
\$500/=.

Issue is General Damages with regard to 2nd
Plaintiff's injuries.

30

Mr. Nathan calls his medical evidence.

In the
High Court
Plaintiffs'
Evidence

No. 6

Dr. C. Bala
Ratnam
Examination

NO. 6

PLAINTIFFS' EVIDENCE

DR. C. BALA RATNAM

P.W.1, Dr. C. Bala Ratnam, affirmed and states
in English:

I am a consultant neuro-physician formerly attached to General Hospital, Kuala Lumpur and now in private practice. I examined 2nd Plaintiff on 12.6.79 for purpose of giving a specialist report on her. I had at that time the reports AB.2 and AB.4. My report is SAB.1. I was not able to get her history. She was shy and withdrawn. Probably her age too had something to do with it. What is described in paragraph 2 relates to Coma 4. She has irreversible brain damage. 10

Babinski reflexes were bilaterally up going meaning there is persistence of the damage to the brain.

"Vegetative" in paragraph 5 means that her responses were not appropriate to the stimuli. In this case there was a regression backwards. 20

My examination confirmed most of the statements by the father. The school report also indicated regression in the performance of the child in school.

She was indifferent when I examined her, not paying attention as children normally do.

Graphesthesia is a test conducted by writing a number or alphabet on the palm of the patient with her eyes (sic) and she is supposed to identify it. Stereognosis is a test to ascertain ability to identify an object by touch like a 10c. coin in the pocket. She was not capable of appreciating these tests indicating higher cortical damage - brain damage. It shows a regression in age. I see this in mentally retarded patients. She is mentally retarded. 30

Clumsy ataxia gait - she was unable to walk in a straight (sic). It was an almost drunken gait. 40

Both hemispheres of the brain are damaged - result of my test under 7.

The ability of human brain to control bowel movements develops with age of child. The development starts from 14 months to 26 to 38 months.

In the
High Court

No. 6
Plaintiffs'
Evidence
Dr. C. Bala
Ratnam
Examination

(continued)

Her damage is permanent. She now has the age of a 3-year old as far as bowel and bladder control is concerned.

10 In my expert opinion with her present disabilities her life will not be shortened. She will have a normal span of life. She is potentially able to get urinary infections as a result of the bladder and bowel disabilities.

She has a tendency to fall to either side whilst walking as a result of 5.

20 XXn: Physically speaking she is 11 years 5 months. Mentally she is between 3 and 5 years but I would put her further down because she cannot communicate. It may be due to basic intelligence. She has been recommended by the Headmaster to be transferred to a school for mentally retarded. She can now be called a spastic. "Spastic" means stiffness. She is a spastic cereberally not malleable. Her condition is less than that of a 3 to 5 year old child. At that age a child can ride a bicycle. At 5 a child can balance. But the plaintiff falls when she walks. Walking will be a very difficult function for her to regain, She cannot add small figures. With age if there is assimilation it will be extremely slow. 30 She has no seizures like fits caused by irritating lesion when the cells are alive and irritable. In her case her damage was to the predominate hemisphere, the left hemisphere.

Cross-
Examination

One does not need to have a skull fracture to have damage to the brain.

The only two people I spoke to were the patient and the father

No Re-Xm:

40 (Witness is released).

In the
High Court

No. 7
Case for
Defendant
18th October
1979

NO.7

CASE FOR DEFENDANT

Mr. Sri Ram not calling any evidence.

Mr. Sri Ram:

2nd Plaintiff has suffered severe injuries.
What is fair compensation?

I refer to -

Modh. Araffin's case
(1977) 1 M.L.J. - lxxix.
\$40,000/= for virtually a cripple. 10

Dass p.118 - Peter @ Rajoo s/o Susai
Manikam vs Lee Hock Chuan - 1970.
p.120, para 3 \$12,000/=.

Tan Chwee Lian v. Lee Ban Soon
(1963) - M.L.J. - 149.
\$64,000/=.

Our case not a physical spastic.

(1964) - M.L.J. - xlvi - Farida's case
\$50,000/= - severe fractures to the skull.

Submit: \$50,000/= is a reasonable sum in this case. 20

No. 8
Case for
Plaintiffs
18th October
1979

NO.8

CASE FOR PLAINTIFFS

Mr. Nathan:

Ask for substantial sum under various
heads:

General Damages:

Quek Poh Ser v. Jhagir Singh
(1962) - M.L.J. - lxxxviii.
\$65,000/=.

30

Farida bt. Shariffudin v. Ali b. Omar
(1964) - M.L.J. - xlvi.
Akin to our case. \$50,000/=.

Would like to distinguish this case.
No submission on future earnings.

In the
High Court

Tan Chwee Lian v. Lee Ban Soon

No. 8
Case for
Plaintiffs

Wong Ah Gan v. Chan Swee Yueh & Anor.
(1970) - 2 M.L.J. - 25

18th October
1979

Yatina bte. Othman & Anor v. Lumi b.
Puteh

(1970) - 1 M.L.J. - xv.
\$60,000/=.

(continued)

10

Chong Fah Fey v. Chen Thiam @ Chen Tiam
(1970) - 1 M.L.J. - xv.

Christopher Piff's case - C.S. 611/78
\$40,000/=.

Owen v. Parrish

Kemp & Kemp 3rd Edn. Vol. 1 p.231.
2nd Plaintiff was 1st in her class.

Ho Chee Fatt v. Subbarow s/o Kasy

(1977) - 1 M.L.J. - xlvii.
\$82,000/= - \$37,000/= for partial loss.
\$45,000/= for pain and
suffering.

20

Submit now for injuries sustained for pain
and suffering and loss of amenities and future
loss - \$100,000/=.

II Re prospective loss of earnings:

Morris v. Williams

Kemp & Kemp. Vol.II 4th Edn. p.3201 at
3203.

Wong Ah Gan's case.

30

Asking for 30 years' purchase.

She will not get married.

From 25 up to 50, she should be given an
award.

I ask for 30 years - for 1st 20 years \$250/=
earnings. - \$37,386/=.

Then the next 10 years @ \$350/= - \$32,431/=.

In the
High Court

No. 8
Case for
Plaintiffs

18th October
1979

(continued)

III Nursing Services

Morris v. Williams at p. 3203.

15 years nursing care.

