

29/79

No. 3 of 1978

IN 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

RECORD OF PROCEEDINGS

MESSRS. JAMES & CHARLES DODD
13 OLD SQUARE,
LINCOLNS INN,
LONDON WC2A 3UA.

Solicitors for the Appellant

MESSRS. CHARLES RUSSELL & CO.,
HALE COURT,
LINCOLNS INN,
WC2A 3UL.

Solicitors for the Respondent

IN THE PRIVY COUNCIL

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RECORD OF PROCEEDINGS

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IN 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

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1342
of 1975

BETWEEN

MUTHUSAMY S/O THARMALINGAM Plaintiff

AND

1. ANG NAM CHEOW
2. LEE HUNG CHENG & CO.
(PTE) LTD. Defendants

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

TO 1. Ang Nam Cheow, 63D, Lorong Bekukong,
Singapore.

In the Court
of Appeal of
Singapore

No. 1
Writ of
Summons

24th April
1975

10

20

In the Court
of Appeal of
Singapore

No. 1.
Writ of
Summons
24th April
1975
(Cont'd)

2. Lee Hung Cheng & Co. (pte) Ltd., a
limited company incorporated in
Singapore and having its registered
office at No. 277-E, Selegie Complex,
5th floor, Selegie Road, Singapore, 7.

WE COMMAND YOU that within eight days after the
service of this writ on you, inclusive of the
day of such service, you do cause an appearance
to be entered for you in a cause at the suit of

MUTHUSAMY S/O THARMALINGAM of
No. 4-C, Jalan Somapah Timor, Singapore

10

AND take notice, that in default of your so
doing the plaintiff may proceed therein to
judgment and execution.

WITNESS MR. TAN WEE KIAN Registrar of the
Supreme Court in Singapore the 24th day of April
1975.

Plaintiff's Solicitors

Assistant Registrar
Supreme Court,
Singapore.

20

N.B. This writ may not be served more than
twelve calendar months after the above date unless
renewed by order of court.

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

A defendant appearing personally may, if he
desires, enter his appearance by post, and the
appropriate forms may be obtained by sending a
Postal Order for \$5.00 with an addressed envelope
to the Registrar, Supreme Court, Singapore, 6.

30

INDORSEMENT OF CLAIM

The Plaintiff's claim is for damages for
personal injuries and consequential loss suffered

by him and caused by the negligence of the 1st Defendant as servant or agent of the 2nd Defendant in the driving of motor car registration number E 2002 E.

In the Court
of Appeal of
Singapore

No. 1
Writ of
Summons
24th April
1975
(Cont'd)

Solicitors for the Plaintiff

This Writ is issued by IRONSIDE & DE SOUZA of Straits Trading Building, 18th floor, No. 9 Battery Road, Singapore, Solicitors for the said Plaintiff whose address is No. 4-C, Jalan Somapah Timor, Singapore.

10

This Writ and Claim was served by me on CHIM ALOU YAN of Messrs. Hilborne & Co., who accepted Service on behalf of the 1st and 2nd Defendants at 7th Floor, Colombo Court, Singapore. on the 14th day of May 1975 at 4.00 p.m.

Indorsed the 14th day of May, 1975.

Process Server

NO. 2
STATEMENT OF CLAIM

In the Court
of Appeal of
Singapore

No. 2
Statement
of Claim
24th April
1975.

20

1. The 1st Defendant was at all material times the servant or agent of the 2nd Defendant.
2. 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

3.

same to collide with the said motor cycle and knock the Plaintiff down to the ground.

3. 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; 10
- (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; 20
- (f) Driving on the wrong side of the road.

4. By reason of the negligence aforesaid, the Plaintiff has suffered personal injuries and pain and has been put to loss and expense.

PARTICULARS OF PERSONAL INJURIES

The Plaintiff suffered severe multiple injuries: 30

- (1) Close fracture of the right humerus;
- (2) Compound fracture right tibia/fibula;
- (3) Close fracture shaft of right femur;
- (4) Extensive crush and degloving injury of the right foot.

The Plaintiff's right foot became gangrenous and a below knee amputation had to be done for the right leg. The amputated stump became infected later and an above knee amputation was subsequently performed.

In the Court
of Appeal of
Singapore

No. 2
Statement
of Claim
24th April
1975
(Cont'd)

PARTICULARS OF SPECIAL DAMAGES

- | | | | |
|----|-----|---|----------|
| | (1) | Loss of earning as a projector operator at \$250.00 p.m. from 23.5.73 and still continuing .. | |
| 10 | (2) | Paid hospital bills and out-patient charges. .. | \$ 87.00 |
| | (3) | Paid transport to and from General Hospital at \$11.20 per trip for 29 trips .. | 324.80 |
| | (4) | Nourishing food .. | 500.00 |
| | (5) | Loss of 13th Month salary .. | 250.00 |
| | (6) | Loss of motor cycle .. | 650.00 |
| | (7) | Loss of watch .. | 35.00 |
| | (8) | Trousers and shirt torn .. | 24.00 |
| 20 | (9) | Costs of artificial leg .. | |

And the Plaintiff claims damages and costs.

DATED and delivered this 24th day of April, 1975

Solicitors for the Plaintiff

TO:

1. Ang Nam Cheow, 63D, Lorong Bekukong, Singapore, the above named 1st Defendant.
2. Lee Hung Cheng & Co. (Pte) Ltd., a limited

In the Court
of Appeal of
Singapore

No. 2
Statement
of Claim
24th April
1975
(Cont'd)

company incorporated in Singapore and having
its registered office at No. 277-E, Selegie
Complex, 5th floor, Selegie Road, Singapore, 7
the above named 2nd Defendant.

NO. 3

DEFENCE OF THE FIRST AND
SECOND DEFENDANTS

No. 3
Defence of
1st and 2nd
Defendants
24th July
1975

1. The Second Defendants admit that they
were the owners of motor car No. E.2002E and
say that their said vehicle was lent to the
First Defendant on the material date for his
own use and business and except as expressly
admitted, the Second Defendants deny that the
First Defendant was driving the said vehicle
as their servant or agent or he was their
servant or agent as alleged or at all.
Paragraphs 1,2 and 3 of the Statement of Claim
are denied and not admitted.

10

2. The Second Defendants contend that they
have been wrongfully made a party to these
proceedings and ought to be dismissed from
this suit with costs.

20

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
the circumstances of the accident and the
allegation of negligence as alleged in
paragraphs 2 and 3 of the Statement of Claim.

30

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

In the Court
of Appeal of
Singapore

No. 3
Defence of
1st and 2nd
Defendants
24th July
1975
(Cont'd)

- (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);
- 10 (5) Failing to have any or any sufficient regard for 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;
- 20 (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.

