

PC
~~G.M.F.G. 2.~~

(25), 1965

IN THE PRIVY COUNCIL

No.46 of 1964

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N:

GERALD LOUIS JEREMIAH (Plaintiff) Appellant

- and -

LEE YEW KWAI
MOK SAI YU (Defendants) Respondents

RECORD OF PROCEEDINGS

LIPTON & JEFFERIES
Princes House,
39, Jermyn Street,
London, S.W.1.
Solicitors for the Appellant.

STANLEY & CO.,
Swan House,
35, Queen Street,
London, E.C.4.
Solicitors for the Respondents.

~~P.C.~~
~~GM4.G.2.~~

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
STUDIES
- 9 FEB 1966
25 RUSSSELL SQUARE
LONDON, W.C.1.

80964

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FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N:

GERALD LOUIS JEREMIAH (Plaintiff) Appellant

- and -

LEE YEW KWAI
MOK SAI YU (Defendants) Respondents

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No.46 of 1964

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N

GERALD LOUIS JEREMIAH (Plaintiff) Appellant)

- and -

LEE YEW KWAI
MOK SAI YU

(Defendants) Respondents

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

IN THE SUPREME COURT OF THE FEDERATION OF

MALAYA

IN THE HIGH COURT AT IPOH

Civil Suit No.82 of 1963

BETWEEN

GERALD LOUIS JEREMIAH

Plaintiff

- and -

20

{1} LEE YEW KWAI
{2} MOK SAI YU

Defendants

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.1

Writ of Summons
22nd March 1963

DATO SIR JAMES THOMSON, P.M.N., P.J.K.,
Chief Justice of the Federation of Malaya, in
the name and on behalf of His Majesty The
Yang di-Pertuan Agong ...

To:

In the Supreme Court of the Federation of Malaya

(1) Lee Yew Kwai of No.32, Che Wan Road, Ipoh.

(2) Mok Sai Yu of No.153, Jalan Pasir Puteh, Ipoh.

In the High Court at Ipoh

No.1

Writ of Summons
22nd March 1963
continued

WE COMMAND you, that within 8 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 an action at the suit of Gerald Louis Jeremiah of No.18-A, Church Road, Taiping.

10

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

WITNESS, Lal Chand Vohrah, Senior Assistant Registrar of the Supreme Court of the Federation of Malaya, the 22nd day of March, 1963.

Sd: Pillai, Lim, Lee & Hwang
Plaintiff's Solicitors.

Sd: Illegible.
Senior Assistant Registrar
High Court,
Ipoh

20

Seal:

N.B. - This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

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

30

A defendant appearing personally, may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the Supreme Court at Ipoh.

The Plaintiff's claim is for damages for injury to the Plaintiff by the negligent driving

40

of the 1st Defendant as servant or agent of the 2nd Defendant.

Sd: Pillai, Lim, Lee & Hwang.
Plaintiff's Solicitors.

This Writ was issued by Messrs. Pillai, Lim, Lee Hwang of 20-A Beach Street, Penang whose address for service is No.20-A Beach Street, Penang Solicitors for the said Plaintiff who resides at 18-A Church Road, Taiping.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

No.1

Writ of Summons
22nd March 1963
continued

10

This Writ was served by me at No.153, Jalan Pasir Puteh, Ipoh on the Defendant No.2, on Tuesday the 2nd day of April, 1963, at the hour of 9.45 a.m.

Indorsed this 4th day of April, 1963.

(Signed) Illegible.
Process Server.

(Address) High Court, Ipoh.

No.2

No.2

AMENDED STATEMENT OF CLAIM

Statement of Claim
11th April 1963
(Amended 17th October 1963)

20

1. The Second-named Defendant was at all material times to this suit the owner of Motor Lorry No.A 6136.

2. The First-named Defendant was at all material times to this suit a servant or agent of the Second-named Defendant.

30

3. On or about the 9th day of November, 1960 the Plaintiff was riding a Motor Cycle No. 39YP37 along Tambun Road in the direction of Tasik Road, Ipoh at or near the junction of Cheah Cheang Lim Lane when he was run into and knocked down by Motor Lorry No.A 6136 which was being driven by the First-named Defendant a servant or agent of the Second-named Defendant and which was travelling out of Cheah Cheang Lim Lane into Tambun Road.

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.2

Statement of
Claim
11th April 1963
(Amended 17th
October 1963)
continued

4. The said collision was caused solely by the negligence of the First-named Defendant a servant or agent of the second-named Defendant.

PARTICULARS OF NEGLIGENCE
OF THE FIRST-NAMED DEFENDANT

- (a) Failing to keep any or any proper lookout.
- (b) Failing to observe the presence of the Plaintiff on the highway.
- (c) Driving at an excessive speed in the circumstances. 10
- (d) Failing to give any or any sufficient warning of his approach.
- (e) Driving out of a lane into the main road when it was unsafe so to do.
- (f) Failing to give way to traffic approaching from the right and travelling along the main road.
- (g) Failing to stop, swerve, slow down or otherwise avoid the said collision. 20

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

PARTICULARS OF PERSONAL INJURIES

The Plaintiff was admitted to the General Hospital, Ipoh on 9.11.60 and was transferred to the General Hospital, Taiping.

The following injuries were found on him:-

- 1. One inch lacerated wound over the chin and at the right wrist. 30
- 2. Abrasion over the left chest, right elbow, and right knee.
- 3. Fracture of the right lower end of radius.

4. Compound comminuted fracture of the left tibia and fibula bones.

The injuries as listed in 1, 2 3 have healed without any permanent disability. He was discharged on 28.9.61 to continue out-patient treatment and was readmitted on 26.4.62 for physiotherapy.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

No.2

Statement of Claim
11th April 1963
(Amended 17th October 1963)
continued

10

Union of his left tibia is only fair and he had to obtain physiotherapy treatment. He now suffers from slight adduction deformity of the left leg and flexion deformity of the left great toe and limitation of knee and ankle movements. He is expected to suffer permanent disability and the percentage disability can be more accurately assessed after he has completed his physiotherapy treatment. He is being discharged to continue physiotherapy treatment as an out-patient.

20

He now has to walk with the aid of a walking stick and he is unable to walk for a long distance.

PARTICULARS OF SPECIAL DAMAGE

~~Loss of earnings at \$245.50 per month from 31.10.62 and continuing.~~

As the result of the accident the plaintiff was discharged from the Federation Army on 31.10.62 and thereby he has been deprived of pecuniary and other benefits which he would have enjoyed had he remained in the army.

From 8.11.61 - 31.10.62 loss of earnings at \$39.20 per month for 11 $\frac{3}{4}$ months ... \$ 460.60.

From 1.11.62 - 20.4.63 loss of earnings at \$213.70 per month for 5 $\frac{2}{3}$ months ... \$1,210.97.

From 21.4.63 and continuing - loss of earnings at \$31.70 per month \$ - . - .

In the Supreme
Court of the
Federation of
Malaya

And the Plaintiff claims damages.

Dated this 11th day of April, 1962.

Sd: Murphy & Dunbar
Plaintiff's Solicitors.

In the High
Court at Ipoh

Dated and re-delivered this 17th day of
October 1963 by

No.2

Statement of
Claim
11th April 1963
(Amended 17th
October 1963)
continued

Solicitors for the Plaintiff.

To:

1. The abovenamed Second Defendant or his Solicitors M/s. Arulanandom & Co., No.1 Hale Street, IPOH.

10

and

2. The abovenamed First Defendant Lee Yew Kwai, 32 Che Wan Road, IPOH.

This Statement of Claim is filed by Messrs. Murphy & Dunbar, Chan Wing Building (5th Floor) No.38, Jalan Mountbatten, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

No.3

No. 3

Statement of
Defence
3rd June 1963

STATEMENT OF DEFENCE

20

The abovenamed Defendants state as follows:-

1. Paras 1 and 2 of the Claim are admitted.
2. Save and except that there was a collision on 9th day of November, 1960 along Tambun Road, Ipoh at or near the junction of Cheah Cheng Lim Lane between Motor cycle No.39YP37 ridden by the Plaintiff and Motor Lorry No.A 6136 driven by the 1st Defendant as the servant of the second Defendant in the course of his employment, the Defendants deny each and every allegation contained in paras 3, 4 and 5 of the Claim.

