27, 1969

IN THE JUDICIAL COMMITTEE No.25 of 1966

OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N :

TAN CHYE CHOO
VICTOR SIM WEE TECK
PETER LIM KENG LOONG
(Plaintiffs) Appellants

-and-

CHONG KEW MOI
(Married Woman)
(Defendant) Respondent

CASE FOR THE APPELLANTS

1. This is an Appeal from the Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated 13th February 1966 pursuant to final leave of that Court dated 5th September 1966 dismissing an Appeal by the Appellants (Plaintiffs) from the Judgment and Order of the High Court holden at Johore Bahru dated 16th June 1965. Record p.98

2. Under the Judgment and Order of the said High Court dated 16th June, the said Court dismissed the claims of the Appellants for damages arising out of a motor car accident. p.64

The Pleadings

3. These proceedings were initially three separate actions and were consolidated on the

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p.29 l.16 -23

1st June 1964 by the trial judge on the first day of the trial.

p.8

4. In civil suit 178/63 the first named Appellant in paragraph 1 of the Statement of Claim alleged that she was the Administratrix of George Tan Eng Leong deceased and that she brought the action for the benefit of the estate under the provisions of the Civil Law Ordinance 1956.

p.9

5. In paragraphs 2 & 3 of the said Statement ofClaim, the Appellant alleged that the deceased was travelling as a passenger in motor car No.BG 1358 (hereinafter called the said motor car) when it was run into by motor taxi No.H814 (hereinafter called the said taxi) which was being driven by Yap Seng Hock, the servant of the Respondent as a result of which the deceased was killed.

p.9

6. In paragraph 4 of the Statement of Claim this Appellant alleged that the collision was caused solely by the negligence and/or breach of statutory duty of the Respondent, his servant or agent in the driving and/or using of the said taxi. Thereunder appeared the following particulars.

"PARTICULARS OF NEGLIGENCE OF THE SERVANTS OR AGENTS OF THE DEFENDANT

(a) Failing to keep any or any proper look out.

(b) Travelling at an excessive speed in the circumstances.

(c) Driving onto the wrong part of the road.

(d) Driving into the motor vehicle in which the deceased was travelling

p.9 & 10

(e) Failing to stop, swerve, slow down or otherwise avoid the said collision.

(f) Using or permitting or causing to be used on the road a motor vehicle No.H.814 the condition of which was a danger or was likely to cause danger to persons on the

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vehicle or on the road

(g) Using or permitting or causing to be used on the road a motor vehicle No.H.814 in a condition which was known or ought to have been known by the Defendant her servants or agents to be a danger or likely to cause danger to persons on the vehicle or on the road.

PARTICULARS OF BREACH OF STATUTORY DUTY ON THE PART OF THE DEFENDANT HER SERVANT OR AGENT

(a) Using or permitting to be used motor taxi No. H.814 on the road when its type of construction was so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on the said road, contrary to section 93 of the Motor Vehicles (Construction and Use) rules 1959, the said vehicle was permitted to be driven on the road with a heavy diesel engine, having been put in place of a petrol engine, the said diesel engine being too heavy for the springs and the chassis and the part of the said motor car on which it rested. The car was thereby unsafe on the road and a danger to the public.

(b) Permitting or causing to be used on the road a motor taxi No. H.814 the condition of which and the condition of its parts and accessories were a danger and did cause or were likely to cause danger to persons on the vehicle or on the road contrary to section 94 of the Motor Vehicles (Construction and Use) rules, 1959. The said vehicle was permitted to be driven on the road with a heavy diesel engine having been put in place of a petrol engine, the said engine being too heavy for the springs and the chassis and the supporting parts of the said motor car. The car was thereby unsafe on the road and a danger to the public.

7. Thereafter the Appellant claimed damages.

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8. In Civil Suit 179/63, the second named Appellant in paragraph 1 of the Statement of
p.11 Claim alleged that he was suing as Administrator of the estate of John Sim Heng Teong deceased and was bringing this action for the benefit of the estate.

9. Thereafter in the said Statement of Claim it was alleged that the said deceased was the driver of the said motor car and claimed
p.11-13 damages. The second named Appellant alleged and relied upon the same facts as the first named Appellant.

10. In Civil Suit 150/63 the third named Appellant in his Statement of Claim alleged that he was a passenger in the said motor car and sustained personal injuries and suffered
p.15-17 damage in consequence of the said collision. The third named Appellant alleged and relied upon the same facts as the first and second Appellants.

