

35/84

No. 22 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE STATE OF BRUNEI

B E T W E E N :

TIONG ING CHIONG

Appellant
(Defendant)

- and -

GIOVANNI VINETTI

Respondent
(Plaintiff)

A N D B E T W E E N :

GIOVANNI VINETTI

Appellant
(Plaintiff)

- and -

TIONG ING CHIONG

Respondent
(Defendant)

(CROSS-APPEAL)

RECORD OF PROCEEDINGS

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Solicitors for the Appellant
and Respondent in Cross-Appeal

Solicitors for the Respondent
and Appellant in Cross-Appeal

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE STATE OF BRUNEI

B E T W E E N :

TIONG ING CHIONG Appellant
(Defendant)

- and -

GIOVANNI VINETTI Respondent
(Plaintiff)

AND B E T W E E N :

GIOVANNI VINETTI Appellant
(Plaintiff)

- and -

TIONG ING CHIONG Respondent
(Defendant)

(CROSS-APPEAL)

RECORD OF PROCEEDINGS

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THE STATE OF BRUNEI

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE STATE OF
BRUNEI

B E T W E E N :

TIONG ING CHIONG Appellant
(Defendant)

- and -

10 GIOVANNI VINETTI Respondent
(Plaintiff)

AND B E T W E E N :

GIOVANNI VINETTI Appellant
(Plaintiff)

- and -

TIONG ING CHIONG Respondent
(Defendant)

(CROSS-APPEAL)

RECORD OF PROCEEDINGS

20

No. 1

In the
High Court

AMENDED WRIT OF SUMMONS

Amended pursuant to O.20 Rule 1, RSC 1979 and
Preliminary Rule 2, Brunei High Court (Civil
Procedure) Rules 1970.

No.1
Amended
Writ of
Summons
28th August
1980

WRIT OF SUMMONS
Order 2, Rule 3)

IN THE HIGH COURT OF THE STATE OF BRUNEI
AT BANDAR SERI BEGAWAN

Suit 1980 No.123

In the
High Court

BETWEEN

GIOVANNI VINETTI

Plaintiff

No.1
Amended
Writ of
Summons
28th August
1980

AND

TIONG ING CHIONG

Defendant

(continued)

BY THE GRACE OF GOD, WE SIR MUDA HASSANAL BOLKIAH MU'IZZADDIN WADDAULAH IBNI DULI YANG TERAMAT MULIA PADUKA SERI BEGAWAN SULTAN SIR MUDA 'OMAR' ALI SAIFUDDIN, SOVEREIGN AND CHIEF OF THE MOST ESTEEMED FAMILY ORDER, SOVEREIGN AND CHIEF OF THE MOST EMINENT ORDER OF ISLAM OF BRUNEI, SOVEREIGN AND CHIEF OF THE MOST ILLUSTRIOUS ORDER OF LAILA JASA KEBERANIAN GEMILANG, SOVEREIGN AND CHIEF OF THE MOST EXALTED ORDER OF KEBERANIAN LAILA TERBILAND, SOVEREIGN AND CHIEF OF THE MOST GALLANT ORDER OF PAHLAWAN NEGARA BRUNEI, SOVEREIGN AND CHIEF OF THE MOST BLESSED ORDER OF SETIA NEGARA BRUNEI, SOVEREIGN AND CHIEF OF THE MOST DISTINGUISHED ORDER OF PADUKA SERI LAILA JASA, SOVEREIGN AND CHIEF OF THE MOST HONOURABLE ORDER OF THE CROWN OF BRUNEI, SOVEREIGN AND CHIEF OF THE MOST FAITHFUL ORDER OF PERWIRA AGONG NEGARA BRUNEI, HONORARY KNIGHT GRAND CROSS OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE, MOST ESTEEMED FAMILY ORDER (FIRST CLASS) KELANTAN, MOST ESTEEMED FAMILY ORDER (FIRST CLASS) JOHORE, Sultan of the State and Territory of Brunei and all its Dependencies.

10

20

To: The abovenamed Defendant
TIONG ING CHIONG of
Lot No. 2049, Jalan Sungai
Kuala Belait
Brunei

30

WE COMMAND you, that within 14 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 our Supreme Court of Brunei, in a cause at the suit of

AND TAKE NOTICE, that in default of your so doing the plaintiff(s) may proceed therein to judgment and execution.

40

Witness the Honourable SIR DENYS ROBERTS
Chief Justice of the State of Brunei, the 28th
day of August 1980

Sd: Choo Chan & Wong
Plaintiffs Advocates

Sd: Illegible
Chief/Deputy Registrar,
High Court, Brunei

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

In the High Court

No.1 Amended Writ of Summons 28th August 1980

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

(continued)

10 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 \$5.50 with an addressed envelope to the Chief Registrar of the Supreme Court.

20 The plaintiffs claim is for damages for injuries and pain and suffering and loss of earnings to the Plaintiff caused by the negligent driving of the Defendant on or about the 6th day of October 1977 at Jalan Bunga Raya, Kuala Belait in the State of Brunei.

Dated this 27th day of August, 1980.

Sd: Choo Chan & Wong
Advocates for the Plaintiff

This Writ was issued by Choo Chan & Wong of Room 34, Britannia House, Jalan Sungai Kianggeh, Bandar Seri Begawan, Brunei advocates to the said plaintiff who resides at via L. Aristo 10, 36100 Vincenga, Italy.

30 Indorsement to be made on the Writ after service thereof.

This Writ was served by.....
on.....
(the defendant or one of the defendants)
on.....the.....day of.....19...

SIGNED:

Indorsed the.....day of.....19....

SIGNED:

ADDRESS:

.....

In the
High Court

No.1
Amended
Writ of
Summons
28th August
1980

(continued)

This Writ was served by.....
on.....
(the defendant or one of the defendants)
.....day of.....19... on.....
the.....

SIGNED:

Indorsed the.....day of.....19...

SIGNED:

ADDRESS:

..... 10

No.2
Statement
of Claim
28th August
1980

No. 2

STATEMENT OF CLAIM

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL SUIT NO. 123 OF 1980

BETWEEN

GIOVANNI VINETTI Plaintiff

AND

TIONG ING CHIONG Defendant

STATEMENT OF CLAIM

20

1. The Plaintiff was born on the 20th day of
June, 1954.

2. At all material times, the Plaintiff was
the owner of a motor-cycle bearing registration
number KA 8346 and the Defendant, a motor car
bearing registration number KA 1963.

3. At about 2210 hours on the 6th day of
October, 1977 the Plaintiff was riding his motor-
cycle with a pillion rider along Jalan Bunga Raya,
Kuala Belait in the direction of Kuala Belait
Town when the Defendant so negligently drove,
controlled or managed KA 1963 in the opposite
direction that he caused the same to collide
with the Plaintiff.

30

PARTICULARS OF NEGLIGENCE

In the
High Court

No.2
Statement
of Claim
28th August
1980

(continued)

- a) Driving too fast in the circumstances;
- b) Failing to keep any or any proper look out or to have any or any sufficient regard for other traffic on the said road, especially on-coming traffic;
- c) Driving or attempting to drive his car across the path of the Plaintiff;
- 10 d) Turning or attempting to turn from the said road across the path of the Plaintiff when it was unsafe and dangerous so to do;
- e) Failing to stop or to wait on his lane of the said road until the Plaintiff passed him in safety before turning or attempting to turn to his right;
- f) Failing to see the Plaintiff in sufficient time to avoid crossing or attempting to cross his path or at all;
- 20 g) Failing to give any or any sufficient or timely warning or signal of his intention to turn right across the path of the Plaintiff;
- h) Failing to stop, slow down, swerve or in any other way so to manage or control his said motor car as to avoid the said collision;
- i) Failing to give any or any adequate warning of his approach;
- j) Failing to give way to the Plaintiff who had the right of way before turning or attempting to turn to the right;
- 30 k) The Plaintiff will rely on the fact that the said collision took place on the Plaintiff's side of the road.

4. As a result of the collision the Plaintiff has suffered pain and injuries and sustained loss and damage. The pillion rider, one Christina Thong May Fund (f), died as a result of the collision.

PARTICULARS OF INJURIES

The Plaintiff suffered the following injuries :-

- 40 a) Compound fracture of the right femur;

In the
High Court

No.2
Statement
of Claim
28th August
1980

(continued)

b) Compound fracture of right tibial plateau with disruption of the patella tendon; and

c) Fracture of the left lateral malleolus.

The physical examination shows high level knee-joint looseness at lateral and antero-posterior passive mobilisation limited flex or extensor knee function (from 80° flexion to 170° extension), tibio-tarsal joint function reduced by one third.

Permanent disability is estimated at about thirty-five per cent. 10

PARTICULARS OF SPECIAL DAMAGE

(I) DAMAGE TO PROPERTY AND DISBURSEMENTS

a)	Loss of one Rolex diving watch	\$1,000.00
b)	Loss of clothings & shoes	\$ 200.00
c)	Loss of motor-cycle Suzuki P250	\$3,000.00
d)	Panaga Hospital charges	\$9,492.00
e)	Medical report	\$ 50.00

Total: \$13,742.00

(II) LOSS OF EARNINGS

20

At the time of accident the Plaintiff was working with Sub Sea Oil Services S.P.A. (hereinafter referred to as "the Company") as a 3rd class deep-sea diver earning B\$8,100.00 per month. Were it not for the said accident, the Plaintiff would have been promoted to a 2nd class deep-sea diver on or about 1.1.1978 earning B\$9,600.00 per month. From 6.10.1977 to 6.1.1979 Plaintiff was paid B\$870.00 per month. From 7.1.1979 he was paid B\$4,300.00 per month, until his services were terminated by the Company on 10.1.1980. The Plaintiff could no longer carry on working as a deep-sea diver because of the injuries he received. From then on, he has been and still is self-employed. He is now a solar energy collector earning about B\$1,800.00 per month. The total loss of earnings from the date of accident up to the date of this Writ (and continuing) is therefore as follows:-

30

a)	\$7,230.00 per month from 6.10.1977 to 31.12.1977 (approx. 3 months) (the difference between \$8,100.00 and \$870.00)	\$21,690.00
----	---	-------------

40

	b)	\$8,730.00 per month from 1.1.1978 to 7.1.1979 (approx. 12 months) (the difference between \$9,600.00 and \$870.00)	\$104,760.00	In the <u>High Court</u>
	c)	\$5,300.00 per month from 7.1.1980 to 10.1.1980 (approx. 12 months) (the difference between \$9,600.00 and \$4,300.00)	\$ 63,600.00	No.2 Statement of Claim 28th August 1980
10	d)	\$7,800.00 per month from 11.1.1980 to the date of this Writ (approx. 7 months) and continuing, (the difference between \$9,600.00 and \$1,800.00)	\$ 54,600.00	(continued)
			Total: \$244,650.00 =====	

20 The Plaintiff will at the trial also claim
damages for pain and suffering, loss of amenities
and loss of future earnings.

And the Plaintiff claims :-

- (1) Damages;
- (2) Interest thereon for such period and at
such rate as the Court may think fit; and
- (3) Costs.

Dated this 27th day of August, 1980

Sgd.

.....

30 CHOO CHAN & WONG
Advocates for the Plaintiff

This Statement of Claim is filed by Messrs. Choo
Chan & Wong, Advocates for the Plaintiff who address
for service is Room 34, Britannia House, Jalan
Sungai Kianggeh, Bandar Seri Begawan, Brunei.

In the
High Court

No. 3

DEFENCE AND COUNTER-
CLAIM

No.3
Defence and
Counterclaim
25th
September
1980

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL SUIT NO. 123 OF 1980

BETWEEN

GIOVANNI VINETTI

Plaintiff

AND

TIONG ING CHIONG

Defendant

10

DEFENCE AND COUNTERCLAIM

D E F E N C E

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

2. Paragraph 2 of the Statement of Claim is admitted.

3. The Defendant denies that the said collision was caused by his negligent driving, control or management of KA 1963. Save that on the 6th day of October at about 2210 hours the Plaintiff was riding motor-cycle No. KA 8346 along Jalan Bunga Raya in the direction of Kuala Belait Town and the Defendant was driving car No. KA 1963 in the opposite direction when there was a collision between the two vehicles, paragraph 3 of the Statement of Claim is denied and the Defendant puts the Plaintiff to strict proof of the particulars of negligence of the Defendant alleged therein.

20

30

4. The Defendant says that the collision was caused solely or alternatively contributed to by the negligence of the Plaintiff.

PARTICULARS OF NEGLIGENCE OF THE PLAINTIFF

- a. Failing to keep any or any proper look out or to have sufficient regard for other road users;
- b. Riding too fast in the circumstances;

- c. Failing to stop, slow down, swerve or in any way control or manage his motor cycle so as to avoid the said collision;
- d. Failing to give sufficient warning of his approach;
- e. Driving without any or any sufficient lights.

In the
High Court

No.3
Defence and
Counterclaim
25th
September
1980

10 5. In the premises the Defendant does not admit the injuries, loss or damage suffered by the Plaintiff and puts the Plaintiff to strict proof thereof.

(continued)

6. Save as hereinbefore admitted the Defendant denies each and every paragraph of the Statement of Claim as if the same were set and seriatim and specifically traversed.

COUNTERCLAIM

7. The Defendant repeats paragraphs 2 to 4 of the Defence.

20 8. By reason of the aforesaid collision the Defendant has suffered loss and has been put to expenses.

PARTICULARS OF SPECIAL DAMAGE

Cost of repairs to motor car
KA 1963:-

Invoice No.0917 dated 3.4.79 for spare parts and labour charges	\$2,130.00
---	------------

Invoice No.4488 dated 3.4.79 for tyres	\$ 149.60
---	-----------

30 Invoice No.0679 for spare parts	<u>\$2,428.40</u>
---------------------------------------	-------------------

Total:	\$4,708.00 =====
--------	---------------------

And the Defendant counterclaims \$4,708.00 by way of damages and costs.

Dated this 25th day of September, 1980.

Sgd.

.....
TAN JIN HWEE & CO.
Advocates for the Defendant

In the
High Court

No.3
Defence and
Counterclaim
25th
September
1980

(continued)

This Defence is filed on behalf of the Defendant by M/s. Tan Jin Hwee & Co., Advocates for the Defendant whose address for service is Suite 26 (3rd Floor), Hongkong Bank Chambers, Bandar Seri Begawan, Brunei.

TO: (1) The Honourable The Registrar,
High Court,
Bandar Seri Begawan,
Brunei.

(2) The Plaintiff through his Advocates,
M/s. Choo Chan & Wong,
Room 34, Britannia House,
Jalan Sungai Kianggeh,
Bandar Seri Begawan,
Brunei.

10

No.4
Defence to
Counterclaim
13th October
1980

No. 4

DEFENCE TO COUNTERCLAIM

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL SUIT NO. 123 OF 1980

20

BETWEEN

GIOVANNI VINETTI

Plaintiff

AND

TIONG ING CHIONG

Defendant

DEFENCE TO COUNTERCLAIM

1. The Plaintiff repeats his Statement of Claim herein.

2. The Plaintiff denies that he was guilty of the alleged or any negligence as alleged in the Defence and Counterclaim herein or at all.

30

3. The Plaintiff denies that the Defendant has suffered any loss or damage.

Dated this 13th day of October 1980.

Sgd.

.....

CHOO CHAN & WONG
Advocates for the Plaintiff

In the
High Court

No.4
Defence to
Counterclaim
13th October
1980

(continued)

This Defence to Counterclaim is filed on behalf of the Plaintiff by Messrs. Choo Chan & Wong, Advocates for the Plaintiff whose address for service is Room 34 Britannia House, Jalan Sungai Kianggeh, Bandar Seri Begawan, Brunei.

