

P.C.  
G.M.G.2.

Judgment  
25, 1965

IN THE PRIVY COUNCIL

No. 46 of 1964

UNIVERSITY OF LONDON  
- 9 FEB 1966  
25 ABINGDON SQUARE  
LONDON, W.C.1.

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

BETWEEN

GERALD LOUIS JEREMIAH

Appellant

-- and --

LEE YEW KWAI and MOK SAI YU

Respondents

80964

CASE FOR THE RESPONDENTS

10 1. This is an appeal from a judgment of the Record  
Federal Court of Malaysia (Appellate Jurisdiction)  
(Thomson, Lord President, Malaysia; Wylie, Chief  
Justice of Borneo; and Tan Ah Tah, Judge of the Federal  
Court) dated the 11th day of March 1964 whereby the  
said Court concurred with the judgment of the  
learned trial Judge, the Honourable Mr. Justice Neal  
of the Supreme Court of the Federation of Malaya  
sitting at Ipoh, whereby he found that the Appellant  
was equally to blame with the Respondents for an  
20 accident which occurred on the 9th day of November  
1960 when a motor cycle driven by the Appellant was  
in collision with a lorry driven by the first named  
Respondent as servant or agent of the second named  
Respondent.

2. The principal questions arising on the appeal  
are:-

30 (i) Whether a judgment given by the Federal  
Court (Appellate Jurisdiction)  
concurring with the judgment of the  
learned trial Judge of the Supreme  
Court in a motor accident case involving  
pure questions of fact depending on the  
effect and evaluation of oral evidence  
given by witnesses who appeared before  
him, he being in the best position to

Record

consider the true value, effect and meaning of such evidence, ought to be reversed;

- (ii) Whether the finding of the said Federal Court that they ought not to substitute its own views as to what happened in a case of this nature which depended so much on credibility for those of the trial Judge, ought to be reversed the said Court having in fact stated that the views of that Court coincided with that of the trial Judge; 10
- (iii) Whether the Judges of the Federal Court were right in agreeing with the learned trial Judge that the Appellant was equally to blame with the Respondents for the accident and in finding inter alia that the evidence suggested that the Appellant was keeping less than an adequate look out and that he could have avoided the accident; 20
- (iv) Whether the learned trial Judge was entitled to make such findings of fact as he did and to draw such inferences therefrom as he did;
- (v) Whether the learned trial Judge and the three Judges of the Federal Court (Appellate Jurisdiction) were entitled to find as they did that the Appellant was equally to blame with the Respondents for the said accident. 30

3. It is submitted that the question is one of fact, and that the learned trial Judge was entitled to find such facts as he did and to draw such inferences as he did. Further it is submitted that the Judges of the Federal Court were justified in agreeing with the findings of the trial Judge, which findings as they said depended on the credibility of witnesses. In fact the Judges of the Federal Court agreed with the conclusions of the trial Judge. 40

4. On the day of the accident, the 9th day of November 1960, the Appellant was driving his motor cycle (which he was going to test) along Tambun Road, travelling at about 25-30 m.p.h. approaching a turning on his left, Cheah Lane, of which turning he was aware. He was driving about 10 feet out from his nearside. There was parked a short distance

p.13 L.8  
p.13.L.30  
p.15.L.8

from the turning, on the nearside of Tambun Road, a van (or lorry) partly on the verge but mostly resting on the road.

Record

The Appellant slowed down to about 16 - 25 m.p.h. P.13 L.35  
sounded his horn to warn some workers around the van,  
and decelerated having shut the throttle down by half. P.15.L.15

10 He said in his evidence that he saw the Respondents' lorry which came out of the turning on his left, when it was 'so far away and travelling slowly'. The parked van did not obstruct his view, he said. P.15.L.37

He thought he could pass in front of the Respondents' lorry, which he first saw when it was half way across the main road. P.15.L.3,4  
P.15.L.23

He accelerated and tried to pass in front of the lorry, but the lorry hit him. At a speed of 25 m.p.h. he could have stopped in less than 10 feet. He did not brake nor did he ever think of braking. P.15 L.2  
P.15.L.38  
P.15 L.31

