

No. 22 of 1969.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

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

FEDERAL COURT CIVIL APPEAL No. Y 24 of 1968  
SINGAPORE HIGH COURT SUIT No.1219 of 1967.

B E T W E E N

RAMOO S/O ERULAPAN Appellant

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AND

(1) GAN SOO SWEE  
(2) ONG AH HO Respondents

INSURANCE  
LONDON, W.C.1.

CASE ON BEHALF OF THE SECOND RESPONDENT  
ONG AH HO

RECORD

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1. This is an Appeal from a Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) (Wee Chong Jin C.J., Tan Ah Tah F.J., and F.A. Chua, J.) given on the 7th day of November, 1968, whereby the Court allowed appeals brought by Gan Soo Swee (hereinafter called "the second Defendant") and Ong Ah Ho (hereinafter called "the first Defendant") against the Judgment of the High Court of Singapore (Buttrose, J.) given on the 31st day of May, 1968, in favour of Ramoo S/O Erulapan (hereinafter called "the Plaintiff") in an action brought by him for damages for personal injuries and consequential loss against the first and second Defendants in the driving and use and management of their respective motor vehicles.

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2. The Plaintiff now appeals against the

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Judgment and Order of the Federal Court in so far as liability is concerned. There is no appeal in regard to quantum of damages.

10. 3. The Appeal concerns a motor vehicle collision which occurred in the early morning of Sunday, the 10th day of July, 1966, in the City of Singapore.
4. On the day of the accident the first Defendant was driving a Chevrolet lorry registration number K 2338, and carrying a load of sand, along Whitley Road, in an easterly direction towards its junction with Dunearn Road. 10
46. 5. The junction of Whitley Road and Dunearn Road was controlled by sets of electric traffic lights. Each set of traffic lights comprised a red light, an amber light and a green light. 2 sets of these electric traffic lights controlled traffic travelling from west to east and 1 set controlled traffic travelling from south to north. 20
17. 6. When the first Defendant was 40 to 50 feet away from the junction he noticed the lights facing him and that they were showing green in his favour. He slowed down a little and when he was 15 feet from the set of lights nearer to him he noticed that it was still green in his favour. He accelerated to cross the junction and the light was still showing green in his favour when he entered. At this time the speed of the first Defendant's lorry was 15 m.p.h. When the lorry was 12 feet inside the junction with Dunearn Road the taxi registration number SH 4378 being driven along Dunearn Road in a northerly direction by the second Defendant collided with the offside front bumper of the first Defendant's lorry. 30
18. 7. At the time of the collision the Plaintiff was a passenger in the taxi driven by the second Defendant.
1. 8. By Writ of Summons dated the 20th day of June, 1967, the Plaintiff claimed damages for personal injuries and consequential loss and damage suffered by him and caused by the negligence of

the first Defendant and by the negligence of the second Defendant or alternatively by the negligence of one or other of them in the driving and use of their respective motor vehicles.

9. By his Statement of Claim dated the 20th day of July, 1967, the Plaintiff set out particulars of alleged negligence. He alleged that the first and second Defendants were each negligent in the following respects:

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- (i) failing to keep any or any proper look-out;
- (ii) driving at an excessive speed in the circumstances;
- (iii) failing to apply their brakes in time or at all so as to steer or control their vehicles as to avoid the collision;
- (iv) driving against the traffic lights.

The Plaintiff further alleged that the first Defendant was negligent in the following respects:

- (v) driving from a minor road onto a major road when it was unsafe so to do and without regard to traffic on the major road;
- (vi) failing to give any or any proper warning of his approach of his intention to drive on to a major road;
- (vii) failing to give way to vehicles travelling on his right.

The Plaintiff further alleged that the second Defendant was negligent:

- (viii) in failing to give any or any proper warning of his approach

The Plaintiff also gave particulars of injury, loss and expense.

10. By his Defence dated the 30th day of

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RECORD

October, 1967, the first Defendant admitted the collision and denied that he drove negligently. He alleged that the collision was solely caused or contributed to by the negligent driving of the second Defendant as set out in the Statement of Claim. Furthermore the first Defendant alleged that the second Defendant failed to take any or any sufficient precautions in the safety of his taxi and the Plaintiff as a passenger when entering the junction of Whitley Road with Dunearn Road. In the alternative, the first Defendant claimed an indemnity or contribution from the second Defendant in regard to any claim and costs which might be awarded to the Plaintiff.

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11. By his Defence dated the 27th day of September, 1967, the second Defendant admitted the collision. He denied that he drove negligently and also denied that the Plaintiff was a passenger in the second Defendant's taxi at the time of the accident. The second Defendant alleged that the collision was caused or alternatively contributed to by the negligence of the first Defendant as set out in the Statement of Claim.

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12. The action came on for hearing before Buttrose, J. in the High Court of Singapore on the 27th day of May, 1968.

13. The Plaintiff and the first Defendant gave evidence to the effect that the traffic lights were showing green in favour of both the taxi and the lorry. Police Reports containing statements from both the first and second Defendants were admitted in evidence: each Defendant's statement said that the traffic lights were showing green in his favour.

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4 Police Officers gave evidence to the following effect:

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(i) At about 7 a.m. the traffic lights at the junction were reported to Orchard Road Police Station as being out of order.

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(ii) The traffic lights facing the first Defendant changed from green to amber and then back to green without turning red.