30

3. Save and except that the Plaintiff was admitted to hospital, the Defendants do not admit any of the allegations in para 5 of the Claim.

In the Supreme Court of the Federation of Malaya

4. The Defendants aver that the said collision was caused entirely by reason of the negligence by the Plaintiff.

In the High Court at Ipoh

PARTICULARS OF NEGLIGENCE

No.3

10

- (1) The Plaintiff failed to keep any or any proper lookout.
- (2) The Plaintiff drove at an excessive speed.
- (3) The Plaintiff failed to have any or any sufficient regard for other traffic on the road.
- (4) The Plaintiff failed to exercise or maintain any or any sufficient control of the said Motor cycle 39YP37.

Statement of Defence
3rd June 1963
continued

20

5. Further and in the alternative the Defendants aver that the negligence of the Plaintiff contributed to the said collision and the injuries and damage sustained by the Plaintiff.

PARTICULARS OF NEGLIGENCE

30

- (1) The Plaintiff failed to keep any or any proper lookout.
- (2) The Plaintiff drove at an excessive speed.
- (3) The Plaintiff failed to have any or any sufficient regard for other traffic on the road.
- (4) The Plaintiff failed to exercise or maintain any or any sufficient control of the said Motor Cycle 39YP37.

6. Save as is specifically admitted the Defendants deny each and every allegation contained in the Statement of Claim as if the same was set out and traversed seriatim.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

No.3

Statement of Defence
3rd June 1963
continued

7. With regard to the particulars of special damage in the Statement of Claim the Defendants aver that the Plaintiff was only earning a total sum of \$147.90 per month as a corporal in the Armed Forces. Subsequent to his discharge on 31.10.62 he is receiving a disability pension of \$81.98 per month.

8. The Defendants pray this action be dismissed with costs.

Dated this 3rd day of June, 1963.

10

Sd: Arulanandom & Co.
Solicitors for the Defendants.

Judge's Notes of Evidence

Plaintiff's Evidence

No.4

Pritam Singh
17th October
1963
Examination

No. 4

EVIDENCE OF PRITAM SINGH
NOTES OF EVIDENCE

Thursday, 17th October 1963.

Murphy for Plaintiff.

Arulanandom for Defendants.

Murphy opens.

Asks leave to amend Statement of Claim.

20

No objection.

Granted.

Calls -

P.W.1. - Pritam Singh a.s. English:

F.R.C.S. Orth. Surgeon, K. Lumpur.

Plaintiff's history involved accident.
9.11.60 treated Ipoh hospital. 16.11.60 transferred to Taiping hospital. Sustained multiple injuries. Complained to me he had -
Pain left ankle on walking short distance.
Pain in mornings left ankle.
Stood down.

30

No. 5

EVIDENCE OF CHOO SOO HUATP.W.2. - Choo Soo Huat a.s. English:In the Supreme
Court of the
Federation of
MalayaIn the High
Court at Ipoh

P.1. Surgeon M.B.B.S., F.R.C.S., F.R.A.S.C.
Taiping. Plaintiff came to me from Ipoh.
I took over 14.2.61, but his transfer
16.11.60. P.1 is my report. In my
hospital till 28.9.61 and continued as an
outpatient.

Judge's Notes
of Evidence10 Choo Soo Huat - P.W.2:Plaintiff's
Evidence

X-Ray in Taiping did not include knee.

No.5

Choo Soo Huat
17th October
1963
Examination

20 I have case history. I have seen X-
Rays - lateral combar - P.2. is X-Ray which
should have shown but does not. Taken
with plaster on - sometimes this would pre-
vent fracture showing. P.3 also shows no
clear fracture but a tilting. If depress-
ion then fracture most probable. P.4 shows
slight tilting. This is taken some months
later and if healed would not show. Taken
in plaster. Continued out-patient. Re-
admitted 26.4.62 for exercises following re-
moval plaster; because bad injury took
long time to unite open wound and infection.
Some part of bone of fibula missing -
P.4 for id. surgeon may have removed part of bone. P.4
P.5 for id. for id. P.5 for id. show missing bone.
Fracture loss or cut away. Infection caused
30 difference in union. Union fair not com-
plete in 1962. Exercises for stiff knee
and ankle - exercises for joints. Discharge
18.7.62. Takes months to get more union.
Continued exercises. Fibula did not unite -
stiffness knee and ankle; leg slightly
bent outwards - very likely caused by later-
al combar in knee - causing instability.
On discharge on crutches. He would need
support - sticks or crutches not sure.
Permanent.

40

(Cross-examined)Cross-
examination

XXD: Since 18.7.62 I have not examined
plaintiff. It would be possible for union
to be reasonable with some lateral defect
by 21.6.63. I would be surprised if full

In the Supreme Court of the Federation of Malaya

movement in knee and ankle joints by 21.6.63 because in plaster considerable time. After prolonged immobility one would expect permanent stiffness.

In the High Court at Ipoh

Choo Soo Huat - P.W.2:

Judge's Notes of Evidence

(XXD: as to permanent): Full recovery seldom encountered after this. I would expect some residual loss of movement. Finding of 21.6.63 possible.

Plaintiff's Evidence

Difficult to answer cause of infection. 10

No.5

Always possible even with proper case.

Choo Soo Huat
17th October
1963
Cross-examination continued

I found no conclusive fracture.

To me: I send witness to examine plaintiff as to movements now.

No.6

No.6

Pritam Singh
(Recalled)
17th October
1963
Examination

EVIDENCE OF PRITAM SINGH

P.W. 1 recalled:

This is my report P.6.: I would wish make correction and have done so. I had not seen him before but had seen P.W. 2's report. I had him X-Rayed - P.4 and P.5 (now admitted). 20

There is a depressed fracture of left condyle of left fibula. If a depression it must be accompanied by fracture. Fracture consistent abduction deformity man has.

Walks with aid of stick. Knee unstable - it makes left unstable because torn ligament - remains static - it will cause osteo? in about two years. Causes difficulty in walking - knee bent under weight outwards and backwards. Limits his walking - 50% normal distance. Difficult to walk upstairs because instability of knee joint - residual stiff and due to immobility in plaster. I would say permanent leads to ostea-artl. very high possibility - bone is not healthy liable to re-infection. Knee requires stick. 30

Pritam Singh - P.W.1. (recalled):

Comparing C.S. 1088/61 - P.7 - I have seen this; Plaintiff has additional injury - weakness left knee and Sinoppillai had shortening. Sedentary occupation only.

(Cross-examined)

XXD. Except for stairs he can work.

10

As to X Ray 21.6.63 it is healed but not firm. (Report put to him). Difficult to prevent osteo. arth. - extensive surgery fusing knee. Temporary relief; heat therapy etc. - short periods. Could not be prevented getting relief.

ReXn: Nil.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

Judge's Notes of Evidence

Plaintiff's Evidence

No.6

Pritam Singh (Recalled) 17th October 1963 Examination continued Cross-examination.

No.7

EVIDENCE OF CHOO SOO HUAT

Choo Soo Huat - P.W. 2 recalled:

20

To me: I have examined movement knee and ankle. Still has residual stiffness. It has improved. It has obtained half the amount of stiffness. I would not expect much more improvement. Plaster 8 - 10 inches above knee when I saw him. Records do not show first in plaster - but letter from surgeon suggests plaster first day. No record to suggest plaster taken off for length of time. Reasonable inference in plaster knee injury could not have been caused after accident.

No.7

Choo Soo Huat (Recalled) 17th October 1963 Examination

In the Supreme Court of the Federation of Malaya

NO. 8

EVIDENCE OF ERIC ALFRED MISSAL

P.W.3 - Eric Alfred Missal a.s. English:

In the High Court at Ipoh

E.M.E. Directorate. Ministry of Defence
K.L. P.8 is pay record of Plaintiff. P.9 P.8, 9.
shows W.O.s pay and limit.

Judge's Notes of Evidence

He was efficient. Above average.

Plaintiff's Evidence

Also paid \$58.50 as ration allowance.

