

23/83

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N:

K. RATNASINGAM Appellant  
(Plaintiff)

- and -

- 10 1. KOW AH DEK  
alias KOW LIAN POI
- 2. YONG DO  
alias YUEN LOY CHOY t/a  
CHOP FUNG LEE HENG

Respondents  
(Defendants)

CASE FOR THE RESPONDENTS

- |    |   | <u>RECORD</u>                             |
|----|---|---|
| 20 | 1. This is an Appeal from the Judgment and Order of the Federal Court of Malaysia (Suffian, L.P., Salleh Abas and Adbul Hamid, F.JJ.) dated 21st February, 1981, whereby the Appeal of the Respondents herein was allowed in part against the Judgment and Order of the High Court in Malaya at Seremban (Ajaib Singh, J.) under which the Appellant herein was awarded damages totalling \$254,130.80 with interest and costs. By the said Order of the Federal Court made on Appeal herein the damages awarded to the Appellant were reduced to \$110,672.33 and the Order for interest was varied. | Pp. 42 - 49<br>Pp. 33 - 37<br>Pp. 29 - 32 |
| 30 | 2. Insofar as any question of law arises in this Appeal it relates to the ability of the Federal Court of Malaysia to review an award of  | Pp. 47, 49<br>Pp. 30, 47                  |

Record

damages based on uncontradicted evidence in the Court below; and the power of the Federal Court to consider how such evidence supports the finding made by the trial Judge.

Pp. 1 - 3 Pp. 3 - 6	3. The Appellant commenced the action leading to the instant Appeal by Writ of Summons issued on 16th September, 1974. The claim in the Statement of Claim was for damages in respect of a motor vehicle collision at the fourth milestone of the Seremban-Tampin Road.	10
Pp. 3 - 4	4. The Appellant alleged by paragraphs 3 and 4 of the Statement of Claim as follows :-	
P. 3, l.32 - P. 4, l.7	"3. On or about the 4th day of May, 1973 the Plaintiff was driving motor car No. BV 887 travelling along Seremban/Tampin Road going in the direction of Seremban when at or near the 4th milestone, Seremban, he was run into by motor lorry No. NA 6509 which was being driven by the First-named Defendant a servant or agent of the Second-named Defendant and which was travelling in the opposite direction."	20
	"4. The said accident was caused by the negligence of the First-named Defendant a servant or agent of the Second-named Defendant."	
P. 3, ll. 25 - 27 P. 3, ll. 28 - 32	5. By paragraph 1 of the Statement of Claim the First-named Respondent herein was identified as the driver of the said motor lorry, and by paragraph 2 of the same the Second-named Respondent herein was identified as the registered owner of the said motor lorry and as the employer of the First-named Respondent herein and for which he was at all material times vicariously liable.	30
	6. The Particulars of Special Damage claimed therein were :-	
P. 6, ll. 8- 19	"1) Loss of use of motor car at \$10 per day and continuing \$	40
	2) Travelling expenses to hospital \$500.00	
	3) Extra and nourishing food \$750.00	

4) Medical expenses and continuing \$

7. By paragraph 5 of the Statement of Claim and by the Particulars of Personal Injuries, the Appellant herein claimed that the injuries sustained by him were such that upon initial examination he was found to be :- Pp. 4 - 6

10 "... in coma III, responding only to pain. He was irritable and showed evidence of marked contusion of his scalp over the (R) parietal area. He also had difficulties in respiration and showed evidence of considerable brain oedema." P. 5, ll. 9 - 14

20 "There was a large laceration over his (L) shoulder area with considerable oedema which had been suffered previously. This measured 5" x 2". In addition, there was a fracture of his nasal bone with slight distortion and bleeding nostrils." P. 5, ll. 17 - 22

Upon admission to the Kuala Lumpur General Hospital

30 "... angiography was done and this revealed normal appearances. However, to give him the benefit of the doubt, a burrhole was placed over the parietal area but there was no evidence of any hematoma or blood clot. He was treated with lafix and steriods, and nichkolin. He was nursed through and following his recovery from his head injured status, had to require plastic care for wound closure over the (L) shoulder." P. 5, ll. 23 - 32