I ask for 1st 10 years a sum of \$100/= for the mother : \$9,266.09¢ up to 21. From 21 for 10 years for a servant to look after her at \$200/= a month = \$18,532.16¢. Ask for a further 20 years' purchase at \$300/= - \$44,863.95¢.

No. 9
Reply for
Defendant

18th October
1979

NO. 9

REPLY FOR DEFENDANT

Sri Ram: Re loss of earnings, no multiplier used. Facts are taken into account.

Re 2nd Head see Dass p.24. There must be proof of domestic help was used or is likely to be used. Able to sit in class not physically disabled. No question that this will get domestic help all the time.

See Piff's case and Tan Chwee Lian's case.

Nathan: Even if she has to go to school she has to pay for it.

No. 10
Judgment

18th October
1979

NO. 10

JUDGMENT

Judgment against the Defendant.

I award \$75,000/= as general damages and agreed \$500/= for special damages in respect of 2nd plaintiff.

I award \$1,000/= as agreed general damages in respect of 1st plaintiff.

Usual interest of 6% on General Damages from date of service and 3% on Special Damages from date of accident.

Costs to be taxed.

Sgd: L.C. Vohrah.

10

20

30

NO. 11

ORDER

In the
High Court

No. 11
Order

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(PERSONAL CLAIMS DIVISION)

18th October
1979

CIVIL SUIT NO: 494 OF 1977

B E T W E E N :

10 1. YANG KAMSI AH bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
(both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

BEFORE THE HONOURABLE MR. JUSTICE L.C. VOHRAH

THIS 18TH DAY OF OCTOBER, 1979

IN OPEN COURT

O R D E R

20 UPON HEARING Mr. R. K. Nathan of Counsel
for the Plaintiffs and Mr. G. Sri Ram together
with Mr. C. Kumar of Counsel for the Defendant
and UPON the Defendant being held totally
liable and UPON HEARING the evidence of the
Plaintiffs and the Submissions of Counsel
aforsaid IT IS ORDERED that the Defendant
do pay the First Plaintiff the sum of \$1,000/=
(RINGgit one thousand) only as general damages
and the Second Plaintiff the sum of \$75,000/=
(RINGgit seventy five thousand) only as general
30 damages and interest on the above at 6% (six per
centum) only from date of service of Writ i.e.
the 16th day of March, 1977 to date of judgment
AND IT IS FURTHER ORDERED that the Defendant do
pay the Second Plaintiff the agreed special
damages of \$500/= (RINGgit five hundred) only
with interest at 3% (three per centum) only from
date of accident i.e. the 22nd day of July, 1975
to date of judgment and IT IS FINALLY ORDERED
that the Costs be taxed by a proper officer of
the Court.

In the
High Court

Given under my hand and the Seal of the
Court this 18th day of October, 1979.

No. 11
Order

Sgd: Illegible
.....

18th October
1979

Senior Assistant Registrar,
High Court,
Kuala Lumpur.

(continued)

This Order is taken out by Messrs. R. K.
Nathan & Co., Solicitors for the Plaintiffs
abovenamed and whose address for service is at
78B, Jalan Pudu, Kuala Lumpur

10

No. 12
Grounds of
Judgment

NO. 12

FOUNDATIONS OF JUDGMENT

17th
December
1979

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 494 of 1977

B E T W E E N

1. YANG KAMSIAM bt. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
(both suing by their father
and next friend, MEOR RASDI @
RASHIDI bin JAMALUDIN)

Plaintiffs

20

- and -

HAMIL bin HARUN

Defendant

FOUNDATIONS OF JUDGMENT OF VOHRAH, J.

In this claim for damages for personal
injuries sustained as a result of a road accident
on 22nd July 1975 liability was admitted by the
defendant at 100% and agreement was reached in
respect of general damages for the first plaintiff
at \$1,000/= and in respect of special damages for
the second plaintiff at \$500/=. The only matter
for determination by the court was the quantum of
general damages to be awarded to the second
plaintiff.

30

Only one witness was called to give evidence
for the second plaintiff. He was Dr. C. Bala
Ratnam whose credentials and competence as a
consultant neuro-physician were not in any way

challenged. His whole evidence was based on the medical report, SAB.1-2, which he prepared on 14th June 1979. As this document was admitted as part of the agreed bundle of documents and as it gives a concise account of the second plaintiff's past and present condition I reproduce below the complete report:-

In the
High Court

No. 12
Grounds of
Judgment

17th December
1979

(continued)

NEURO-MEDICAL CLINIC

10 Dr. C. BALA RATNAM, S.M.T. Wisma P.K.N.S.
F.R.C.P.(C), F.R.A.C.P. (Ground Floor),
Consultant Neuro-Physician. Jalan Raja Laut,
Kuala Lumpur.
Tel: 987986

Your Ref: RKN/4303/76/N/L. Date: 14th June, 1979.

Our Ref: 0275/79.

20 Messrs. R.K. Nathan & Co.,
Advocates & Solicitors,
78B (2nd Floor), Jalan Pudu,
KUALA LUMPUR.

Dear Sir,

Re: Yang Salbiah bte. Meor Rasdi
Age: 11 years.

Thank you for referring the above patient who was evaluated on 12th and 14th June, 1979. Since the patient was rather apathetic and non-communicative throughout the examination, the history was obtained from the father.

30 The patient was apparently a healthy, bright and cheerful child, until she was knocked by a motor vehicle on 22nd July, 1975. She was then admitted to the Neuro-Surgical Department of General Hospital, Kuala Lumpur, where she was found to be in a deeply comatose state, responding to painful stimuli and showing signs of decerebrate rigidity (the later term is applied to patients in a deeply comatose state, showing opisthotonos (spasm of the posterior
40 neck muscles causing the head and neck to be flexed backwards) with sustained extension of the extremities. This state is generally seen in patients with acute hypoxia (lack of oxygen) or increased intra-cranial pressure (may be seen in patients after severe head trauma, intra-cranial bleeding or brain tumour) and indicates

In the
High Court

No. 12
Grounds of
Judgment
17th December
1979

(continued)

potentially irreversible damage to the central nervous system, at the brain-stem level).

She also then had asymmetry of the pupils with (L) being dilated and reacting sluggishly to light. The Babinski reflexes were bilaterally up going.