\$245.60.

No.8

Lives in barracks. 10

Eric Alfred Missal
17th October 1963
Examination

As Corporal he gets \$147.90 plus some ration.

Allowance - difference \$39.20.

Sub. Sergeant pay same as Ag. Sergeant.

I would expect him to pass examination.

After passing 18 months to 2 years he would be W.O. If commissioned then gets marriage allowance. Pension withheld because medical board not reported present condition. As far as I know likely to receive. Medical board 28th September. This is 3rd medical board. Before never held up pension. Do not know why held up now - from 28th June 1963. Confirms claim in amended statement of claim. Class III typist is \$182. Class I \$250 p.m. Master Artisan is stepping stone for Lieut. provided behaviour good. 20

About 5 years - highest Major - Retiring age is 45 years.

Captain earns \$514 basic - all in \$800 30

Major ... all in \$1,100/-

Free accommodation.

XXD: They pay mess allowance \$2.50 per month.

Almost every Ag. Sgt. becomes Sgt. providing conduct clear. Since 1957 not one failed to become Sgt.

He has been hand picked to go to H.Q. and 99% would pass. We have not sufficient officers in Corps. I anticipate he will improve himself. Industrious, ambitious and hard working.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

Judge's Notes of Evidence

Plaintiff's Evidence

No.8

Eric Alfred Missal
17th October 1963
Cross-examination
Re-examination

10 36 Master Artisan at present - S/Sgts.?
2 Captains - establishment is for 52 including regulars. 21 including regulars. Establishment being increased year by year. 18 Lieutenants. Promotion automatic. Not dependant on vacancy. Must be less than 34 years at M.A. No examination or selection board. If passes bound to be a Major.

Re-examined

ReXn: 3 years Lieutenant.

8 years Captain.

20 Major.

No. 9

EVIDENCE OF GERALD LOUIS JEREMIAH

P.W.4 - Gerald Louis Jeremiah a.s. English:-

30 In Ipoh Ag. Sgt. Federation Army K.L. I had been in Ipoh inspecting vehicles. On 9.11.60 riding motor cycle going to Tasek Road to test motor cycle. Driving along Tambun Road. Approaching Cheah Lane travelling 25-30 m.p.h.; 10 - 10.15 a.m. I was about 1/2 road from left. About 10 feet out. As approached junction vehicle parked left hand side. I draw plan P.10 to show parked vehicle. Lorry facing same direction - partly on and partly off road. Labourers around. I did not know them but I know now C.E.B. I slowed down to say 16 - 25. I sounded horn 3 or 4 times before I passed it.

No.9

Gerald Louis Jeremiah
17th October 1963
Examination

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

Judge's Notes of Evidence

Plaintiff's Evidence

No.9

Gerald Louis Jeremiah
17th October 1963
Examination continued

Road clear otherwise. When I came abreast of stationary lorry - lorry shot out onto main road in front of me. I accelerated and swerved to right to avoid collision. Lorry hit me. I finished on side of road. No warning lorry - going very quickly. I think right-hand side lorry hit me. Plan - P.11 for id. shows where I finished. I did not realise I had been hit till I tried to get up and then found leg broken. Battery motor cycle broken, smashed front forks and handle. Army motor cycle. I don't know about the rest. I asked for help. Driver came supported back. Police came; sent to hospital.

10

First to Ipoh Hospital then Taiping.

Very painful for 3 months night and day.

Gave me drugs. 14 months in hospital.

1st time 11 months.

When I walk I feel pain stabbing sometimes - knee wobbles - pain in ankle.

20

Typist in Army. I get \$170 - did probation period - total \$182. No improvement unless short-hand. I propose to try. I think I should be able to learn. If Class I 200 odd dollars - 250; short-hand \$300 - \$400.

Discharged Army 31.10.61 - pension \$31.90. Then started fresh job. Pension stopped; awaiting re-assessment. Every year I have to be re-assessed.

I am 27½ unmarried.

30

I cannot squat fully - ankle stiff and painful.

Adjourned 2.15 p.m.

Before accident played football and badminton - friendly games.

If become Captain \$320 p.m. pension.

Major \$370 " "

Cross-examined

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

Judge's Notes
of Evidence

Plaintiff's
Evidence

No.9

Gerald Louis
Jeremiah
17th October
1963
Cross-
examination

10 XAD: Riding along Tambun Road. I acceler-
ated to go in front but did not succeed. I
thought I could do so. I thought I could
swerve to right past front of lorry. I
thought lorry moving so that I could get across
front. I have been to Ipoh 2 - 3 times before.
I have passed place before. Aware side roads.
I did not attempt to brake. When I first saw
it was so far away and travelling slowly. I
thought I could pass in front. When I first
saw lorry 10 - 15 feet (demonstrates Regis-
trar's table 12 feet). I was not testing at
time; on way to test. When I approached
stationary lorry I shut throttle to half - de-
celerating. I did not want to use brakes as
road wet - damp. I think road quite damp. I
went back to scene 1½ years ago. Lane narrow
coming on to main road. Normal driver would
20 halt. Lorry would take off at about 5 m.p.h.
He was on to my path. C.E.B. Lorry about 6
feet wide - looked 1 foot on grass and 5 feet
on road. When I first saw lorry it was half
way across main road (Mr. Murphy queries). -
it was on to road I cannot say how much.
(Pressed should have seen it). I do not know
distance. I do not agree my cycle hit front of
lorry. I do not recollect how exact collision
occurred. Speed not in excess of what I stat-
ed. I do not agree if I travelled at 25 m.p.h.
and braked no accident. I never thought of
30 putting on brakes. Vehicle Mech. Class I.
Riding motor cycle last 4 years. Complete con-
fidence. Ride motor cycle every day. 6 volt
battery horn - quite sharp - heard quite a dis-
tance. I sounded it to warn C.E.B. workers.
C.E.B. van did not obstruct my view. No reason
to slow but I thought it best. At 25 m.p.h.
pull brake I could stop motor-cycle in less than
40 10 feet.

I have not passed School Certificate - I
passed old Standard V. Left 1951 and joined
Army - passed Army C/T equivalent Std. VI or
VII. No other occupation apart from Army. I
cannot now get work as mechanic. Could not
act as instructor because cannot do practical
demonstration. Apart from accident I am
healthy.

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

Judge's Notes
of Evidence

Plaintiff's
Evidence

No.9

Gerald Louis
Jeremiah
17th October
1963
Re-examination

Re-examined

REXN: Before came to corner I saw lorry and I could not see corner. I did not see lorry till it came out. I did not see lorry until 10 feet away. Passed C.E.B. lorry before I saw defendant's lorry. Cab opposite me when I first saw it. I cannot say how far lorry on road when I first saw it. It was on to road. I could not see it before I passed C.E.B. lorry. It takes little time to apply brakes. I do not think I could have pulled up before reaching lorry.

10

No.10

Mohd Bin Alang
17th October
1963
Examination

No.10

EVIDENCE OF MOHD BIN ALANG

P.W.5. - Mohd bin Alang a.s. Malay :-

Sgt. 8000 Kelantan. I was I.O. this accident. I drew this plan P.11. Measurements. correct but not to scale. Damage to lorry - slight dent on bumper right front - I cannot remember more. Asked as to lamps lamp on right damaged - headlamp rim of lamp dented. I cannot remember if glass broken (dem. dent on bumper - right on right curve of bumper). Right side of rim; lamp between mudguard and radiator. As far as I recollect motor cycle dent on left front mudguard. I cannot remember any other. F is mark made by motor cycle - scratch mark. At E place where motor-cycle fell - scratch there.

20

Cross-
examination

Cross-examined

30

XXD: Road was dry. Distance F - M I cannot remember. I cannot estimate it. I cannot say if damage I saw consistent with motorcycle

hitting side of lorry.

C.E.B. lorry not there - able to trace driver and others in it.

Re-examined

REXN: I see lorry on plan is at an angle. I cannot say how lorry and motor cycle hit.

Case for Plaintiff.