40 It was thereafter pleaded that the Appellant made an uneventful recovery and was subsequently discharged on 20th June, 1973. He returned to the General Hospital in Kuala Lumpur on seven subsequent occasions and he was pronounced fit to return to work in mid-November 1973, although his anti-convulsent therapy continued. It is convenient to deal with all the medical evidence at this stage of the printed case and to observe that the Judgment of the Federal Court outlined the current state of the Appellant as follows :- P. 43, ll. 31 - 45

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Pp. 20 - 21 and Pp. 24 - 25	"According to Dr. N.Arumugasamy (P.W.6) the respondent (Appellant) suffers a minimal brain damage resulting in a considerable change in his behaviour. He becomes very talkative and is full of complaints even over small matters. He has lost self-confidence and relies a great deal upon his sister for material support. He has frequent headache(s) on the right side of his head and suffers decreased vision on his right eye. He is unable to apply himself to task(s) requiring mental concentration and has poor memory. He suffers from severe episode(s) of vertigo - i.e. unsteady on his feet. He also has fits and dizziness. Further because of the accident he is wearing a collar around his neck."	10
P. 6, 11. 15 - 19	8. By paragraph 6 of the Statement of Claim the Appellant herein made the allegation that is fundamental to the issues raised in this Appeal:  "Further, and in addition, due to the accident and the injuries, the Plaintiff has lost the opportunity of promotion and his ability in the teaching profession has been affected for which he claims damages."	20
P. 6, 11 20 - 24	The Appellant herein also claimed interest on all damages claimed at a rate of six per cent per annum from 4th May, 1973 until Judgment or payment pursuant to Section II of the Civil Law Ordinance 1956.	30
Pp. 7 - 8	9. The Respondents herein jointly filed a Statement of Defence on 5th November, 1974 in which negligence on their part was denied, together with a Counterclaim for the negligence or contributory negligence of the Appellant. This denial was not persisted in for at the commencement of the trial the Respondents admitted liability, but no other matter. By paragraph 5 of the Statement of Defence the Respondents herein did not admit any injuries, pain, suffering, loss, or expense and put the Appellant herein to strict proof thereof.	40
P. 9, 1.15		
Pp. 9 - 13	10. The action came on for hearing on 4th December, 1975 before the Honourable Mr. Justice Ajaib Singh in the High Court in	50

Malaya at Seremban. The hearing was adjourned part heard and subsequent hearings took place on :

14th September 1976, 24th January 1978 Pp. 14 - 19  
27th September 1978, 26th June 1979, and Pp. 19 - 24  
ending on the 10th August 1979. Pp. 24 - 28

The Appellant herein called eight witnesses at Pp. 9 - 25  
the trial although he gave no evidence himself.  
The Respondents herein called no evidence.

10 11. Apart from the testimony upon the Pp. 20 - 21  
medical condition of the Appellant the effect and  
of the evidence given by the witnesses called Pp. 23 - 25  
on behalf of the Appellant so far as is relevant  
to the instant Appeal is effectively summarised Pp. 44, 1.41-  
in the Judgment of the Federal Court delivered Pp. 45, 1.31  
by Salleh Abas F.5. and 11.40 -  
44

Exhibits produced at the trial Pp. 51 - 55  
consisted of two medical reports of Dr. N.  
Arumugasamy dated 11th January 1974 and 6th

20 January 1976; a psychological report by  
Dr. K.L. Yeo dated 11th May 1977 and a Pp. 56 - 57  
psychiatric report by Dr. Teoh Hin Inn dated

24th May, 1979. The Record of Service of the P.  
Appellant (Exhibit P.1.) details the promotions, P. 60-67  
salaries, qualifications and examination  
attendances (inter alia) while Exhibits P.2 PP. 68 - 72  
and P.3 illustrate the regard with which the  
Appellant was held as a headmaster by

30 colleagues ~~with~~ <sup>and</sup> pupils alike. Exhibit P.4 is Pp. 73 - 80  
a Bundle of Testimonials illustrating the  
qualifications and qualities of the Appellant.

12. The learned Trial Judge delivered P. 29  
his decision on the 10th August, 1979 in the  
following terms whilst giving no reasons at  
that stage:-

"For the injuries, loss of P. 29, 11.  
amenities and pain and 3 - 16  
suffering \$70,000.00

40 Future loss of earnings  
at \$1,000 per month for \$112,722.80  
13 years

Loss of earnings after  
retirement plus pension  
factor - \$1,000 per month  
for 6 years \$60,908.00

Record

Gratuity factor \$10,000.00

Travelling expenses to hospital \$500.00

6% interest on general damages for the injuries from date of service of Writ.