11. These separate defences were filed by the Respondent and all were to the same effect.
p.18-20 The Respondent admitted the fact of the collision and that the said taxi was being driven by the servant of the Respondent. In the first place it was denied that the collision was caused by the negligence of the Respondent or his servants. In the second place it was denied that the collision was caused by breach of statutory duty. In the third place it was alleged that, if it be found
p.18-20 that there was a breach of statutory duty, then the Respondent will object that the claim on this ground is bad in law and discloses no cause of action against the Respondent on the ground that a breach of the said statutory duty as alleged does not confer a right of action on the persons or persons suffering damages as a result of the said breach. In the fourth place damages were put in issue. No allegation of contributory negligence was made against the second named appellant, the driver of the said motor car.

Damages

12. As already stated in paragraph 2 hereof,

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these claims were dismissed. Nevertheless the trial judge was asked and did in fact assess the damages in the event of his decision on the question of liabilities being upset. He assessed $4.140 in respect of the first named Appellant, $11.000 in respect of the second named Appellant and $9.985 in respect of the third named Appellant. There has been no appeal against this Order and accordingly there is no further reference to damages in this Case since there is no issue thereon in this Appeal. p.72-74

The Facts of the Collision in Brief

13. It was common ground between the Appellants and the Defendant that the said taxi had swerved to the wrong side of the road immediately prior to the collision and thus ran into the said motor car. There are concurrent findings that at this moment the said taxi was out of control owing to a break-down in the mechanism of the said taxi and that this was traceable to faulty workmanship when the said taxi was converted from a petrol to a diesel engine. These facts, however, were challenged by the driver of the said taxi who gave evidence to the effect that he was driving on the correct side of the road and in control of the taxi when the said motor car banged into him.

The Main Points arising in this Appeal

14.(a) Whether Section 93 and 94 of the Motor Vehicles (Construction and Use) Rules 1959 imposes an absolute duty on a motorist towards his neighbour to comply therewith which is enforceable by an individual aggrieved in a civil action.

(b) Whether the said Rules impose a duty on a motorist towards his neighbour that due skill and care had been exercised to ensure compliance therewith which is enforceable by an individual aggrieved in a civil action.

(c) Whether the Respondent was negligent in using the said taxi-cab on the road in the circumstances.

(d) Whether the Respondent's servant was negligent in driving the said taxi

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15. The Statutory Regulations

The following is an extract from the relevant Regulations.

" Road Traffic Act 1958

Motor Vehicles (Construction and Use) Rules 1959.

In the exercise of the powers conferred by sections 57, 73 and 135 of the Road Traffic Ordinance, 1958, The Minister of Transport hereby makes the following rules:

1. These rules may be cited as the Motor Vehicles (Construction and Use) Rules, 1959, and shall come into force on the 1st day of July.

2. . . . . to

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93. No motor vehicle shall be used on a road for any purpose for which its type or construction is so unsuitable as to cause or be likely to cause danger to any person on the vehicle or on a road.

94. The condition of any motor vehicle used on a road and all its parts and accessories, shall at all times be such that no danger is caused or likely to be caused to any person on the vehicle or on a road."

16. First Hearing

The three actions came on for hearing before Azmi J. on 1st June 1964 and the trial was continued on the 2nd June 1964, 28th February 1965 and 10th March 1965 and on 16th June 1965 the Appellants' claims were dismissed.

17. The Evidence

The following passage from the Judgment of Azimi J. is a fair summary of the evidence as far as it goes.

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"Before I go into the matter Ithink I ought to refer to the history of this car as appeared from the Registration Book. The car had originally been a petrol engine and was first registered on the 21st February 1959. On the 15th November 1960 the engine was converted from petrol to diesel engine The change was approved by the Registrar and Inspector of Motor Vehicles, Johore. p.66 l.34 to p.67 l.6

The taxi was inspected by the Registrar and Inspector of Motor Vehicles, Johore, on the 1st October 1961.

On the 28th January 1962 the accident happened, i.e., less than 4 months after its last inspection by the Registrar and Inspector of Motor Vehicles and about 14 months (or after travelling about 60.000 miles) after the conversion.