10

TO: (1) The Honourable The Registrar,
High Court
Bandar Seri Begawan

(2) The Defendant through his Advocates
Messrs. Tan Jin Hwee & Company
Room 32 -33 (4th Floor)
Hongkong Bank Chambers
Bandar Seri Begawan

No. 5

PROCEEDINGS

No.5
Proceedings
7th December
1981

20

IN THE HIGH COURT OF THE STATE OF BRUNEI
AT BANDAR SERI BEGAWAN
SUIT NO. 123 OF 1980

BETWEEN

GIOVANNI VINETTI

Plaintiff

AND

TIONG ING CHIONG

Defendant

Coram: Penlington J.

7th December, 1981

NOTES OF EVIDENCE

30

Chan: Move to receive evidence taken of Dr. Hamshere under Order 55.

Order accordingly.

Seek order that the Commissioner of Police release the investigation file relating to the accident in question.

Order accordingly.

In the
High Court

Seek to call witness from Singapore first
(medical).

No.5
Proceedings
7th December
1981

(continued)

Defendant's
Evidence
No.6
Cheng Wei
Nien
Examination
7th December
1981

No. 6

CHENG WEI NIEN

D1 Cheng Wei Nien

Affirms in English.

Doctor in Singapore. Qualified in Otago
(NZ 1961), FRCS (Eng 1969), FRCS (Ed),
Master of Surgery (Liverpool). Lecturer
at Singapore University. 1972 - Consultant
Orthopaedic Surgeon in Singapore.

10

Would deal with about 2,000 cases a year.

On 1/12/1981 I examined the Plaintiff.

Prepared a report (1/12/1981).

Produced. (D1)

1 cm shortening of leg is of no real
consequence.

Can do shallow diving only.

No head injuries.

Cross-
Examination

Cross-examination

20

There will be some stiffness of ligaments
round the hip joint. Would not give rise
to much disability. Would not give rise
to osteoarthritis. Do not think diving
would require hyper-extension of the knees.
Shortening of the knee by 3 cm is significant.

If he develops osteoarthritis of the knee
before 45 I would recommend fusion of
the knee. If the pain is so severe after
45 some surgeons would put in a plastic/
steel joint. Then there would be no
shortening and good mobility. Life of the
artificial joint is limited. It should be
done when young. Could dive for pleasure
in shallow water.

30

Chan:

The plaintiff's case is that the defendant drove across his path. He had the right of way and the accident happened on his side of the road.
Last job as a diver.
Ownership of the motorcycle is not disputed.

Noel Dibattista sworn as an interpreter.

In the
High Court

Defendant's
Evidence
No.6
Cheng Wei
Nien
Cross-
Examination
7th December
1981

(continued)

No. 7

10

GIOVANNI VINETTI

P.1 Giovanni Vinetti

Sworn in Italian.
Plaintiff in this matter.
Live at Vicenza in Italy.
I am 27. Born on 20/6/1954.
At 9 pm on 6/10/1977 I was at KB at a friend's house - Philiberto Pesce. With us were 2 girls. Christina and Frieda. Left his house at about 10.00 p.m. I left with Christina on my motorcycle, KA 8346. I drove the motorcycle, Christina was behind. The house is in front of a football pitch at KB in Jalan Sungai Pandan.

20

Going home to house in Jalan Bunga Raya. Went down Jalan Panglima and down Jalan Bunga Raya. Accident in front of the hospital. (Marks route in red on map.) Near the entrance of the hospital I saw a car coming towards me and it turned in front of me. It suddenly turned in front of me. Cannot say how far away the car was when it turned.
Can't remember if I hit the car or it hit me. There was an accident but I lost consciousness for quite some time.

30

I was riding on the left side of the road. The only thing I can remember is when I woke up in hospital.

The motor cycle was road worthy.
Had the head-light on dipped beam.
The motorcycle is 250 cc Suzuki.

40

Plaintiff's
Evidence
No.7
Giovanni
Vinetti
Examination
7th December
1981

In the
High Court

Plaintiff's
Evidence
No.7
Giovanni
Vinetti
Examination
7th December
1981

I was travelling at a normal speed - about 25/30 mph. At the time of the accident I was a diver working for Sub Sea Co.Ltd. in Kuala Belait. I had been working for them for 20 months. Before that I was studying for engineering diploma. Started in January 1976 with Sub Sea. Started as a 4th category diver, for the first few days. Then became a 3rd class diver.

In Italy I got about \$3,500 per month. 10
As a 3rd class diver I was earning \$8,000 (Brunei). UP to August I could not work at all. I was only paid some money by the Italian Government. A bit less than \$1,000 a month. After August 1978 I went to the doctor to see if I could re-commence as a diver. I was given a license to work in shallow water. Did so for 20 days in Lybia. Got \$4,000 a month. I came back to Brunei in January 1979. I worked for Sub Sea again. I was paid \$4,000 to \$4,500 per month. I was a shallow sea-diver, a diving assistant. 20

Sub Sea paid locally and paid 2 other payments in Italy.

There is the basic pay which is taxable, paid in Italy. Qualifies for hospital treatment, etc. Deep-sea bonus - paid in Italy.

Went back to Italy for 20 days in June for medical treatment. Came back to Brunei for another month. Then went back to Italy for good. That was in July or August 1979. 30

When I went back to Italy I asked for work with Sub Sea in Lybia. I went to Lybia but not as a diver. I had a shore job.

I did 2 months in Lybia and was paid about \$4,000. Sub Sea then said I was no longer qualified. I resigned in January 1981. I looked for a job which would not have too much strain. I now work as a salesman for solar energy products. Self-employed. Started in August/September 1980. There were difficulties getting further training as I was then married with a child. Further training was necessary for engineering. I have invested some capital. The earnings only finance expenses. 40

Invested about \$60,000, half from father. Turnover about \$4,000 a month. Varies according to the season. Now in winter. The \$4,000 goes back to buying new stock. Overhead expenses. Lot of advertising. 50
Bit less than \$3,000 is newstock. Bit more than \$1,000 is expenses. This is a new product.

Hope to make enough to live on.
Produce P2 and P3.

P2 is a Technical Study Certificate.
for under-water work.
P3 is a Diploma for geometry.

Paid over \$3,000 for the motorcycle. It
was new.

Cross-examination:

10 Agree it was a cloudy night. Had dipped
lights. Could see 10/15 metres.
Also equipped with full light. Could see
10 more metres with full light but can't
use the bright light in KB.
Can't remember if any other vehicles were
in front of me. Was going at what I thought
was a safe speed.
It is a straight road.
It is a 250 cc bike but it is a motorcross,
not fast. Could do about 90 kph.
20 All I remember was seeing the car ahead of
me when it suddenly turned into my path.
Can't remember if the car had turning lights
on. Would not disagree if he said he did.
Put: You were travelling at high speed and if you
had had a proper look out you would have
seen the car 150 ft away.
I was not going at a high speed. Was not
talking to the pillion passenger. Have
difficulty in talking English anyway.
30 Were you drinking before?

Objection: Not pleaded

Karuppan:

Seek to amend defence.

Application refused: Too late.

40 Knew there was entrance to the hospital.
Did not see any need to reduce speed to 10 mph.
Can't remember what I did when saw car turning
into my path.
If there had been a chance to avoid the accident
I would have done so.
Have a similar bike in Italy. I have ridden it

In the
High Court

Plaintiff's
Evidence
No.7
Giovanni
Vinetti
Examination
7th December
1981

(continued)

Cross-
examination

In the
High Court

Plaintiff's
Evidence
No.7
Giovanni
Vinetti
Cross-
Examination
7th December
1981

(continued)

in competitions. I prefer riding off
roads.

Had lumps on head. Was unconscious after
the accident. Was travelling about 1 metre
away from the edge of the road. Usual
distance. Had previous accident which caused
injury to the left leg. Skiing - not
motorcycle.

Qualified as a diver in December 1976. Came
to Brunei in May 1977. First two to three
months was on low pay (\$5-6,000). Depended
on overtime. Paid some tax in Italy.
10/15% on basic pay - \$2,700.

10

Fixed rate of bonus of \$1,500 pm.
Another bonus - offshore allowance.

After the accident I was paid. It was what
I would get from Italian Government -
\$900-\$1,000 per month. This was because
the accident was not at work. Have not
brought records of tax.

20

Produce salary records. P4.

January 1980 Net \$4,000
December 1979 Net \$2,700

On second time in Brunei did not pay tax.
Was considered to be an immigrant. Do not
have records. Present business. \$4,000 is
gross sales - does not allow for purchase of
stock.

Solar panels were a novelty. Some quick
sales. Now much more difficult to sell.
Future very uncertain. Need capital.
Can't work offshore. Have to be 100% fit.
I am not. Sub Sea no longer has a contract
in Brunei. Diving is dangerous but Sub Sea
did not have one accident in Brunei while it
had the contract. People continue as deep
sea divers up to 45. I planned to be on
the management side at about 35. Older men
who send others down. Top man of team.

30

The motorcycle after the accident was a
write-off. Did not attempt to repair it.
Engine was in good condition.

40

Hospital charges were paid the employers.
I would have difficulty in getting a job
because of lack of practical experience.
My qualifications are of little use. Pay is
low.
Would try to get a Government job. Pay would

be \$1,000 - \$1,200 per month. Much competition for such jobs. Low pay but good security. 10 jobs advertised - 1,000 applicants.

In the High Court

Re-examination:

Plaintiff's Evidence No.7

10 Hoped to work for same company when actual diving days were over. As a building technician could earn up to \$2,000. As a result of the accident I can't do some of the things I did before, such as skiing, or other activities which could result in injury. Can ride a motor-bike, but don't ride in motorcross. Skiing can result in injury but safety-bindings now make it much safer.

Giovanni Vinetti Cross-Examination 7th December 1981

(continued)

Re-Examination

No. 8

IBRAHIM BIN JA'AFAR

No.8 Ibrahim bin Ja'afar Examination 7th December 1981

P2 - Ibrahim bin Ja'afar

Affirms in Malay.

(continued)

20 Government motor vehicle examiner, Kuala Belait. On the 7th October I examined car and motorcycle KA 1963 and KA 8346. Made reports. They are at page 1 and 4 of the agreed bundle. Lamp of motorcycle was not damaged. Could not test. No battery. Had bulb.

Cross- Examination:

Cross-Examination

Signal lights of KA 1963 on right hand front side were in order. Motorcycle seriously damaged.

No. 9

LINTONG INGAR

Plaintiff's Evidence No.9 Lintong Ingar Examination 7th December 1981

30

P3 - Inspector Lintong Ingar

Affirms in Malay. (Order that Police file should remain in Court until conclusion of case, including appeal).

On 6th October 1977 I was in charge of Police Station, Kuala Belait. Accident reported in

In the
High Court
Plaintiff's
Evidence
No.9
Lintong
Ingar
Examination
7th December
1981

Jalan Bunga Raya. Went to scene. Was
a car and motorcycle.
Got there about 10.40 pm. Prepared rough
sketch.
Page 7 of the agreed bundle.
Took measurements.
Prepared better plan, at Page 8.
Key at Page 9. Page 8 not to scale.
Have investigated many other accidents in
Brunei.
Road is 22'8" wide. Distance from edge of
road is "C" to "H" (11'8"). "H" is handle-
bar of motorcycle as found. Motorcycle was
on its right side of the road going towards
Kuala Belait. The specks on the plan are
glass and "X" is the centre spot where glass
was.

10

(continued)

- Photo 1) General area, looking towards KB.
Entrance to hospital is on left.
- 2) Opposite direction.
- 3) Car and motorcycle as found.
- 4) Show car after the accident.
- 5)
- 6)

20

If motorcycle going towards KB and if car
turning into hospital motorcycle would have
right of way.

Plaintiff's
Evidence
No.10
Eric Vennell
Examination
7th December
1981

No.10

ERIC VENNELL

P4 - Eric Vennell

30

Affirms in English.

57 years old. Lives at No.11, Kampong
Delima Satu, Jalan Muara.
Accident claim's assessor.
Have given evidence many times and been
accepted as an expert. I used to be with
PWD in the mechanical department. Was with
them for 7½ years.
Same job for same period in Sarawak.
Have studied photos and documents. Have
prepared a scale plan.

40

Produce P5

From damage to the motorcycle I am of the

opinion that it was not going at a very fast speed. Would have expected much more damage to the motorcycle if there was a fast speed at impact. Damage to the car is to the sheet metal work - not to the sub-structure. Reason for head lamp not being smashed was that it was higher than the wing of the car which is agreed.

In the
High Court

Plaintiff's
Evidence
No.10
Eric Vennell
Examination
7th December
1981

Chan:

10 Tender Mr. Davidson's report which is agreed.
Will call 2 further witnesses as to quantum.

(continued)

No.11

TIONG ING CHIONG

Defendant's
Evidence

No.11
Tiong Ing
Chiong
Examination
7th December
1981

(Defendant interposed)

D2 - Tiong Ing Chiong

Affirms in Mandarin.

20 Live at Ulu Belait. Logging Supervisor.
On the night of the 6th October I was driving
car KA 1963 along Jalan Bunga Raya. Going into
the hospital. Going towards Kuala Belait.
The hospital was on the right. There was one
passenger in my car. Choo Sion Wu. He was sick.
Don't know where he is now. Was driving at
10/20 mph. I signalled I was turning right.
Used the car signal lights. The light was
functioning. Did so at about 150 ft from the
entrance. Turned right into the entrance.
While I was turning in no vehicles were coming
in the opposite direction or from behind.
30 While I was turning I saw one head lamp about
50 yards away coming towards me. I thought
it was safe to turn. I heard a bang. The
windscreen was broken. The car was pushed into
a drain. Saw a person lying on my car - a
woman. She was on the bonnet near the windscreen.
Don't know how my car came to be in the drain.
Don't know if it was pushed or I lost control.
Road was wet, it was drizzling.

Cross-Examination:

40 Friend was sick. Stomach trouble. Did not
stop car but slowed down before turning right.
Slowed down to 10 mph.
Can't understand why suddenly there was a head
lamp in front of me.

Cross-
Examination

In the
High Court

Did not take a risk.

(Marks route on plan in green).

Defendant's
Evidence
No.11
Tiong Ing
Chiong
Cross-
Examination
7th December
1981

(continued)

Plaintiff's
Evidence
No.12
Vittorio
Majoni
Examination
7th December
1981

No.12

VITTORIA MAJONI

P5 - Vittorio Majoni

Affirms in English.

46 years old. Italian. Married.
Operations manager of Sub Sea Ltd - a large
diving company with headquarters in Milan,
Italy. Started diving in 1950. Went into
the navy. Did a course in diving. Got
marine masters certificate. Sub Sea has 4
classes of divers. We recruit from diving
schools or from the navy. When he joins us
a diver does a deep sea diving course. He
goes out as a 4th class diver. Then to 3rd,
2nd, and then 1st class. 1½ to 2 years
between 3rd and 2nd class. To 1st class it
may take a little longer. Depends on the
individual's ability.

10

20

In October 1977 I was in charge of operations
in Brunei.

Giovanni Vinetti was a 3rd class diver. His
salary would be basic plus bonuses. A 3rd
class diver would be on about \$5,000 basic
(includes \$1,500 deep sea diving bonus),
plus \$2,500 - 3,000 local allowance. The
basic salary is paid in Italy. Tax is payable
for the first 12 months overseas then there is
none.

30

For each promotion a diver would get an extra
\$1,500. He would also be liable to get
a saturation bonus. That is for working in
constant pressure. We started that in 1978.
In May or June. The company pays US\$12 per hour

while under pressure. In Brunei a diver would average 7 days a month x 24 hours saturation.