Costs to the Plaintiff."

Pp. 29 - 30 And an Order was drawn and entered on 10th August, 1979 in the above terms.

P. 33 13. On the 14th August, 1979 the Respondents herein gave notice of appeal and on 19th September, 1979 the learned Trial Judge delivered Grounds of Judgment. Prior to dealing with the Grounds of Judgment of the learned Trial Judge it is convenient to demonstrate the relevant issues by reference to the subsequent appeal. 10

Pp. 35 - 37 On the 20th September, 1979 the Respondents herein issued a Memorandum of Appeal against the decision of the learned Trial Judge. The first ground of appeal was against the award of damages in the sum of \$70,000 for pain and suffering and loss of amenities. However this Ground failed before the Federal Court of Malaysia at Kuala Lumpur and is not in issue in the instant Appeal. Neither is the award of \$500.00 any longer in issue which award was made by the learned Trial Judge in respect of the travelling expenses incurred by the Appellant. 20

Pp. 36 - 37 14. By paragraph 2 of their Memorandum of Appeal the Respondents herein averred as follows: 30

P. 36, 11. "The Learned Trial Judge erred in Law and in fact in awarding \$112,722.80 for the loss of future earnings prior to retirement; \$60,908.00 for loss of future earnings after retirement and 14 - 18 \$10,000/- for loss of gratuity."

Thereafter followed particulars in support of this Ground of Appeal. 40

P. 31, 1.27 - 15. The learned Trial Judge based the award of \$112,722.80 for the loss of future earnings suffered by the Appellant before retirement upon the assumption that, but for the injuries received by him, the Appellant P. 32, 1.14

would in all probability have passed the 'Bahasa Malaysia' examination and so would have moved immediately on to the salary grade 'Superscale G' which was substantially higher than his pre-accident salary.

10 16. The learned Trial Judge based the award of \$60,908.00 for the loss of future earnings which the Appellant would otherwise have enjoyed from a post-retirement occupation and the reduced pension which he would suffer by losing the chance of a promotion on to the 'Superscale G' salary grade. The monthly future loss which the learned Judge awarded under this head of damages was \$1,000 with a purchase of six years. The further award of \$10,000 for loss of 'gratuity factor' was also based upon the premise that the Appellant would have passed the 'Bahasa Malaysia' examination and would have been promoted to the salary grade of 'Superscale G'.

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P. 32, 11.  
37 - 39

17. The 'Bahasa Malaysia' examination is an examination in Malay language and culture which consists of four papers: Paper I involves essay and letter writing; Paper II involves grammar; Paper III involves history and culture and Paper IV is an oral examination. The examinations are held in June and December each year and success is regarded as a pre-requisite for confirmation in the civil service post of Education Officer - to which the Appellant was appointed with effect from 5th September, 1969 with a time limit of three years in which to pass the examination.

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P. 17, 11.  
14 - 16 and  
P. 45, 11.1-5

18. As a State School Headmaster the Appellant was a Malaysian Civil Servant. Evidence was given at the trial herein by Ong Teng Keng (P.W.1) and Tuan Syed Zainal Abidin Bin Syed Abdul Rani (P.W.5) as to the two schemes of civil service remuneration which existed at the material times: the 'Aziz' scheme and the 'Cabinet Report' scheme which are levels of remuneration of different bases and criteria. The Appellant opted to work under the 'Aziz' scheme when he was confirmed in the civil service as a college-trained teacher and one of the criteria under this scheme of service is an undertaking on the part of the officer to pass the 'Bahasa Malaysia' examinations.

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Pp. 9 - 11  
Pp. 16 - 19

P. 17, 11.  
31 - 38

50 'Superscale G' is a scale of salary for Malaysian Civil Servants upon which the