20 5. In his judgment, the learned trial Judge said that it was clear that on the Appellant's own evidence he was aware of the lorry when he was 12 feet away, when the lorry was moving across his line of passage, and that at that time he had been decelerating; he thereupon accelerated and endeavoured to pass across the front of the lorry. P.22 L.36

30 The learned Judge continued that, leaving out the consideration altogether whether or not he was keeping the look out that he ought to have been keeping and should have seen the lorry before that point of time, if he was travelling at the speed at which he said he was travelling, it was not only negligent of him to attempt this manoeuvre but extremely dangerous. P.22 L.43  
P.22 L.49

6. Further, the learned Judge said that it was "abundantly clear" that had the Appellant braked, the continuance of the lorry would have left him adequate room to pass behind the lorry. P.23 L.16

40 7. The learned trial Judge said that he considered the questions of "agony of the moment" and "sudden emergency" with reference to any emergency created by the first named Respondent. But, he said, on the facts as he found them, the Appellant, if he had been maintaining a proper look out, would not have been placed in any emergency but for the parked van, which was so parked in breach of road traffic legislation. P.23 L.20

Record

P.23 L.30

8. The learned Judge then considered the question of apportioning blame, stated the practical difficulties in so apportioning blame, but came to the conclusion that the proper contribution was one of 50 per cent.

P.37  
P.38 L.6

9. On appeal, in the judgment of the Federal Court of Malaysia delivered by Thomson Lord President (with which judgment the two other judges agreed), it was said that there was nothing to compel the Court to differ from the finding of the trial Judge, and that it was not for that Court to substitute its own views in a case which depended so much on credibility for those of the trial Judge. In any event he said that he agreed with the trial Judge.

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P.38 L.17

10. The Appeal Court found that the Appellant was keeping less than an adequate look out; that he had over 20 feet of roadway to his right available for him, and an 'escape route' leading off to his right at an angle.

P.38 L.30

The Respondents' lorry, the judgment continued, could not have been travelling at any fast speed, judging from its position.

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P.38 L.34

The Appeal Court took the view that 'it was very difficult to think that had the Appellant been keeping a proper look out that he could not have succeeded in avoiding the accident.' The Appeal was dismissed with costs.

11. The Respondents submit:

(i) That the learned trial Judge who saw and heard the witnesses was entitled to find, as he did, he being in the best position to evaluate their evidence, that the Appellant was equally to blame for the accident with the Respondents.

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(ii) That the learned trial Judge was entitled to find that the manoeuvre carried out by the Appellant was not only negligent but extremely dangerous.

(iii) That the finding by the learned trial Judge amounted to a finding, inter alia, that the Appellant was not keeping a proper look out, particularly as on the Appellant's own evidence he only first saw the Respondents' lorry when it was half way across the main road and that the parked van did not obstruct his view;

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and further that at the speed he says he was going he could have stopped in less than ten feet.

(iv) That the learned trial Judge was right in his finding (and was entitled so to find) that, had the Appellant braked (which he did not), he could have passed behind the Respondents' lorry.

10 (v) That the Judges of the Federal Court (Appellate Jurisdiction) were right in not interfering with the judgment of the learned trial Judge in a case of this nature, depending on questions of fact.

12. The Respondents submit that the judgment of the learned trial Judge was correct and justified on the evidence, and that the Federal Court (Appellate Jurisdiction) was right in not interfering with his judgment, and that they were right in agreeing with the learned trial Judge, for the following (among  
20 other)

R E A S O N S

- (1) BECAUSE the judgment of the Honourable Mr. Justice Neal the trial Judge was justified and was founded on his evaluation of the evidence of witnesses whom he saw and heard;
- (2) BECAUSE the judgment of the learned Judge was right;
- (3) BECAUSE the concurrent judgment of the Federal Court (Appellate Jurisdiction) was right;
- 30 (4) BECAUSE the evidence given at the trial showed that the Appellant was equally to blame with the Respondents for the accident.

Anthony Allen  
7th May, 1965.

No. 46 of 1964

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O N A P P E A L

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B E T W E E N:

GERALD LOUIS JEREMIAH

Appellant

- and -

LEE YEW KWAI and MOK SAI YU

Respondent

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C A S E FOR THE RESPONDENTS

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