30 5. The alleged injuries, loss and damage are not admitted and denied and the First Defendant puts the Plaintiff to strict proof thereof.

6. Save as hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed

In the Court
of Appeal of
Singapore

DATED and DELIVERED this 24th day of July,
1975.

No. 3
Defence of
1st and 2nd
Defendants
24th July
1975
(Cont'd)

Sgd. Hilborne & Co.
Solicitors for the Defendants

TO: The above named Plaintiff and his
Solicitors,
Messrs. Ironside & de Souza,
Singapore.

No. 4
Notes of
Evidence
4th March
1977

No. 4
NOTES OF EVIDENCE

10

Friday, 4th March 1977

Pala Krishnan for Plaintiff

Chim for both defendants

Agreed bundle marked AB1-7

Damages agreed at \$70,000/-

Special Damages \$35,000/-

General Damages \$35,000/- includes loss
of future earnings.

P.W.1 John Low sworn

Sgt. Accident Branch, Sepoy Lines.

20

On 22nd May 1973 I investigated an accident
at Tangmere Road and Upper Changi Road at 12.45
a.m. i.e. 23rd May 1973. One vehicle the motor
cycle was at the scene. I drew AB3. The motor
cycle was lying on top of the kerb between the
road and the bay.

Front portion of motor cycle facing the bay.

There were street lights but insufficient.
There was one near letter P on AB3. other
lights were some distance away.

30

There were lights along Upper Changi Road some distance away.

10 Apart from the light at P, I am not aware if there were other lights in the vicinity. Visibility at this stretch is dim. As you approach the Tangmere Road junction from the City there is some amount of light at this junction. There is a slight bend after the Airport in Upper Changi Road before you come to the Tangmere Road junction. The road is not level. After the airport barriers the road goes up hill. After Tangmere Road junction the road is level again, just outside the 2nd Tangmere Road junction shown in AB3. The road was dry.

20 I have marked on AB3 the broken pieces of glass. I saw pieces of glass away from the motor cycle towards the direction of the city on the carriage way heading to the city. They were scattered about 10 feet from the motor cycle. I noticed a broken bone about 2" in length just beside the motor cycle. Apart from other police officers there was no one else on the scene.

Krishnasamy is introduced

I did not see M. Samy at the scene. I was at the scene for about half an hour and left at about 1.15 a.m.

By me: D.C. D'Cotta

xxn

- 30 Q For half an hour you only saw police officers at the scene and no one else.
- A That is so.
- Q Were your answers about the road beyond the sketch plan from your notes or memory.
- A Memory.
- Q You know this stretch of road.
- A Yes.
- Q From the junction of Tangmere Road and

In the Court
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No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

Changi Road can you see 30-40 feet around.

A If there is a beam of line, yes.

Q Could you see someone 50 feet away pushing a bicycle.

A If he wore a white shirt yes.

Q Why didn't you mark the broken glass in AB3

A It was scattered not concentrated.

Q Is this from memory or is it in your note book.

A From memory.

10

Q Did you notice any tyre marks.

A I inspected the road surface there were none.

Q Is there anything else you remember seeing.

A Nothing else.

Q The road is not level.

A No, it slopes downwards from the top of AB3 to the 2nd lane of Tangmere Road.

Q Is it a sharp slope.

A Very slight.

Q You are not quite sure about the lights at Changi Road.

20

A That is so.

By me: D.C. D'Cotta

EXN: I didn't pay particular attention to the lights along Changi Road.

I am positive about the scattered pieces of glass.

One could see a motor cycle if he had his

lights on while along Changi Road.

By me: D.C. D'Cotta

P.W.2. Gurdip Singh a/s English
Inspector of Police now attached to
Prosecution,
Subordinates Courts.
In May 1973 attached to Traffic.

In the Court
of Appeal of
Singapore

No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

10

I took over investigation on 25th May
1973 at 11.45 a.m. concerning this accident.
Inspector Wee took over at 8 a.m. on 25th May
1973.

I examined E2002E an Opel Commodore
2000 c.c.

I noticed the following damages:-

1. Front offside mudguard badly
damaged;
2. Front offside headlamp smashed;
3. Front grill smashed;
4. Front bumper damaged and detached;
5. Spot light in front damaged.

20

Krishnan tenders 3 photographs marked AB8, 9
and 10.

Car seized on 25th May 1973 from a
workshop 28 Kim Tian Road when it was sent for
repairs. Found 4 metallic pieces purple in
colour, collected them and handed them to the
Chemist and asked him at the Station if the
colour matched the colour of the car. I found
3 pieces on the motor cycle (front wheel rim)
and one in the engine block. Sent them to
chemist who made a report.

30

By me: D.C. D'Cotta

P.W.3. Muthusamy s/o Tharmalingam a/s Tamil
4C Jalan Somapah Timor, Unemployed.

Prior to 22nd May 1973 I was a film

In the Court
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Singapore

No. 4
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Evidence
4th March
1977
(Cont'd)

projector operator at a cinema in Tangmere Road at the date of the accident. I used a motor cycle to go to and from work. AB8 shows my motor cycle.

It is an old machine, probably 20 years old. I had it for 6 months.

I know the route from my house to my place of work. On 22nd May 1973 I finished work at 10.50 p.m.

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. 10
20

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. 30

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 from the "stop" sign I was in 1st gear, at the time of the accident

I was in 2nd gear.

There is a street light in Tangmere Road just before you come to the "stop" sign. There were no street lights along Upper Changi Road.

I was in the centre of Tangmere Road.

Witness marks on AB3 the bus stop and states the lights were beyond this bus stop.

10 Much beyond the bus stop is the Chartered Bank and the lights were around here.

Witness marks on AB3 the path he took and his position at the time of accident.

I do not know what happened after the accident.

By me: D.C. D'Cotta

xxn:

Q You were on the way home.

A Yes.

20 Q Towards the City.

A Yes.

Q Were there any vehicles in front of you at the "Stop" sign.

A No.

Q Behind you.

A No.

Q When you looked right was there any vehicle on Changi Road.

A No.

30 Q Any vehicle coming from Changi Point.

xxn (contd)

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Evidence
4th March
1977
(Cont'd)

- A No.
- Q When did you discover the lights you saw were those of a vehicle.
- A After I crossed the centre white line on the main road.
- Q At this time were you facing the direction of the City.
- A Yes.
- Q How close was the motor car to you. 10
- A From where I am to just beyond the opposite side - 30 feet.
- Q It was ahead of you.
- A Yes.
- Q How long prior to the accident had you been riding a motor cycle.
- A About 3 years.
- Q You had your head lights on.
- A Yes.
- Q Lights on this vehicle was on. 20
- A Yes.
- Q You consider 30 feet close.
- A Yes, both I and the other vehicle was moving and the other vehicle was coming at great speed.
- Q Can you estimate the speed of this vehicle.
- A No all I can say it was coming at great speed.
- Q You swerved left.
- A Yes. 30

xxn (contd)

Q How far did you swerve.