The Defendant, a woman aged 58, of little or perhaps no education, said that she bought the taxi-cab for $7,000/- and she understood it to be a diesel engine. She let Yap Sen Hock drive it and for that Yap would pay her about $17 to $20 a day. She cannot remember if there were major repairs done to the taxi-cab, but any small repairs would be seen to by Yap, who would also buy new tyres for the taxi-cab. She did not even know if the taxi-cab had been sent to the Registrar of Motor Vehicles for inspection. It is obvious that this woman had no knowledge of motor vehicles and all she was concerned with was that this was a kind of investment and she, being a widow, considered it a good one." p.67 l.28-40

18. The Court accepted the evidence of Mr. Pope, an expert called by the Respondent, who had inspected both the vehicles and the marks left on the road at the scene of the accident. The following passage taken from the Judgment of Thomson, Lord President Malaysia is a fair summary of his evidence so far as it goes.

"He examined the two vehicles and the scene of the accident about a week after it occurred.

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p.88 l.31 to p.89 l.22

His evidence as to the scratches on the road has already been mentioned. As regards the "Chevrolet" he found that a ball and socket joint in the connection between the nearside front spring and the corresponding wheel of the vehicle had been ruptured by the ball have been forced out of the socket the sides of which showed signs of wear. This would have had the effect of depriving the driver of any control over the steering of the vehicle and it had broken the tubes conveying power to the front brakes. He then found, on taking the relevant assembly to pieces that the original spring which was installed by the makers had been securely anchored at both ends had been lengthened by having a steel ring (apparently called a "shim") inserted between its lower end and its seating. The effect of this was to allow a certain amount of movement between the spring and its seating which there would not otherwise have been and, in his view, it was this movement continuing over a long period of driving which had been responsible for the rupture in the ball and socket joint. In support of this view he quoted the following passage from the Chevrolet Workshop manual referring to this spring:-

> "To correct the height springs must be replaced. These springs do not have flat ends and shims should not be used".

He expressed the opinion that alteration of the seating of the spring must have been done when the petrol engine was replaced by the diesel one. The diesel engine was shorter but heavier than the petrol one and was required "to sit back slightly" and the springs would require strengthening to prevent the tyres fouling the mudguards".

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In addition thereto Mr. Pope gave evidence.

"Question: If the socket has been worn out, you must feel steering is loose?

Answer: Yes, you will feel a little. p.43. l.14-28

I cannot say if in such circumstances it should be taken to a garage. I would not know how much would be apparent. I would have all vehicles examined periodically, i.e. every 6 months if proper maintenance is kept.

Proper maintenance is imperative and changing oil, etc. A taxi should be inspected after every 1,000 miles or one month.

To Court: It could be possible that the taxi had been going for 70,000 miles before the accident happened."

In his Report which was in evidence he concluded with the following paragraph.

"Subsequent to this work being carried out, the vehicle some 3 to 4 months was examined by the R.I.M.V. Johore Bahru and I come to the conclusion that the examination was of a cursory manner certainly not thorough or these defects would have been detected." p.104. l.34-39

19. The following are extracts from the evidence of Yap Sen Hock, the driver of the said taxi:-

"When I reached 8¼ milestone, Jalan Scudai, I saw a vehicle from opposite direction and all of a sudden the vehicle 'banged' into my car. It was about 2 p.m. The weather was good. p.44.l.29 to p.45.l.6

I did not hear anything before the cars collided. When the collision took place I was on my side of the road.

The oncoming car "banged" into me. I was going along properly, then suddenly that car knocked into mine.

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. . . . . .

Nobody else drove the taxi. I did servicing of the taxi. By servicing I mean spray on springs, fill oil in gear box and other things. Spray oil, put oil on the springs and king pins. The servicing was done at the service station - the oil station.

p.45.l.15-20

. . . . . .

I have been driving this taxi about 7 or 8 months before accident. It was a good car. I did not notice anything wrong with the car before accident. I took it for inspection of R.I.M.V. once in six months.

p.45.l.22-28

. . . . . .

During the time I had the taxi it was sent to the R.I.M.V. only once."

p.46.l.25

Appellants Contention on the evidence

20. In the first place the Appellants contended that the evidence clearly established a breach of the Motor Vehicle (Construction and Use) Rules 1959 hereinafter called the said Rules as a result of which the Appellants suffered damage. Therefore, if the effect of the said Rules is to give a civil remedy to the Appellants, that should conclude the case in their favour. The Appellants contention on the effect of the said Rules are set out after referring to the Judgments in these proceedings.

21. If, however, the Appellants are wrong in their first contention they further contend that the said Rules are still relevant in considering what steps the Respondent should take in view of the responsibility thrown on to the Respondent in consequence of the said Rules. Accordingly the Appellants contend that there should have been regular inspections of the said taxi and that these inspections if properly carried out would have revealed the defects. The evidence discloses that there were no such inspections.

