

16, 1971

No. 22 of 1969.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE (APPELLATE JURISDICTION)

BETWEEN

RAMOO S/O ERULAPAN

Appellant

AND

1. GAN SOO SWEE
2. ONG AH HO

Respondents

RECEIVED
INSTITUTION OF ADVANCED
LEGAL STUDIES
- 7 APR 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

10

CASE FOR THE 1ST RESPONDENT

RECORD

20

1. This is an appeal by leave of the Federal Court of Malaysia holden at Singapore against the Judgment of that Court dated the 7th November 1968 allowing the appeals of the above-named Respondents against the Judgment of Buttrose J. delivered on the 31st May 1968 whereby he held that the Respondents had driven their respective vehicles negligently as a result whereof the Appellant had suffered damages amounting to \$30,000/-. (Singapore currency) apportionable as to 75% thereof to the 2nd Respondent and 25% to the 1st Respondent. By the Order of the said Federal Court the said judgment was set aside and the costs of the proceedings in the Federal Court and in the Court below were awarded to the Respondents.

p. 44

p. 35

p. 19

30

2. The question arising for determination is whether the Respondents or either of them were negligent in the driving of their respective vehicles or one of them so as to be liable either jointly or severally to the Appellant for the said damages.

RECORD

- p. 4 3. The negligence alleged against the 1st Respondent in the pleadings was (inter alia), "Driving against the traffic lights", that is, proceeding past the traffic lights when the same were showing red against the 1st Respondent. A similar act of negligence was alleged against the 2nd Respondent from which it appeared that the Appellant's case was that either the 1st or the 2nd Respondent had proceeded past a red traffic light. The 1st and 2nd Respondents, in their respective defences, blamed each other. 10
- pp. 7, 8
- p.46 4. It was common ground that the 1st Respondent, driving a taxi, and the 2nd Respondent, driving a lorry were approaching a cross-roads junction on intersecting routes in daylight, that the said junction was controlled by traffic lights, and that both vehicles proceeded past their respective traffic lights into the junction and there collided, the 2nd Respondent's lorry coming into contact with the offside of the 1st Respondent's taxi. The Appellant was a passenger in the 1st Respondent's taxi. 20
- pp.13, 17
- p.13 5. The Appellant in evidence stated that as the taxi approached the junction the traffic lights facing the taxi were showing green. He did not see anything unusual about the lights; he was 15 yards away when he first saw the lights; he was seated beside the 1st Respondent. Arising out of the cross-examination of Abdullah bin Rahmat, a police witness called by the Appellant, it emerged that the traffic lights at the junction were out of order at the time when the witness arrived at the scene at 8.45 a.m. The 2nd Respondent called other police personnel who gave corroboratory evidence regarding the defective lights 30
- p. 11
- pp.15, 16
- There was evidence that the lights
- pp. 11, 16 (i) in Whitley Road (the lorry's route) were changing from green to amber and back to green without changing to red 40
- p. 11 (ii) in Dunearn Road (taxi's route) were changing from green to amber to red very quickly

RECORD

- (iii) in both roads were showing green simultaneously. p.11
6. The 1st Respondent submitted that there was no case for him to answer on the Appellant's evidence and he elected to call no evidence. p.18
7. In a reserved judgment, delivered on the 31st May 1968, Buttrose J. found as a fact that at the material time the traffic lights at the junction were defective, that the malfunctioning of such lights was palpably obvious to anyone approaching them whether pedestrian or motorist, and that the Respondents were not keeping a proper look-out but for which fact they would have noticed that the traffic lights in Whitley and Dunearn Roads were not functioning properly. The learned trial judge apportioned liability as to 25% to the 1st Respondent and 75% to the 2nd Respondent p.19
p.20
p.22
p.22
p.24
8. From the Judgment of Buttrose J. the 1st Respondent appealed and the 2nd Respondent cross-appealed to the Federal Court of Malaysia holden at Singapore. In a reserved judgment, delivered on the 7th November 1968, the Federal Court (the Chief Justice, Mr. Justice Tan Ah Tah, and Mr. Justice Chua) allowed the appeal. The Chief Justice delivering the Judgment of the Court stated that p.27
p.32
p.35
- (i) while it was open to the learned trial judge to find that at the material time the traffic lights were defective, there was no evidence that the 1st Respondent knew that the traffic lights at Dunearn Road were defective p.39
- (ii) the finding of the learned trial judge that it was "palpably obvious" that the traffic lights were malfunctioning was not supported by the evidence p.40
- (iii) there was no evidence as to the extent of the malfunctioning of the said traffic lights. p.41
9. Leave to appeal to *the Judicial Committee*
~~Her Majesty in Council~~

RECORD

p.43

p.44

against the Order made by the Federal Court was granted on the 10th March 1969.

10. The 1st Respondent humbly submits that this Appeal should be dismissed with costs for the following among other

R E A S O N S

(1) BECAUSE the Appellant's case, as pleaded, sought to establish that the 1st Respondent's negligence consisted (inter alia) of driving against the traffic lights, that is driving past a red light, whereas the Appellant's evidence proved that the traffic lights were green 10

(2) BECAUSE there was no evidence, or insufficient evidence, to establish the fact that the traffic lights at the junction were defective at the time of the collision

(3) BECAUSE if there was evidence to establish such defectiveness at the time of the collision, there was no evidence, or insufficient evidence to establish the extent or degree of such defectiveness so as to warrant a finding that the same was palpably obvious to anyone approaching the same. 20

(4) BECAUSE there was no evidence as to the state, volume or disposition of vehicular traffic in or along Dunearn Road at or about the traffic lights at or immediately prior to the collision or as to the visibility or otherwise of the said traffic lights from any given distance. 30

(5) BECAUSE the Appellant failed to establish a case against the 1st Respondent.

(6) BECAUSE the Order appealed from is right and ought to be confirmed.

K. E. HILBORNE.