A I had just begun to turn.

Q This vehicle came in to your path.

A Yes.

Q Did you know when you were hit.

A No.

Q Witness is shown AB3 and position of
his motor cycle. Does it surprise you
your vehicle was at this spot.

10

A Possible owing to the speed of the
vehicle my machine could have been
thrown.

Q It was thrown back 50-60 feet.

A Yes.

Q You don't know where you landed.

A No.

Q Put: You did not stop at the "Stop"
sign.

20

A I did stop.

Q You shot out from the minor road without
looking.

A That is not true.

Q The accident occurred as soon as you shoot
out and defendant's vehicle knocked
squarely into you.

A That is not true, this is my usual path
home and I am familiar with it.

Q That is why your position is as shown in
AB3.

30

In the Court
of Appeal of
Singapore

No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

xxn (Contd)

A That is not true.

Q You were still on the right side of the road facing the City when you were hit.

A I deny that.

Q Did you suffer any other injuries apart from right leg.

A Fracture of right hand.

Q Witness is shown AB8. There is no damage to the front of the motor cycle.

10

A Yes.

Q The only substantial damage is the dent on the front offside of the petrol tank.

A Yes.

Q At the "Stop" sign you stopped 2 feet from the left edge of the road.

A Yes.

Q Coming into the main road you would be diagonally across.

A I moved as I illustrated in AB3.

20

Q Put: The collision occurred as soon as you passed the "Stop" sign.

A That is not true.

Q If you were in 2nd gear you did not stop at the "Stop" sign.

A That is not true.

Q You saw the vehicle 120 yards away.

A Yes that is where I saw the light.

Q As soon as you came out of the junction did you see the vehicle again.

30

xxn (contd)

In the Court
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Singapore

No. 4

Notes of
Evidence
4th March
1977

(Cont'd)

A I only saw the vehicle after I crossed
the centre white line.

Q Why did you come out of the junction.

A The Vehicle was some distance away and
I felt I could come out on to the main
Road.

Q Did you take a risk in coming out.

10

A I felt I could safely come on to the
main road as the vehicle was some
distance away.

Q At the "Stop" sign did you notice the
speed of the vehicle.

A No, all I could see was some light.

Q When you first saw the lights the
vehicle was 50 odd feet away from you.

A That is not true I estimate it to be
120 yards.

Q You pointed in Court a distance of 60 feet.

20

A I am not good in estimation.

Q For a car travelling 30 m.p.h. to cover
50 odd feet it would only take 2 seconds.

A I do not know that.

Q The car was still on its proper side of
the road, you were hit on your right lane
and petrol tank.

A That is not true.

30

Q If the accident had occurred the way you
described the position of your motor cycle
would have been just below "A" in AB3.

A That is not true.

In the Court
of Appeal of
Singapore

No. 4

Notes of
Evidence
4th March
1977
(Cont'd)

xxn (contd)

Q Did you hear any screeching sound at the
time of accident.

A No.

Q Horning sound.

A No.

By me: D.C. D'Cotta

RXN: I first saw the lights when the car was
near the Chartered Bank. I am positive.

D.W.1. Lee Tian Hai a/s Hokkien
79 Tai Keng Gardens, Singapore.
Director of 2nd Defendant Company.
Duly authorised to give evidence.

10

In 1973 my company owned car registration
No. W2002E. 1st Defendant was employed by us
before the accident at the time of the accident
he was not employed by us, he only came to borrow
the car.

He said his friend was getting married so
he came to borrow the car. I agreed to lend it
to him. I later came to know the car was involved
in an accident. 1st Defendant told me he had run
on to a tree.

20

On the 23rd May 1973 past 10 a.m. 1st
Defendant told me he ran into a tree.

By me: D.C. D'Cotta

xxn:

Q What was 1st defendant employed as.

A A lorry driver. He worked for a week.

Q Does he come often to your firm.

30

A No.

Q Just before this accident was he doing part
time work with your company.

D.W.1. xn-in-chief (contd)

xxn (contd)

A No.

Q Did you give him permission to use the car.

A Yes, he came to borrow it and I lent it to him.

Q Did he tell you where the wedding was.

A He said at Changi.

10

Q What time did 1st defendant come to your premises to borrow it.

A That evening I parked my car at Changi Point. I don't know what time 1st defendant came to collect it.

Q When did you give him permission.

A Some time between noon and 1 p.m. on 22nd May 1973.

Q Did you ask him to do any favour for you.

A No.

20

Q On the 23rd he told you he crashed into a tree.

A Yes.

Q Did he tell you when it occurred.

A No.

Q Did you see the damaged car.

A Yes, I drove it to the workshop.

Q At what time.

A Between 10 a.m. and 11 a.m. on 23rd May 1973.

Q Where did you get the car from.

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In the Court
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No. 4
Notes of
Evidence
3rd March
1977
(Cont'd)

D.W.1. xm-in-chief (contd)

xxm (contd)

A In a road off the 10 m.s. Changi Road.

Q Did you examine it.

A Yes.

Q Did you see any graze marks on the offside
of the car.

A No.

Q Did you see any blood stains on the
offside.

10

A No.

Q Did you see any graze marks on the offside
doors of the car.

A No.

Q Did you see any blood stains on the doors.

A No.

Q What was the condition of the mirror on the
front offside door.

A No it was out of position.

Q When the 1st defendant told you he crashed
into a tree did he tell you he had a bout
of drinks at the wedding.

20

A No.

Q You never questioned him how he crashed.

A No.

By me: D.C. D'Cotta

D.W.2. Ang Nam Cheow a/s Teochew

167 Block 36 Chai Chee Avenue.

Hawker, also a hawker in May 1970.

Now I am a shop assistant. 29 years
of age.

30

D.W.2. xn-in-chief (contd)

In the Court
of Appeal of
Singapore

No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

10 I met with an accident on 22nd May 1973. After the accident I left the scene. This had never happened to me and I got frightened. I went home. I knew Police were looking for me. I went to Sepoy Lines Police Station. Three days later I told Police I left the scene as I was afraid. I wanted to come down but when I heard a crowd I ran away. Just before the accident I attended a wedding party at Bendemeer Road. It was a fairly big wedding party. It was at Teochew restaurant. There were 20 odd tables. I had some beer. I was supposed to send some guests home.

I had a small glass of beer. I rarely drink. I sent some of the bride's relatives home and then I left for home. I was alone while driving along Upper Changi Road.