An emergency (R) Brachial angiogram showed no intra-cerebral haematoma and the patient was treated conservatively. A tracheostomy was done to prevent respiratory embarrassment. (done as a prophylactic in deeply comatose patients).

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She made a slow recovery and was discharged from the hospital after about 42 days. On discharge, she was said to be "vegetative" and not responding appropriately to painful stimuli. On review in December, 1975, patient was ambulatory but slow mentally.

The father now states that the patient's:-

1. Speech is slow and hesitant with occasional word difficulty.
2. Unsteady, clumsy gait with tendency to veer to either side on walking.
3. Poor control of faeces and urin and tendency to daefaecate or urinate in class.
4. Tendency to outbursts of temper.
5. Progressive intellectual deterioration in class with a recommendation to be transferred to a school for retarded children.
6. Poor attention span with no social interest in her friends or family.
7. There is no history of seizures.

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Neurological examination revealed :-

1. An apathetic looking young girl with an inappropriate smile.
2. Immediate, recent and remote memory was poor.
3. The speech was slurred and she was unable to subtract or add serial 7's. Did not attempt to use her fingers when coaxed to do so.

4. Higher cortical testing including graphesthesia, stereognosis and two-point discrimination could not be tested as the patient was unable to comprehend the significance of the tests.
5. Clumsy ataxia gait.
6. Partial (R) facial palsy.
7. The reflexes were bilaterally brisk with bilaterally positive Chaddock's (suggesting bilateral cerebral damage).
8. Skull x-rays were normal with no evidence of fracture or intra-cranial calcification.
9. The Electroencephalogram (E.E.G.) was mildly abnormal due to asymmetry of the background alpha activity.

In the
High Court

No. 12
Grounds of
Judgment

17th December
1979

(continued)

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In conclusion, this patient has severe traumatic cerebral damage leading her to be classified as a mentally retarded child with inability to control her bladder and bowel functions. I feel that there will be no further improvement in her mental functions as she has not made any progress for the better over the past 4 years except for gross motor movements. Her disability is permanent and she will be a liability to her family for the rest of her life, as she will be unable to complete her basic education or learn a useful self supporting trade.

With regards,

Sgd:

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It was obvious from the evidence adduced that the second plaintiff has suffered very serious brain injury which has turned her into a subnormal child with permanent mental and physical disabilities. I was satisfied that before the accident she was a normal child with all the expectations of a normal life. The accident caused mental retardation resulting, inter alia, in her inability to control her bladder and bowel movements and to benefit from a normal education. It was in evidence that her span of life would be normal and that she would have to be cared for all her life. Counsel for the plaintiffs submitted that in assessing damages a substantial sum should be awarded separately under each of the three heads, namely,

In the
High Court

No. 12
Grounds of
Judgment

17th December
1979

(continued)

"general damages for pain and suffering, loss of amenities and future loss," "prospective loss of earnings" and "nursing services." The trend of the local authorities quoted to my mind did not admit of such separate awards in the case of children whose earning capacity was not known and where no evidence was adduced to show that outside nursing care was required. The general trend in cases of this sort showed an inclination towards an award of a global sum which would, however, take into account all these three heads. In my view the Court's duty was to reach a figure which was fair and reasonable so far as money could compensate and after anxious consideration of all the relevant factors I considered the global sum of \$75,000/= to be a fair and reasonable sum and gave judgment for that sum as general damages with the usual interest of 6% from the date of the service of the writ.

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Sgd: Justice Lal Chand Vohrah.

(L.C. VOHRAH)
JUDGE,
HIGH COURT,
MALAYA.

Kuala Lumpur,
17th December, 1979.

Counsel:

Mr. R. K. Nathan for Plaintiffs.
Solicitors: Messrs R. K. Nathan & Co.

30

Mr. Sri Ram for Defendant.
Solicitors: Messrs Sri Ram, Chan & Chia.

NO. 13
NOTICE OF APPEAL

In the
Federal Court

No. 13
Notice of
Appeal

30th October
1979

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE AND SPECIAL POWERS DIVISION)

FEDERAL COURT CIVIL APPEAL NO: OF 1979

B E T W E E N :

- 1. YANG KAMSI AH Bte. MEOR RASDI
 - 2. YANG SALBIAH Bt. MEOR RASDI
- (both infants suing by their father and
next friend, MEOR RASDI @ RASHIDI BIN
JAMALUDIN Appellants)

AND

JAMIL BIN HARUN Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit NO: 494 of 1977 - (Personal
Claims Division)

B E T W E E N :

- 1. YANG KAMSI AH Bte. Meor Rasdi
 - 2. YANG SALBIAH Bt. MEOR RASDI
- both infants suing by their father
and next friend, MEOR RASDI @
RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

NOTICE OF APPEAL

TAKE NOTICE that the Second Appellant
abovenamed being dissatisfied with the decision
of the Honourable Mr. Justice L.C. Vohrah given
in Open Court at Kuala Lumpur on the 18th day
of October, 1979 appeals to the Federal Court
against the award of quantum.

Dated this 30th day of October, 1979

Sgd: R. K. Nathan & Co.
.....

Solicitors for the Appellants

In the
Federal Court

No. 13
Notice of
Appeal

30th October
1979

(continued)

TO:

The Chief Registrar,
Federal Court,
Kuala Lumpur.

AND TO :

The Senior Assistant Registrar,
High Court,
Kuala Lumpur

AND TO :

The Respondent abovenamed and/or his Solicitors, 10
Messrs. Sri Ram & Co.,
Bangunan Yee Seng,
Jalan Raja Chulan,
Kuala Lumpur. (Your Ref: CBK/ar/1747/77 (SI(22))

This Notice of Appeal is filed by Messrs.
R. K. Nathan & Co., Solicitors for the Appellants
abovenamed and whose address for service is at
78B Jalan Pudu, Kuala Lumpur. (RKN/4303/76/N/L).

No. 14
Memorandum
of Appeal

6th February
1980

NO: 14

MEMORANDUM OF APPEAL

20

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE AND SPECIAL POWERS DIVISION)

FEDERAL COURT CIVIL APPEAL NO: 197 OF 1979

B E T W E E N

1. YANG KAMSI AH Bte. MEOR RASDI
2. YANG SALBIAH Bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Appellants 30

AND

JAMIL BIN HARUN

Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit NO: 494 of 1977 - (Personal
Claims Division).