Record

	Appellant has never been paid, because it is a salary grade reserved for officers who are required to pass the 'Bahasa Malaysia' examination and <del>but</del> who have not done so. "Superscale G' is referred to in context in the evidence of the two witnesses referred to above (i.e. P.W.1 and P.W.5); in the Grounds of Judgement of the learned Trial Judge and in the Judgment of the Federal Court.	
P. 10, 11. 5 - 25		
P. 17, 11. 2 - 38		
P. 32, 11. 16 - 39		
P. 45, 1.52 - P. 46, 1.41		10
Pp. 31 - 32	19. From the Grounds of Judgment of the learned Trial Judge it is evident that there were two central findings of fact upon which the awards of damages for loss of future earnings made by the learned Trial Judge were based, and were as follows :	
P. 31, 11. 27 - 41	"Upon his promotion to headmaster the Plaintiff had to pass Bahasa Malaysia consisting of four papers. He had passed the first paper which was essay and letter writing but not the other three papers. On the evidence which was adduced in this case I accepted the submission of counsel for the Plaintiff that the Plaintiff would in all probability have passed the remaining three papers if not for the injuries which he had received. He is now in no position to sit for any paper and he has thereby lost all chance of further promotion. Dato' Dr. Arumugasamy (PW6) describe clearly the injuries and their effect on the Plaintiff which tends to show that 'the spring has gone out of his life'."	20
		30
	and	
P. 32, 11. 16 - 17	"If not for his injuries he would have climbed up the Superscale G salary scale."	
Pp. 38 - 41	20. Argument before the Federal Court (Suffian L.P., Salleh Abas and Abdul Hamid F.JJ.) took place on 13th January 1981, the Judgment of the Court being delivered on 21st February 1981 by Salleh Abas F.J. The Judgment commenced by reciting brief details of the motor vehicle collision, that the liability of the Respondents herein had been admitted at the trial below and then by setting out the heads of damage awarded by the learned Trial Judge.	40
P. 42, 11. 25 - 28		
P. 42, 11. 28 - 29		
Pp. 42 - 43		



(8) There then followed a synopsis of the submissions made by counsel for the Respondents herein namely that (a) the award for pain and suffering and loss of amenity was too large; there ought to have been no award for loss of future earnings; (c) there ought to be no award for loss of gratuity.

P. 43, 11  
5 - 14

10 21. The Judgment then recounted the injuries sustained by the Appellant herein during the motor accident of 4th May 1973, the treatment he subsequently received and the lasting effects of his injuries; in particular the minimal brain damage with consequential symptomatic neurological deficiencies such as memory loss, headaches and change of character, noting that they had all been detailed in the evidence and reports of Dr. N. Arumugasamy as confirmed by the expert opinions of Dr. K.L.Yeo and Dr. Teoh Hin Inn.

P. 43, 11  
15 - 49

P. 43, 11.  
45 - 49  
Pp. 20 - 21  
and 51 - 55

Pp. 56 - 59

20 22. The Federal Court declined to vary the award of \$70,000 for pain and suffering and loss of amenity since it was felt that the learned Trial Judge did not incorrectly employ his discretion in arriving at this sum - albeit holding it was comparatively high by local standards of similar awards. As stated in paragraph 13 hereof this award is no longer in issue.

Pp. 43, 1.50 -  
44, 1.28

P. 44, 1.18

30 23. However the Federal Court varied the award of \$173,630.80 in respect of loss of future earnings on the basis that the learned Trial Judge had erred in his two central conclusions on the undisputed evidence. These conclusions were firstly that the Appellant herein would have passed the 'Bahasa Malaysia' examinations. The second conclusion was that the Appellant herein would also have been promoted instantly to "Superscale G' salary grade of the Malaysian Civil Service and would have thus been in receipt of a higher salary than his present salary which had remained unchanged since before the motor accident.

P. 45, 11.  
46 - 51

Pp. 45, 1.52 -  
P. 46, 1.19

40 24. The conclusion of the said Judgment of the Federal Court was in these terms :-

P. 47

- "(a) For pain suffering and loss of amenities \$ 70,000.00
- (b) Loss of future earnings \$ 31,172.23

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(c) Travelling expenses to hospital	\$ 500.00
	<hr/>
	\$101,672.23
	<hr/>

Interest at 6% per annum is charged on (a) from the date of the issue of the Writ, and interest at 4% on (b) and (c) from the date of the judgment."