When not working the plaintiff would be paid a basic salary of about \$3,500 in Italy. Diver's income depends very much on what and how much diving he does.

10 When the plaintiff came out again he could not do any real diving work. He was a surface assistant. He would get a basic salary but no bonuses. He would get an overseas allowance of about \$1,000. He would be getting around \$4,000 a month. Divers normally have some basic technical skill. Some do not but they have a good general background. The plaintiff came from a very good diving school and was very hardworking. He had a good chance of becoming a 1st class diver and later a supervisor and superintendant.

20 We have monthly meetings to discuss the state of work and the ability of different divers. The plaintiff was considered a good diver by his supervisors. He would normally have been promoted to 2nd class diver after 18 months and then to a 1st class diver. He is a quiet and reasonable person. He would now be a 1st class diver. Normally promotion takes place at the end of the year. He would have become a 2nd class diver on the 1st January 1979 and a 1st class diver on the 1st January 1982.

30 The plaintiff was a free-lance diver to start with but was a permanent company diver at the time of the accident.

40 A diver in Italy retires at the age of 60. After becoming a 1st class diver he would become a diving supervisor. They seldom dive. Then he would become a diving superintendant. They never dive. A diver does not usually dive after 40. A diving superintendant gets \$12,000 to \$14,000 a month.

50 The plaintiff would certainly have become a superintendant. If he was good enough to become a 1st class diver he would almost certainly become a superintendant. He had the ability to explain work to others. Would be ready for appointment as superintendant at about the age of 30. On retirement an employee is entitled to one month's salary for each year of service, i.e. \$12,000 x each year of service. A diver must be 100% fit. It is dangerous to himself and others if he is not. The plaintiff would only dive in shallow water. We have a medical department. He was declared unfit for diving. Injured divers are sometimes given a

In the
High Court

Plaintiff's
Evidence
No.12
Vittorio
Majoni
Examination
7th December
1981

(continued)

In the
High Court

Plaintiff's
Evidence

No.12

Vittorio

Majoni

Examination

7th December

1981

(continued)

job as store keeper, bus driver etc. If
the position is available the salary would
be about \$2,000 per month.

Diving is a hazardous occupation.

Looks at pay-slip. January 1980.

- Item 1) Contractual minimum.
2) Compensation for cost of living.
4) Personal bonus. Purely discretionary.
Depends on good reports.
5) Production bonuses. 10
Depends on the company's profits.
29) Holiday bonus.
45) Payment for illness - out of work
due to illness.
60) Portion of yearly bonus. Get 13
month's salary each year.
64) Seniority bonus.
68) Correction of previous mistake.
87,88) Overtime. Italian law - 8 hours a day,
89,90) 5 days a week. 20
94,95) percentage of overtime. When overtime
exceeds certain percentage he must
be paid extra bonus.
104) Travelling allowance.
154) Deduction of an air-ticket for wife.
0165) Some other deductions for amount
advanced.

Last figure is net payment. After deductions
total payment is L 2,514,507.

L 89,670 is a tax deduction. 30

Maximum deduction would be 10%. Deducted by
the Company. Have to declare other income.
After 1 year continuous employment overseas
there is no tax payable.

In addition to retirement lump sum there is a
Government pension which is 75% of the average
of the last 2 year's income. Get that at 60.
The maximum is payable after 30 years working.
A worker pays a nominal contribution to the
pension fund. See second column from the 40
bottom. L 36,465 in January 1980.

Cross-
Examination

Cross-Examination

Came from Italy for this case.

Did not bring any records.

Did not understand they were required.

Have many hundreds of divers. Company divers
and free-lance. All start as free-lance.

Good ones are offered positions with the
company as permanent divers.

In Brazil I had 5 company divers and 150 50
free-lance divers. The plaintiff was a company

10 diver. I knew the plaintiff in Brunei when he was a diver.
 Since October 1977 tax has not been payable in Italy if citizen is employed overseas for more than one year. Don't know what the position is with lump sum damages payments. Company ceased operations in Brunei at the end of 1979. If the plaintiff had not been injured he would have been employed elsewhere. We lost the contract because we were undercut. After saturation a diver should rest for 50% of the time he was in saturation. Exchange rate in 1977 was L 780 to B\$1. Now it is about L 520 to B\$1. Contract was more in Italy. Paid around L 1,100,000 at that time. We have 160 permanent company divers of whom 60 superintendants. Quite a lot of senior staff start their own diving companies and do quite well.
 20 Tax is a difference between L 9,000 and 36,000 About L50,000 on 2,500,000. The stamp "Esenzione Fiscale" means the person is not liable to pay disaster tax. This is a special tax to cover payments to a person involved in disasters.
 In the North Sea there are definite regulations on promotion. These do not apply in Brunei. Do not agree it would take 10 years to reach a 1st class diver from 4th class. Nor would it take 3 years for each step.
 30 Each diver is given an annual report and also when he leaves an area.

In the
High Court
 Plaintiff's
 Evidence
 No.12
 Vittorio
 Majoni
 Cross-
 Examination
 7th December
 1981

(continued)

To Court:

40 When a company ceases operations in a country we would ask a diver where they want to go. Their allowance would vary with the cost of living. Also there is a damage factor - a disturbance allowance.
 There is no "loss of license" insurance. To become a 1st class diver you just have to be a good diver. To be a superintendant you have to be a good supervisor. Saturation diving is very economical overall. It enables work to be done where it could not be done before at all. In Brazil there was a lot of saturation work. In Brunei there is not so much.
 50 The average company diver would get 7-10 days a month. After saturation, if a diver goes ashore he only gets the basic salary. If he stays on the rig he gets some bonus. Normally free-lance divers go ashore. Company divers stay on the rig. Periods on the rig vary. They are short in the

In the
High Court
Plaintiff's
Evidence
No.12
Vittorio
Majoni
Cross-
Examination
7th December
1981

North Sea - about 2 weeks - and long in
Brazil - 2 months.
The Plaintiff did have supervisory capacity.
It would be very exceptional for a diver
not to go beyond being a 1st class diver.
Can pick supervisors early.
A 1st class diver getting a lot of saturation
diving could make much more than a super-
intendant.

(continued)

Plaintiff's
Evidence
No.13
Colin Wilson
Examination
7th December
1981

No. 13

10

COLIN WILSON

P6 - Colin Wilson

Affirms in English.

Works for Ocean Engineering Ltd. as a Project
Manager.

Do diving work.

Was in the navy in 1959.

In 1961 commenced diving in the off-shore oil
industry. Been in the North Sea, Australia
and New Zealand.

20

Been here for 2 years and 3 months.

Minimum earnings of a diver in Brunei are
\$4,000 per month and the maximum are \$8,000
net earnings.

Classes of divers:

- 1) shallow depth - 165'
- 2) deep divers - unlimited
- 3) league diver
- 4) diving superintendant.

A diver with 5 year's experience could expect
to get about \$8,000 per month. He would get
at least 20% bonus for contract completion,
may be a little more.

30

A good diver would be a superintendant in about
5 years from starting at diving school.

The figures I gave are after tax.

There is an unlimited amount of work available
for good experienced divers.

Employ many nationalities.

Cross-
Examination

Cross-Examination

40

Diving is a hazardous job.

Must stay fit.
Ratio of divers to superintendant is 5:1.
People are continually leaving the industry.

In the
High Court

To Court:

Plaintiff's
Evidence
No.13
Colin Wilson
Cross-
Examination
7th December
1981

10 Saturation divers get a bonus of about
US\$200 a day.
In the North Sea it is higher.
Divers tend to be paid much the same by
different companies. It varies with factors.
A superintendant's basic salary is \$8,000 per
month, plus free housing and a 20% bonus (an
average of 22/23%). There are free medical
benefits and annual leave to the country of
domicile.
My company employs British, American,
Autralian, New Zealand, Malaysian workers, etc.

(continued)

No.14

HAJI BUANG BIN HAJI SIRAJ

D2 - Haji Buang bin Haji Siraj

Defendant's
Evidence
No.14
Haji Buang
bin Haji
Siraj
Examination
7th December
1981

20 Affirms in English.
Clerk employed by Murphy and Dunbar.
Interviewed Roberto Colomo who gave a list
showing the tax payable by persons living
in Italy.

Produce D2.

He said no tax was payable on lump sum damages.
A person who is Italian and lives in Brunei
would pay Italian tax as there is no agreement
between Italy and Brunei.

30 Chan: Object

Evidence is hearsay and the witness is not an
expert.

Objection allowed. Evidence not admissible.

PROCEEDINGS

No.15
Proceedings
7th December
1981

Chan: Agreed damage to car is \$4,708
Repairs to motorcycle \$ 750

Wong: 1) Special damages agreed \$10,292
2) Pain, suffering and loss
of amenities
Suggest \$35,000

See Lim Pheng Siang v.
Cheong Yuen Lim (1979
MLJ xxxviii)

10

3) Loss of past earnings. Present
table.
Should add saturation allowance.
Seek to amend claim.

Defence: Object. Too late.

Application refused.

4) Retirement lump sum based
on average monthly earnings
for the last 2 years x years
of service.
Should be difference between
superintendant at \$12,000 and
storeman at \$2,000 over a
period of 4 years when he was
with the company.

20

5) Loss of future earnings
McGuinness x 12, aged 34 (21 years)
David Swee x 18, aged 25 (30 years)
The plaintiff here was aged
24 at the date of the
accident.
Suggest 18.

30

Multipliant

Earnings of a supervisor = \$12-14,000
Suggest \$13,000.

Deduct present earnings capacity.
Suggest capacity reduced to 1/3.
Amend amount.

40

* * * * *

Plaintiff had lights dipped. Cloudy night and
the road was wet.

Charlesworth 876. Speed
Patel v Edwards. 431.

In the
High Court

Quantum

No.15
Proceedings
7th December
1981

If you allow lump sum of \$300,000 would get
\$54,000 tax free. That would mean a sum of
\$4,500 per month.

(continued)

Greater risk the lesser should be the multiplier.

In Powell v Ng Cheng Tee (1979 MLJ xxxix)
\$17,000 was awarded.

10 No documentary proof as to the earnings in
future.

Plaintiff claims for the loss of past earnings.
Therefore must take present age.

Chan: Independant evidence from Wilson - \$8,000
per month after 5 years.

Prepared to accept \$4,000 as present
earnings.

Difference between that and \$8,000.

20 No reason why he should not go on to
age of 60.

Should use straight multiplier.

Mr. Wilson say \$8,000 nett, plus
bonuses and housing, etc.

Adjourned to 9/12/1981 for Judgment.

(Sgd) R.G. Penlington
COMMISSIONER OF THE SUPREME
COURT
Brunei

No. 16

No.16
Judgment
9th Decembe:
1981

30 JUDGMENT

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL SUIT NO. 123 OF 1980

Between

GIOVANNI VINETTI

Plaintiff

And

TIONG ING CHIONG

Defendant

Coram: Penlington J.
9th December, 1981.

No.16
Judgment
9th December
1981

(continued)

I will deal first with the question of liability. On the 6th October, 1977 at about 10.10 pm the plaintiff was riding his motorcycle along Jalan Bunga Raya, Kuala Belait. It was a cloudy evening and there was evidence it had been raining. The plaintiff had a lady on the motorcycle as a pillion passenger.

As the plaintiff was passing the entrance to the Kuala Belait General Hospital, travelling easterly, his motorcycle came into collision with a car driven by the defendant. The pillion passenger was thrown onto the car, coming to rest according to the defendant's evidence, against the windscreen. She suffered injuries from which she died. The plaintiff said, and I accept, that he became unconscious and did not regain consciousness until he was in hospital. 10

The plaintiff said he had the head light of his motorcycle on dipped beam, which was normal when travelling around KB. He could see the road ahead of his motorcycle in that light for about 10/15 metres. He said he saw the defendant's car coming towards him but could not remember seeing any turning lights flashing on it. However, he said he would not disagree if the defendant said he had such lights on, as indeed was his evidence. He could not say how far away from the car he was when it turned in front of him or whether he hit the car or vice versa. He said he was on the left hand side of the road, about 1 metre from the verge and gave his speed at 25/30 mph. He said he regarded that as a normal speed. 20 30

The motorcycle was a motorcross type, 250 cc, and was not a high speed machine but was capable of speed of about 90 kph. The plaintiff's evidence as to speed was attacked by Counsel for the defendant who suggested he was going faster than he had said. The defendant relied on the evidence of the damage to the defendant's car (see photographs and report in the agreed bundles). 40

Mr. Eric Vennell, a claim's assessor, gave evidence as to the damage to both the car and the motorcycle. He said in his opinion the damage was not consistent with high speed and in particular he would have expected much worse damage to the motorcycle if it had been going very fast. He had seen cases in which the damage 50

to the motorcycle was very much worse than in this case.

In the
High Court

There is clear evidence that the accident occurred on the plaintiff's side of the road. This is established by the position of the two vehicles after the accident and the position of the broken glass from the car's left front head lamp, the motorcycle's lamp strangely enough being undamaged. This point of impact was estimated by Mr. Vennell on a plan he prepared to scale following a plan prepared by the police investigating officer and I think it is correct.

No.16
Judgment
9th December
1981

(continued)

The defendant said that on the night in question he was taking a sick friend to hospital, signalled his intention to turn right out of Jalan Bunga Raya into the hospital entrance at about 150 ft away. While he was turning he saw one head lamp approaching about 50 yds away. Before that he saw no vehicle approaching. He thought it was safe to turn but there was a bang and the accident occurred.

Jalan Bunga Raya, looking east from the scene of the accident, is straight for about 600 yds. I am satisfied that the defendant must have seen the plaintiff much further away than 50 yds, if he was keeping a proper lookout. The plaintiff had the right of way and the defendant was under a duty, being in a car that was turning to its right across the path of an oncoming vehicle, to allow it to pass before turning.

I found the plaintiff to be an impressive and honest witness and I accept his evidence of speed, which was corroborated by the lack of extensive damage to his motorcycle. I am satisfied that he was not speeding, even if that were relevant. I am satisfied the defendant was entirely responsible for the accident. The plaintiff is entitled to judgment in his claim.

QUANTUM OF DAMAGE

Special damages

a) Hospital expenses, damage to the motorcycle, etc. have been agreed at \$10,292.

b) Loss of earnings :-

there was an unfortunate lack of documentary evidence on this head which should have been easy to calculate. It is not in dispute that

In the
High Court

No.16
Judgment
9th December
1981

(continued)

the plaintiff commenced work with his employer, Sub Sea Ltd. in January 1976 as a 4th class diver. He was promoted to 3rd class diver before the accident and said at that time he was earning about \$8,000 a month. This included basic salary which was paid in Italy, and various bonuses and extra payments. His income after the accident went from that to about \$1,000 which was paid by the Italian Government, until he got medical clearance to work as a shallow-water diver in August 1978. He then worked in Lybia for a short period at a salary of \$4,000 per month, returning to Brunei in January, 1979; where he was paid \$4,000 - \$4,500. He returned to Italy in June for medical treatment, came back to Brunei at the same salary but eventually resigned from Sub Sea Ltd. in January 1980. 10

It is the plaintiff's claim that he would have been promoted to 2nd class diver on the 1st January 1978 when his salary would have increased to \$9,500 per month. That evidence is supported by Mr. Vittorio Majoni, his supervisor here at that time, and I accept that evidence. I found Mr. Majoni to be a most impressive and honest witness. 30

The plaintiff said that after he resigned from the Company he was not employed until August 1980 when he started to work on his own account selling solar panels. He invested some \$30,000 in the business, and his father did the same. He said that the profit from the business varies according to the seasons but the turnover is about \$4,000 a month. He has to spend quite a lot on advertising and there are other overheads. I will, however, assume that he made a profit of \$4,000 per month during that period. I will also assume that from January to August 1980 he was receiving the \$1,000 a month Government allowance. 40

I would make an award for loss of earnings as follows :

6/10/77 to 31/12/77	at \$7,000 pm	\$ 19,000	
1/1/78 to 1/1/79	at \$8,500 pm	\$100,000	50
1/1/79 to 1/1/80	at \$5,000 pm	\$ 60,000	
1/1/80 to 1/8/80	at \$8,500 pm	<u>\$ 55,000</u>	
	c/fwd	\$234,000	

	b/fwd	\$234,000	In the
			<u>High Court</u>
1/1/80 to today	at \$5,500 pm	\$ 93,000	
(\$9,500 - \$4,000)		<hr/>	No.16
		\$327,000	Judgment
		<hr/>	9th December
			1981

General Damages

(continued)

- 10 a) Pain, suffering and loss of amenities.
The up-to-date medical evidence was contained in a very comprehensive report from Dr. W.N.Cheng, a highly qualified orthopaedic surgeon from Singapore.