B E T W E E N

1. YANG KAMSIAH Bte. MEOR RASDI
2. YANG SALBIAH Bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

MEMORANDUM OF APPEAL

In the
Federal Court

No. 14
Memorandum
of Appeal

6th February
1980

(continued)

10

YANG SALBIAH BT. MEOR RASDI, an infant
suing by her father and next friend, Meor Rasdi
@ Rashidi bin Jamaludin, the Appellant (Second
Plaintiff) above-named appeals to the Federal
Court against the decision of the Honourable
Mr. Justice L. C. Vohrah as relates to the award
of a global sum of \$75,000/= as general damages
on the following grounds.

20

1. The Learned Judge having accepted the fact
that the Second Plaintiff suffered very serious
brain injury thus turning the Appellant into a
subnormal child with permanent mental and
physical disabilities and that her span of life
would be normal and that she would have to be
cared for all her life, failed to make separate
awards under the three (3) heads of

- (i) loss of amenities and future loss;
- (ii) prospective loss of earnings; and
- (iii) nursing services

30

2. The Learned Judge erred when he failed to
consider the case of Morris v. Williams - Kemp &
Kemp Volume II, 4th Edition, Page 3201 at 3203
wherein the Court made specific awards under the
three (3) headings.

3. The Learned Judge erred in law when he
held that the trend of the local authorities
quoted were in favour of a lump sum or global
award when there were no actual local authorities
wherein the Court was asked to canvass awards
under the three heads.

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4. The Learned Judge failed to consider that
a sum of \$75,000/= was not a fair and reasonable
sum bearing in mind

In the
Federal Court

No. 14
Memorandum
of Appeal

6th February
1980

(continued)

- (a) the age of the child;
- (b) the rate at which purchase of money is falling;
- (c) the residual defects of the child;
- (d) the accepted normal life span of the child;
- (e) that she was to be cared for all her life.

5. The Learned Judge erred when he failed to consider the decision in the case of Lim Poh Cheo v. Camden and Islington Area Health Authority (1979) 2 AER 910 wherein the House of Lords awarded under various heads. 10

The Appellant (Second Plaintiff) therefore prays that this Appeal be allowed with costs.

DATED this 6th day of February, 1980.

Sgd: R. K. Nathan & Co.
.....
Solicitors for the Appellants

TO :

The Chief Registrar,
Federal Court,
Kuala Lumpur. 20

AND TO :

The Senior Assistant Registrar,
High Court,
Kuala Lumpur

AND TO :

The Respondent abovenamed and/or his Solicitors,
Messrs. Sri Ram & Co.,
Bangunan Yee Seng,
Jalan Raja Chulen 30
Kuala Lumpur. (Your Ref: CSK/ar/1747/77/SI(22))

This Memorandum of Appeal is filed by Messrs. R. K. Nathan & Co., Solicitors for the Appellants abovenamed and whose address for service is at 78B, Jalan Pudu, Kuala Lumpur.

NO. 15
JUDGMENT

In the
Federal Court

No. 15
Judgment

22nd January
1981

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE AND SPECIAL POWERS DIVISION)

FEDERAL COURT CIVIL APPEAL NO. 197 OF 1979

B E T W E E N :

- 10
1. YANG KAMSI AH bte. MEOR RASDI
 2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Appellants

AND

JAMIL BIN HARUN Respondent

(In the matter of Kuala Lumpur High Court
Civil Suit No. 494 of 1977 - (Personal
Claims Division).

B E T W E E N :

- 20
1. YANG KAMSI AH bte. MEOR RASDI
 2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

CORAM: Raja Azlan Shah, C.J. Malaya.
Syed Othman, F.J.
Salleh Abas, F.J.

JUDGMENT OF THE COURT

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The appellant, Yang Salbiah bt. Meor Rasdi (Salbiah) - the only appellant, despite the heading - is a very unfortunate young girl. She was run down by a bus and though the visible injuries sustained were a few abrasions and contusions, the end result was disastrous. She became, in that awful but very descriptive term, vegetative. She had in fact sustained severe traumatic cerebral damage and from being a happy normal healthy and intelligent school

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

girl she has become a severely mentally retarded child, with very little awareness of her surroundings and no ability to respond socially or to control herself physically. She is unable to manage wilfully her bladder and her bowel functions. Born on May 10, 1968, she was at the time of the accident, a bit more than 7 years old. Four years later, just before the trial of the action at a neurological test conducted by a consultant, she was assessed at a mental age of 3 years. She is now a little better than a vegetable. Her condition is irreversible with hardly any prospects of improvement, but the poignancy of her situation is that her span of life is in no way shortened. Throughout the rest of her life - and one may reasonably expect that she will live out her normal span of life in this country - she will be unable to appreciate the world she lives in, to grow up to a gainfully employed life, or marry and bear children, otherwise to lead a normal healthy life and she will need constant care and attention and nursing.

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20

Liability for the accident having been fully admitted by the defence, she must recover a substantial award for general damages to cover past, present and future injury and loss. Such an award is final and as remarked, "it is not susceptible to review as the future unfolds, substituting fact for estimate." The award has to be a lump sum assessed at the conclusion of the legal process.

30

It is perhaps for this reason that her claim in the statement of claim delivered on her behalf was merely expressed to be for general damages with the usual prayer for interest and cost. But at the conclusion of the case, her counsel descended into some particulars and submitted that the award should be for (1) pain and suffering and loss of amenities, (2) future loss and (3) nursing services. Her counsel however signally failed to lead any evidence of what this future loss would be or any evidence of the cost of the nursing services he had in mind or he was advised were available for the child. The trial judge, after hearing defendant's counsel's submission which let it be said, without disrespect, was equally of no assistance to the judge, awarded \$75,000 as general damages with the "usual" order as to interest and costs. So far from being usual, it is in fact, unusual. From his grounds of decision supplied subsequently, this sum was awarded on a global basis, because,

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in his view, "the general trend in cases of this sort showed an inclination towards an award of a global sum which would, however, take into account all these three cases." By the three cases, he obviously meant the three heads of claim referred to in counsel's submission.

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

10 A global award has the distinct advantage of covering a multitude of sins. It does not show where or how the Judge had erred on the side of over-generosity or on the side of parsimony. But there is at least one good reason why a global sum should be discouraged.