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

Judge's Notes of Evidence

Plaintiff's Evidence

No.10

Mohd Bin Alang
17th October
1963
Cross-examination continued

DEFENDANT'S EVIDENCE

No.11

Defendant's Evidence

No.11

Lee Yew Kwai
17th October
1963
Examination

10

EVIDENCE OF LEE YEW KWAI

Arulanandom calls -

D.W.1. - Lee Yew Kwai a.s. Cantonese:

20

Ipoh: lorry driver. November 1960 drove defendant 2's lorry. On 9.11.60 drove lorry A6136; came to Ipoh with load of sand. Unloaded it and was approaching Tambun Road via Cheah Cheang Lim Lane. When I arrived at junction I saw lorry parked on left hand side of Tambun Road - on my right. (Dem.). Lorry was parked 10 feet from junction. I stopped at junction. I looked both directions to see if vehicle. I could not see any vehicle in either direction. I heard no horn or sound of vehicle approaching. When I saw no vehicle I engaged gear and moved forward in 1st gear and slowly. Suddenly there was a collision. Motor cycle came from Ipoh towards Tambun and crashed against my mudguard - front offside.

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

Judge's Notes
of Evidence

Defendant's
Evidence

No.11

Lee Yew Kwai
17th October
1963
Examination
continued

Cross-
examination

I immediately stopped lorry and cycle was thrown to other side of road opposite me. After knocking right mudguard motor cycle went across other side - slid across - it ran across. As soon as I engaged 1st gear and moved forward collision took place - just saw him as collision occurred. Motor cycle travelled very fast. 30 m.p.h. speed limit I am aware of it. Headlamp slightly dented side lamp damaged. Small dent front bumper near side; wheels C.E.B. lorry on grass verge. Width of lorry 7 feet. Dry day; dry road. Had I seen motor cycle I could have avoided accident - he appeared so suddenly.

10

Cross-examined

XXD: C.E.B. lorry practically all on road. Main road is wide. I had to come out to see beyond lorry. I stopped before junction, then I moved forward a little to see if any traffic behind parked lorry. I stopped twice. When I stopped second time I saw no traffic along road from behind parked lorry. There is a hump in road a little towards Ipoh. Put to me 200 yards - I say 2 chains. I could not see a motor cycle. As I halted second time my cab level with side of C.E.B. and bonnet and bumper further into road. Driver's seat to bumper of my lorry about 5 feet. Put to me to enable me to see bumper must have been 11 feet into road. From the plan I agree mark on road is 15 feet out which means I had moved 4 feet - that would be right. I do not know why I did not see it. I did look I did not see motor cycle until time of collision. I say motor cycle entirely to blame for accident.

20

30

I remember Magistrate Court 3.4.1962; charge lack of due care and attention. I pleaded guilty and fined \$55. I was told by Interpreter that if I pleaded guilty fine would be small. I pleaded guilty to avoid inconvenience.

40

There were labourers working along road.

When I looked towards Ipoh I could see no motor cycle only some cyclists.

Re-examined

REXN: I first stopped at junction. Then I moved slowly until I could see past obstruction halted and then engaged gear and moved forward - about 10 seconds before collision.

To me: Lorry is 16' or 17'.

Case for Defence.

No.12

ADDRESSES TO COURT

In the Supreme Court of the Federation of Malaya

In the High Court at Ipoh

Judge's Notes of Evidence

Defendant's Evidence

No.11

Lee Yew Kwai
17th October
1963
Re-examination

No.12

Addresses to Court

10 Mr. Arulanandom addresses:

Was Defendant negligent and if contributed by Plaintiff.

Weighing all probabilities. Accident caused by negligence of Plaintiff.

Plaintiff travelling 25 - 30 m.p.h.

Motor cycle decelerating.

Should have braked.

If keeping lookout would have seen bumper bonnet and cab; not all of sudden cab only.

20 Balance probabilities.

As to damages - future uncertain.

Murphy - statement to police.

C.A.V.

Sd: M.G.Neal
Judge.
High Court of Ipoh.

In the Supreme
Court of the
Federation of
Malaya

No.13

JUDGMENT OF NEAL, J.

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963.

The Plaintiff sued the Defendants who were the driver and the owner of motor lorry A 6136 at the relevant time claiming special and general damages in respect of a collision between the said motor lorry and motor cycle 39 YP 37 at or near the junction of Cheah Cheng Lim Lane and Tambun Road Ipoh on the 9th November 1960. It was alleged that the collision was caused solely by the negligence of the first defendant a servant or agent of the second defendant in -

10

- " (a) Failing to keep any or any proper lookout.
- (b) Failing to observe the presence of the plaintiff on the highway.
- (c) Driving at an excessive speed in the circumstances.
- (d) Failing to give any or any sufficient warning of his approach.
- (e) Driving out of a lane into the main road when it was unsafe so to do.
- (f) Failing to give way to traffic approaching from the right and travelling along the main road.
- (g) Failing to stop, swerve, slow down or otherwise avoid the said collision. "

20

In their statement of defence the Defendants asserted that the first defendant was not negligent and that the collision was due entirely to the negligence of the plaintiff or alternatively the negligence of the plaintiff had contributed to the cause of the collision. Particulars of the negligence were -

30

- " (1) The plaintiff failed to keep any or any proper lookout.
- (2) the plaintiff drove at an excessive speed

40

(3) The plaintiff failed to have any or any sufficient regard for other traffic on the road.

In the Supreme Court of the Federation of Malaya

(4) The plaintiff failed to exercise or maintain any or any sufficient control of the said motor cycle 39 YP 37. "

In the High Court at Ipoh

No.13

10 A certain amount of the evidence was comm-
on to the cases of both the plaintiff and the
defendants and a certain amount of the remaind-
er of the evidence was not disputed. The
plaintiff was travelling in the direction of
Tambun at the time of the accident at a dis-
tance of some 10 feet from the lefthand side
of the road whereas the lorry in question
driven by the first defendant was coming out of
Cheah Cheang Lim Lane intending to cross into
Golf Club Road. At the corner or within a very
short distance of the corner of Cheah Cheang Lim
20 Lane there was parked a vehicle belonging to the
Central Electricity Board. This vehicle was
parked partly on the grass verge but the mar-
jority of the vehicle was on the road itself.
This vehicle was parked in such a manner that
there can be no doubt that its driver had com-
mitted at least one if not more offences under
the road traffic legislation.

Judgment of
Neal, J.
18th December
1963
continued

30 At the conclusion of the case I found it
necessary to refresh my memory as to the area
and in particular the distance down Tambun Road
that the driver of a vehicle at the junction of
Cheah Cheang Lim Lane could see. I invited
both counsel to attend with me but both asked to
be excused. The inspection proved my memory to
be correct and that there was clear vision at
least for a distance exceeding 12 telegraph
posts i.e. 240 yards; that the grass verge
where the van must have been parked according to
the evidence was of such a nature that not more
40 than 18" of the vehicle could be off the road.

On the evidence before me I came to the con-
clusion that the collision was caused by the
negligence of the first defendant in that he had
failed to keep any or any proper lookout under
the circumstances of the case. I was unable to
accept that part of the first defendant's

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963
continued

evidence that he had stopped when the driver's seat was level with the right hand side or the righthand front corner of the cab of the vehicle and looked down Tambun Road. The reasons why I was unable to accept it as reasonably true were firstly it would have been impossible for the lorry to have travelled the distance it did from the point of impact if it had been stationary at the point where its front was protruding at least 8 feet into Tambun Road; and, secondly, because of the evidence of the first defendant that he did not see the motor bike until the collision. At this stage I think I should deal with the assertion by Mr. Murphy in cross-examination and in his final address that the point of collision was 15 feet from Cheah Cheang Lim Lane. This assumes that the point of collision "E" was according to the plan in a direct line A. B. The fallacy of this assertion was abundantly clear when I plotted on the sketch plan the measurements given in the key to such sketch plan. It is obvious from this that the position of the lorry on the road is incorrectly set out in the plan. It must have been at a greater angle to the left and more towards the triangle in Golf Club Road than shown in the plan. It was not suggested by either party that the measurements were not correct and I can find no reason for not accepting them. I find therefore that the collision was due to the negligence of the first defendant.