He said the plaintiff's injuries were:
Compound fracture of his right femur
Compound fracture of his right tibial plateau with disruption of the patellar tendon.
Fracture of the lateral malleolus of his left ankle.

20 There were scars on his leg, right arm and two small ones on his face. His right leg is 1 cm shorter than his left but that was not significant. There was some restriction in movement of the right hip and left ankle but good recovery had been made from all injuries except the right knee. Osteoarthritis is already present and there are loose particles present. There is pain and stiffness in the joint which will probably increase and movement become less.
30 If the pain gets too bad the knee may have to be fused and later on an artificial joint inserted.

I have been referred to several cases where various levels of damages for such injuries have been awarded. In Powell v. Ng Cheng Tee (1979 MLJ xxxix), \$17,000 was awarded to a man of 23 where the injury was similar. Lim Pheng Siang v. Cheong Yuen Lim, in the same volume of the MLJ at xxxviii, \$25,000 was awarded for what seems to be a similar case. In McGuinness v Abdul Zaini bin Tahir, Brunei Civil Case 217 of 1979, \$50,000 was awarded for the total loss of a leg above the knee.
40

Taking those authorities into account and allowing for the affects of inflation I award the sum of \$27,500 for pain, suffering and loss of amenities.

In the
High Court

No.16
Judgment
9th December
1981

(continued)

b) Loss of future earnings :-

It is quite clear from the medical evidence that the plaintiff will never be able to dive professionally again. He has some technical training but I accept that it is only enough to work as an engineering assistant and such positions are not easy to get and are not well paid. He could possibly have got a job as a storeman with the Sub Sea Ltd., at about \$2,000. He has infact become self-employed in a highly competitive field and his future is by no means certain. However, I was impressed with him and certainly Mr. Majoni speaks well of him as a serious, quiet man who would accept responsibility. I think his business should improve but it is of course only a hope. I will assume however that his average income in future will be about \$6,000 per month.

10

20

Such estimates must, as the learned Chief Justice said in McGuinness, "be nothing more than a rough guess," but I do take into account that as a result of this accident, unfortunate though it was, the plaintiff will have capital to invest in his business which he said he needed to build it up.

I accept the evidence of Mr. Majoni that the plaintiff would in all probability become a 1st class diver and then a superintendant. His evidence was that as such his income would be \$12,000 - \$14,000 a month. That would vary depending on where he was sent. He could remain as a superintendant until retiring at the age of 60. It was Mr. Majoni's evidence that the plaintiff was well thought of by Sub Sea Ltd. He said that the Company employed a very large number of divers, most of whom were free-lance. It only offered permanent employment to those few it considered as above average and the plaintiff was one of those.

30

40

Mr. Colin Wilson, of another diving Company, Ocean Engineering Co.Ltd., now working in Brunei as project manager, said that a diver of 5 years experience could expect \$8,000 net per month, plus free housing, the usual expatriate benefits, and a bonus of about 20% (that would be about \$1,600 for such a diver). That, plus the free

50

housing which I would estimate at 10% of salary as was done in the case of McGuinness, seems to equate with Mr. Majoni's estimate of \$12,000 per month.

In the
High Court

No.16
Judgment
9th December
1981

(continued)

10

Mr. Majoni gave evidence, as did Mr. Wilson, that divers can earn very high bonuses indeed - about US\$200 - US\$300 per day if they are engaged in saturation diving, that is they live and work constantly under pressure. Mr. Majoni said it is possible to work under constant pressure for up to 30 days without a break but a rest period of half that time is then required. The bonus for such a period would be about US\$16,000. There was no specific claim for such a bonus and while it seems that saturation diving is becoming more common I do not know if the plaintiff would have done any - he did not refer to it in his evidence. I therefore make no allowance for it.

20

It was urged by the defence that I should not use a single multiplier on the basis that it would produce far too large a sum and that today's high interest rates meant that such a sum was not justified. I do not see any authorities for that and I think I should follow the way in which the learned Chief Justice calculated damages for loss of future earnings in the case of McGuinness.

30

I therefore take loss of earnings at \$12,000 per month, less \$6,000, i.e. \$72,000 per year. The plaintiff is now 27 and would normally have retired at 60. He was, however, engaged in a hazardous occupation and that is a factor which must be considered. The Chief Justice in McGuinness, applied a multiplier of 12 for a man of 34 who was a driller, also a hazardous occupation, who would retire at 55. I think I should apply a multiplier of 13 here. That gives a figure for loss of future earnings of $\$72,000 \times 13 = \$936,000$.

40

The awards are therefore:

Special damages/hospital expenses	\$ 10,292
Loss of earnings	\$327,000
General damages/ Pain, suffering and loss of amenities	\$ 27,500
Loss of future earnings	<u>\$936,000</u>
	<u>\$1,300,792</u>

In the
High Court

No.16
Judgment
9th December
1981

(continued)

That is a very large sum of money and the defence argued that, taking into account current interest rates, such sums are unrealistic.

First of all it seems to me that one should not depart from accepted principles just because the resultant figure is very large.

Secondly, the plaintiff was a well qualified member of a very highly paid profession, whose future in his company was very good. Even if it was not I accept Mr. Wilson's evidence that experienced divers are in much demand as the search for oil goes on, no doubt going deeper and into areas where good divers are essential. 10

In one moment that career has been destroyed and his future is now very uncertain indeed, he may well finish in a job which pays much less than what I have estimated if his business does not prosper. 20

Thirdly interest rates are high, though coming down, but capital is also depreciating at a rapid rate and that is not likely to be halted.

I think that current interest rates, while appearing to be very attractive, are deceptive because of the corresponding high rate of inflation. If funds are invested in a way which keeps capital more intact, such as property, the income return is very much less. Taking account of inflation I am of the view that the Courts should still base awards on the traditional rates of interest of 5-6%. 30

There are two other matters which I should deal with. One is that evidence was given that a retirement provident scheme was operated by Sub Sea Ltd. under which a lump sum of one month's salary per year of employment was payable. The evidence on this was not comprehensive and no details were given as to if it was payable before the age of 60 or on what conditions, or what contributions were made by the employee. It was not pleaded. In view of the large amount of capital the plaintiff will now have I make no award in respect of the loss of retirement benefit, though this would have been a large sum. 40

There was also some argument as to the plaintiff's

liability to tax. It is not at all clear if he would be liable to Italian tax, but if working elsewhere he would presumably pay tax in that country.

In the
High Court

No.16
Judgment
9th December
1981

(continued)

10 It seems, however, that divers are an international breed of men and if the tax liabilities in any country are high, a larger salary would have to be paid to compensate. Mr. Majoni said a superintendant would get \$12,000 - \$14,000. We do not know where the plaintiff would have gone if he had continued with Sub Sea Ltd. I have therefore not deducted anything for tax payable on future earnings.

The plaintiff is entitled to his costs on the claim and he is also entitled to his costs on the counterclaim, which is dismissed.

20 There will be interest at 3% on the amount for loss of earnings from date payment would have become due and at 6% on hospital expenses, etc. and pain, suffering and loss of amenities from the date of service of the writ.

There will be a stay of execution until determination of the appeal on condition that the appeal is lodged within one month and the sum of \$300,000 is paid to the plaintiff's solicitors within 14 days.

Certificate for 2 counsel.

R.G. Penlington
COMMISSIONER OF THE SUPREME
COURT

Brunei

30

In the
High Court

No. 17

ORDER

No.17
Order
9th December
1981

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
SUIT NO. 123 OF 1980

B E T W E E N

GIOVANNI VINETTI Plaintiff

A N D

TIONG ING CHIONG Defendant

BEFORE MR JUSTICE PENLINGTON IN OPEN COURT
THE 9TH DAY OF DECEMBER 1981

10

O R D E R

UPON THIS ACTION coming on for hearing on 7th and 8th December 1981 and UPON hearing the evidence adduced herein and UPON hearing Messrs. T.C.Chan and S.P.Wong of Counsel for the Plaintiff and Messrs. R.Karuppan Chettiar and S.Singh of Counsel for the Defendant and UPON finding that the Defendant was wholly to blame IT IS ORDERED as follows :-

20

- (1) that the Defendant do pay the Plaintiff the sum of \$10,292.00 being agreed special damages;
- (2) that the Defendant do pay the Plaintiff the sum of \$327,000.00 being loss of past earnings from 6th October 1977 to 9th December 1981;
- (3) that the Defendant do pay the Plaintiff the sum of \$27,500.00 being general damages for pain and suffering and the loss of amenities; 30
- (4) that the Defendant do pay the Plaintiff the sum of \$936,000.00 being loss of future earnings;
- (5) that interest of \$1,235.04 shall be paid on the sum of \$10,292.00 at the rate of 3% per annum from 6th October 1977 to 9th December 1981 and thereafter at 6% per annum until full and final payment; 40

(6) that interest of \$20,800.00 shall be paid on the sum of \$327,000.00 at the rate of 3% per annum as follows :-

In the
High Court

No.17

Order
9th December
1981

(a) on \$19,000.00 from 7th January 1978 until 9th December 1981 (48 months) the sum of \$2,280.00;

(b) on \$100,000.00 from 7th June 1979 until 9th December 1981 (36 months) the sum of \$9,000.00;

(continued)

10

(c) on \$60,000.00 from 10th January 1980 until 9th December 1981 (24 months) (sic) the sum of \$3,600.00;

(d) on \$55,000.00 from 8th August 1980 until 9th December 1981 (16 months) the sum of \$2,200.00;

(e) on \$93,000.00 from 9th August 1980 until 9th December 1981 (16 months) the sum of \$3,720.00;

20

and thereafter at 6% per annum from 9th December 1981 until full and final payment;

(7) that interest of \$2,200.00 shall be paid on \$27,500.00 at the rate of 6% per annum from 1st September 1980 to 10th December 1981 and thereafter at 6% per annum until full and final payment;

30

(8) that interest shall be paid on \$936,000.00 at the rate of 6% per annum from 9th December 1981 until full and final payment;

(9) that the Defendant do pay the Plaintiff the costs of this action and the counter-claim;

(10) that execution of this judgment be stayed pending appeal on the following terms :-

40

(a) that the Defendant do pay the Plaintiff within 14 days from the date hereof the sum of \$300,000.00; and

(b) that the Defendant do file the Notice of Appeal within one calendar

In the month of the date hereof.
High Court

No.17
Order
9th December
1981

Dated this 20th day of January 1982

Sd: M. Ali bin Salleh

(continued)

CHIEF REGISTRAR
HIGH COURT
BRUNEI

Entered No. 10/1982

In the Court
of Appeal

No. 18

NOTICE OF APPEAL

No.18
Notice of
Appeal
19th
December
1981

IN THE HIGH COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL APPEAL NO. 9 OF 1981

10

BETWEEN

TIONG ING CHIONG

Appellant

AND

GIOVANNI VINETTI

Respondent

IN THE MATTER of Civil Suit No.123 of 1980

BETWEEN

GIOVANNI VINETTI

Plaintiff

AND

TIONG ING CHIONG

Defendant

20

NOTICE OF APPEAL

TAKE NOTICE that the abovenamed Appellant Tiong Ing Chiong being dissatisfied with the decision of the Honourable Mr. Justice Ross Penlington given at Brunei on the 9th day of December 1981 hereby appeals to the Court of Appeal against the decision of the learned Judge as to liability and quantum.

Dated this 19th day of December 1981

30

Sd: Tan Jin Hwee & Co.

In the Court
of Appeal

TAN JIN HWEE & COMPANY
Advocates for the Appellant

No.18
Notice of
Appeal
19th December
1981

To: The Chief Registrar
Supreme Court
Bandar Seri Begawan
Brunei

(continued)

10

And to the Respondent Giovanni
Vinetti through his Advocates
M/s Choo Chan & Wong
Room 52 Britannia House
Jalan Kianggeh
Bandar Seri Begawan
Brunei

The address for service of the Appellant is
Messrs. Tan Jin Hwee & Company of No.32-33 (4th
Floor) Hongkong Bank Chambers Bandar Seri
Begawan Brunei.

No. 19

No.19
Memorandum
of Appeal
4th March
1982

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MEMORANDUM OF APPEAL

IN THE COURT OF APPEAL OF THE STATE OF BRUNEI
CIVIL APPEAL NO. 9 OF 1981

BETWEEN

TIONG ING CHIONG

Appellant

AND

GIOVANNI VINETTI

Respondent

(In the matter of Suit No.123 of 1980 in the
High Court of Brunei at Bandar Seri Begawan)

BETWEEN

30

GIOVANNI VINETTI

Plaintiff

AND

TIONG ING CHIONG

Defendant

MEMORANDUM OF APPEAL

A. The learned Trial Judge erred in law and in
fact :-

(1) In coming to his decision with regard to

In the Court
of Appeal

No.19
Memorandum
of Appeal
4th March
1982

(continued)

liability the learned Trial Judge failed to take into consideration that the Respondent ought to have seen the lights of the Appellant's car when it was a considerable distance away.

(2) While finding the Respondent an impressive and honest witness the learned Trial Judge has only found that the Appellant was entirely to blame but he made no finding in respect of the Appellant's honesty. 10

(3) The learned Trial Judge ought to have accepted the Appellant's statement that he signalled that he was turning right when he was about 150 feet from the entrance to the hospital.

(4) The learned Trial Judge ought to have held that the Respondent :-

(i) should have seen the Appellant's indicator lights in sufficient time; 20

(ii) should have taken some precautionary steps in view of the weather and that it was night;

(iii) in failing to do so the Respondent himself contributed to the accident.

B. The learned Trial Judge erred in law that he :-

(1) Failed to appreciate that in awarding damages for loss of future earnings the principle to be applied is that such a sum should be awarded which taking interest into account would be exhausted both as to principal and interest at the end of the time period calculated according to the multiplier selected. 30

(2) In awarding the sum of \$936,000 for loss of future earnings, the learned Trial Judge failed to apply the above referred to principle so that at the end of the time period the Respondent would have been left with his capital untouched and so would have made capital out of his injury. 40

(3) In coming to his awards for loss of earnings and loss of future earnings he failed to appreciate that the compensation for cost of living, holiday bonus and other similar allowances ought not to be taken into consideration.

In the Court
of Appeal

No.19
Memorandum
of Appeal
4th March
1982

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(4) Failed to appreciate and therefore failed to allow for the fact that at the time when he, the learned Trial Judge, made his award Brunei \$1-00 was worth 520 Italian Lire as opposed to 280 Italian Lire which was the exchange rate when the Respondent received part of his salary in Italy.