20 It must be remembered that the purpose of damages is to try, so far as humanly possible, to put the victim back to the position he would have been in but for the accident. The damages must be fair, adequate and not excessive. A reasoned judgment must therefore be given by the Judge, following legal principles and precedents. Other awards in other cases should normally be prayed in aid, but consideration must be given where the circumstances differ.

30 In Murtadza bin Mohamed Hassan v. Chong Swee Pian, (1980) 1 MLJ 216 this court has explained that because no interest can be given on future loss, it is entirely inappropriate to make a global award which must necessarily incorporate this future loss into the past loss. Unfortunately the trial judge's attention was not drawn to this case. The explanation was evident. He gave judgment before the delivery of the Federal Court judgment. But this explanation does not quite absolve anyone from the duty to draw his attention to the case of Jefford v. Gee (1970) 2 QB 130; (1970) 1 AER 1202 Cookson v. Knowles (1979) AC 556; HL.(E); (1978) 2 AER 604 and Pickett v. British Rail Engineering Ltd. (1978) 3 WLR 955; H.L.(E); 40 (1980) A.C.136; (1979) 1 W.L.R. 519; which are the authorities relied on for this court's judgment. If his attention had been drawn to these authorities, he would have realised that the trend of the modern authorities is not towards awards of global sums but towards awards under particular heads of claim.

50 In the matter of what are the proper heads of claims in a case of total or near total incapacity, his attention should have been drawn to the House of Lords case of Lim Poh Choo v.

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

Camden and Islington Area Health Authority which must now be regarded as the leading case on the subject. It is realised that the final words of that case were not said until June 21, 1979 and the judgment did not reach us before the case was heard. But the judgments of Bristow J. at first instance and of the Court of Appeal were published on December 1, 1978 in the Weekly Law Reports, (1978) 3 WLR 895, months before the case was heard in the High Court. Again, if his attention had been drawn to that case, he would have been able to advise himself that in a case of total or near-total incapacity, the heads of claim for damages are: (1) pain and suffering and loss of amenities, (2) out of pocket expenses up to date of trial, (3) cost of care to date of judgment with interest, (4) loss of earnings to date of judgment with interest, (5) cost of future case and (6) loss of future earnings. And he would have then dealt with the action before him on this basis, except possibly in this particular case, loss of actual earnings. 10 20

In the House of Lords: (1979) 3 WLR 44; (1979) 2 AER 910, except for some matters which need not concern us here, the judgments of Bristow J. and the majority of the Court of Appeal were in the main upheld. Not only did Lord Scarman, with the concurrence of all his brethren, continue to consider the claim under these heads of claim, he also set out deliberately to restate the principles in a particularly attractive and useful way, with special reference to the more serious, often catastrophic cases of severe injuries, often affecting the mental perception of the victim. We can do no better than to turn to the speech of Lord Scarman in our task which clearly lies before us, in this appeal, to assess the proper damages to be awarded to Salbiah under the various heads and then on the aggregate to see whether it differs so much from the trial judge's own global sum that we in the exercise of our appellate jurisdiction and on well-established principles, ought to interfere. 30 40

(1) The award for pain and suffering and loss of amenities:

The House of Lords reaffirmed the authority of Wise v. Kaye (1962) 1 QB 638; (1962) 1 AER 257 and of H. West & Son Ltd. V. Shephard (1964) AC. 326; (1963) 2 AER 625 and the two rules formulated are: (1) The fact of unconsciousness does not eliminate the actuality of the deprivation of the ordinary experience and amenities of life. 50

10 Lim Poh Choo's case in effect extends the Pickett principle to the plaintiff who is prevented from feeling his loss, not by death, but by total disablement, and is thus the logical corollary of that case. (2) If damages are awarded on a correct basis, it is of no concern to the Court to consider any question as to the use that will thereafter be made of the money awarded. The House of Lords made it quite clear that damages are first and foremost for replacing what the plaintiff has lost.

20 Lord Scarman considered that the affect of these two cases is twofold. "First, they draw a clear distinction between damages for pain and suffering and damages for loss of amenities. The former depend on the plaintiff's personal awareness of pain, her capacity for suffering. But the latter are awarded for the fact of deprivation, a substantial loss whether the plaintiff is aware of it or not. Secondly, they establish that the award in Benham v. Gambling (1941) AC.157, H.L.(E); (1941) 1 AER 7 (assessment in fatal cases of damages for loss of expectation of life) is not to be compared with and has no application to, damages to be awarded to a living plaintiff for loss of amenities."

30 On the evidence, Bristow J. found that Dr. Lim's loss of amenities of her good and useful life is total. On this finding which Lord Scarman refused to over-rule, although he was referred to the medical evidence led which would suggest that Dr. Lim's awareness of her condition was greater and more sustained than the trial judge found, the Law Lord held that the award of £20,000 was not excessive under this head. He would appear to suggest that if the 40 medical finding was otherwise, the award could be higher.

50 Dr. Lim was a mature woman, with professional qualifications, on the way to the top of her career as a psychiatric consultant. It may of course be argued that Salbiah had not "lived" in the way that Dr. Lim had and therefore would not have lost as much in the ways of amenities and ought not therefore to be compensated with a comparable sum. On the other hand, it can also be argued that Salbiah has a longer way to go, and on the way she could and would have 'lived'

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

in the way that Dr. Lim had if she had not suffered her catastrophic injuries and therefore her loss of amenities must be regarded as greater because of the longer life ahead of her. For ourselves, we do not consider that Salbiah's immaturity is of any great significance. She certainly has a greater awareness of her physical condition.

In all the circumstances of this case, we would award \$70,000/- for pain and suffering and loss of amenities, which, on the authority of Pickett v. British Rail Engineering Ltd. (supra), should bear interest at 6% from the date of the service of the Writ to the date of trial. 10

(2) Out of pocket expenses and (3) Cost of care to date of judgment:

The out of pocket expenses have been charged at \$50/-, travelling expenses for Salbiah and settled at the higher figure of \$500/-. 20

As for the cost of care to date of judgment, no evidence was led that this care undertaken by Salbiah's mother was other than the normal care devoted by a mother to an infant or a girl of tender years. Consequently we make no award.