On the question whether or not there had been any negligence on the part of the plaintiff which contributed within the terms of section 12 of the Civil Law Ordinance No.5 of 1956 it is clear on the evidence of the plaintiff himself that he was aware of the lorry concerned when he was a distance of some 12 feet from the cab of the lorry which on his own evidence 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. Leaving out the consideration altogether whether or not he was keeping the lookout 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.

He was cross-examined as to whether or not he had been negligent in not braking and thereby avoiding the collision. There is little evidence upon which I can make a finding but on all of the evidence there is and I am inclined to the view that allowing for the lapse of time of the brain to communicate with the limbs his braking would not have avoided a collision between the lorry and the motor cycle. He was therefore not in breach of the highway code. As to whether that collision whilst it could not have caused the actual damage to the plaintiff would have been as great or less it is in my opinion impossible to determine. It is however in my opinion abundantly clear that had he braked the continuance of the lorry (if it did continue) would have left him adequate room to pass behind the lorry.

10

20

I have considered the authorities on "the agony of the moment" and "sudden emergency" but these have reference to an emergency created by the defendant. On the facts as I have found them the plaintiff would not had he been maintaining a proper lookout, have been placed in any emergency but for the existence of the C. E.B. van in breach of the road traffic legislation and the authorities therefore in my opinion have no application.

30

I have considered all of the authorities based upon the equivalent section in the English legislation as to the test to be applied and I have considered the authorities on the question of apportionment; it is a practical impossibility to apportion the proportions of culpability which are the cause of the accident, and I have come to the conclusion that the proper award would be that the plaintiff contributed 50 per cent towards the damage which he sustained. I would not have reserved my decision but for the fact that the plaintiff was in receipt of a government pension which it is agreed had to be taken into account and also there was evidence before me that the plaintiff had attended a second medical board before the hearing and the report of that board was not available. As this was extremely relevant in assessing the amount of the damages I reserved

40

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963
continued

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963
continued

my decision until the information was available.

Despite a delay of nearly two months and vigilant efforts by the Registrar of this court I have been unable up to date to obtain any information from the department of Government concerned with the pension of the plaintiff as to whether or not there will be any variation of it. Under those circumstances and in view of my approaching departure I am compelled to give my judgment on the basis that the pension of the plaintiff from the Federation Army will remain the same notwithstanding the last medical board.

10

The plaintiff in his statement of claim claimed by way of special damages the loss of earnings up to the date of hearing - 17th October, 1963. I allow a sum of \$460.60 for the loss of earnings from 8.11.61 to 31.10.62 as amended at the hearing. For the period 1.11.62 to 20.4.63 I allow a sum of \$1,210.97 which is the amount claimed in the amended statement of claim. From the 21.4.63 to the date of hearing approximately six months I allow \$190.20 claimed in the amended statement of claim totalling by way of special damages \$1,861.87.

20

As to general damages this falls to be considered under three headings -

- (a) Pain and suffering;
- (b) Loss of amenities; and
- (c) Loss of future earnings.

30

With reference to the question of pain and suffering, in the course of his argument, Mr. Murphy referred me to an unreported decision of the then Chief Justice of Singapore in Civil Suit No.115 of 1959 where the learned Chief Justice allowed under this head a sum of \$5,000. On the evidence before me I can see no distinction between the injuries in that case and the injuries in the case that I have to decide, and as I consider such a sum fair and reasonable under all the circumstances I allow \$5,000 under this head.

40

On the question of loss of amenities the evidence before me is that prior to the accident the plaintiff played football and badminton of a social standard as opposed to a competitive standard. The medical evidence is such that it is obvious he can no longer partake of those sports. He will also have trouble in walking especially upstairs.

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963
continued

10 The decision of the former Chief Justice to which I have referred allowed \$10,000 in respect of loss of enjoyment in walking and dancing which the plaintiff in that case enjoyed. There is no evidence before me as to whether or not the plaintiff had enjoyed dancing and bearing in mind that the plaintiff is 27½ years old and can be said to be approaching the period in his life when active sport of the football and badminton type would normally have no longer attracted him, I consider an award of \$10,000
20 under this head as fair and reasonable.

As to the loss of future earnings the evidence before me was clear and, in fact, not seriously contested, that the plaintiff would in the reasonable future be confirmed as a Sergeant in the Army with very little, if any, alteration of his salary. No time was fixed by the witnesses for this promotion. Having regard to what was said I think it not unreasonable to work on the assumption that it would be within one year.
30 Eighteen months to two years after that promotion he would if selected - and I emphasise the words, 'if selected,' - sit for an examination which if he passed would earn him promotion to Warrant Officer or Master Artisan. The Officer of Government who gave evidence, speaking from a knowledge of the plaintiff and the knowledge of the shortness of eligible men, said "hē hād no doubt that the plaintiff would be selected and if selected would pass the examination. How-
40 ever, it must not be overlooked that examinations are examinations and history is full of inexplicable failures in examinations by candidates apparently well qualified to pass. I have worked on the basis of this probable promotion to Warrant Officer two years after that of Sergeant. Three years service as a Warrant Officer would entitle the plaintiff to selection as a Lieutenant followed by automatic promotion

In the Supreme
Court of the
Federation of
Malaya

In the High
Court at Ipoh

No.13

Judgment of
Neal, J.
18th December
1963
continued

through the various grades of Lieutenants to Captain in eight years and thereafter he would by a practically automatic promotion become a Major. As a Warrant Officer he would receive \$359.25 per month with all allowances. As a Lieutenant on appointment \$458.50. As a Lieutenant with two years service \$498.50; as a Lieutenant with three years service \$543.50; as a Captain \$800; and as a Major \$1,100; all of the figures inclusive of all allowances except the free lodging that he would get in barracks as a bachelor. No attempt was made before me to produce any evidence as to the value of these and as I am not prepared to guess it I leave it out of my considerations.

10

The retiring age from the Army as it stands at present is 45 years. The present age of the plaintiff is 27½ years. From this the plaintiff, subject to what I have to say hereafter, could expect to be in the Army for a further 17 years and that he could expect on a normal life expectancy approximately 20 years on pension. His pension as a Captain would be \$320 per month and as a Major \$370 per month. As against that he is currently employed by the army as a typist at a total salary of \$182 and is in receipt of an invalidity pension of \$31.90. In his evidence-in-chief on the question of his future prospects in this appointment he stated that with no further qualifications he could rise to a total of \$250 per month, and that if he learned to do shorthand his salary would be between \$300 - \$400 per month. He said he would be prepared to learn shorthand and on the opinion that I have formed of him and the opinion expressed by his senior officer I have no doubt that he would qualify as a shorthand typist. It must, however, not be overlooked that he will in the normal course of his retiring from such a job at the age of 55 be getting no pension but will receive (this from my own knowledge and not from the evidence) a small retiring allowance.

20

30

40

I have also in my opinion to take into account a number of other possible eventualities. They are -

- (a) Intervening illness precluding his continuance in the Army.

- (b) Premature death before attaining the promotion referred to or before attaining the normal expectancy of life.

In the Supreme Court of the Federation of Malaya

10 These two factors carry in my opinion a great significance by virtue of the fact that he is in the Army subject to orders in the event of war and having no voluntary say in his enlistment. I have not overlooked that he will not necessarily be in the front line at any war.

In the High Court at Ipoh

No.13

- (c) The fact that commissions in the Federation Army are held at the will of His Majesty the Yang di-Pertuan Agong.

Judgment of Neal, J.
18th December 1963
continued

- 20 (d) The possibility of his committing some offence against the Army Regulations and being cashiered. I have not rated the possibility highly because of the impression the plaintiff made upon me during the hearing. Nevertheless it is a possibility; and, again, there have been many cases of Army officers committing inexplicable offences. For that reason it must, in my opinion, be considered.

- 30 (e) If I am right in the plaintiff's ability to become proficient in shorthand the loss between the age of 45 when he would go on pension and 55 his new retiring age would not be as great as the period he would have served as an officer in the Army.