(continued)

(5) Failed that the onus was on the Respondent to prove his present and past earnings strictly.

20

C. The amount awarded for pain and suffering was both out of line with awards currently awarded for similar injuries and was inordinately high..

D. The sum of \$1,300,792 awarded taken as a whole was in all the circumstances manifestly excessive, inordinately high and palpably unjust.

(Sgd) TAN JIN HWEE & CO.
Advocates for the Appellant

To: The Chief Registrar
High Court
Brunei

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And to the abovenamed Respondent and his Advocates: Messrs. Choo Chan & Wong
Room 52 Britannia House
Jalan Sungai Kianggeh
Bandar Seri Begawan
Brunei

In the Court
of Appeal

No. 20

NOTICE OF CROSS APPEAL

No.20
Notice of
Cross Appeal
4th May
1982

IN THE COURT OF APPEAL OF THE STATE OF BRUNEI
CIVIL APPEAL NO. 9 OF 1981

B E T W E E N

TIONG ING CHIONG Appellant

A N D

GIOVANNI VINETTI Respondent

(In the matter of Suit No.123 of 1980 in the
High Court of Brunei at Bandar Seri Begawan) 10

B E T W E E N

GIOVANNI VINETTI Plaintiff

A N D

TIONG ING CHIONG Defendant

NOTICE OF CROSS APPEAL
(Order 55 rule 7)

TAKE NOTICE that the above-named Respon-
dent GIOVANNI VINETTI intends to cross appeal
at the hearing of this appeal against part of
the judgment of the Honourable Mr. Justice
Ross Penlington given on 9th December 1981
on the following grounds :- 20

(1) The multiplier of 13 applied by the
learned trial judge is manifestly too
low and fails properly to take account
of the following factors, namely :-

(a) that the Respondent was a man of 27
years of age at the date of trial
with a probable working life of 33
years ahead of him; 30

(b) that the hazardous elements in the
Respondent's occupation would have
been likely to diminish, if not
cease, on his becoming a diving
superintendent for which he would
have been eligible at the age of 30;

(c) that the case of McGuinness relied on by the learned trial judge concerned a plaintiff seven years older than the Respondent and with a working life ahead of him which would not have ceased to be hazardous and would have lasted for 12 years less than that of the Respondent;

In the Court
of Appeal

No.20
Notice of
Cross Appeal
4th May 1982

(continued)

10 (d) that taking account all factors, the learned trial judge made an excessive discount for contingencies of life and lump sum payment.

20 (2) The learned trial judge's assumption that the Respondent made a profit of \$4,000.00 per month in the period from August, 1980 to December, 1981 was unsupported by any evidence and was inconsistent with the evidence of the Respondent (whom the learned trial judge found to be an impressive and honest witness) that the turnover of his business during that period was about \$4,000.00 per month from which had to be deducted the cost of advertising, overhead expenses and the purchase of stock.

(3) The multiplicand of \$6,000.00 in respect of future loss of earnings is manifestly too low and fails properly to take account of the following factors, namely :-

30 (a) that having accepted the evidence of Vittorio Majoni (PW5) that the Respondent's prospective future earnings would be \$12,000.00 - \$14,000.00 per month, the just and moderate figure to take would be \$13,000.00 per month and not the \$12,000.00 in fact taken;

40 (b) that in taking the Respondent's prospective future earnings at \$12,000.00 per month (which is the lower end of the salary range of a diving superintendant) the learned trial judge wrongly failed to take into account the good work record of the Respondent and his aptitude in his occupation;

(c) that there was no evidence to support the learned trial judge's assumption that the Respondent's average future income would be about \$6,000.00 per month, particularly as the learned trial judge accepted

In the Court
of Appeal

No.20
Notice of
Cross Appeal
4th May 1982

(i) that the Respondent's future
was very uncertain indeed, and

(ii) that he might well finish in a
job which paid much less than the
assumed figure of \$6,000.00 if
his business did not prosper.

(continued)

- (4) The assessment of the multiplier was based on the working life of a deep sea diver and that of the multiplicand on the earnings of a diving superintendant. The learned trial judge failed properly to take account of the following factors, namely :- 10
- (a) that the nature of work and the working life span of a deep sea diver and a diving superintendant are different;
- (b) that the earnings, both present and prospective, of a deep sea diver and a diving superintendant are different. The earnings of a deep sea diver fluctuate with promotions and diving bonuses while that of a diving superintendant are steady and fairly fixed. 20
- (5) The learned trial judge wrongly failed to make any award in respect of the Respondent's loss of retirement lump sum at age 60 of \$12,000.00 x 37 working years = \$444,000.00 which sum should have been discounted to take account of accelerated payment and the chance that the Respondent would not be available to receive such payment. 30
- (6) The award of \$27,500.00 made by the learned trial judge for pain and suffering and loss of amenities is manifestly low and fails properly to take account of the following factors, namely :-
- (a) that osteoarthritis is present with loose particles; 40
- (b) that there is the real possibility of fusion of the right knee by surgery with consequent shortening of the right leg by 3 cm and the costs of surgery;
- (c) that alternatively there is the real

possibility of removing the right knee and replacing it with an artificial joint which has a limited life span and the cost of surgery;

In the Court
of Appeal

- (7) In the premises, the award of the learned trial judge was manifestly too low and should be substantially increased.

No.20
Notice of
Cross Appeal
4th May 1982

(continued)

Dated this 4th day of May, 1982

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CHOO CHAN & WONG
Advocates for the Respondent

To: The above-named Appellant
and his Advocates,
Messrs. Tan Jin Hwee & Company,
Suites 32 & 33 (4th Floor)
Hongkong Bank Chambers,
Bandar Seri Begawan,
Brunei.

20

This Notice of Cross-Appeal is filed by Messrs. Choo Chan & Wong, Advocates for the Respondents, whose address for service is at Room 52 Britannia House, Bandar Seri Begawan, State of Brunei.

No. 21

JUDGMENT

No.21
Judgment
18th October
1982

IN THE COURT OF APPEAL OF THE STATE OF BRUNEI
CIVIL APPEAL NO. 9 OF 1981

B E T W E E N

TIONG ING CHIONG Appellant

A N D

GIOVANNI VINETTI Respondent

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Coram: Sir Geoffrey Briggs, P., and Sir Alan Huggins and Bewley, J. sitting as Commissioners.

J U D G M E N T

Sir Alan Huggins:

There was an accident outside the Kuala Belait

In the Court
of Appeal

No.21
Judgment
18th October
1982

(continued)

General Hospital at about 10.10 p.m. on 6th October 1977. The Respondent Plaintiff was riding a motor-cycle towards Kuala Belait when a motor-car, driven by the Appellant Defendant, crossed in front of him in the course of a turn from the opposite lane into the hospital entrance. The Plaintiff's motor-cycle struck the car and the Plaintiff was injured.

Liability

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The trial judge found the Defendant solely to blame for the accident and the Defendant appeals, contending that the Plaintiff contributed to his own loss at least to some extent.

In my view the judge was entitled to reach the conclusion that he did. Whether or not the Plaintiff was negligent in failing to see the Defendant's car sooner (and I am not sure whether his evidence should be read as meaning that he was entirely unaware of the presence of the Defendant's car until it turned across his path), that negligence in no way contributed to his damage. I accept the judge's finding that the Defendant's car was displaying not only the regulation driving lights but also a trafficator light indicating on intention to turn right. The fact remains that until the car started its fatal turn the Plaintiff was justified in assuming that it represented no danger to him. By that time it was too late to take effective avoiding action. Just as the use of a trafficator gives a driver no right to carry out the manoeuvre which he indicates, so it does not impose on other road users any obligation to suppose that the manoeuvre will be performed until it is safe. Only when the danger becomes apparent to another road user does that road user have a duty to take reasonable precautions to protect himself from it.

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Damages

The judge awarded \$10,292.00 special damages, \$27,500.00 for pain, suffering and loss of amenities, \$327,000.00 for loss of earnings to the date of trial and \$936,000.00 for loss of future earnings, making a grand total of \$1,300,792.00. The Defendant appeals against the award for pain, suffering and loss of amenities and against the awards for past and future earnings. The Plaintiff cross-appeals

50

against the award for past and future earnings. In the Court
of Appeal

Pain, Suffering and Loss of Amenities

No.21

Judgment
18th October
1982

10 The judge was referred to several cases where comparable injuries were suffered and based himself on these cases, after taking the effect of inflation into account. The Defendant thinks the figure of \$27,500.00 too high but does not challenge it. The Plaintiff submits that it is too low and ought to be increased to \$35,000.00. There is a body of opinion that the general level of awards under this head has, in the past, been too low and there is much to be said for it. However, a general level has been established and I do not think we should disregard it. In my view the award in the present case is not substantially out of line with past awards and I would not interfere with it.

(continued)

Loss of Earnings

20 In relation to the earnings one must first inquire what the Plaintiff was earning at the date of the accident, and at once we run into difficulty because the whole case was tried on the false basis that the Plaintiff was being paid in Brunei dollars, whereas the fact is that his basic salary and deep sea diving bonus were paid in lire in Italy. As I understand it, he was then a third class diver earning

30	Basic monthly salary (equivalent to B\$3,500.00 at B\$1 = L.280	L. 980,000
	Deep or off-shore sea allowance (equivalent to B\$1,500.00)	<u>L. 420,000</u>
		L. 1,400,000 =====
	Local allowance (a variable which the judge took at the higher end of the bracket)	B\$3,000.00

40 As he had been abroad for more than 12 months, no tax was payable in Italy.

Another difficulty which has bedevilled us, as it must the trial judge, is the unsatisfactory nature of the rest of the evidence as to damages. For example, it is not entirely clear whether the

In the Court
of Appeal

No.21
Judgment
18th October
1982

(continued)

Plaintiff's company paid him anything when he became unable to work by reason of an accident unconnected with his employment. The judge obviously thought that it did not and that the "\$1,000.00" allowance which was paid for a time by the Italian Government was in the nature of an unemployment allowance. (That figure should, of course, be expressed in lire, say L.280,000.00.)

The question arises whether, and if so to what extent, the Plaintiff's failure to call satisfactory evidence as to his actual post-accident earnings has prejudiced his claim. Where lies the burden of proof? The basic rule is that a plaintiff must prove his loss. Where a defendant contends that that loss should have been mitigated, the onus of proving the possible mitigation is on the defendant. A loss of earning capacity is generally, and was here, sought to be established by showing what the plaintiff would have earned if he had not been injured and by deducting therefrom what he will be able to earn in his injured state. By "mitigation" in this type of case is meant, for example, the undergoing of medical treatment which would reduce the loss of earning capacity or the acceptance of available employment in another area. The proper approach to the assessment of damages for loss of earnings capacity has been the subject of several decisions in the courts of New South Wales in the past 10 years and a useful statement of general principle is to be found in the judgment of Mr. Justice Mahoney in Baird v. Roberts 1977 2 N.S.W.L.R. 389, 397A:

"The way in which the loss is to be taken into account must, as I have said, be determined according to the circumstances of the case before the court. Although that for which compensation is given may be the loss of economic capacity, that loss often will be best quantified by considering what is the relevant result from it, viz., the difference between the remuneration which could have been obtained by employment of the plaintiff's pre-injury capacity and that which can be obtained by employment of his reduced capacity after the injury: cf. Ruby v. Marsh (1975) 132 C.L.R. 642, at p.663, per Stephen J. This is the approach frequently adopted and, in my opinion, rightly so. In the kind of case where the compensation sought is for a reduction,

10 and not for a complete destruction,
of the economic capacity, such an
approach will afford, prima facie, the
most direct assistance in quantifying
the compensation. This does not mean
that it is the only approach which can
be made. There, no doubt, will be
circumstances in which a comparison
between such pre- and post-accident
remuneration possibilities cannot be made.
In such cases, the Court has the more
difficult task of taking into account
or fixing upon a figure for a reduction
in capacity generally.

20 However, in many cases, it will be to
the advantage of the plaintiff and the
defendant to have the compensation assessed
upon the basis of a comparison of such
pre- and post-accident possible earnings.
But, if the court is to be asked to adopt
this approach and the parties are to have
from such an approach the benefits which
they seek to obtain from it, then, in
my opinion, appropriate evidence must
be adduced to support it."

30 In the present case it was for the Plaintiff
to prove his loss and, since he sought to
compare the pre- and post-accident possible
earnings, to show what he was now able to earn
in his injured state (see Allan v. Loadsmen
1975 2 N.S.W.L.R. 789): there was no question
of mitigation. The fact that the evidence of
the prospective earnings of his business was
far from satisfactory does not mean that the
judge was unjustified in doing his best to arrive
at a just conclusion. Even though the onus was
on the Plaintiff to prove his loss, it was open
to the Defendant to adduce evidence to refute
such evidence as the Plaintiff did provide.
40 Indeed I would accept the view of Mr. Justice
Reynolds in Yammine v. Kalwy 1979 2 N.S.W.L.R.
151, 155A that

50 "...in seeking to quantify his damages,
a plaintiff could be well advised to offer
such evidence in many cases; and likewise
a defendant, in seeking to cut down the
damage, might similarly be well advised
to tender such evidence; neither, in the
absence of such evidence, could complain,
to the same effect, at any quantification
arrived at. This, however, is far from
asserting that in the absence of such
evidence only nominal damages is appropriate.

In the Court
of Appeal

No. 21
Judgment
18th October
1982

(continued)

In Kealley v. Jones 1979 1 N.S.W.L.R. 723, at p.732 et seq. the President dealt with this matter in terms with which I express respectful agreement. In my opinion, where a plaintiff has suffered a significantly disabling injury which obviously affects the range and nature of the work, he can, therefore, perform, a tribunal of fact can, without specific evidence as to what other persons with that kind of disability can earn, make a judgment and assessment, on a percentage basis or otherwise, of the value of the lost capacity. Allan v. Loadman should not be understood as deciding otherwise."

10

In truth Mr. Cashin did not contend that the Plaintiff had failed to prove any loss but merely that, on the whole of the evidence, it was wrong to conclude that the loss was as great as the judge found it to be.

20

On the question whether the Plaintiff's company paid him anything when he became unable to work, I incline to the view that there was just enough evidence for the judge to find as he did. The Plaintiff was unable to work from the date of the accident to the end of 1977 and, therefore, during that period he received only L.785,806.44 in unemployment allowance.

30

In 1978 he was unable to work until August and for the first seven months he received a total of L.1,960,000.00 from the Italian Government. He then obtained a licence to work as a shallow water diver and went to work in Libya. He was there for 20 days and was paid "\$4,000.00 a month". Presumably that was expressed, but not paid, in Brunei dollars and meant the rate at which he was paid. There was no evidence as to where it was paid and I shall leave the amount in Brunei dollars. The judge did not explain how he arrived at his figure of the loss for 1978, but Mr. Chan suggests that he assumed an income limited to the unemployment allowance throughout the year. If that be so, it cannot be right: the Plaintiff worked in August and we must not assume that he was unemployed upon his return to Italy. On the contrary, I would assume that he continued to be paid the equivalent of \$4,000.00 a month, say L.1,120,000.00 making a total of L.4,480,000.00 for the four months.