P. 29	The Appeal by the Respondents herein being allowed with costs. The effect of this Judgment was that the heads of damage awarded by the learned Trial Judge in respect of future loss of earnings (\$112,722.80); loss of earnings after retirement (\$60,908.00) and the gratuity factor (\$10,000) were overturned by the Federal Court and in their place an award of \$31,172.23 in respect of loss of future earnings was made. The learned Federal Judges held that the assessments made by the learned	10
P. 45, 1.53 - P. 46, 1.2	- Trial Judge in this regard were based upon "the difference between the respondent's (Appellant's) present salary and what he could get as a Superscale G officer, and this assessment began from the date of the accident as if he was already in Superscale G." Since this premise was rejected by the Federal Court the three awards made by the learned Trial Judge in this regard were, it is respectfully submitted, correctly held to be unsupported by evidence. The Appellant herein remained at the time of the Appeal before the Federal Court in full employment at his pre-accident salary, and therefore had suffered no reduction in earnings. The award made by the learned Federal Judges in the sum of \$31,172.23 was based upon the loss of future earnings which, but for the injuries, the Appellant could have expected once he had retired from the Malaysian Civil Service at the age of 55, by giving private tuition; it was, it is respectfully submitted, correctly expressed in the following way :-	20
P. 46, 11. 15 - 19 P. 46, 11. 43 - 53		30
P. 46, 11. 48 - 53	"The income from such occupation may be fixed to be at \$600/- permonth and taking into consideration various contingencies, such as illness and lack of interest in taking up post-retirement job we think it is fair that we should fix 5 years of purchase."	40

25. The learned Federal Judges held, it is submitted correctly, that the learned Trial Judge had made conclusions on wholly inadequate evidence, in respect of the Appellant herein passing the 'Bahasa Malaysia' examination and thereupon being promoted to 'Superscale G' salary scale. There was some documentary evidence that the Appellant was able to speak "the National Language" in his Certificate of Qualification dated September 1960 from the Malayan Teachers' College in Penang, but no evidence was presented at the trial below to suggest that the Appellant was fully capable of success in the Bahasa Malaysia examination. It is further submitted on behalf of the Respondents herein that evidence as to the teaching and administrative abilities of the Appellant is not germane to the issue as to whether he would have been able to pass the Bahasa Malaysia examination.

P. 45, 11.  
42 - 51  
P. 46, 11.  
2 - 15

P. 75

26. As the Appellant herein did not give evidence at the trial below it is further submitted on behalf of the Respondents herein both that the learned Trial Judge was in no better position than were the learned Federal Judges in assessing the ability of the Appellant to pass the Bahasa Malaysia examination and also that the conclusions drawn by the Federal Court from the evidence at the trial below in this regard were correct. This is especially so when due regard is had to the number of missed opportunities which the Appellant had to sit the Bahasa Malaysia examination.

P. 45, 11.  
31 - 51

27. The Service Record of the Appellant, it is submitted, is highly relevant in demonstrating his lack of attempts at the bi-annual Bahasa Malaysia examination. The Record (Exhibit P1) may be summarised as follows in this respect:

Pp. 66 - 67

<u>DATE</u>	<u>DETAILS</u>
1971 - 21, 22 June	: Absent
1971 - 13, 14 December	: Absent
1972 - 25 January	: Absent from Paper II
1972 - 5, 6 June	: Paper I, passed Paper II, IV failed Paper III absent

Record

<u>DATE</u>	<u>DETAILS</u>	
1972 - 5 September	: 1 year extension, with fine, in which to pass examination granted	
1972 - 12, 13 December	: Absent	
1973 - 12, 13 June	: Absent	
1973 - 4 May	: Accident with Respondents' motor lorry.	10
1973 - 5 September	: 1 year extension, with fine, in which to pass examination granted	
1974 - 5 September	: Further 2 year extension, with warning.	
1975 - 17, 18 June	: Papers II, IV failed Paper III absent.	

P-31, 11.27-36 28. The learned Trial Judge appears to have based his conclusion that the Appellant herein would have passed the Bahasa Malaysia examination upon the success which the Appellant had in the only paper which he would appear ever to have passed, namely Paper I in the examination of June 1972. It is submitted that the weight of the evidence of the absences and failures of the Appellant in the Bahasa Malaysia examinations during the course of his employment as an Education Officer does not support such a conclusion. Further, in the light of the evidence that the Appellant had in all probability exhausted the number of discretionary extensions of time which had been afforded him in which to pass the Bahasa Malaysia examinations, the Appellant adduced no evidence at the trial below to suggest that he would not have been absent from the examination sittings open to him until his final extension of time expired on the 5th September 1976. Neither was any evidence adduced at the trial below as to the possibilities of any future extensions of time which may have been given to him by the Education Services Commission of Malaysia. 30

P. 18, 11.  
13 - 16 and  
P. 18, 1.24 -  
P. 19, 1.9

29. The learned Trial Judge also found that

the Appellant herein,

"... is now in no position to sit for any paper."