40 Counsel mentioned the possibilities of increased allowances in the event of marriage. I found on a consideration insufficient evidence on which I can make any allowance in this respect. Bearing in mind the principles so often enunciated of moderate awards, fairness to both parties and adequate compensation for the injuries suffered; and bearing in mind all of the factors which I have referred to I think it not unreasonable to assess the damages under this head at \$35,000. This would make a total of \$51,861 to the nearest dollar. I have apportioned the responsibility 50/50. There will therefore be

In the Supreme Court of the Federation of Malaya

judgment for the plaintiff for \$25,930. The Defendant will pay the Plaintiff costs as taxed.

Sd: M.G. Neal

Judge

HIGH COURT AT IPOH

(M.G. NEAL)

In the High Court at Ipoh

No.13

18th December 1963

Judgment of Neal, J. 18th December 1963 continued

For Plaintiff

Inche D.H.Murphy (Murphy & Dunbar)

10

" Defendants

Inche F.C. Arulanandom (Arulanandom & Co.)

No.14

Order of Court 18th December 1963

No. 14

ORDER OF COURT

BEFORE THE HONOURABLE MR. JUSTICE NEAL, JUDGE, MALAYA.

IN OPEN COURT

This 18th day of December, 1963.

O R D E R

This action coming on for hearing on 17th October, 1963 before the Honourable Mr. Justice Neal, Judge, Malaya, in the presence of Mr. Denis Murphy of Counsel for the Plaintiff and Mr. F.C. Arulanandom of Counsel for the Defendants AND UPON READING the pleadings herein AND UPON HEARING the evidence and argument of Counsel aforesaid THIS COURT DID ORDER that this action do stand for judgment AND UPON this action coming for judgment the 18th day of December, 1963 THIS COURT DOTH ADJUDGE that the Plaintiff and the 1st Defendant are both equally to blame AND IT IS ORDERED that judgment be and is hereby entered against the Defendants in the sum of \$25,930/- AND IT IS FURTHER ORDERED that the sum of \$10,000 paid into Court by the Defendants be paid out to

20

30

the Plaintiff AND IT IS LASTLY ORDERED that the Plaintiff's costs be taxed on the Higher Scale by the proper officer of the Court and be paid by the Defendants when so taxed.

In the Supreme Court of the Federation of Malaya

Given under my hand and the seal of the Court this 18th day of December, 1963.

In the High Court at Ipoh

10

Sd: Illegible.....,
Senior Asst. Registrar;
High Court, Malaya,
Ipoh.

No.14
Order of Court
18th December
1963
continued

No.15
NOTICE OF APPEAL

In the Federal Court of Malaysia
(Appellate Jurisdiction)

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

CIVIL APPEAL NO.9 OF 1964

No.15

BETWEEN

Notice of Appeal
14th January
1964

GERALD LOUIS JEREMIAH Appellant

And

20

(1) LEE YEW KWAI
(2) MOK SAI YU Respondents

(In the matter of Ipoh High Court
Civil Suit No.82 of 1963

Between

Gerald Louis Jeremiah Plaintiff

And

(1) Lee Yew Kwai
(2) Mok Sai Yu Defendants)

NOTICE OF APPEAL

30

TAKE NOTICE that Gerald Louis Jeremiah the Appellant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Neal

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

given at Ipoh on the 18th day of December, 1963
appeals to the Federal Court against such part
only of the said decision as decides that the
Plaintiff/Appellant by his negligence contri-
buted fifty per cent towards the damage he
sustained.

No.15

Dated this 14th day of January, 1964.

Notice of Appeal
14th January
1964
continued

Sd: Illegible.
Appellant.

Sd: Murphy & Dunbar
Solicitors for the
Appellant.

10

To:

The Registrar,
The Federal Court,
Kuala Lumpur.

and to The Registrar,
The High Court in Malaya at Ipoh.

No.16

Memorandum of
Appeal
19th February
1964

No.16

MEMORANDUM OF APPEAL

Gerald Louis Jeremiah, the Appellant above-
named, appeals to the Federal Court against that
part of the decision of the Honourable Mr.
Justice M.G. Neal given on the 18th December,
1963 wherein he adjudged that the Plaintiff con-
tributed 50% towards the damage which he sus-
tained on the following grounds:-

20

1. The learned Judge was wrong in fact and in
law in deciding that the position of the lorry
on the road was incorrectly set out in the
sketch plan exhibited and that it should have
been at a greater angle to the left and more to-
wards the triangle in Golf Club Road than shown
in the plan by virtue of the fact that he had
plotted on the sketch plan the measurements
given in the key when it was impossible accur-
ately so to do in view of the fact that the
sketch plan was not drawn to scale.

30

2. The learned judge was wrong in fact and in
law in deciding that the Plaintiff was negligent
in attempting to pass across the front of the
lorry by swerving and accelerating when faced

40

with a lorry coming into his road at a distance of only 12 ft. in front of him.

3. The learned judge was wrong in fact and in law in deciding that, had the Plaintiff braked, the continuance of the lorry would have left him adequate room to pass behind the lorry, having previously decided that if the Plaintiff had braked, he would not have avoided a collision between the lorry and the motor cycle.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

—————
No.16

Memorandum of
Appeal
19th February
1964
continued

10 4. The learned judge was wrong in fact and in law in deciding that the authorities on the agony of the moment and sudden emergency had no application to the facts of this particular case by virtue of the fact that the emergency was created by the position of the C.E.B. van. The emergency was created not by the position of the C.E.B. van but by the action of the Defendant driver.

20 5. The learned judge was wrong in fact and in law in holding that the action of the driver of the lorry did not create an emergency because of the position of the C.E.B. van in breach of the road traffic legislation and was wrong in fact and in law in holding that the relevant authorities had no application to this case.

30 6. The learned judge was wrong in fact and in law in holding that it was a practical impossibility to apportion the proportions of culpability and by reason of that impossibility, in assessing the liability at 50%.

7. The learned judge should have held in fact and in law that the Plaintiff himself was not in any way negligent.

8. The learned judge was wrong in fact and in law in assessing the degree of culpability in the Plaintiff at 50% and in the Defendant driver at only 50%, the Defendant driver being far more to blame.

Dated this 19th day of February, 1964.

40

Sd: Murphy & Dunbar
Appellant's Solicitors.

This Memorandum of Appeal was filed by

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

Messrs. Murphy & Dunbar, Advocates & Solicitors,
CHAN WING BUILDING, 5th Floor, 38, Jalan
Mountbatten, Kuala Lumpur.

No.16

Memorandum of
Appeal
19th February
1964
continued

No.17

Notes of Argu-
ment of Thomson,
Lord President,
Malaysia
11th March 1964

No.17

NOTES OF ARGUMENT RECORDED BY THOMSON,
LORD PRESIDENT, MALAYSIA.

11th March, 1964.

For appt. : D.H. Murphy

For Respts: F.G. Arulanandom

Murphy:

10

Appeal is against finding of negligence on
the part of ptff.

Plan not accurate.

Go through evidence.

C.E.B. van was stationary and it only made
the corner more dangerous.

On evidence the lorry came out of the side
road w/o warning.

Driver did not see cyclist till collision
occurred.

20

No evidence to support negligence on the
part of ptff.

Case for appt.

Arulanandom:

Facts support J's findings.

Civil Law Ordinance s.12.

Smith v. Bray 56 T.L.R. 200.

Collins v. Hertfordshire County Council
& anor. (1947) 1 A.E.R. 633, 642.

M/c travelled 44 ft. after impact. This shows excessive speed.

Ptff. could have stopped and he should have attempted to do so. Had he succeeded there would have been no collision.

10 Murphy:

It would have been impossible for the m/c to go behind the lorry.

Appeal dismissed with costs.

Deposit to respts.

Intld. J.B.T.
11.3.64.

TRUE COPY

Sd: Tneh Liang Peng.

20 (Tneh Liang Peng)
Secretary to the Lord
President, Malaysia.

15/5/64.

NO.18

NOTES OF ARGUMENT, RECORDED BY
WYLIE, CHIEF JUSTICE, BORNEO

Federal Court C/A 9/1964.

Murphy for Appellant.

Arulandam for Respondent.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.17

Notes of Argu-
ment of Thomson,
Lord President,
Malaysia
11th March 1964
continued

No.18

Notes of Argu-
ment of Wylie,
C.J. Borneo.
14th March 1964

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.18

Notes of Argu-
ment of Wylie,
C.J. Borneo.
14th March 1964
continued

Murphy:-

See plan P.41 of record.