(4) Cost of future care:

Again, no evidence was led in the High Court of the cost of future care. A submission was however made based on certain figures submitted by counsel. 30

It should perhaps be realised that a submission must be made on the evidence adduced in Court or on admissions agreed to by the parties and that a Court can only act on such evidence and admissions. Nevertheless it must be a matter of some certainty that there must come a time when Salbiah's parents will not be able to look after her physical needs and will have to call on outside assistance which will have to be paid for. Even if it is otherwise and Salbiah's parents can look after her, they will have to be compensated for the time and money spent on such care and such compensation, in our view, must be a charge for future care. 40

If we are not to shirk our duty to apply the principle of law that the compensation should

as nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong, a principle distilled by Lord Scarman from Livingstone v. Rawyards Coal Co., (1880) 5 App. Cases 25 at p.39, we must do the best we can as we are enjoined by authority to do, in the circumstances of this case and the evidence or rather in the absence of it. But we must also bear in mind the facts of the accelerated payment and the availability of capital as well as income to meet the cost of care and the contingency that Salbiah may not live out her full expectation of life. She is now aged 12. In all the circumstances of the case we therefore take a multiplier of 25 years' purchase on a multiplicand of \$150/- and reach a figure of \$25,362/- for cost of future care.

In the
Federal Court

No. 15
Judgment

22nd January
1981

(continued)

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(5) Loss of future earnings:

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Despite the tender age of Salbiah, we have not the slightest doubt that if she had not been injured and rendered totally incapable of gainful employment, she would have, at the appropriate age, earned an income for herself. This she has now lost by reason of the tort committed on her by the respondent and for this in our view she must receive compensation.

30

The basis for such an award is that she should recover for her future loss "a capital sum which, after all proper deductions, will represent her loss of earnings, not after allowing for working expenses, and her cost of care, net after deducting the domestic element. A capital sum so assessed will compensate for a genuine loss and for a genuine item of additional expenditure, both of which arise from the injury she has sustained. It will not contain any element of duplication or go beyond compensation into surplus."

40

Unfortunately we do not have any evidence of Salbiah's social and economic background or her prospects. We have again to do the best we can and doing just that, we take what we believe to be a reasonably moderate figure of \$200/- for her net monthly income and having regard to a span of a working life of, say, 25 years, having regard to her age and to the discounts earlier referred to as necessarily to be taken, we arrive at a figure of \$33,816.00.

In the
Federal Court
No. 15
Judgment
22nd January
1981
(continued)

On the authority of Cookson v. Knowles (supra) and of the latter case of Thompson v. Faraonio (1979) 1 WLR 1157; on appeal from the Full Court of the Supreme Court of South Australia, in which the Privy Council held that on principle there should be no interest on an award for future loss of earning capacity, this sum shall not bear interest, nor will the sum awarded for cost of future care.

The total of general damages: 10

In the result, the total now comes to \$129,178.00. Lord Scarman has made it clear that the amount of the total is quite immaterial and that if the tortfeasors are to succeed, they must show that one or more of the component items of the award are wrong. But for the purpose of this appeal, having regard to the global award made and the absence of any indication of the amount of each proper head of claim, the total serves as an indication whether the award made was so excessive or so inadequate that an appellate court ought to intervene. Clearly the global sum awarded is so inadequate that we must have no hesitation to substitute our assessment for that of the trial judge. 20

It is obvious and we state this as a fact that the High Court had been labouring under a misdirection and the Federal Court met with considerable difficulties because no sufficient consideration had been given to the proper claims for damages in a case such as this and the proper assistance which a trial court must have a right to expect, was not given. But this we must also say. When the only issue is the question of general damages, there can be absolutely no justification for the inclusion in the Record of Appeal of those pages - pages 35-36, and 42 relating to special expenses and pages 39-41 relating to negligence: see Ooi Soon Eng v. Ng Kee Lin; (1980) 1 MLJ 26 F.C. Chow Yee Wah & Anor. v. Choo Ah Pat (1978) 2 MLJ 41 P.C. and the judgment in Syarikat Jengka Sdn. Bhd. v. Abdul Rashid bin Harun (F.C.C.A. 113 of 1979). 30 40

The appeal is allowed, the award of \$129,178.00 will be substituted for the \$75,000 award of the High Court. The appellant shall have the costs of the appeal except for the costs of the unnecessary pages in the Record referred to in the proceeding paragraph. The award is to be paid to the Public Trustee to be held in trust for Salbiah. 50

Sgd: Raja Azlan Shah
.....
(RAJA AZLAN SHAH)
CHIEF JUSTICE
MALAYA.

Kuala Lumpur
22 January 1981

In the
Federal Court

No. 15
Judgment
22nd January
1981

(continued)

Notes:

(1) Hearing in Kuala Lumpur on
Wednesday, 1st October, 1980.

(2) Counsel: Encik R. K. Nathan for
Appellants
Solicitors: Messrs. R.K.
Nathan & Co.,
Kuala Lumpur

Encik G. Sri Ram for
Respondent
Solicitors: Messrs. Sri Ram
& Co.,
Kuala Lumpur

NO. 16

ORDER GRANTING FINAL LEAVE TO APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 197 OF 1979

B E T W E E N :

1. YANG KAMSI AH bte. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Appellants

AND

JAMIL BIN HARUN Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. 494 of 1977
Personal Claims Division)

No. 16
Order granting
Final Leave to
Appeal

2nd November
1981

In the
Federal Court
No. 16
Order granting
Final Leave to
Appeal
2nd November
1981
(continued)

B E T W E E N :

1. YANG KAMSI AH bte. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father and next friend, MEOR
RASDI @ RASHIDI BIN JAMALUDIN Plaintiffs

AND

JAMIL BIN HARUN Defendant

CORAM: RAJA AZLAN SHAH, AG. LORD PRESIDENT,
MALAYSIA
LEE HUN HOE, CHIEF JUSTICE, BORNEO
MOHD. AZMI, JUDGE, HIGH COURT, MALAYA

10

IN OPEN COURT

THIS 2ND DAY OF NOVEMBER 1981.

UPON MOTION made unto Court this day by
Encik C.S. Kumar of Counsel for the Appellant/
Respondent also mentioning on behalf of M/s. R.R.
Nathan & Co., Solicitors for the Respondent/
Appellants AND UPON READING the Notice of
Motion dated the 5th day of October, 1981 and
the Affidavit of G. Sri Ram affirmed on the 11th
day of June 1981 all filed herein AND UPON
HEARING Counsel aforesaid IT IS HEREBY
ORDERED that final leave to appeal to His
Majesty, the Yang di-Pertuan Agong, against the
Judgment herein delivered on the 22nd day of
January, 1981 be granted to the Applicant/Respondent
AND IT IS FURTHER ORDERED that the costs of this
Application be costs in the Appeal.