20 I was travelling at 30 or 40 m.p.h. I was in no particular hurry to go home. Before the accident I was about 1 or 2 ft from the left edge of the road. The accident occurred at the junction of Upper Changi Road and Tangmere Road.

30 I was driving almost in a straight line along Upper Changi Road and when I was about 50 feet from Tangmere Road I began to slow down as I know the place well. When I was 20 odd feet from Tangmere Road I noticed a motor cycle shooting out at a great speed from Tangmere Road. I swerved to my left and applied the brakes but it was too late. I hit the motor cycle.

40 I swerved to the left until it almost reached the left edge of the road. When I hit the motor cyclist he was on my side of the road 8 or 9 feet from the left edge of the road. Both the motor cycle and its rider fell on the other side of the road. My speed was slightly more than 30 m.p.h. when the accident occurred. I pulled up immediately after the accident. I moved to the left edge of the road past Tangmere Road. The motor cycle was somewhere behind me to the other side of the road. My car stopped somewhere near

D.W.2. xn-in-chief (contd)

B1 on AB3. I was about to get down. I noticed a lot of people coming out and shouting. On the left side of AB3 is a canteen. I noticed people were coming out.

The first time I saw the motor cycle I was slightly more than 20 feet from Tangmere Road. It was in motion coming from Tangmere Road to Upper Changi Road. I never expected the motor cycle to shoot out of Tangmere Road.

10

Sgd. D.C. D'Cotta

xxn (contd)

Q You worked for D.W.1 for some time before the accident.

A Slightly more than 1 week.

Q How long before the accident.

A 1 or 2 months before the accident.

Q Did the 2nd Defendant ask you to take wedding guests home.

A No.

20

Q Was this the first time you drove E2002E.

A No, I had been driving it previously although for a short distance.

Q How many times.

A 2 or 3 times.

Q This is a 2400 c.c. car.

A I don't know.

Q Is this the heaviest car you have driven.

A I have driven a Mercedes.

Q Just after the accident how big was the crowd that came out of the canteen.

30

xxn (contd)

A About 10 persons.

Q They were shouting?

A Yes.

Q That.

A There were shouts of assault, assault.

Q How long were you at B1.

A A very short while.

10

Q These 10 persons were still on the side road.

A Yes.

Q They had not come on the main road.

A They were running towards my direction.

Q Did they come out of the Changi Recreation Centre.

A I know there was a canteen I can't say if they were coming out of there.

Q This place is not lighted.

A It was lighted.

20

Q Put: This part of your evidence is not the truth.

A I can't say for sure if they were going to assault, but on seeing a crowd I got frightened.

Q You never heard words, assault, assault.

A I didn't, I heard a commotion. I started my car and drove to my house which is in a road at Changi Point.

Q You could have rendered aid.

In the Court
of Appeal of
Singapore

No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

xxn (contd)

A Yes, I could have.

Q At this time of the night traffic is very
light at Upper Changi Road.

A Yes.

Court adjs at this stage - 4 p.m. - as both
counsel agree it would take another morning to
complete.

By me: D.C. D'Cotta

Certified true copy.

10

Sgd:

Private Secretary to Judge,
Court No. 5.,
Supreme Court, Singapore.

Part head Suit No. 1342 of 1975

Coram: D'Cotta J

Wednesday, 16th March 1977.

D.W.2 on his former affirmation

xxn (contd)

Q Width of your car is 5ft 9 inches.

A I don't know.

20

Q (Witness indicates a distance of 6 feet)
You never volunteered information about the
accident.

A D.W.1 asked me to go.

Q You made AB2.

A Yes.

Q You never told the truth about the accident
until you were called by the police.

D.W.2 Ang Nam Cheow

In the Court
of Appeal of
Singapore

No. 4

Notes of
Evidence
4th March
1977
(Cont'd)

xxn (contd)

A Yes.

Q AB2 does not describe the cause of the
accident.

A I reported in detail.

Q There is no details in AB2.

A That is so.

10

Q There was nothing to prevent you making a
report.

A This is the first time this happened to me.

Q Have you ever seen vehicles come out of
Tangmere Road without stopping.

A Yes, many times.

Q Because of this you slowed down when
approaching this junction.

A That is correct.

Q Were there cars in front of you.

A No.

20

Q Behind you.

A No.

Q Your head lights were on.

A Yes.

Q Was the motor cyclist travelling at a greater
speed than your car.

A Yes it was.

Q When you were 50 feet from the junction you
did not see the motor cycle or its lights.

xxn (contd)

A That is so.

Q Your vision for the 50 feet ahead was clear.

A That is so.

Q Did you hear the motor cycle.

A No.

Q Just before the accident the scene and vicinity was quiet.

A Yes.

10

Q Did you horn.

A Yes I did, at the same time I swerved and applied my brakes.

Q Were you in top gear.

A Yes.

Q You didn't change on seeing the motor cyclist.

A No I had no time.

Q How far did you swerve.

A To the left edge of the road.

Q Did you see the motor cyclist attempting to swerve.

20

A No I saw him shooting across my path.

Q (Witness marks on AB3 (with a "O") the point where collision took place.

The front of your car hit the motor cyclist.

A My off-side head lamp hit him - the centre of the motor cycle.

Q The collision took place after you swerved.

D.W.2 Ang Nam Cheow
xxn contd.

In the Court
of Appeal of
Singapore

No. 4
Notes of
Evidence
4th March
1977
(Cont'd)

A Yes.

Q You saw motor cycle 20 feet before impact.

A Yes.

Q Why didn't you turn into Tangmere Road.

A I didn't expect it to shoot across my path.

Q It shot straight across.

A Yes.

10

Q Put: Accident could not have happened
in manner you described.

A I am telling the truth - I am telling the
court what actually happened.

Q There should have been more damage to the
motor cycle if the accident occurred as
you say it has.

A I did not know how badly damaged was the
motor cycle.

Q The rear wheel, exhaust pipe among other
things would be damaged.

20

A I don't know.

Q Were motor cycle and rider dragged to that
spot.

A I didn't see.

Q Put: you failed to keep a proper look out
for other users of the road.

(sic)

A I was keeping a proper look out.

Q Your car hit the motor cyclist a glancing blow.

A No.

RXN:

30

There is no reason for me to lie about the

NO. 5

J U D G M E N T

In the Court
of Appeal of
Singapore

No. 5
Formal
Judgment
16th March
1977.

The 16th day of March, 1977.