22. In the third place the Appellants contend that the Respondent has not satisfactorily

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explained away the inference ofregligence which arises from the fact that the said taxi swerved across the road and collided with the said motor car. If the driver had given evidence that his vehicle had got out of control without warning, such evidence would provide a satisfactory explanation in view of the evidence of Mr. Pope. But this was not his evidence, nor does the evidence of Mr. Pope indicate that this accident happened without any warning to the driver as a matter of months, weeks, days, hours, minutes or seconds before the mechanical failure. This gap in the evidence can only be filled by the driver and in the absence of such evidence there is no answer to the inference of negligence.

23. The Judgment of Azmi J.

In his Judgment Azmi J. stated that no doubt the driver was lying in saying that the said taxi did not cross the road and he accepted the evidence of Mr. Pope that the said taxi had got out of control before it crossed the road. On the issues whether or not it was negligent on the part of the Respondent to use the said taxi, he said:

> "In my view although the use of the coil shim had proved disastrous in this case, it must be said on behalf of the Defendant that it did not happen until 14 months later and after the taxi cab had travelled about 60,000 miles. In my opinion, therefore, I do not consider that the Defendant was negligent merely because she used the taxi cab which had a mechanical defect which was not apparent to the ordinary person. Besides, she had the permission of the R.I.M.V. to use it, and the same was inspected by the Department who stated that it was in a satisfactory condition. In my opinion the Defendant had done all that she could be expected to do and therefore the allegation of negligence set out in particulars (f) and (g) must fail."

p.69.l.21-31

24. The learned judge then considered whether the Respondent was liable on the question of the alleged breach of statutory duty. In this context he quoted a passage from Atkin L.J. in Phillips v. Britannia Hygienic Laundry 1923 2 K.B. page 832 at page 841.

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"There fore the question is whether these regulations, viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrived. I have come to the conclusion that the duty they were intended to impose was not a duty enforceable by individuals injured, but a public duty only, the sole remedy for which is the remedy provided by way of a fine. They impose obligations of various kinds, some are concerned more with the maintenance of the highway than with the safety of passengers; and they are of varying degrees of importance; yet for breach of any regulation a fine not exceeding 10 l. is the penalty. It is not likely that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and new causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the Legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence."

p.70.l.11-44

He then came to the conclusion that the provision of the said Rules did not impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence.

25. The Appeal and Grounds of Dismissal

The Appellants appealed and the Appeal came on for hearing before Thomson Lord President Malaysia, Ong Hock Thye Judge Federal Court and Ismail Khan Judge on 4th October 1965.

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26. In his Judgment Thomson Lord President rejected the submission that the driver had been guilty of negligence. He said:-

> "On the original pleadings, which were later amended, there was an allegation of negligent driving by the Defendant's servant who was driving the "Chevrolet" at the time of the collision. That, however, was never very seriously pressed, indeed the driver was not joined as a Defendant, and the trial judge found that the immediate physical cause of the accident was a mechanical failure in the "Chevrolet" which resulted in a total failure of the steering and braking systems and rendered it completely out of control."

p.85.l.28 to p.86 l.8.

27. The learned judge also rejected the submission that the Respondent was negligent in using the said taxi on the road. He said:-

> "As regards maintenance and inspection, if there was negligence at all it was on the part of the Defendant's driver, for which of course the Defendant would be vicariously liable. His evidence, however, was that the vehicle was regularly serviced and lubricated and that at least once it was sent to the Road Transport Department for inspection. Moreover, the mechanical fault that led to the accident was not one that any ordinary system of inspection would have revealed. It was not something that a normal careful driver or mechanic would have noticed, as for instance a damaged tyre. It was in such a position that it could only have been discovered by taking most of the springing and steering assembly to pieces. And it is difficult to think that even the most prudent person would take such a step without at least some warning that there might be something wrong that such a step would discover. And there was no evidence that there was any such warning. The vehicle had been bought by the Defendant after the diesel engine had been installed and she could not have known of the defect that had been created by the incapacity or carelessness of (to her) the anonymous

p.95.L.18 to p.96 l.11

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mechanic who had done the work.. Moreover, this type of conversion is of common occurrence and there is nothing to show that it is often done in such a way as ultimately to lead to disaster as it did in this case. Again the driver who had been driving the vehicle some 6,000 miles a month said he did not notice anything wrong with the steering and though Pope said there should have been sone looseness in the steering this is something that commonly develops in old vehicles and it is unreasonable to expect a man who was driving the vehicle day after day for considerable distances to appreciate its oncoming. And that the weakness had developed gradually is clear even to a layman's eye from a visual examination of the parts involved.