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GIVEN under my hand and the Seal of the
Court

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THIS 2nd day of November, 1981.

.....
SENIOR ASSISTANT REGISTRAR
FEDERAL COURT, KUALA LUMPUR

This Order is filed by M/s. Sri Ram & Co., Advocates
& Solicitors, Bangunan Yee Seng, 6th Floor, Jalan
Raja Chulan, Kuala Lumpur.

Exhibit A(ii)

Medical Report on Yang Salbiah
Serial No. 9

Exhibits

A(ii)
Medical
Report on
Yang
Salbiah

16th December
1976

Dr. A. Mohandas, M.B.B.S.,
Diplomate Neurosurg. (USA),
F.A.C.S.,

Pakar Perunding dan
Ketua, Yunit II,
Jabatan Bedah Otak dan Saraf,
Hospital Besar,
Kuala Lumpur,
Malaysia.

10

16th December, 1976.

M/S. R. K. Nathan & Co.,
Advocates & Solicitors,
78-B, (2nd Floor) Jalan Pudu,
Kuala Lumpur. 05-03

Thro: Pengarah,
Hospital Besar,
20 Kuala Lumpur.

Dear Sirs,

Re: Medical Report on Yang
Salbiah binte Meor Rasdi -
H.2325/75

The abovenamed patient was admitted to the
Casualty Ward on the 22.7.1975 following a
motor vehicle accident in which she sustained
multiple injuries. She was referred to the
Neurosurgical Dept. on the same day. When I
30 saw her, her clinical status was as below:-

Conscious level: Unconscious, respond only to
painful stimuli. Vital signs were within
normal limits. Respiration was very rapid.

Head and Spinal Injuries: 1. Abrasion (L) side
of face with swollen lower lip.

2. Bleeding from
both nostrils and from (R) ear.

Positive neuro findings: Pupils (R) normal
size, reacting briskly. (L) pupil bigger,
40 reacting sluggishly. Going into decerebrate
rigidity. Plantars were up going bilaterally.

Other injuries: Abdomen was soft and lungs were
clear.

Exhibits

A(ii)
Medical
Report on
Yang
Salbiah

Skull x-ray: no fracture seen.
Chest x-ray: aspiration pneumonitis.
(R) brachial angiogram: no mass lesion.

Patient was treated conservatively. A tracheostomy was done.

16th December
1976

Patient showed gradual improvement over the days and on the 4.9.75 patient was sent home for further recuperation. At the time of discharge patient was only vegetative in function. She did not respond purposefully to pain.

10

The last review at the Neurosurgical Clinic on 31.12.75 showed moderate improvement in the general condition of patient. She was alert and ambulatory though her higher functions (e.g. calculations, etc.) has still not returned. We anticipate further improvement in time.

Yours sincerely,

Sgd: A. Mohandas
.....

Dr. A. Mohandas,
Head, Unit II,
Dept. of Neurosurgery.

20

A(iv)
Further
Medical
Report on
Yang
Salbiah

Exhibit A(iv)

Further Medical Report on Yang Salbiah
Serial No. 9

3rd February
1979.

Pegawai Perubatan,
Neurosurgery Unit II,
Hospital Besar,
Kuala Lumpur.

3rd February 1979

Your Ref: RKN/4303/76/N/L

30

Messrs. R. K. Nathan & Co.,
Advocates & Solicitors,
78B (2nd Floor) Jalan Pudu,
Kuala Lumpur.

Thro: Pengarah,
Hospital Besar,
Kuala Lumpur.

Tuan,

Re: Medical Report on Yang Salbiah
bt. Meor Rasdi - H2325/75

Exhibits

A(iv)
Further
Medical
Report on
Yang
Salbiah

3rd February
1979

(continued)

10

The above named person was admitted on 22.7.75 following an alleged motor vehicle accident. At admission she was unconscious responding only to painful stimuli. The right pupil was of normal size and reacting briskly. The left pupil was bigger and reacting sluggishly. The plantars were upgoing bilaterally. She was going into decerebrate rigidity.

She sustained the following injuries:-

- a) Abrasion left side of face
- b) Swelling of lower lip
- c) Bleeding from both nostrils and right ear.

X-rays of the skull were normal, chest x-ray showed aspiration pneumonitis.

20

A right brachial angiogram done did not reveal any intracranial haematoma. Hence she was treated conservatively. A tracheostomy was done to facilitate respiration.

She showed gradual improvement over the days and on 9.9.75 she was sent home for further recuperation. At the time of discharge she was only vegetative in function. She did not respond purposefully to pain.

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She was seen in the clinic several times since her discharge, the last being on 12.7.78. There was definite improvement in her condition. She appeared brighter and more self-confident. She was mentally very slow. Though in std.4 she was unable to write her name. According to the father prior to the accident she used to be 4th or 5th in the class but now she is the last in the class.

We anticipate further improvement in time.
Thank you.

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Yours sincerely,

Sgd: B. Gunasekaran,
.....

Dr. B. Gunasekaran,
Medical Officer.

Exhibits

Exhibit A(v)

A(v)
Letter,
Sekolah
Kebangsaan
Setapak to
R.K. Nathan
& Co.

Letter from Sekolah Kebangsaan Setapak
Serial No: 9

Sekolah Kebangsaan Setapak,
Jalan Pahang,
Kuala Lumpur 14.05

3rd May
1979

No. Talpon: 636401

Hujukan Surat Tuan RKN/4303/76/N/L.

Hujukan Surat Kami Bil (52) SKS 26.

3. 5. 1979.

10

To,

R.K. Nathan & Co.,
Advocates & Solicitors,
78-B, 2nd Floor,
Jalan Pudu,
Kuala Lumpur. 05-03
MALAYSIA

Sir,

Re: Yang Salbiah binti Meor Rasdi - 3714
Yang Kamsiah binti Meor Rasdi - 3717

20

With reference to your letter dated 5th April, 1979, Ref: RKN/4303/76/N/L. I would like to give the following information regards the condition of the pupil, Yang Salbiah binti Meor Rasidi - 3714 before and after the accident on 22.7.1975.