This action having been tried before the Honourable Mr. Justice C. D. D'Cotta on the 4th day of March, 1977 and this day in the presence of Counsel for the Plaintiff and for the Defendants

10 AND UPON HEARING what was alleged by Counsel aforesaid

IT IS ADJUDGED

that the Plaintiff do recover against the First Defendant damages assessed at the sum of \$70,000.00

AND IT IS FURTHER ADJUDGED

that the Plaintiff's costs of this action as between Party and Party be taxed and paid by the First Defendant to the Plaintiff

AND IT IS ORDERED

20 that the said sum of \$70,000.00 plus the Party and Party costs when taxed be paid by the First Defendant to the Public Trustee in trust for the Plaintiff

AND IT IS FURTHER ORDERED

that the Plaintiff's costs of this action chargeable on a Solicitor and Client basis be taxed and paid by the Public Trustee to the Plaintiff's Solicitors out of the Plaintiff's monies aforesaid

30 AND IT IS FURTHER ADJUDGED

that the Plaintiff's claim against the Second Defendants herein be dismissed with costs to be taxed and paid by the Plaintiff to the Second Defendants.

Entered the 4th day of April 1977 in Volume 172 Page 20 at 4.00 p.m.

Sgd:

Assistant Registrar

No.6
Grounds
of
Judgment
21st
April
1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1342 of 1975

BETWEEN

MUTHUSAMY S/O THARMALINGAM

Plaintiff

10

- and -

1. ANG NAM CHEOW
2. LEE HUNG CHENG & CO. (Pte)
Ltd.,

Defendants

Pala Krishnan for the Plaintiff

Chim How Yan for both Defendants

Coram: D'Cotta J

GROUNDS OF JUDGMENT

The Plaintiff's claim is for damages for personal injuries and consequential loss suffered by him and caused by the negligence of the 1st Defendant as servant or agent of the 2nd Defendant in driving of motor car registration No. E2002E.

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At the conclusion of the hearing, judgment was entered for the Plaintiff for the sum of

\$70,000/- which was the agreed quantum of damages, and costs against the 1st Defendant Ang Nam Cheow. The Plaintiff's claim against the 2nd Defendant was dismissed with costs. The 1st Defendant now appeals against the said judgment.

No.6
Grounds of
Judgment
21st April
1977
(Contd.)

The facts are as follows:-

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On the 22nd May 1973 at about 10.50 p.m. the Plaintiff was riding his motor cycle along Tangmere Road which is on the left of Upper Changi Road as one approaches Changi Point and about 600 to 800 yards away from Changi Point. On arriving at the junction of Tangmere Road and Upper Changi Road there is a stop sign as a result of which the Plaintiff stopped his motor cycle. He looked right and then left and again looked right and when he looked right a second time, about 120 yards away he saw lights on what appeared to be a vehicle. There is a street light in Tangmere Road just before you come to the stop sign. 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 when he had stopped earlier at the "stop sign" had come very close to him and was travelling at full speed; on seeing this vehicle coming close to him, the Plaintiff who was travelling in second gear at the time swerved left to avoid the collision but was unsuccessful. From his evidence the Plaintiff did not appear to have a good concept of distances, nevertheless under cross-examination he said he crossed from Tangmere Road into Upper Changi Road because the lights of the vehicle which he had seen was some distance away and he could safely go on to the other side of the road.

The Defendant in evidence said that on the day and time in question he was returning to his home at Changi Point after attending a Chinese wedding dinner. He was

travelling 30-40 m.p.h. and was about 1 or 2 feet from the left edge of the road. When he was about 60 feet from Tangmere Road he began to slow down as he knew the area well. When he reached a spot about 20 feet from Tangmere Road, he noticed a motor cycle shooting out at great speed from Tangmere Road. He swerved left and applied his brakes but was too late to avoid the collision. When the Defendant hit the motor cyclist, the latter was on his side of the road - 8 or 9 feet from the left edge of the road. The Defendant's speed at that time was slightly more than 30 m.p.h. He pulled up immediately after the accident and moved to the left edge of the road. He was about to alight and render first aid when he noticed a lot of people coming out and shouting as a result of which he drove away.

10

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The Plaintiff and the Defendant both gave different versions of the accident. 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 - see San Seong Choy and ors. v. Yuson Bien 1962 28 M.L.J. page 427.

30

Let us now test the evidence. The Defendant said when he was driving along Upper Changi Road, the Plaintiff on his motor cycle shot out from Tangmere Road which is an off road or minor road off Upper Changi Road at great speed. If he is to be believed, then the Plaintiff is wholly to blame for the accident; if such is the case, it is indeed strange that the Defendant did not go straight to a Police Station at the first available opportunity and make a report. Again if he is to be believed, the Defendant drove off after the accident because, as he said he heard a commotion and a crowd approaching. The Defendant stays at Changi Point. There is a Police Station at Changi Point; why did he not drive straight to the police station and ask them to render first aid to the victim and at

40

10 the same time lodge his report. Again there was nothing to prevent him from going to the police the first thing the next morning and making his report. He, however, did nothing of the sort; he only informed D.W.1 from whom he borrowed the car that he had met with an accident and that the car had crashed into a tree. The Defendant went to Sepoy Lines Police Station on the 25th May 1973 i.e. three days after the accident, at the request of D.W.1 the owner of the car which the Plaintiff was driving. D.W.1 made this request after his car had been seized by the police from a garage where it was being repaired. But for the fact that the police had seized the car and D.W.1 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. 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.

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30 Even when the Defendant went to the police station on the 25th May to make his report - AB2 - considering the fact that he was not injured and that he made the report 3 days after the accident, he should have been able to give a very good description as to how the accident occurred. 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. To say the least his report throws no light whatever as to how the accident occurred.

40 Again under cross-examination, the Defendant said that he saw about 10 persons coming out from a canteen and shouting. When asked what the shouts 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" but that he did hear a commotion. 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.

Exhibit AB8 which is a photograph of the damaged motor cycle clearly shows that there was no damage to the front portion of the motor cycle and even the front of the petrol tank: only the rear of the petrol tank was damaged which would clearly indicate that it was not a head-on collision. In fact the damage to the motor cycle would tend to indicate that the Plaintiff had swerved left to avoid the accident as he alleged and that he was hit a glancing blow by the Defendant's car. Exhibit AB10 which is a photograph of the car clearly shows that there was only damage to the right mudguard and the right head lamp. The front portion of the car was not damaged at all and this would once again support the Plaintiff's story that he had swerved to avoid the accident and as he swerved, the right side of the Defendant's car hit the rear portion of his motor cycle. Again, if the Defendant as he alleged hit the Plaintiff when the latter was about 8-9 feet from the left edge of the road having shot out of Tangmere Road, his car would have hit the motor cycle broad side, in which event the entire front portion of the car or a better part of it at least would have been damaged, and the motor cycle would have shown more damage. The result of such an impact would be that the motor cycle would have fallen on the left side of the road as one faces Changi Point and it would never have been where it was eventually found - on the spot marked as an "X" on AB3 the sketch plan. Furthermore, the Plaintiff marked with a double "XX" on AB3 the position of his motor cycle on the point of impact - from this point to where the motor cycle was found is a distance of 50-60 feet, and the only conclusion that can be arrived at when considering that the Plaintiff's motor cycle was thrown backward this distance, is that the Defendant must have been travelling at great speed.