Not drawn to scale. Nothing to show
how wide lane is or relationship of the
two intersections.

Also two "E"s

C.E.B. van has merely made corner more
dangerous. "Would not have been
placed in any emergency but for"
C.E.B. van.

10

Judge found braking could not have
avoided accident.

Evidence of Defendant shows Plaintiff
could not have got behind lorry, especi-
ally with C.E.B. van on Plaintiff's
left.

Submit no evidence to support finding
of contributory negligence.

Case.

Arulandam:-

20

In key E-A -- 26 feet

A-L -- 41 feet

Submit clear not keeping proper look out.

Aware of junction and saw parked lorry.

Section 12 of Civil Law Ordinance 1956.

Smith v. Bray () 56
T.L.R. 200.

Per Hilbery J. P.200 2nd column half
way down.

Collins v. Herfordshire C.C. (1947) 1
All E.R. 633 at p. 642 (last page of
judgment)

30

Submit accident could not have happened

without contributory negligence of Plaintiff.

Case.

Murphy :- Bingham P.22.
(in reply)

Judgment delivered dismissing appeal with costs. Deposit to Respondent against costs.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.18

Notes of Argument of Wylie, C.J. Borneo. 14th March 1964 continued

No.19

NOTES OF ARGUMENT RECORDED BY TAN AH TAH, JUDGE, FEDERAL COURT.

No.19

Notes of Argument of Tan Ah Tah, F.J. 11th March 1964

10

Murphy for Appellant.

Arulanandom for Respondents.

Murphy: Plan at p.41.

Nothing to show how wide the lane is.

Various measurements cannot be reconciled.

C.E.B. van made the corner more dangerous.

20

Lorry driver never saw motor cyclist until the collision.

Plaintiff did nothing wrong.

Plaintiff could not have turned to left as the C.E.B. van was there.

Lorry was 16 ft. to 17 ft. long. Back of lorry was still inside Cheah Cheang Lim Lane.

Plaintiff adopted the only alternative - to try and pass in front of the lorry.

30

Arulanandom: E to A = 26 ft.
A to L = 41 ft.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.19

Notes of Argu-
ment of Tan Ah
Tah, F.J.
11th March 1964
continued

F is scratch mark made by motor
cycle - not a skid mark.

E (middle of road) - motor cycle fell
there and then went on to make the scratch
mark F.

Although no specific finding by Judge,
I submit Plaintiff was not keeping a proper
look-out - p.20D1 - he was aware of
side roads and aware of the C.E.B. van.

Plaintiff said he could have stopped 10
within 10 ft. He was decelerating. If
he had braked, he could have stopped within
10 ft.

Section 12 Civil Law Ordinance No.5/56 -
contributory negligence - "reduced to
such extent as the court thinks just and
equitable."

Smith v Bray (1939) 56 T.L.R. 200 2nd Col.
 $\frac{1}{2}$ way down.

Collins v Hertfordshire County Council 20
(1947) 1 All E.R. 633 at p.642

He should have braked.

A wrong judgment (by Plaintiff) can
constitute negligence.

Plaintiff had already become cautious.
He slowed down - ready for any eventuality.
He could have stopped to avoid the
accident.

Murphy: Page 24A1 - If lorry was 15 ft. out,
how could Plaintiff have gone behind the 30
lorry? The back of the lorry was still
inside the lane.

(Court adjourns to consider the
decision.)

4.25 p.m. Lord President delivers oral
judgment dismissing the appeal.

Wylie C.J.(Borneo) agrees.

I agree.

Appeal dismissed with costs. Deposit to be paid out to Respondent or his Solicitors.

Sd: Tan Ah Tah.

Certified true copy

Sd: Eng Seong Hooi

Private Secretary to
Federal Judge,
Malaysia,

4th June, 1964.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.19

Notes of Argu-
ment of Tan Ah
Tah, F.J.,
11th March 1964
continued

10

No.20

ORAL JUDGMENT OF THOMSON, LORD PRESIDENT,
MALAYSIA.

No.20

Oral Judgment of
Thomson, Lord
President,
Malaysia
11th March 1964

This matter arises from a collision between a lorry and a motor cycle which took place in Ipoh on 9th November, 1960. For some reason the proceedings in connection with it did not come to trial until October, 1963, some three years later, when the recollections of the parties concerned must have been somewhat less than perfect.

20

In these proceedings the motor cyclist sued the owner and driver of the lorry, the cause of action being negligence.

The defence was a denial of negligence and an allegation that the accident was due to the plaintiff's own negligence.

30

In the event the trial Judge found there was negligence on the part of the lorry driver and assessed damages at something over \$50,000. He also found that there was negligence on the part of the motor cyclist which he assessed at 50% and the amount of damages awarded was reduced accordingly.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.20

Oral Judgment of
Thomson, Lord
President,
Malaysia
11th March 1964
continued

The motor cyclist has now appealed against the Judge's finding of negligence on his part.

Speaking for myself and giving the matter the best consideration I can, and after all I can do no more, I can find nothing which compels me to differ from the result at which the trial Judge arrived in this connection. It is not for this Court to substitute its own views as to what happened in a case of this sort which depends so much on credibility for those of the trial Judge but I find comfort in the consideration that my own views do on the whole coincide with the trial Judge's conclusions.

10

On the whole the evidence, to put it at the lowest, suggests that the motor cyclist was keeping a less than adequate look-out. I base this largely on the plan. Making all allowances for what has been said about the lack of accuracy of this document, it seems to me that having regard to the fact that when the motor cyclist commenced, if I may so put it, to go round the front of the lorry he had on his right not only over 20 feet of roadway, regarding which there is no evidence whatsoever of oncoming traffic, but also on his immediate right what I may describe as an escape route leading off to the right at an angle of 45°. Judging by its position after the accident the lorry could not have been travelling at any great speed. Postulating on the part of the motor cyclist a normal human sense of self-preservation I find it very very difficult to think that had he been keeping a proper look-out he could not have succeeded in avoiding the collision.

20

30

In the circumstances I would dismiss the appeal with costs and order payment out of the deposit.

40

Taken down by me and seen by the Hon'ble the Lord President.

Sd: Tneh Liang Peng
Secretary to the Lord President.

Penang, 11th March, 1964.

D.H.Murphy Esq. for
Appellant.
F.C.Arulanandom Esq.
for Respondents.

TRUE COPY
Sd: Tneh Liang Peng
(TNEH LIANG PENG)
Secy. to the Lord
President.

15.5.64.

50

No.21

ORDER OF FEDERAL COURT

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., LORD PRESIDENT OF THE
FEDERAL COURT OF MALAYSIA;

THE HONOURABLE SIR CAMPBELL WYLIE, E.D.,
Q.C., CHIEF JUSTICE, HIGH COURT IN
BORNEO;

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.21

Order of
Federal Court
11th March
1964

AND

10 THE HONOURABLE MR. JUSTICE TAN AH TAH,
JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT.

THIS 11TH DAY OF MARCH, 1964.

O R D E R

20 THIS APPEAL coming on for hearing this day in
the presence of Mr.Denis Murphy of Counsel for the
Appellant and Mr.F.C. Arulanandom of Counsel for
the Respondent AND UPON READING the Record of
Appeal filed herein AND UPON HEARING the arguments
of Counsel as aforesaid for the parties:

IT IS ORDERED That this appeal be and is
hereby dismissed.

AND IT IS ORDERED that the Appellant do pay
to the Respondent the costs of this appeal as tax-
ed by the proper officer of this Court.

AND IT IS ORDERED that the sum of \$500/-
(Dollars five hundred) deposited into Court by the
Appellant towards the costs of this Appeal be paid
out to the Respondent.