In all the circumstances of the case I would dismiss the appeal with costs."

28. He also reviewed at length the authorities bearing on the question whether a breach of the said Rules gave rise to a civil remedy at the suit of the party aggrieved and decided that it did not do so.

29. Ismail Khan Judge signed the same Judgment.

30. Ong Acting Chief Justice Malaysia agreed with the Lord President on the question of statutory duty, but differed with him on the facts of the case. He accepted the evidence of the driver that the said motor car had gone on to the wrong side of the road and collided with the said taxi.

31. Appellants Contention on the Facts

The Appellants contended that the Lord President was inaccurate in stating that the Appellants did not rely on the submission that the driver was negligent. The following passage appears in the Notes of Agreement of the Lord President.

p.79.l.25-29 "The driver's evidence that he noticed nothing wrong should not be relied on

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because his evidence that he did not drive to the wrong side was clearly false.

So Defendant had not discharged onus."

32. The Appellants further contend the Lord President misdirected himself on the evidence on the question of maintenance. Mr. Pope, who was the expert called by the Respondent, gave evidence that a proper examination of the said taxi would have revealed the defect and that a taxi should be inspected every month. p.104 p.43. 1.23-24

33. The Appellants further contend that the minority view expressed by the Acting Chief Justice of Malaysia that the said motor car crossed the road should not be accepted. No allegation of negligence was made against the driver of the said motor car and such a finding was contrary to the admission made by Counsel for the Respondents.

34. Appellants Contentions on Breach of Statutory Duty

The Appellants readily admit that there is a vast body of judicial opinion to the effect that the learned judges are correct in the manner in which they construed the said Rules. Nevertheless it is not intended in this document to review the reported cases but merely to indicate the lines which the argument will follow.

35. The Appellants firstly contend that in the absence of authority there is an overwhelming argument in favour of construing the said Rules as creating a civil obligation on motorists to ensure that their vehicles are roadworthy. As a matter of common sense, the number of accidents which are due solely to such a course must be a fraction of 1%. Since the motorist is obliged to be insured - and this is solely for the benefit of road users - the practical effect of this extra obligation would be to add a fraction of 1% to the premium to be paid by the motorist. This works out as a fraction of 1/- every £5 of that part of the premium solely related to third party risks. If there is no such obligation there is a personal tragedy every time an innocent road user is injured and the State has failed in its modern

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policy "of bringing the miracle of averages to the salvation of the millions".

36. The facts in the case of Barkway v. South Wales Transport Co. Ltd. 1950 1 A.E.R. at page 392 illustrate the necessity for the contention above. Fortunately for the Plaintiff in that case, the House of Lords found that the Defendants were guilty of negligence; otherwise this case would in all probability have been a House of Lords authority in favour of the Respondent. The cause of the accident was an impact facture of a tyre. In the course of his Judgment Lord Porter said,

> "It is quite true that an accident of this kind and the burst of a tyre owing to an impact fracture is a rare event - so rare, indeed, that at least one of the witnesses on behalf of the Respondents regarded it as negligible, and thought that the public must take this chance at its occurrence. The duty, however, as I see it, of a Transport Company is to take all reasonable precautions for the safety of their passengers and not to leave them in danger of a crash against which some precautions, at any rate, can be taken."

37. The Appellants contend that as a matter of policy the public should never be on risk of injury without compensation even when there is no common law 'culpa' on the part of the motorist. Parliament has imposed on the motorist a public duty to ensure that a vehicle on the road is roadworthy. Why then should the statutory enactment not be construed so as to give rise to a private duty to other road users who suffer damage in consequence.

38. The States intention to implement the policy referred to in paragraph 35 hereof is manifested in a curious manner by the current agreement between the Minister of Transport and the Motor Insurance Bureau whereby innocent road users may obtain compensation from a motorist in the absence of 'culpa' on the part of that motorist. That is the practical effect of the Agreement.

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39. Admittedly there is the distinction that no one can recover compensation from the Motor Insurance Bureau unless there is a Judgment against an individual and no such Judgment can be obtained against an individual in the absence of culpa on his behalf. But the persons made responsible for supplying the compensation under the Scheme are not guilty of culpa. There are the Insured drivers whose premiums collectively enable the Insurance Companies to put the Motor Insurance Bureau in funds to meet obligations of strangers who have failed in their obligations.