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The width of the road from A to B is 31 feet and 4 inches; half of this would be about 15 feet and 7 inches. If as the Defendant says that he was travelling 1-2 feet from the edge of the road and allowing for the fact that his motor car is about 6-7 feet in breadth, he still has about 5 feet on his side of the road to manoeuvre in, such being the case there is no excuse whatever for him to cross 3-4 feet into the Plaintiff's side of the road which would mean that he was about 18-19 feet from the left edge of the road bearing in mind that there was no evidence of any other vehicle or anybody else making use of the road at that time. The Plaintiff's injuries were as follows :-

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- 1) close fracture of the right humerus associated with a right wrist drop;
- 2) compound fracture of right tibia/fibula;
- 3) close fracture shaft of right femur;
- 4) extensive crush and degloving injury of the right foot.

30

It is pertinent to note that all the injuries suffered by the Plaintiff were on the right side of his body. The nature of the injuries, the sketch plan, the photographs and the damage to the vehicles, leave little doubt that the Plaintiff's version of the accident is inconsistent with how the accident occurred. 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. In my judgment he was solely to blame for the accident and I awarded the Plaintiff the damages agreed upon and costs.

40

D. C. D'Cotta

J U D G E

D. C. D'Cotta

21st April, 1977.

Certified true copy

Sgd. illegible
Private Secretary to Judge
Court No. 5
Supreme Court, Singapore.

In the Court
of Appeal of
Singapore

No. 7

IN THE COURT OF APPEAL IN SINGAPORE

No. 7
Notice of
Appeal
24th March
1977

CIVIL APPEAL NO. 11 of 1977

BETWEEN

ANG NAM CHEOW Appellant

- and -

MUTHUSAMY s/o THARMALINGAM Respondent

In the Matter of Suit No. 1342 of 1975

BETWEEN

MUTHUSAMY s/o THARMALINGAM Plaintiff 10

- and -

1. ANG NAM CHEOW
2. LEE HUNG CHENG & CO., (Pte)
Ltd., Defendants

NOTICE OF APPEAL

TAKE NOTICE that Ang Nam Cheow, the above
named Appellant being dissatisfied with the
decision of the Honourable Mr. Justice D.C.
D'Cotta given at Singapore on the 16th day of
March, 1977, appeals to the Court of Appeal
against the whole of the said decision. 20

Dated the 24th day of March, 1977.

Sgd:

SOLICITORS FOR THE APPELLANT

TO: The Registrar
Supreme Court
Singapore

and to the above-named Respondent and
his solicitors, Messrs. Ironside &
DeSouza, 18th floor, (Nos. 1801-1804),
Straits Trading Building,
9 Battery Road,
Singapore 1. 30

The address for service of the Appellant is at
the office of Messrs. Hilborne & Co.,
Advocates & Solicitors, No. 701, Colombo
Court, Singapore 6.

No. 8

In the Court
of Appeal
of Singapore

IN THE COURT OF APPEAL IN SINGAPORE

BETWEEN

ANG NAM CHEOW Appellant

- and -

MUTHUSAMY S/O THARMALINGAM Respondent

In the Matter of Suit No. 1342 of 1975

BETWEEN

Muthusamy s/o Tharmalingam Plaintiff

- and -

1. Ang Nam Cheow
2. Lee Hung Cheng & Co.
(Pte) Ltd. Defendants

PETITION OF APPEAL

TO the Honourable the Judges of the Court of Appeal.

The Petition of the above-named Appellant showeth as follows :-

1. The appeal arises from a claim made by the Respondent against the Appellant for damages for personal injuries and consequential loss suffered by the Respondent and caused by the negligence of Appellant arising out of a collision between motor-car No. E. 2002E driven by the Appellant and motor cycle No. AN. 3892L ridden by the Respondent along Upper Changi Road on the 22nd May 1973.

2. By Judgment dated 16th March 1977 judgment was given for the Respondent in the agreed sum of \$70,000.00 and costs.

3. Your Petitioner is dissatisfied with that

No.8
Petition
of Appeal
24th
May 1977
(Cont'd)

part of the said Judgment which decided that the Appellant was negligent and liable for the accident on the following grounds:-

- (a) that the learned trial 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; 10
- (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 motorcycle 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 20
- (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. 30

4. Your Petitioner prays that such Judgment may be reversed.

Dated the 24th day of May, 1977

Sgd. Hilborne & Co.
Solicitors for the Appellant

To the above-named Respondent and to his
Solicitors -
Messrs. Ironside & de Souza, Singapore

In the Court
of Appeal of
Singapore

No.8

Petition of
Appeal
24th May
1977
(Cont'd)

In the Court
of Appeal of
Singapore

No. 9
Formal
Order
5th August
1977

Corum: The Honourable The Chief Justice;
The Honourable Mr. Justice F.A. Chua;
and
The Honourable Mr. Justice T. Kulasekarum

O R D E R

IN OPEN COURT

THIS 5TH DAY OF AUGUST, 1977.

This Appeal coming on for hearing on the
28th day of June 1977 in the presence of Counsel
for the Appellant and for the Respondent

10

AND UPON

reading the Record of Appeal

AND UPON

hearing Counsel for the Appellant and for
the Respondent

IT WAS ORDERED

that the Appeal do stand adjourned for Judgment

AND

the same coming on for Judgment this day,

IT IS ORDERED that this appeal be allowed
and that the Judgment of the Honourable Mr.
Justice D. C. D'Cotta dated the 16th day of March
1977 in favour of the Respondent be set aside.

20

AND IT IS FURTHER ORDERED

that the costs of this Appeal including the
costs below be taxed and paid by the Respondent
to the Appellant's Solicitors, Messrs. Hilborne
& Company

AND IT IS LASTLY ORDERED

that the sum of \$500.00 paid into Court by the Appellant as security for costs of this Appeal be paid out by the Accountant-General to the Appellant's Solicitors.

GIVEN under my hand and Seal of the Court this 15th day of August, 1977.

Sgd:

Assistant Registrar.