P. 31, 11.  
36 - 38

It is submitted that the learned Trial Judge erred in this finding of fact because the Appellant has sat two further papers since his accident, namely in June 1975 which again he failed. And insofar as the learned Trial Judge found that the Appellant herein has "lost all chance of further promotion", it is submitted that it was for the Appellant as Plaintiff to have proven that he would have passed the Bahasa Malaysia examinations which he failed to do.

P. 67, 11.  
9 - 13

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P. 31, 11.  
37 - 38

30. Further, and in the alternative, it is respectfully submitted, it was the failure of the Appellant herein to pass the Bahasa Malaysia examinations which has prevented his promotion to 'Superscale G' and that the accident of the 4th May, 1973 is res inter alios acta in this regard.

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31. The learned Federal Judges, it is submitted correctly, rejected the second central conclusion on the undisputed evidence made by the learned Trial Judge, namely, that upon passing the 'Bahasa Malaysia' examination, the Appellant would have moved straightway on to "Superscale G' and thereby been remunerated more highly.

Pp. 10, 28,  
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Since promotion to 'Superscale G' cannot take place unless and until a civil servant passes the 'Bahasa Malaysia' examinations and is fully confirmed in the service as an Education Officer, if the Board in the instant Appeal upholds the finding of the Federal Court that the Appellant herein would not have so passed the examination, it is submitted that this alone is sufficient to justify the interference by the Federal Court in the award made by the learned Trial Judge for loss of future earnings.

(P. 10, 11.  
(21 - 25  
(P. 18, 11.  
(31 - 37  
(P. 46, 11.  
(4 - 12

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32. If the Board should find that the Appellant herein would have passed the Bahasa Malaysia examination as found by the learned Trial Judge, it is submitted that this on its own would not be sufficient to uphold the award made by the learned Trial Judge for loss of future earnings, for the reasons given by the Federal Court :-

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P. 46, 11.  
4 - 19

"It is a well known fact that the passing of the prescribed Bahasa Malaysia examinations only entitles an officer to confirmation in the service. It does not however automatically promote him to Superscale G. Promotion to this scale depends upon vacancies. Thus a confirmed officer has to wait for at least eight to ten years for a vacancy to occur before he can be expected to act in Superscale G. In the present case the (Appellant herein) was not even confirmed much less promoted to Superscale G which is as remote as it is purely speculative. The correct view should be that as he suffers no diminution in salary, but continues to be paid his accident salary, he loses nothing, although he is now no longer the headmaster." 10

Pp. 49 - 50

33. On 2nd November, 1981 the Appellant herein was granted Final Leave to Appeal to His Majesty the Yang Di Pertuan Agong. 20

34. The Respondents respectfully submit that this Appeal should be dismissed, with costs, for the following amongst other

R E A S O N S

- (a) BECAUSE the learned Trial Judge was wrong.
- (b) BECAUSE the Federal Court was right.
- (c) BECAUSE there was no or no sufficient evidence adduced at the trial below to support the finding of the learned Trial Judge that the Appellant would ever have passed the Bahasa Malaysia examinations within the required time period. 30
- (d) BECAUSE there was ample evidence adduced at the trial below to support the finding of the Federal Court that the Appellant would not have passed the Bahasa Malaysia examinations as required. 40
- (e) BECAUSE as the Appellant did not give evidence at the trial below, the Federal Court was as entitled as was

the learned Trial Judge to draw inferences of fact on the ability or otherwise of the Appellant in respect of the Bahasa Malaysia examinations.

- 10
- (f) BECAUSE there was no or no sufficient evidence adduced at the trial below to support the finding of the learned Trial Judge that the Appellant would ever have been promoted on to the 'Superscale G' salary grade which would have entitled him to higher salary, a higher pension and a 'gratuity factor'.
  - (g) BECAUSE the Federal Court acted within their powers in rehearing the case and/or within the practical fetters surrounding the reconsideration of a decision of a trial judge.

NIGEL MURRAY

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

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B E T W E E N:

K. RATNASINGAM Appellant  
(Plaintiff)

- and -

1. KOW AH DEK  
alias KOW LIAN POI
2. YONG DO  
alias YUEN LOY CHOY t/a  
CHOP FUNG LEE HENG

Respondents  
(Defendants)

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CASE FOR THE RESPONDENTS

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