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(continued)

10 Although the judge assumed a loss of
earnings of \$5,000.00 a month from 1st January
1979 to "1st January 1980", I think we need
to consider this period in detail. In January
1979 the Plaintiff returned to Brunei and was
re-employed by his old company at a salary of
"\$4,000 - \$4,500 per month". I say he was
"re-employed" although there was no evidence
that he was ever discharged by the company
and there is the evidence of pay sheets
suggesting that he never was discharged. Those
pay sheets are in Italian and no translations
were provided. The judge did not rely upon
them and I do not think we can do so, save as
evidence that the Plaintiff was still employed.
Although his evidence was contradictory, his
basic salary appears now to have been paid
locally with "two other payments in Italy",
say B\$3,500.00 and L.280,000.00 a month. This
20 continued until June, when he returned to Italy
for medical treatment. That makes B\$17,500.00
and L.1,400,000.00 for the first five months
and, since he did not say what form the treatment
took or how long it took, one cannot assume he
was not working during the treatment and I shall
assume, as did the judge, the same rate of
earnings as in January to May. The Plaintiff
returned to Brunei for one month, during which
he would have earned B\$3,500.00 and L.280,000.00,
30 and then returned to Italy, whereupon he asked
to be sent to Libya. He went to Libya for two
months at a salary of "about \$4,000.00" - as
before. That comes to the equivalent of B\$8,000.00.
After that - it would be October 1979 - he
returned to Italy. Until he started his own
business in "August/September 1980" his income
is unclear. There are pay sheets up to January
1980, when, he says, he resigned. He did not
say why he resigned or what he earned prior to
40 his starting in business. The judge assumed that
he was unemployed from October 1979 to the end
of July 1980. We have seen that he was still
employed until the end of January 1980, but I
do not think we can quarrel with the finding
that he was unemployed thereafter.

50 The evidence as to the earnings of his
business is woefully inadequate, but the Plaintiff
said that by the date of the trial he had a
turnover equivalent to "about B\$4,000.00". This
varied according to the season. What we are
concerned with is not turnover but profit, and
there is no evidence at all as to that. All the
Plaintiff said was that a bit less than \$3,000.00
went into buying new stock and a bit more than

In the Court
of Appeal

No.21
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1982

(continued)

\$1,000.00 'is expenses'. What is 'new stock?' I take it that he meant increased stock for the purpose of building up his business and that the replacement of old stock which had been used in making the '\$4,000.00' was covered by 'expenses.' Nevertheless the evidence is so unsatisfactory that I think the judge was entitled, as he appears to have done, to treat the entire '\$4,000.00' as profit. It should, however, be expressed in lire without the benefit of the increasingly favourable exchange rate i.e. L.1,120,000.00 Accordingly, in the period August 1980 to 6th December 1981 the total would come to L.18,136,774.09.

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The actual pre-trial income can be summarized as follows :

<u>Period</u>	<u>L</u>	<u>B\$</u>	
1.10.77 to 31.12.77	785,806.44	-	
1. 1.78 to 31. 7.78	1,960,000.00	-	20
1. 8.78 to 31. 8.78	-	4,000.00	
1. 9.78 to 31.12.78	4,480,000.00	-	
1. 1.79 to 30. 6.79	1,680,000.00	21,000.00	
1. 7.79 to 31. 7.79	280,000.00	3,500.00	
1. 8.79 to 30. 9.79	-	8,000.00	
1.10.79 to 31. 1.80	4,480,000.00	-	
1. 2.80 to 31. 7.80	1,680,000.00	-	
1. 8.80 to 6.12.81	18,136,774.09	-	
	<hr/>	<hr/>	
Total	33,482,580.53	36,500.00	
	=====	=====	

Pre-trial Earnings if not Injured 30

The pre-trial earnings, if the Plaintiff had not been injured, would have been as follows. From the day following the accident until the 31st December 1977 he would have been paid at the pre-accident rate. In January 1978 he would probably have been promoted to 2nd class diver and would have been paid L.1,400,000.00 as basic salary plus L.420,000.00 deep sea allowance and a local allowance of B\$3,000.00. That would have been continued until the end of 1979, when the company ceased operations in Brunei. In 1980 he would still have been a 2nd class diver but it is not known where he would have worked. Presumably he would have continued to draw his basic salary and deep sea allowance, both payable in Italy. The judge found that in 1981 he would have been likely to be promoted to 1st class diver and his basic salary would then have been

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L.1,820,000.00 plus the deep sea allowance of L.420,000.00. The annual totals would thus be :

In the Court of Appeal

	<u>L</u>	<u>B\$</u>	No.21
1977	3,929,032.20	8,419.35	Judgment
1978	21,840,000.00	72,000.00	18th October
1979	21,840,000.00	72,000.00	1982
1980	21,840,000.00	-	
1981 (to 6 Dec)	25,273,548.19	-	(continued)
	<hr/>	<hr/>	
	94,722,580.39	152,419.35	
	=====	=====	

10 As tax was payable in Italy for only one year after the Plaintiff went abroad and no tax was payable in Brunei, I think the judge was justified in ignoring the incidence of taxation.

Loss of Earnings to date of Trial

We are now in a position to calculate the loss to the date of trial and it comes to L.61,239,999.86 and B\$115,919.35. At the rate of exchange ruling at the date of trial, namely B\$1 = L.520, that amounts to \$233,688.58, which is \$93,311.42 less than the judge awarded.

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Future Earnings if not Injured

We then come to the loss of future earnings. Here we must estimate what he was likely to have earned had he not been injured and what he was likely to earn in his injured state. Clearly the Plaintiff has not been wholly incapacitated and, to arrive at his actual loss, some deduction must be made from the amount he would have earned had he not been injured. The judge thought the loss could properly be arrived at by deducting the prospective profits of the Plaintiff's business and that it was fair to assess those profits at \$6,000.00 a month. The attack on the award is, in effect, in two stages: first it is said that the finding that the prospective profits can properly be assessed at \$6,000.00 a month is not supported by sufficiently cogent evidence: then it is said that, however one calculates the loss of earning capacity, the final figure of \$936,000.00 is manifestly too high. The judge accepted the evidence that the Plaintiff was a proficient diver who would have done particularly well. He therefore made his entire calculation on the basic salary of a Superintendent Diver which was said to be equivalent to B\$12,000.00 to B\$14,000.00 He took the lower figure. Mr. Chan objects that, although it was reasonable to base

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In the Court
of Appeal

No.21
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1982

(continued)

the calculation on a Superintendent Diver's salary, it was unfair to take the lower figure in view of the Plaintiff's record, and he suggests that one ought to take a mean figure of B\$13,000.00. The judge gave no reason for adopting the lower figure, but I do not see that it is open to us to say that he was wrong. It gives an annual figure of B\$144,000.00.

Future Earnings in Injured State

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On the other side of the balance sheet the judge assumed that the Plaintiff's business would at all material times make a profit of the equivalent of B\$6,000.00 a month. The evidence was, as we have seen, that it had a turnover equivalent to "about B\$4,000.00 p.m.", and that it varied according to the season. In the Plaintiff's evidence there then appears the note: 'Now in winter', I am not sure what that means, but presumably such a business is less profitable in the winter and the suggestion was that in the summer the profit would be higher. How much would it be? The Plaintiff emphasized that his was a new product and he said that he hoped to make enough to live on. This suggests that he was not yet earning enough to live on. In any event he was ploughing all the profit back into the business with the object of building it up. The judge, having taken the entire \$4,000.00 as 'profit' for the purposes of pre-trial earnings, then estimated the profit throughout the assumed working life as \$6,000.00. There was no other evidence to support such a finding and the Plaintiff submits that the finding was not justified. I do not see what else the judge could have done than to take a figure out of the air. To assume that the Plaintiff would make no profit at all would mean that he would be entitled to sit back and live at the Defendant's expense. On the other hand Mr. Cashin points out that the future profits might well exceed the amount of the Plaintiff's estimated future earnings as a diver: in that event there might be no loss at all and, having regard to the fact that the Plaintiff had a working life of some 28 years ahead of him and to the fact that he was the type of man who was likely to do well at any job he took up, it was too cautious an estimate that a business which had made a monthly profit of \$3,000 - \$4,000 after only a few months of trading would earn only an average of \$6,000 throughout the whole of the material period.

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Mr. Cashin emphasized that the nature of the Plaintiff's injuries might have made him unfit for deep sea diving but they would not affect his managerial capabilities. Moreover, he objected that the judge had accepted the Plaintiff's statement of his earnings in Brunei dollars, when they should have been expressed in lire and then converted at the current rate of exchange, bearing in mind the large drop in the value of the lire against the Brunei currency.

In the Court
of Appeal

No.21
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1982

(continued)

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I have every sympathy with the trial judge; he was trying to do justice to both sides on very slender evidence. He was satisfied that the Plaintiff would suffer some loss, but equally it was obvious that the business would make some profit or the Plaintiff would discontinue it and do something else. It was reasonable to assume that the small initial profit would increase and I think the judge was certainly entitled to take as a minimum the figure he did. I have no doubt that if I had been trying the case at first instance I would have assessed the probable future profit at a higher figure, even though the future is inevitably fraught with uncertainty. Nevertheless, after much deliberation, I have come to the conclusion that I cannot say the judge was not entitled to find as he did.

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I have not over-looked two further contentions. The first was that the judge ought to have had regard to the pension which it was said the Plaintiff would have earned if he had remained with the company which was employing him at the time of the accident. Apart from the fact that it appears to have been a non-contributory pension, no details of the scheme can be deduced from the evidence. The trial judge gave three reasons for disregarding the pension:

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- (i) that the evidence on the subject 'was not comprehensive and no details were given as to if it was payable before the age of 60 or on what condition';
- (ii) 'it was not pleaded' and
- (iii) 'the large amount of capital the Plaintiff will now have.'

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In my view the last two reasons cannot be supported. Any loss of pension would be part of the future loss and there was no need to plead it

specifically. The fact that an award will be very large without taking into consideration a factor which would normally be considered does not justify the judge in disregarding that factor: that is tantamount to reducing a proper award on the sole ground that it is very large, which cannot be right. However, the first reason given for disregarding the pension is ample ground for upholding the decision of the judge.

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Secondly, I have not overlooked the judge's decision that no discount ought to be made for tax. Mr. Cashin submits that there should be a discount of not less than 30%. Although there was evidence that salaries were taxed in Italy, there was none that business profits were taxed or to what extent they were taxed. Perhaps one is entitled to say, on a balance of probabilities, that if salaries are taxed business profits will also be taxed, but the amount is a matter of pure conjecture. Moreover, if prospective profits should be disconnected for tax, so should the prospective salary as a diver. I think both sides were at fault in leaving the judge entirely without assistance on the point and it seems to me that he cannot be criticised for having decided to ignore tax.

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Loss of Future Earning Capacity

The resulting annual loss of future earnings, which is here the measure of the loss of earning capacity, is B\$144,000.00 less \$72,000.00, i.e. \$72,000.00.

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The judge took a multiplier of 13. Mr. Cashin submits that this was generous but does not attack it as such. Mr. Chan submits that it is too low and ought to be increased. I have said before that the use of multipliers in the way in which they have come to be used is arbitrary, often misleading and thoroughly unsatisfactory. However, it is too late to say that it is wrong.

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In the present case there has been much discussion of the evidence relating to the hazards of a diver's occupation. The Plaintiff submits that the judge attached too much weight to this factor in view of the fact that he would rarely have dived after being appointed a supervisor and would never have dived after becoming a Superintendent. However, I am not persuaded that the judge failed to appreciate

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that the greatest danger would continue for only a limited period: we cannot say for certain what discount he did make for it, but my calculation at the end of this judgment may show that he assumed a working life of 25 to 26 years and therefore discounted by about 24%. It was common ground that the Plaintiff could have worked for another 33 years (until the age of 60 years). In Lee Woon Sun v. Wong Kin Keling [1976] H.K.L.R. 296 I suggested that as a general rule a discount of not more than 10% would be appropriate for the contingencies of life. This is not a normal case and I think a discount of 15% would have been appropriate in view of the hazards under which the Plaintiff would have been working. I would therefore have calculated the damages on the basis of a working life of 28 years.

In the Court
of Appeal

No.21
Judgment
18th October
1982

(continued)

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Whichever way one chooses to make the calculation I think we are bound by authority to say that, after making good the Plaintiff's loss year by year, the capital (with interest thereon) must be exhausted at the end of what would have been the Plaintiff's working life. Thus in Taylor v O'Connor [1971] A.C.115, the court took a multiplier of 12, but the remaining working life of the Plaintiff was 15 to 18 years and at p.143G Lord Pearson said the fund must be exhausted over 15 to 18 years. The reason behind this can be seen from the words of Lord Diplock in Mallet v. McMonagle 1970 A.C.166,174:

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"My Lords, the purpose of an award of damages under the Fatal Accidents Acts is to provide the widow and other dependants of the deceased with a capital sum which with prudent management will be sufficient to supply them with material benefits of the same standard and duration as would have been provided for them out of the earnings of the deceased had he not been killed by the tortious act of the defendant.....".

50

The Defendant contends that it is here that the judge went wrong and that he failed to make proper allowance for the fact of a lump sum payment. At some stage the question had to be asked: What sum would need to be invested to produce \$72,000.00 a year during the rest of the Plaintiff's working life?

For this calculation it was necessary to

In the Court
of Appeal

No.21
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18th October
1982

(continued)

decide what rate of interest should be allowed. The judge said that in his view

"The court should still base awards on the traditional rates of interest of 5 - 6%."

Mr. Cashin has submitted that 10% is now the very lowest interest payable on deposits in Europe and that it is unrealistic to assume that the high rates of interest which have now persisted for decades by reason of the continuing inflation will come to an end. Whilst I see the force in this argument (which was advanced in Mallett v. McMonagle and dealt with at length by Lord Diplock at p.175E) I think it must be remembered that we are not here concerned with a future of a few years but with a working life of about 28 years and I think it is too early to abandon the more modest rate which have been applied until now. I would not disagree with the figure of 6% which was obviously adopted by the judge.

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Mr. Cashin then argued that, whatever the multiplier one takes, the fund must be exhausted at the end of that number of years. As Mr. Chan points out, where the generally adopted method of assessment is employed, that argument confuses the multiplier with the length of the working life and he cites Munkman on Damages (3rd Edition) 46. If my mathematics are correct, the sum of \$936,000.00 awarded by the judge would be exhausted in the last month of the 25th year. As I would have continued the payments until the 28th year, this supports the view that the judge's award was slightly on the low side on his assessment of the probable future profits of the Plaintiff's business, possibly because he made a greater discount for the contingencies of life. Whatever the reason, the award was not so low that I am disposed to increase it. Equally I am not satisfied that the award is so high that it is out of proportion with the loss sustained.

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I would therefore allow the appeal to the extent only that I would substitute '\$233,688.58' in paragraph (2) of the Judgment with consequential amendments as to interest. I think the Defendant should have (a) 25% of the costs of the appeal and (b) the costs of the cross-appeal.

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This is the judgment of the Court.

In the Court
of Appeal

Sir Geoffrey Briggs
PRESIDENT

No.21
Judgment
18th October
1982

Delivered on Monday, 18th October, 1982

(continued)

No. 22

ORDER

No.22
Order
6th December
1982

IN THE COURT OF APPEAL OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL APPEAL NO. 9 OF 1981

10

B E T W E E N

TIONG ING CHIONG Appellant

A N D

GIOVANNI VINETTI Respondent

(In the matter of Suit No.123 of 1980 in the
High Court of Brunei)

B E T W E E N

GIOVANNI VINETTI Plaintiff

A N D

TIONG ING CHIONG Defendant

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BEFORE THE HONOURABLE
SIR GEOFFREY BRIGGS, P.
SIR ALAN HUGGINS, J.A. AND
BEWLEY, J.