In the Court
of Appeal of
Singapore

No. 9
Formal Order
5th August
1977
(Cont'd)

10

Coram: Wee Chong Jin, C.J.
P. A. Chua, J.
T. Kulasekaram

In the Court
of Appeal of
Singapore

No. 10
Judgment
5th August
1977

J U D G M E N T

20

This appeal arises from a claim made by the Respondent against the Appellant for damages for personal injuries and consequential loss suffered by the Respondent and caused by the negligence of the Appellant arising out of a collision between motor car No. E 2002E driven by the Appellant and motor cycle No. AN 3892L ridden by the Respondent along Upper Changi Road on the 22nd May, 1973.

The trial Judge held that the Appellant was solely to blame for the accident and gave judgment for the Respondent in the agreed sum of \$70,000 damages and costs.

The Appellant now appeals against the said judgment.

30

The evidence of the Respondent was shortly this. On the 22nd May, 1973, at about 10.50 p.m. the Respondent was riding his motor cycle along Tangmere Road which is on the left of Upper Changi Road as one approaches Changi Point and about 600 to 800 yards away from Changi Point. On arriving at the junction

In the Court
of Appeal of
Singapore

No. 10
Judgment
5th August
1977
(Cont'd)

of Tangmere Road and Upper Changi Road he stopped his motor cycle at the stop sign there. He looked right and then left and again looked right and when he looked right a second time he saw lights of a vehicle about 120 yards away. 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."

10

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."

20

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 trial Judge, however, made a finding that the collision took place when the Respondent had crossed three or four feet beyond the centre broken white line and the Respondent had just straightened his motor cycle.

30

The version of the accident given by the Appellant was shortly this. That night he was returning to his home at Changi Point after attending a Chinese wedding dinner. He was travelling at 30-40 mph and was about one or two feet from the left edge of the road. When he was about sixty feet from Tangmere Road he began to slow down as he knew the area well. When he reached a spot twenty feet from Tangmere Road, he noticed a motor cycle shooting

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10 out at great speed from Tangmere Road. He swerved left and applied his brakes but was too late to avoid the collision. When he hit the motor cyclist the latter was on his side of the road - eight or nine feet from the left edge of the road - and his speed at that time was slightly more than 30 mph. He pulled up immediately after the accident and moved to the left edge of the road. He was about to alight and render aid when he noticed a lot of people coming out and shouting as a result of which he drove away.

20 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. He concluded: "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."

30 After examining the evidence given by the Appellant, as regards the Police Report made by the Appellant and his explanation as to why he did not render assistance, the trial Judge said in his Grounds of Decision:

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

40 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. The trial Judge should not have rejected the whole of the evidence of the Appellant. He should have examined it in the context of the rest of the evidence to decide the parts

that ought properly to be accepted and the parts that ought properly to be rejected.

The real issue in this case is, where did the accident occur? The Appellant said it occurred on his side of the road near the broken centre white line when the motor cycle shoot (sic) across the road. At first the Respondent said it occurred when he was three to four feet on the main road after passing the stop sign, that is on the Appellant's side of the road, but he later changed his story and said it occurred after he had crossed the broken centre white line implying that the Appellant went to the wrong side of the road and collided into him.

10

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 centre white line and had straightened his motor cycle and that it was a head on collision.

20

The damage to the Appellant's motor car and to the Respondent's motor cycle was on the offside of the vehicles. The Respondent suffered injuries to his right leg. After the accident the Respondent's motor cycle landed on the opposite side of the road. The Respondent, when he was at the stop sign, saw the lights of the appellant's car fifty-nine feet away. All these undisputed facts support and are consistent with the version of the accident given by the Appellant and not the version given by the Respondent and it is clear that it could not have been a head on collision. In fact the Respondent's first version supports the Appellant's version.

30

We have no doubt that the accident occurred in the way described by the Appellant, that the Respondent shot out of Tangmere Road. The Respondent, on seeing the Appellant's motor car about 60 feet away, should have waited at the stop sign and let the Appellant's motor car pass before crossing the road. We are of the view that this accident was caused solely by the negligence of the Respondent.

40

Accordingly, the appeal is allowed with costs here and below.

In the Court
of Appeal of
Singapore

Sgd: Wee Chong Jin
CHIEF JUSTICE,
SINGAPORE.

No. 10
Judgment
5th August
1977
(Cont'd)

Sgd: F. A. CHUA
JUDGE.

Sgd: T. Kulasekaram
JUDGE

10 DATED This 5th day of August, 1977.

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

Certified True Copy

Sgd:

Private Secretary to Judge
Court No.
Supreme Court, Singapore.

O R D E R

20 CORAM: THE HONOURABLE THE CHIEF JUSTICE,
MR. WEE CHONG JIN:
THE HONOURABLE MR. JUSTICE F.A. CHUA: and
THE HONOURABLE MR. JUSTICE A.P. RAJAH.

IN OPEN COURT

THIS 14TH DAY OF NOVEMBER, 1977

Upon motion preferred unto the Court by

In the Court
of Appeal of
Singapore

No. 11
Order of
Court granting
leave to
appeal to the
Judicial
Committee of
the Privy
Council
14th November
1977.

In the Court
of Appeal of
Singapore

No. 11
Order of
Court
granting
leave to
appeal to
the Judicial
Committee of
the Privy
Council

14th November
1977.

(Cont'd)

Counsel for the above-named Respondent coming on
for hearing this day in the presence of Counsel
for the above-named Appellant

AND UPON

Reading the Notice of Motion herein dated the
29th day of October, 1977 and the Affidavit of
Muthusamy s/o Tharmalingam filed herein on the
29th day of October, 1977 and the exhibits
therein referred to

THIS COURT DOTH GRANT LEAVE

10

under Sections 3 (1) (a) (i), (ii) and (iii) of
the Judicial Committee Act (Cap. 8) to appeal
to the Judicial Committee of Her Britannic
Majesty's Privy Council against the whole of
the Judgment of the Court of Appeal delivered
herein at Singapore on the 5th day of August,
1977.

DATED the 9th day of December, 1977.

Sgd:

REGISTRAR.