- (iii) Changes of the traffic lights facing the second Defendants were from green to amber and to red and were very quick. 11.
- (iv) At one stage at the junction all the traffic lights showed green. 11.
- A Police Sketch Plan of the accident (not to scale) with measurements of various distances was admitted in evidence. 46 and 48
- 10 14. The second Defendant did not give evidence as a submission was made on his behalf that no evidence of negligence on his part had been adduced and his Counsel elected to call no evidence. 18.
15. The learned Judge found as facts:
- (i) At the material time the traffic lights were defective and not working properly at the junction.
- 20 (ii) The traffic lights facing the first Defendants approaching the junction from Whitley Road changed from green to amber and then back to green again with no red light appearing at all.
- (iii) The traffic lights facing the second Defendant approaching the junction from Dunearn Road changed correctly from green to amber and then red in their proper sequence but the changes were at a very fast rate and not at their normal speed.
- 30 (iv) At various stages during the mal-functioning of the traffic lights at the junction the lights controlling the traffic in both directions would be showing green for brief periods at short intervals.
16. The learned Judge made the following findings:
- (i) Each driver was negligent in failing to keep any or any proper look out

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(ii) Each driver was negligent in failing to drive his vehicle with that degree of care and caution which the circumstances of the case obviously required and the situation demanded

22 Before arriving at these conclusions the learned Judge formed the opinion that each Defendant should have seen the traffic lights were not functioning properly whereby they were warned of the danger of proceeding across the junction until they were satisfied it was safe to do so. The learned Judge was further of the opinion that traffic approaching the lights in Dunearn Road could clearly be seen for a considerable distance by motorists approaching it along Whitley Road and vice versa. 10

23 17. The learned Judge further formed the opinion that as the first Defendant was proceeding from a minor road out onto a major road the first Defendant was the more culpable and he accordingly apportioned 75 per cent of the blame to the first Defendant and 25 per cent of the blame to the second Defendant. 20

26 18. The learned Judge assessed the Plaintiff's damages in the sum of \$30,000 and awarded him the costs of the action.

35 19. The Defendants appealed against the Judgment of the Federal Court of Malaysia, the appeal being heard on the 9th day of September, 1968. Judgment was reserved until the 7th day of November, 1968 and was given by Wee Chong Jin, C.J. 30

39 20. In his Judgment the learned Chief Justice considered there was no evidence that the first Defendant knew the traffic lights controlling his entry into the junction were defective. Relying on Joseph Eva Limited v. Reeves (1938) 2 K.B. 393 the learned Chief Justice held that the first Defendant on seeing the traffic light showing green in his favour was under no duty to assume that other traffic was entering the junction in disobedience to a red light. The learned Chief Justice accordingly held that the first Defendant was not negligent. 40

21. The learned Chief Justice further held that the second Defendant was also not negligent. 41.
22. By their Judgment the Federal Court set aside the judgment of the trial Judge. 42, 43
23. By Order dated the 10th day of March, 1969, leave was granted to the Plaintiff to appeal to the Judicial Committee of Her Britannic Majesty against the whole of the Judgment and Orders of the Federal Court of Malaysia dated the 7th day of November, 1968. 10 44 -45
24. The first Defendant respectfully submits that the Plaintiff's Appeal against the Judgment and Order of the Federal Court should be dismissed for the following among other

R E A S O N S

- (1) BECAUSE no evidence of negligence by the first Defendant was adduced in regard to any of the matters alleged against him in the Statement of Claim.
- 20 (2) BECAUSE the first Defendant was under no duty to assume that the second Defendant would enter the road junction when the traffic lights showed green in favour of the first Defendant
- (3) BECAUSE there was no evidence that the first Defendant knew or ought to have known that the traffic lights were not functioning properly
- 30 (4) BECAUSE there was no evidence that the first Defendant knew or ought to have known that the second Defendant was likely to drive into the junction and across his path.
- (5) BECAUSE the Federal Court of Malaysia were correct in holding that the first Defendant was not negligent.
25. The first Defendant further submits that if and in so far as this Appeal may be allowed

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against both Defendants their responsibility should be equal (or alternatively that of the second Defendant greater) for the following among other

R E A S O N S

- (1) BECAUSE there was no evidence that Whitley Road should be treated as a minor road.
- (2) BECAUSE the first Defendant was under no duty to give way to traffic coming from his right. 10
- (3) BECAUSE the second Defendant had ample opportunity to appreciate the possibility of danger by reason of the fast changing lights facing him.

WHEREFORE THE SECOND RESPONDENT HUMBLY PRAYS  
YOUR ~~MAJESTY~~ THAT THE JUDGMENT AND ORDER OF THE  
FEDERAL COURT OF MALAYSIA DATED THE 7TH DAY OF  
NOVEMBER 1968 BE AFFIRMED AND THAT YOUR LORDSHIPS  
MAJESTY MAY BE GRACIOUSLY PLEASED TO MAKE SUCH  
FURTHER OR OTHER ORDER INCLUDING ORDERS AS TO 20  
COSTS AS TO YOUR ~~MAJESTY~~ MAY APPEAR FIT AND  
PROPER.

LORDSHIPS

LORDSHIPS

MARCUS ANWYL-DAVIES Q.C.



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O N A P P E A L

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

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FEDERAL COURT CIVIL APPEAL No. Y 24  
of 1968  
SINGAPORE HIGH COURT SUIT No. 1219 of  
1967

B E T W E E N

RAMOO S/O ERULAPAN Appellant

AND

(1) GAN SOO SWEE  
(2) ONG AH HO Respondents

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CASE ON BEHALF OF THE SECOND  
RESPONDENT ONG AH HO

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W.C.2.

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FROM THE FEDERAL COURT OF MALAYSIA  
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RAMOO S/O ERULAPAN                      Appellant

AND

1. GAN SOO SWEE  
2. ONG AH HO                                      Respondents

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CASE FOR THE 1ST RESPONDENT

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