IN OPEN COURT

The 18th October 1982

O R D E R

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UPON this Appeal by the Appellant/Defendant and
Cross Appeal by the Respondent/Plaintiff having
come on for hearing before this Court on the 9th
and 10th day of May 1982 in the presence of
Mr. Cashin and Mr. Karuppan of Counsel for the
Appellant and Mr. T.C.Chan and Mr. S.P.Wong of
Counsel for the Respondent. AND UPON hearing Counsel

In the Court
of Appeal

No.22
Order
6th December
1982

(continued)

for the Appellant and Counsel for the Respondent THIS COURT DOTH ORDER that the Appeal be allowed to the extent that the figure of \$327,000/- awarded in respect of loss of Earning be substituted to the figure of \$233,688.58 with consequential amendments as to interest and that the Cross-Appeal be dismissed and IT IS FURTHER ORDERED that the Appellant is entitled to have (a) 25% of the costs of the Appeal and (b) the costs of the Cross-Appeal.

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Dated this 6th day of December 1982

M. ALI BIN SALLEH
CHIEF REGISTRAR
Supreme Court
Brunei

Entered No. 180 of 1982

No.23
Order
granting
leave to
appeal to
Privy
Council
5th January
1983

No. 23

ORDER GRANTING LEAVE
TO APPEAL TO PRIVY
COUNCIL

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IN THE SUPREME COURT OF THE STATE OF BRUNEI
HOLDEN AT BANDAR SERI BEGAWAN
CIVIL APPEAL NO. 9 OF 1981

B E T W E E N

TIONG ING CHIONG

Appellant

A N D

GIOVANNI VINETTI

Respondent

BEFORE THE HONOURABLE GARCIA J.

IN OPEN COURT
The 8th December 1982

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O R D E R

UPON these motions by the Appellant and the Respondent having come up for hearing before this Court on the 8th day of December 1982 in the presence of Mr. Sarjeet Singh of Counsel for the Appellant and Mr. T.C.Chan of Counsel for the Respondent AND UPON hearing

10 Counsel for the Appellant and Counsel for
the Respondent THIS COURT DOTH ORDER that
leave be granted to both Appellant and
Respondent to appeal to the Privy Council
and that the Appellant and the Respondent to
take all the necessary steps for the purposes
of procuring the preparation of the records
and the despatch thereof to England within
6 months from date hereof AND IT IS FURTHER
ORDERED that the Appellant's application for
a stay of execution on the Judgment of the
Court of Appeal be remitted for hearing at
the Court of Appeal at its next sitting and
that a general stay on the said Judgment be
granted until the hearing of the application
by the Court of Appeal.

Dated this 5th day of January 1983

20 MALI BIN SALLEH
CHIEF REGISTRAR
Supreme Court
Brunei

In the Court
of Appeal

No.23
Order granting
leave to appeal
to Privy
Council
5th January
1983

(continued)

EXHIBITS

'Pl'

Deposition
of Richard
John
Hamshere
2nd October
1980

EXHIBITS

'Pl'

DEPOSITION OF RICHARD
JOHN HAMSHERE
2nd October 1980

IN THE HIGH COURT OF BRUNEI HOLDEN AT
BANDAR SERI BEGAWAN

CIVIL SUIT NO. 123 OF 1980

GIOVANNI VINETTI

Plaintiff

AGAINST

10

TIONG ING CHIONG

Defendant

DEPOSITION OF WITNESS EXAMINED
BEFORE TRIAL

The deposition of Dr. Richard John Hamshere examined in the above action on behalf of the Plaintiff pursuant to the Order of Mr. Justice Silke dated the 16th day of September, 1980 before me, Zainal Abidin Jamal, the Magistrate of Kuala Belait, Brunei on the 2nd day of October, 1980 at 10.30 in the forenoon.

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There were present:

Mr. S.P.Wong, Counsel for the Plaintiff
of Messrs. Choo, Chan & Wong;

Mr. Sarjeet Singh, Counsel for the
Defendant of Messrs. Tan Jin Hwee & Co.;

The above mentioned witness.

The said Dr. Richard John Hamshere being first duly sworn by me and examined by Mr.S.P. Wong said:

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I am a qualified practising physician in the State and have been here for 5½ years. I first qualify to practise medicine in 1964 and Surgery is my specialised field. I am a fellow of the Royal College of Surgeons, England and Edinburgh.

Some time in 1977, I met a gentleman by the name of Giovanni Vinetti when he was admitted into Panaga Hospital following a road

traffic accident which occurred on the 6th October, 1977 in Kuala Belait. He was admitted into the said hospital on the 15th October, 1977. I am a surgeon in the said hospital.

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

When this gentleman first came to see me, he was unable to walk without assistance. He had a fractured leg and was transferred from the Kuala Belait Government Hospital.

(continued)

10 Q: Did you at that time obtain from the General Hospital the case history of the patient?

A: In general, he was riding a motorcycle when he was struck by a car and his leg was fractured.

When I first saw him, he had pain in his leg and on the same day he was admitted (15.10.77) I examined him. My examination disclosed that the patient had :

- 20 (a) Compound fracture of the right femur (thigh bone);
- (b) Compound fracture of right tibial plateau with disruption of the patella tendon; and
- (c) fracture of the left medial malleolus.

X'rays were taken.

Counsel tendered X'rays as exhibits, identified and marked "P2(i) to (vii)". The following was found to be written on the X'rays :-

30 4530
SSOS
PA.

Court referring to the Exhibits: What does SSOS mean?

A: Sub-Sea Oil Services

Court: What does P.A. Stand for?

A: Postero-Anterior

40 The first X'ray (P2(i)) is a normal chest X'ray. The second X'ray (P2(ii)) is on his right femur and is the lateral view of the femur. The third X'ray is also on the femur (P2(iii)) and it is in antero posterior view

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

(continued)

The fourth one (P2(iv)) is the knee of the right leg.
The fifth one (P2(v)) is the left ankle.
The sixth one (P2(vi)) is the lateral view of the knee of the right leg.
The seventh (P2(vii)) is the left knee which is normal.

Q: Can you please tell us what type of fracture are all these?

A: Compound fracture. 10
Compound fracture is associated with the wounds. Besides the compound fracture the patient did not suffer from anything else. There are different types of fracture - simple, compound and comminuted.

Q: Is this a comminuted fracture?

A: Yes.

Q: Is it correct to say a comminuted fracture means broken into pieces?

A: Yes. 20

Q: I would appreciate if you would translate these medical terms into layman's language.

A: Femur is a thigh bone. Tibial plateau is the top of the shin bone where it joins the knee. Patella tendon is the tendon from the knee cap. Lateral malleolus is part of the ankle joint. After carrying out my examination, I performed an open reduction and fixation of the fracture of the femur and I fixed the fracture of the medial malleolus with a screw. The knee injury had previously been dealt with at the Kuala Belait Government Hospital. After the operation, the patient could not use his leg immediately. He stayed in that condition for some while. The wound of the knee which has been sutured at the Kuala Belait Hospital became infected. This was treated conservatively with dressings. There were 30
some difficulties in mobilising him as both legs were injured. He was subsequently transferred to Italy. His injured leg was in a cast until 8.11.77. 40

Court: From when to when?

A: From the date of the operation, i.e. 15.10.77

to 8.11.77. After that he had a below-knee plaster to the left leg. He was not able to use his leg for a considerable period.

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

Q: What was the effect of dis-use of the part of the body like the joint?

A: The joint becomes stiff.

(continued)

Q: There will be muscle wasting?

A: Yes.

10 Q: What is capsule of the joint?

A: A capsule of the knee is a fibrous covering surrounding the synovial membrane which produces liquid that lubricates the joint.

Q: Is it correct to say if a joint is injured then this capsule will also be injured?

A: That can be.

20 Q: When you have a fracture which cut into the knee joint breaking up the tibial plateau of the shin bone do you find that the fracture has disturbed the normal contour or curvature of the plateau?

A: Yes.

Q: What is the effect of these injuries on the knee?

30 A: Damages the cartilage covering the joint. It breaks up. So the joint is no longer as good as it was. The cartilage does not heal properly. The joint is deranged and osteoarthritis develops. The damaged cartilage will regenerate to a certain extent but never returns to the original state. It is damaged forever.

Q: Is there any medical treatment which can make good the plateau as it is before?

40 A: Some people with severe rheumatoid arthritis can have the knee joint replaced by an artificial joint but it is never as good as the original knee. The effect of the injury is that the knee will always be stiff to a certain degree with lost movement. He will neither be able to fully extend nor flex the knee. At the time he left, it was impossible

EXHIBITS

'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

(continued)

to tell the final degree of his disability. There will be bleeding in the knee joint. It causes the knee to swell and can be quite painful and quite tense. The body eventually absorbs the blood and the joint returns to normal.

Q: Can you tell that from the X'rays?

A: No, from the X'rays this joint is going to be permanently deranged.

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Q: Can you explain adhesion?

A: It is joining together of two parts of the joint, either by direct contact or by a thread of tissue.

Q: Bearing in mind that the Plaintiff's leg was in a cast, would that cause adhesion?

A: It may initially produce adhesion between the joint surfaces but if the joint is not damaged then full function would have been restored.

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Court: In this case does this happen?

A: No, if the joint had not been damaged then full function would have been restored. With the compound or comminuted fracture of the femur the tissue around the bone would be injured. The effect is that it usually damaged muscles with haematoma formation. In operating on the fracture it is necessary to cut through muscle thus causing further damage. On the whole, recovery by healing is very good although healing by scar tissue is inevitable. There will always be scarring. The fracture on the left ankle is probably an avulsion fracture. Medial and lateral ligaments of the ankle joint are attached to either side of the ankle to the malleolae. If the ankle is forcibly averted, the ligament is so strong that it pulls a bone fragment away, this causing a fracture. The treatment is to hold the two pieces together and the best way is by a screw. After the treatment the patient progressed satisfactorily apart from the infection of the knee wound. He was discharged on the 10th December, 1977 when he was transferred

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back to Italy. So far as these injuries are concerned, I last saw him on the 14th December, 1977 before he left for Italy and he was then satisfactory.

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

Q: At that time did you have any prognosis on the condition of the Plaintiff?

10 A: I thought at that time his knee is unlikely to fully recover to normal because of the injuries of the tendons and the fracture. At that time it was difficult to make an exact assessment. It depends on the therapy he gets. I am quite certain he can never fully recover. I know the Plaintiff was a commercial diver by profession and in my opinion based on his injuries he would not be able to pass his medical fitness in respect of a diver in future. I say this with medical certainty. (continued)

20 Q: In your expert opinion, what is the physical condition required of a commercial diver?

A: He must be mentally and physically fit.

Q: In the past, have you been asked to examine a commercial diver?

A: Yes.

Q: It is then within your knowledge?

A: Yes.

Q: Are you qualified to state an opinion as to the physical fitness of a commercial diver?

30 A: Yes. I am registered with the British Board of Trade which allow me to conduct medical examination of divers.

Q: In your opinion is the Plaintiff able to diver again after this?

40 A: If he has any residual disability as I imagine he would have, I would not be prepared to pass him as fit to dive. He would not be able to get in and out of the hatches and he would therefore, in emergency not be reliable and therefore, would not be fit enough to be a commercial diver.

Court: Which you are quite certain he will have residual disability?

A: Yes.

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

(continued)

Q: Where the fracture involving the compound fracture and knee joint, was this open to pain?

A: Yes.

Q: Is there any objective test which you can show how painful it is?

A: Different people have different level of pain and it is difficult to assess.

Q: Would you tell us based on your examination and treatment what was the cause of the injuries? 10

A: It is consistent with severe trauma which would have been found in a traffic accident.

Cross-examined by Mr. Sarjeet Singh, the said witness said:

I made a report on the 26th June, 1980 on these injuries.

Q: Are you tendering this report to the court?

A: No.

Mr. Sarjeet Singh made an application to tender the medical report. Plaintiff's Counsel did not object. Medical report identified, tendered and marked P3. 20

Q: Do you know of any reason why the patient was transferred from the Kuala Belait General Hospital to Panaga Hospital?

A: I gathered that the surgeon had not performed nailing of the femur and he was therefore transferred to Panaga Hospital. 30

Q: You mean they were not capable of doing so?

A: Yes.

Q: Before you treated this patient and when you were treating this patient, did you examine his general condition?

A: His general condition was quite good.

Q: He did not have any other illness?

A: No.

- 10 Q: In your report, you stated that you fixed the femur using a kuntchnear nail and screw. This nail and screw, can this be removed later on?
- A: Yes, the nail in the femur works loose. It is put in the thigh bone and holds it together. Frequently, it works loose.
- Q: What about the screw?
- A: The screw is usually taken out some six months or a year later.
- Q: The opinion you gave during your examination-in-chief, the possibility of the pain the patient will suffer, and since you did not examine the patient subsequently, you do not really know?
- A: No, not for certain.
- Q: In your report, you also stated no further active therapy was carried out. Can you explain?
- 20 A: They did not nail the leg or screw the ankle and they merely apply a plaster and splint.
- Q: In your examination-in-chief, you stated that the fracture of the right femur and right tibial plateau were compound and comminuted. Do you mean the same thing?
- 30 A: Comminuted is when the thing is broken into several fragments. The difference between a compound and a simple fracture is that in the simple fracture the skin is intact. There is a break in the skin in a compound fracture. It does not mean that the wound is necessarily in contact with the fracture.
- Q: Because the patient is in a cast, there will be muscle wasting and stiffness?
- A: Yes.
- 40 Q: When this cast is removed and the patient exercises, will this stiffness and wasting of muscles be improved?
- A: It will improve after it has been in a cast with physiotherapy and exercises. A full range of movement will return over a period of several months.

EXHIBITS
'P1'

Deposition
of Richard
John Hamshere
2nd October
1980

(continued)

Q: You also told the Court that osteo-
arthritis can occur?

A: Yes.

Q: In your opinion, could you tell us the
period of time which the patient may get
it?

A: Several years as a rule. It is a disease
of the joint but if the joint has been
damaged in any way, this process is
accelerated.

10

Q: Can you tell us the period?

A: About 6 years.

Court: How old was the patient?

A: 26 years.

Q: There would be bleeding in the knee joint?

A: Yes, but once it has healed, it should
be alright.

Q: In your opinion, from the injuries this
patient sustained, would there be any
limitation in the knee movement and
ankle movement?

20

A: The ankle should fully recover as this
part does not bear weight. The knee, however,
certainly bears weight and the weight
bearing surface has been damaged. I think
he is unlikely to get full recovery of the
movement in that joint.

Q: In your report you said you were doubtful
that this patient can pursue his previous
profession. Is there any possibility
that he may do so?

30

A: When there is doubt there is always a
possibility of recovery but I think the
possibility is very remote.

Q: Did he sustain any other injuries?

A: No.

Re-examined by Mr. S.P.Wong, the said witness
said:

Apart from the suturing of the tendon, no

other treatment was given at the Kuala Belait hospital. That did not affect or make the injuries worse.

EXHIBITS

'P1'

12.00 noon - Re-examination adjourned until 2.00 p.m.

Deposition
of Richard
John Hamshere
2nd October
1980

2.00 p.m. - Re-examination continued.

Mr. S.P. Wong: I wish to make an application to ask further questions as to the hospital charges. (continued)

10 Mr. Sarjeet Singh: No objection.

Mr. S.P. Wong: Was the Plaintiff charged for medical services?

A: I have nothing whatsoever to do with charges. I am paid a salary and I do not get any fees. The hospital administrator deal with the charges which are set by the Company.

20 Mr. S.P. Wong has no further questions and the witness upon questions asked by the Court said:

I am a holder of M.B.B.S. degree, London and also a fellow of the Royal Colleges of Surgeons. The injured party only went to Panaga Hospital after he was discharged from the General Hospital. He went there on his own free will.

Court: Did he say why?

30 A: Firstly, because we can carry out the treatment. Secondly, he has a right to go to Panaga Hospital because it is within his contract of service to be treated at Panaga Hospital.