20

I.P. No.73/13831/0

Key to Plan

| <u>Sr. Letter</u> | <u>Alleged Occurrence</u> | <u>Authority Remarks</u> |
|-------------------|---|--------------------------|
| A & B | ... Left and right edges of Upper Changi Road as one faces towards City. | Sgt. 372 |
| | C ... Broken white line. | |
| | D ... Bus shelter. | |
| | E ... Bus stage. | |
| 10 F & G | ... Left and right edges of Tangmere Road. | |
| L & H | ... Single white lines. | |
| J & K | ... Left and right edges of Tangmere Road. | |
| M & M1 | ... Opening edges of the bus bay. | |
| N & N1 | ... Opening edges of the bus bay. | |
| | O ... Broken glasses. | |
| | P ... Island (89'5" x 88'10" x 87'2") | |
| 20 R & Q | ... Left and right edges of the entrance leading to Changi Recreation Centre. | |
| | S ... Position of the motor cycle AN3892. | |
| T & U | ... Front and rear edges of the motor cycle AN3892. | |
| | V ... The edge of the bus shelter. | |

Measurements.

| | | | | |
|------|----|----|------|---------|
| A | to | C | .... | 18'2" |
| C | to | B | .... | 13'2" |
| A1 | to | B1 | .... | 30'10" |
| F | to | G | .... | 22'6" |
| F | to | H | .... | 11'1" |
| 30 J | to | K | .... | 38'3" |
| L | to | K | .... | 20'8" |
| M | to | N | .... | 167'10" |
| M | to | M1 | .... | 61'8" |
| N | to | N1 | .... | 61'1" |
| Q | to | R | .... | 21'0" |
| U | to | B | .... | 27'11" |
| T | to | B | .... | 30'4" |
| U | to | V | .... | 53'7" |

40 Sgd. illegible
Officer-in-Charge,
Traffic Accidents
Investigation Section,
Sepoy Lines Police Station,
Singapore 2.

Sgd. John Loh
Inv. Sgt. 372

Exhibits

"AB.5"

Letter
2nd February
1977

EXHIBIT "AB. 5"

LETTER

GOVERNMENT OF SINGAPORE

Your Ref: RP/my/962/73 Officer-in-Charge,
Our Ref: TAS/L/G/06787/77/2 Traffic Accidents
Date: 2nd Feb 77 Investigation Section,
 Sepoy Lines Police
 Station, Singapore 2.

M/s Ironside & de Souza
Advocates & Solicitors
Straits Trading Building
18th floor (M.B.1801-4)
Battery Road, Singapore 1

10

Dear Sirs

ACCIDENT INVOLVING E 2002E & SAN 3892 ON 22 MAY 73

Reference your letter dated 12 Jan 77, the
damage report is as follows:-

SAN 3892 - "Front offside crash bar dented;
Cylinder oil tank broken;
Offside petrol tank dented;
Offside footrest bent".

E 2002E - "Not examined".

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2 There is no report lodged by your client,
only a statement was recorded from him which is
not for sale.

3. Please note that as you have a credit
balance of \$5/- in your favour vide my letter
dated 18.1.77 and your PS/2686/76/KL, this
amount is now being utilised for payment of the
above damage report.

Yours faithfully,

Sgd.

30

K C VOON
for OC ACCIDENTS INVESTIGATION SECTION

/ook

Stamped and dated 3rd
February 1977.

EXHIBIT "AB. 6"

LETTER

GOVERNMENT OF SINGAPORE

Letter

27th
September
1974

Your Ref:

Our Ref: C 0571902

CONFIDENTIAL

Dept of Orthopaedic Surgery
Unit 'C'
ORGH
Singapore 3

27 Sep 74

10

The Medical Superintendent
ORGH
Singapore 3

MEDICAL REPORT ON MUTHUSAMY
C 153458

The above patient was admitted on 23.5.73 to Ward 56 after being involved in a road traffic accident.

He sustained severe multiple injuries:

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- 1) Close fracture of the right humerus associated with a right wrist drop
- 2) Compound fracture right tibia/fibula
- 3) Close fracture shaft of right femur
- 4) Extensive crush and degloving injury of the right foot.

The fracture humerus and femur were treated conservatively and an attempt made to save the right leg. The fracture tibia was internally fixed with a Mullos Plate and a toilet and suture done for the multiple lacerations in the right leg and foot.

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However the right foot became gangrenous and a below knee amputation had to be done for the right leg on 29.5.73. The amputated stump became infected later despite the use of antibiotic.

An above knee amputation was subsequently performed on the right side on 1.6.73. The wound over the stump healed and he was discharged from the ward on 14.6.73.

He was followed up at the outpatient clinic. The fracture humerus was noted to be united on 19.7.73

Exhibits

"AB.6"

Letter
27th
September
1974

(Contd.)

and the radial nerve palsy showed signs of improvement on 18.10.73.

An artificial limb has been ordered for him and it is not ready yet.

Certified Official

Sgd:

DR TEH PENG
HOOI

Sgd:

Medical Superintendent,
Outram Road,
Singapore 3.

5 Oct 1974

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Exhibits

"AB.7"

Letter
11th June
1973

EXHIBIT "AB. 7"

LETTER

DEPARTMENT OF CHEMISTRY

TCY/tkn

Department of Chemistry
Outram Road,
Singapore 3.

Lab. No.(s) 9507/73

11th June 1973

REPORT UNDER SECTION 424 OF THE CRIMINAL
PROCEDURE CODE, 1955.

I, THENG CHYE YAM Chemist, Singapore DO HEREBY CERTIFY that at 2.30p.m. on the 25th day of May 1973, at the request of Insp. Gurdip Singh, I went to Sepoy Lines Police Station. I was shown one motor car Maroon in colour, bearing registration plate No. "E2002E" and one dark brown motor cycle No. "AN3892L". I also received from Insp. Gurdip Singh one envelope unsealed marked "OS1" containing some scrapings for comparison with the paint on the car No. "E2002E".

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I examined the motor car No. E2002E and found the offside front mud-guard missing. I found the badly damaged mudguard inside the car. I took paint scrapings from the mudguard

for subsequent analysis in the laboratory.

I examined the motor cycle No. "AN3892L" and found the petrol tank on the right hand side to be badly dented. I found some stains on the exhaust pipe on the right hand side of the motor cycle. I took scrapings of the stains for subsequent analysis in the laboratory.

"AB.7"
Letter
11th June
1973
(Contd.)

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On examination I found the scrapings in the envelope "OS1" and the scrapings from the exhaust pipe of the motor cycle "AN3892L" to be maroon in colour similar to that of the scrapings from the mudguard.

I compared spectrographically the scrapings in the envelope "OS1" and the scrapings from the exhaust pipe of the motor cycle with the scrapings from the mudguard and found them all to have the same elemental composition.

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After examination the exhibits were sealed "Chief Chemist, Singapore" and handed together with this Report to Insp. Gurdip Singh at 3.00 p.m. on 13/6/73.

The Commissioner of Police
Singapore.

Sgd:

Chemist, Singapore.

IN 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

RECORD OF PROCEEDINGS

MESSRS. JAMES & CHARLES DODD
13 OLD SQUARE,
LINCOLNS INN,
LONDON WC2A 3UA.

Solicitors for the Appellant

MESSRS. CHARLES RUSSELL & CO.,
HALE COURT,
LINCOLNS INN,
WC2A 3UL.

Solicitors for the Respondent