30 GIVEN under my hand and the seal of this
Court this 11th day of March, 1964.

Sd: Raja Azlan Shah

(L.S.) CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.22

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HIS MAJESTY THE YANG DI-PERTUAN
AGONG

No.22

BEFORE:

Order Granting
Final Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agong
2nd September
1964

THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., LORD PRESIDENT,
FEDERAL COURT OF MALAYSIA;

THE HONOURABLE DATO SYED SH^{EH} BARAKBAH,
P.M.N., D.P.M.K., P.S.B., CHIEF
JUSTICE, MALAYA;

10

AND

THE HONOURABLE MR. JUSTICE TAN AH TAH,
JUDGE, FEDERAL COURT OF MALAYSIA.

IN OPEN COURT

This 2nd day of September, 1964.

O R D E R

UPON MOTION made to the Court this day by
Mr. T.G.Dunbar of Counsel for the abovenamed
Appellant in the presence of Mr. P.P. Dharman-
anda on behalf of Mr. F.C. Arulanandom of
Counsel for the Respondents AND UPON READING
the Notice of Motion dated the 29th day of July,
1964 and the Affidavit of Gerald Louis Jeremiah
affirmed on the 20th day of July, 1964 and filed
herein in support of the said Motion AND UPON
HEARING Counsel as aforesaid for the parties
IT IS ORDERED that Final Leave be and is
hereby granted to the above-named Appellant to
appeal to His Majesty the Yang di-Pertuan Agong
from the Order of the Federal Court of Malaysia
dated the 11th day of March, 1964 AND IT IS
FURTHER ORDERED that the costs of this Motion
be costs in the cause.

20

30

Given under my hand and the seal of the
Court this 2nd day of September, 1964.

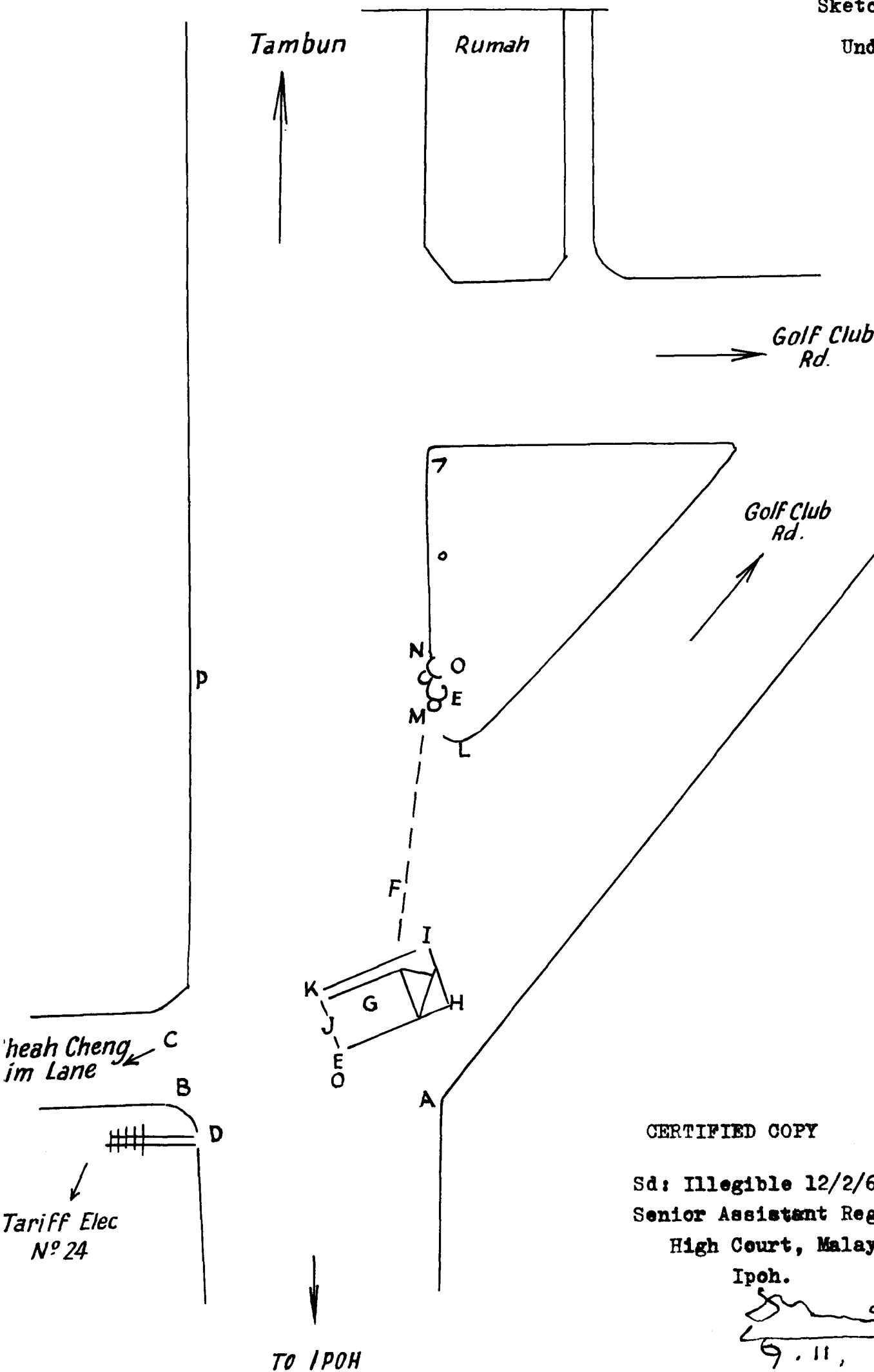
Sgd: RAJA AZLAN SHAH
CHIEF REGISTRAR,
FEDERAL COURT OF MALAYSIA.

Seal:

PETA KASAR REPORT N^o12606/60
TRAFFIC BRANCH IPOH

P.11,
Sketch Plan
and Key to
Sketch Plan

Undated



CERTIFIED COPY

Sd: Illegible 12/2/64.
Senior Assistant Registrar,
High Court, Malaya,
Ipoh.

[Handwritten Signature]
9.11, 60

KEY TO SKETCH PLAN - REPORT NO.12616/60TRAFFIC BRANCH1. Explanation to signs on plan.

- A. Right side of road towards Tambun.
- B. Left side of road towards Tambun.
- C. Cheah Cheng Lim Lane - the place where lorry No.A 6136 came out.
- D. Lamp Post No.24 on left side of road towards Tambun- the place where C.E.B. lorry was parked.
- E. The place where motor cycle No.39YB37 fell.
- F. Motor cycle skid mark.
- G. Motor lorry No.A 6136.
- H. Off front tyre of lorry No.A 6136.
- I. Near front tyre of lorry No.A 6136.
- J. Off rear tyre of lorry No.A 6136.
- K. Near rear tyre of lorry No.A 6136.
- L. Grass edge on left side of road leading to Golf Club Road.
- M. Rear wheel of Motor cycle 39YB37.
- N. Front wheel of Motor cycle 39YB37.
- O. Guide stone on right side of grass towards Tambun.
- P. Left side of road towards Tambun.

2. Distances of places.

A	TO	B	41	feet.
C	to	D	6	"
E	to	A	26	"
F	to	A	20	"
H	to	A	21	"
I	to	L	15	" 10 inches.
L	to	A	41	"
J	to	B	26	"
K	to	B	25	"
N	to	P	33	"
O	to	P	34	"
N	to	O	3	"
F	to	M	44	"

3. Condition of road.

1. The road from Ipoh to Tambun is straight. Surface good and not wet.

2. Place of incident - there is a corner into Golf Club road on the right side and a corner into Cheah Cheng Lim Lane on the left.
3. The road is clear and is tarred - marked 30 M.P.H.

This is the certified Translation of the original document produced for Translation in Ipoh Supreme Court Translation Serial No.990 of 1963.

Sd: Illegible.

Interpreter.

Dated 25.9.63 Supreme Court, Ipoh.

IN THE PRIVY COUNCIL

No.46 of 1964

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N:

GERALD LOUIS JEREMIAH (Plaintiff) Appellant

- and -

LEE YEW KWAI
MOK SAI YU (Defendants) Respondents

RECORD OF PROCEEDINGS

LIPTON & JEFFERIES
Princes House,
39, Jermyn Street,
London, S.W.1.
Solicitors for the Appellant.

STANLEY & CO.,
Swan House,
35, Queen Street,
London, E.C.4.
Solicitors for the Respondents.