3.00 p.m. Court ended.

Signed: R.J.Hamshere
(Witness)

40 I HEREBY CERTIFY that the evidence contained in this and the preceding nineteen sheets of paper was taken down by me and is the evidence of the witness mentioned and was on completion read over to him and signed by him in my presence.

Dated the 2nd day of October, 1980

Signed: Zainal Abidin Jamal
Magistrate



ATTESTATO DI STUDIO

ISTITUTO TECNICO INDUSTRIALE STATALE
"A ROSSI" - VICENZA

L'Allievo **VINETTI GIOVANNI**
ha frequentato nell'anno scolastico 1975 - 1976 il Corso (*) annuale di PERITO ADDETTO AI LAVORI SUBACQUEI

e, nell'esame finale, ha riportato la seguente votazione

----- 65 / 100 (sessantacinque centesimi)

Il presente attestato è titolo preferenziale per l'ammissione a impieghi (art. 6 del D. L. 27 dicembre 1947, n. 1509)

VICENZA li 20 DICEMBRE 1976



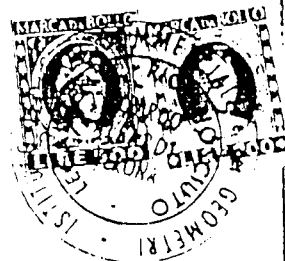
Consorzio Provinciale
per l'Istruzione Tecnica

(*) Biennale o Triennale.



Il Direttore del Corso
IL PRESIDE
(Ing. Livio Bernasconi)

"P. 3"
Diploma
of Geometry
25th July
1974



MINISTERO DELLA PUBBLICA ISTRUZIONE

ISTITUTO TECNICO COMMERCIALE E PER GEOMETRI
"ALEARDO ALEARDI" (tipo di istituto)

Legalmente Riconosciuto (D.D. Min. P.I. 16.5.1957, 22.5.1958 - 20.5.1969)

(denominazione) n. 5 - VERONA - tel. 511883 (sele)

ANNO SCOLASTICO 19 73 - 19 74

MATURITÀ TECNICA

DIPLOMA DI GEOMETRA

(Legge 15 giugno 1931, n. 889; D. L. 15 febbraio 1969, n. 9,
convertito con modificazioni nella legge 5 aprile 1969, n. 119)

conferito a *Zinedu Giovanni*
nato a *Alleveta Vicenza* prov. di *Vicenza*
il giorno *20 giugno 1954*

con il seguente voto *quarantatré /* sessantesimi
(in lettere)

Verona addì *15 luglio 1974*

IL PRESIDENTE DELLA COMMISSIONE

Prof. Remo Pizzati
[Signature]

Medical
report of
J.M. Davidson
4th December
1981

MEDICAL REPORT OF
J.M. DAVIDSON

BRUNEI SHELL PETROLEUM COMPANY LIMITED
(Incorporated in the State of Brunei)

Panaga Hospital Kawat (Cable):
Seria, State of Brunei BRUNSHELL Seria
Teleks: (Telex) BU3313

Confidential 4 December 1981 10

Medical Report

Giovanni VINETTI dob 20.6.54
Occupation Diver with SSOS

The above was involved in a motor-cycle accident on 6/10/77 and suffered a compound fracture of (R) femur, compound fracture of (R) tibial plateau with disruption of patella tendon and fracture of (L) medial malleolus. On 15/10/77 he was transferred to Panaga and had an internal nail (Kuntscher) fixation of his (R) femur fracture and a fixation with screw to fracture of (L) medial malleolus. His knee had become infected and was treated conservatively. 20

On examination today, 3/12/81, he appears of normal stature with no shortening of (R) leg. The Kuntscher nail has been removed in Italy and the femoral fracture site is well healed in excellent position. There is no arthritis of the (R) hip joint. He has scars in the (R) hip area, (R) lateral thigh, (R) anterior knee and (L) medial malleolus region of the ankle. He has 0.5" wasting of (R) quadriceps muscle and has difficulty in forward flexion of (R) knee. There is limitation of flexion of (R) knee and crepitus in the joint. X-ray shows presence of arthritis and several loose bodies present in the joint which are likely to worsen the arthritis with passage of time. The (L) ankle joint on X-ray appears well healed and normal and the screw has been removed. 30 40

He is able to walk without a limp but has difficulty ascending and descending stairs. In the light of the above findings and limitations of his (R) knee joint, it is considered that he is unfit for further diving service under

pressure.

EXHIBITS
'P5'

J.M. Davidson
MB ChB MRCCP DIH MFOM
CHIEF MEDICAL OFFICER

Medical report
of J.M.
Davidson
4th December
1981

(continued)

EXHIBITS
'D1'

MEDICAL REPORT OF CHENG
WEI NIENG

'D1'
Medical report
of Cheng Wei
Nieng
1st December
1981

10 W.N.CHENG, A.M., M.B.CH.B;
M.Ch. (Orth) F.R.C.S
(Eng) F.R.C.S. (Ed)
V.K. PILLAY, A.M., M.B.B.S; M.D.;
M.Ch.(Orth) F.R.C.S.
(Eng) F.R.A.C.S.; F.A.C.S.
K.H.YEOH, A.M.; M.B.B.S.; M.Ch.(Orth)
F.R.C.S. (Ed)
K. SOIN, A.M. M.B.B.S.; (Hons) M.MED (Surg)
F.R.A.C.S.
20 C.M. LING, A.M.; M.B.B.S.; M.Ch. (orth)
F.R.C.S. (Eng) F.R.C.S. (Edin)
K.Q. YEO, A.M.; M.B.B.S; M.Ch. (Orth)
M.MED (Surg) F.R.C.S. (Edin)
P.B.CHACHA, M.B.B.S.; M.D.; M.Ch. (Orth)
F.R.C.S. (Glas) F.R.C.S. (Edin)
F.R.A.C.S.

ORTHOPAEDIC SURGERY

30 Units 2.01 2.05
Second Floor,
Mount Elizabeth Medical
Centre
Mount Elizabeth
Singapore 0922
Telephone Nos. 7374533
After Office hours:
918833
1st December 1981

Murphy & Dunbar
Advocates & Solicitors
1901 Hong Leong Building
Raffles Quay
Singapore 0104.

EXHIBITS
'D1'

Re: Mr. Giovanni Vinetti
Our ref: ML/126/5699/81/WNC
Your ref: RKC/WYF/713/80

Medical
report of
Cheng Wei
Nieng
1st December
1981

Specialist Report

I saw this patient in my clinic on 1st December 1981 for the purpose of producing this medical report. The examination was arranged by Messrs. Murphy & Dunbar of Hong Leong Building, Singapore. The patient is an Italian but he spoke sufficient English for the examination to be completed without difficulty.

10

(continued)

History:

According to the medical report released by Dr. Hamshere of Brunei Shell Petroleum, this patient was admitted to Panaga Hospital on 15th October 1977. Prior to this he was admitted to the General Hospital of Kuala Belait following a road traffic accident on 6th October 1977. His injuries consisted of:

20

Compound fracture of his right femur.
Compound fracture of his right tibial plateau with disruption of the patellar tendon.
Fracture of the lateral malleolus of his left ankle. (It was most probable that the fracture was of the medial malleolus because the wound was on the medial side)

At the Government Hospital, the skin wounds were sutured. While in Panaga Hospital, Dr. Hamshere internally fixed the fracture of the shaft of the femur with a Kuntcher's intramedullary nail and internally fixed the fracture of the medial malleolus with a screw. The knee wound unfortunately became infected but it responded to conservative treatment.

30

On 10th December 1977, he was repatriated to Italy. While in Italy, further surgical procedure was carried out.

40

According to the translated version of the medical report released by Dr. Giuliano Mazzetti dated 12th October 1978, he was re-operated while in Italy. The date of the re-operation was not given but the patient told me that it was approximately one year after the operation by Dr. Hamshere in Brunei. The operation was necessary because the Kuntcher's

intramedullary nail had migrated upward. There was no mention if the fracture had united or consolidated by then. Presumably it must have consolidated to allow the nail to be removed. The screw in the left medial malleolus was also removed. According to the patient, he did quite well after the nail and screw were removed.

EXHIBITS
'D1'

Medical report
of Cheng Wei
Nieng
1st December
1981

Main Complaints:

(continued)

10 When I saw him on 1st December 1981, he was complaining of inability to fully flex his right knee which also became painful on exertion and prolonged walking. This stiffness made it impossible for him to deep dive and climb ladder which is essential for diving. Climbing up steps also would rise to pain in his right knee.

20 His right leg was also weak and stiff in the morning. He also complained of numbness of the medial aspect of the right leg.

On rainy days and on prolonged walking, his left ankle also became painful. At times his left knee also became painful. He insisted that during the accident, he also injured his left knee.

Since the accident, he had not returned to deep diving but has tried shallow diving which is less than 20 feet deep.

30 He also complained of inability to flex his left big toe.

Clinical Examination:

On clinical examination, the following scars were found:

40 Right leg: 11cm at right gluteal region.
17 cm at right thigh.
3 cm x 2 cm at front of right thigh.
5 cm x 4 cm at right intrapatellar region
7 cm over left medial malleolar region.
3 scars of 2 cm each at his right axillary region.
Multiple small scars at the ventral surface of his right forearm.
2 cm scar at the bridge of his left nose.
4 cm scar at his left forehead
(Partially hidden by his hairs)

EXHIBITS
'D1'

Medical
report of
Cheng Wei
Nieng
1st December
1981

His right leg was about 1 cm shorter than his left. There was a 2 cm quadriceps wasting of his right thigh. There was no wasting of his calf muscles.

No external deformity was seen but the right hip, knee, ankle and left big toe joints had limitation of movements.

Right hip:

- Flexion - 135 degrees (150 degrees on the left).
 - Extension - Full.
 - Abduction - 65 degrees (75 degrees on the left).
 - Adduction - 30 degrees (Full).
 - Internal rotation - 30 degrees (80 degrees on the left).
 - External rotation - 20 degrees (30 degrees on the left)
- The movements of this joint was painless.

10

Right knee:

- Extension - Full
 - Flexion - 120 degrees (140 degrees on the left).
- Movements of the knee was painful especially on hyperextension. There was no side to side laxity but there was a slight antero-posterior ligamental laxity.

20

Left ankle:

- Dorsiflexion - 15 degrees (Full).
 - Plantar flexion - 20 degrees (30 degrees on the right)
 - Internal rotation - 15 degrees (Full)
 - Lateral rotation - 5 degrees (Full)
- Movements of the ankle was painless.

30

Right big toe had full extension of 30 degrees but flexion of metacarpo-phalangeal joint was nil compared with 30 degrees on the right side.

No abnormality was found on the left knee.

There was no loss of his right quadriceps power.

He was walking fairly normally but was unable to squat due to stiffness of his right knee.

40

Radiological Examination:

X-rays were taken on 1st December 1981 by the Mount Elizabeth Hospital X-ray Department. They showed:

- | | | | |
|----|----|---|--|
| | 1. | There were sign of old healed fracture of the midshaft of right femur. The fracture had consolidated and in good alignment. Calcified ligament was seen above the right greater tuberosity. | <u>EXHIBITS</u>
'D1'
Medical report
of Cheng Wei
Nieng
1st December
1981 |
| 10 | 2. | There were signs of old healed fracture of the lateral tibial condyle. The fracture had solidly united but in a slightly depressed position. The articular surface was irregular showing that osteo-arthrititis of the knee joint had already set in. Some loose bodies were also seen in the knee joint. There were also signs of an old fracture of the neck of the right fibula. The fracture had united in good position. | (continued) |
| 20 | 3. | There were signs of an old healed fracture of the left medial malleolus. The fracture had united in good alignment. The left ankle joint line was well preserved. About 2 inches above the left ankle, there were also old healed fractures of the left tibia and fibula. The patient however mentioned that these two fractures were sustained long ago and was not | |
| 30 | | related to the accident concerned. | |

OPINION:

As a result of the accident, this man sustained multiple injuries of which the serious ones were the fracture of the shaft of his right femur, fracture of the right tibial plateau and fracture of his left medial malleolus. There was also a compound rupture of his right patellar tendon. The fracture of the femur was fixed by a Kuntcher's intramedullary nail while the fracture of his

40 left medial malleolus was fixed by a screw. The fractures united as expected and the intramedullary nail as well as the left malleolar screw were removed one year later.

The fracture of the left femur had united leaving behind about 1 cm of shortening of the right leg. Such shortening usually does not give rise to any disability nor any limp on walking. Some stiffness of the hip is to be expected but again it should not give rise to disability.

50 The fracture of the lateral tibial plateau however

EXHIBITS
'D1'

Medical report
of Cheng Wei
Nieng
1st December
1981

(continued)

was a serious one. It involved the knee joint and has given rise to pain, stiffness and limitation movements of the knee joint. Osteoarthritis has already set in and there were loose bodies in the knee joint. The pain will only get worse as time goes on and the range of movement may become less. If the pain continues, he may have to have his knee fused which will give him a pain free but stiff knee and the leg may be further shortened by 3 cm. When will this take place is hard to say. It may be in 10 or 20 year's time or it may never be necessary. Right now he has a limitation of flexion at 120 degrees. This will make it impossible for him to climb ladder and to squat. The osteoarthritis will also make it painful for him to walk for long distance, run or climbing steps. Deep diving will also aggravate the osteoarthritis because of poor blood supply of the articular surface. 10

The left medial malleolar fracture had healed in good alignment.

Apart from aching pain on rainy days and prolonged walking, it should not give rise to any permanent disability.

The disrupted right patellar tendon had healed back and was working satisfactorily. There was an adherent scar over it. Apart from this, there should be no disability arising from this.

I am unable to explain why he was unable to flex his left big toe as there was no mention of the toe having been injured. Fracture of the left malleolus will not give rise to such complication. At any rate such stiffness usually gives rise to very little disability. 30

As far as his present disability is concerned, working according to the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, the following permanent disabilities may be awarded in term of total body loss: 40

Right hip joint:

Flexion 130 degrees	-	1%
Extension full	-	0%
Abduction 65 degrees	-	0%
Adduction 30 degrees	-	0%
Internal rotation 30 degrees	-	1%
External rotation 20 degrees	-	3%

Right knee:		
Extension full	-	0%
Flexion 120 degrees	-	4%
Left ankle:		
Dorsiflexion full	-	0%
Plantar flexion 20 degrees	-	3%
Left big toe:		
Extension full	-	0%
Flexion 0 degree	-	1%
10 TOTAL	-	13%

EXHIBITS
'D1'

Medical Report
of Cheng Wei
Nieng
1st December
1981

(continued)

Added to this, another 10% should be given for the possibility of having had to fuse his right knee in future. (The permanent disability of a fused knee at neutral position is 21%).

The total permanent disability will therefore be 23%.

He should not return to deep diving again.

CHENG WEI NIEN
A.M.; M.B.Ch.B.; M.Ch.Orth.; F.R.C.S. (Eng)
F.R.C.S. (Edin)

20

No. 22 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE STATE OF BRUNEI

B E T W E E N :

TIONG ING CHIONG

Appellant
(Defendant)

- and -

GIOVANNI VINETTI

Respondent
(Plaintiff)

AND B E T W E E N :

GIOVANNI VINETTI

Appellant
(Plaintiff)

- and -

TIONG ING CHIONG

Respondent
(Defendant)

(CROSS-APPEAL)

RECORD OF PROCEEDINGS

LE BRASSEUR & BURY,
71 Lincoln's Inn Fields,
London, WC2A 3JF

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

Solicitors for the Appellant
and Respondent in Cross-Appeal

Solicitors for the Respondent
and Appellant in Cross-Appeal