40. This being the policy of the law it would be an anachronism if the law did not place an obligation on motorists to ensure that their vehicles were roadworthy and thereby avoid personal tragedies which occur when an accident can be explained in such a way that there was no liability on the part of the motorist and therefor no cover by the Insurance Company.

41. The authorities on the construction of Statutes and Regulations and Rules made under Statutes goes back to the last century when the Courts showed a marked reluctance to allow the Common Law to be developed as and when Parliament created new obligations on members of society to meet the changing ways of life. The original rule of construction was that a Statute did not create a civil obligation if there was any criminal sanction for a breach. The Courts were driven that far because to hold otherwise would have been to treat the Statute as a nullity.

42. The authority which rang the death knell to this proposition was the case of Phillips v. Britannia Hygienic Laundry Co. Ltd. 1923 2 K.B. and the Judgment most widely quoted is that of Atkin L.J. This authority is the corner stone of the line of authorities relied upon by the Respondent. The Appellants freely admit that this case is relevant because the Court there rejected the argument that there was a statutory duty on the motorist to have his vehicle in a roadworthy condition pursuant to Article 2 Clause 6 of the Motor Cars (Use and Construction) Order 1904 made under Locomotion on Highways Act 1896.

43. In that case the Court was construing an Act of Parliament passed in the 19th century when Parliament might be thought to have quite a different conception of the risks to which road users must subject themselves without remedy. Further it is contended that it is clear from the Judgment of Atkin L.J. that any Order made under the said Act would be ultra vires so that in the final resort he based his Judgment on the meaning of the Statute and not of the Order 1904. On page 842 he said:

"It is not likely that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and new causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the Legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events in the absence of negligence."

44. In this case the Court were being asked to construe the said Rules which were passed in 1959 in pursuance of an Ordinance in 1958. The relevant Rules were passed under Part 3 of the said Ordinance and the rule making power under Section 73 thereof includes power to make rules "facilitating the providing for the safety of road users." The provisions for pedestrian crossings is also made in Part 3 of the said Ordinance and the rules made under such provisions are generally construed as giving rise to a civil statutory obligation.

45. Furthermore this decision was given before the days of compulsory insurance, another step taken by Parliament to protect road users from the hazards of the road. Once Parliament has taken this course, there is no reason to question the intention of Parliament to place upon motorists the obligation to have their motor cars in a roadworthy condition. It is contended that there is no social justification for granting compensation to a road user who suffers damage because he is injured by the

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negligence of a motorist who has stolen a motor car as opposed to the motorists in these proceedings who were injured because of the behaviour of a rogue taxi.

46. If the above contentions of the Appellants to the effect that there is an absolute duty on a person to ensure that a vehicle for which he is responsible is roadworthy are not accepted, then the Appellants contend it would still be wrong to hold that a breach of the statutory duty creates no private obligation towards an individual who suffers damage in consequence of the breach. It is herein contended in the alternative that the effect of the said Rules is to create a Statutory duty to take all reasonable care that the vehicle is roadworthy and this duty is not discharged if there is negligence on the part of an independent contractor. This last proposition of law is discussed by Rigby L.J. in Groves v. Wimborne 1589 2. A.B.D. at p.412 and the Appellants rely onthe views therein expressed.

47. Accordingly the Appellants hereby contend that the Appeal should be allowed and that the Judgment of the Federal Court of Malaysia be reversed and that Judgments be entered for the Appellants for the sums quantified by the trial judge for the following among other

R E A S O N S

(a) That the servant of the Respondent was guilty of negligence in the driving of the said taxi.

(b) That the Respondent was guilty of negligence in failing properly to maintain the said taxi.

(c) That the Respondent was guilty of a breach of statutory duty in permitting the said taxi to be on the road in an unroadworthy condition.

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(d) That the Respondent was guilty of a breach of statutory duty in failing to ensure that all reasonable care had been exercised to see that the said taxi was in a roadworthy condition.

IAN BAILLIEU

No. 25 of 1966

IN THE JUDICIAL COMMITTEE

OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

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VICTOR SIM WEE TECK
PETER LIM KENG LOONG (Plaintiffs) Appellants

- and -

CHONG KEW MOI
(Married Woman) (Defendant) Respondent

CASE FOR THE APPELLANTS

MESSRS. LIPTON & JEFFERIES,
Princes House,
39, Jermyn Street,
London, S.W.1.