A. Before the accident:

1. This pupil was bright, cheerful and happy.
2. She was able to read and talk fluently.
3. Was sociable and mixed well with other children in the school.
4. Was able to take part in sports and the physical education lessons.
5. She was good in her studies when she was in standard one.
6. She was a happy, normal, healthy and intelligent child.

30

B. After the accident

1. This pupil has become retarded mentally and physically.
2. She is a completely different personality from what she was.

40

3. She just sits in class and is not able to concentrate or pay attention to the lessons being taught nor is she able to absorb anything that is taught.
4. Due to this she has become very, very backward in her studies and fails all the examinations.
5. She is not responsive to anything.
6. Her speech is impeded.
- 10 7. She is not able to take part in sports nor the physical education lessons.
8. Occasionally she urinates in class.
9. She salivas continuously.
10. She keeps to herself and does not mix with her friends anymore.
11. Although she attends school regularly there is no improvement at all in her studies.
- 20 12. This pupil should be sent to a school for retarded children immediately where she could get the proper attention that is needed.

Herewith I forward a photostat copy of the pupil's Report Book from the date of admission to date of accident.

Regards Yang Kamsiah binti Meor Rasidi - 3717, this pupil is at present studying at Sek: Mon: Keb: Kampung Baru, Kuala Lumpur.

30 While she was in Sekolah Kebangsaan Setapak her progress was not affected much after the accident.

Kindly get in touch with the Headmistress of her present school for further information regards her.

Ismail bin Sanding

Exhibits

A(v)
Letter,
Sekolah
Kebangsaan
Setapak to
R.K. Nathan
& Co.

3rd May
1979

(continued)

Exhibits

SAB(i)

Report of
Dr. C. Bala
Ratnam

14th June
1970

Exhibit SAB(i)

Report of Dr. C. Bala Ratnam
Serial No. 10

NEURO - MEDICAL CLINIC

Dr. C. Bala Ratnam, S.M.T. WISMA P.K.N.S.,
F.R.C.P.(C)., F.R.A.C.P. (Ground Floor),
Consultant Neuro-Physician Jalan Raja Laut,
Kuala Lumpur
Tel: 987986

Your Ref: RKN/4303/76/N/L.

Our Ref: 0275/79 14th June, 1979.

M/s. R.K. Nathan & Co.,
Advocates & Solicitors,
78B (2nd Floor),
Jalan Pudu,
Kuala Lumpur.

Dear Sir,

Re: Yang Salbiah bte. Meor Rasdi.
Age: 11 years

Thank you for referring the above patient who was evaluated on 12th and 14th June, 1979. Since the patient was rather apathetic and non-communicative throughout the examination, the history was obtained from the father.

The patient was apparently a healthy, bright and cheerful child, until she was knocked by a motor vehicle on 22nd July, 1975. She was then admitted to the Neuro-Surgical Department of General Hospital, Kuala Lumpur, where she was found to be in a deeply comatose state, responding to painful stimuli and showing signs of decerebrate rigidity (the later term is applied to patients in a deeply comatose state, showing opisthotonos (spasm of the posterior neck muscles causing the head and neck to be flexed backwards) with sustained extension of the extremities. This state is generally seen in patients with acute hypoxia (lack of oxygen) or increased intra-cranial pressure (may be seen in patients after severe head trauma, intra-cranial bleeding or brain tumour) and indicates potentially irreversible damage to the central nervous system, at the brain-stem level.)

She also then had asymmetry of the pupils with (L) being dilated and reacting sluggishly to light. The Babinski reflexes were bilaterally up going.

An emergency (R) Brachial angiogram showed no intra-cerebral haematoma and the patient was treated conservatively. A tracheostomy was done to prevent respiratory embarrassment. (done as a prophylactic in deeply comatose patients).

Exhibits
SAB(i)
Report of
Dr. C. Bala
Ratnam

14th June
1979

(continued)

10

She made a slow recovery and was discharged from the hospital after about 42 days. On discharge, she was said to be "vegetative" and not responding appropriately to painful stimuli. On review on December, 1975, patient was ambulatory but slow mentally.

The father now states that the patient's:-

20

1. Speech is slow and hesitant with occasional word finding difficulty.
2. Unsteady, clumsy gait with tendency to veer to either side on walking.
3. Poor control of faeces and urine and tendency to defaecate or urinate in class.
4. Tendency to outbursts of temper.
5. Progressive intellectual deterioration in class with a recommendation to be transferred to a school for retarded children.
6. Poor attention span with no social interest in her friends or family.
7. There is no history of seizures.

Neurological examination revealed :-

30

1. An apathetic looking young girl with an inappropriate smile.
2. Immediate, recent and remote memory was poor.
3. The speech was slurred and she was unable to subtract or add serial 7's. Did not attempt to use her fingers when coaxed to do so.
4. Higher cortical testing including graphesthesia, stereognosis and two-point discrimination could not be tested as the patient was unable to comprehend the significance of the tests.
5. Clumsy ataxia gait.

Exhibits

SAB(i)
Report of
Dr. C. Bala
Ratnam

14th June
1979

(continued)

6. Partial (R) facial palsy.
7. The reflexes were bilaterally brisk with bilaterally positive Chaddock's (suggesting bilateral cerebral damage)
8. Skull X-rays were normal with no evidence of fracture or intra-cranial calcification.
9. The Electroencephalogram (E.E.G.) was mildly abnormal due to asymmetry of the background alpha activity.

In conclusion, this patient has severe traumatic cerebral damage leading her to be classified as a mentally retarded child with inability to control her bladder and bowel functions. I feel that there will be no further improvement in her mental functions as she has not made any progress for the better over the past 4 years, except for gross motor movements. Her disability is permanent and she will be a liability to her family for the rest of her life, as she will be unable to complete her basic education or learn a useful self supporting trade. 10
20

With regards.

DR. C. BALA RATNAM

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

JAMIL bin HARUN

Appellant
(Defendant)

- AND -

1. YANG KAMSI AH bte. MEOR RASDI
2. YANG SALBIAH bt. MEOR RASDI
both infants suing by their
father MEOR RASDI @ RASHIDI
bin JAMALUDIN

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.

Solicitors for the
Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.

Solicitors for the
Respondents