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INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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25 RUSSELL SQUARE  
LONDON W.C.1

No. 24 of 1970  
No. 25 of 1970

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)

B E T W E E N

TAY KOH YAT BUS COMPANY LIMITED Appellant  
(Respondent)

10

AND

CHUA CHONG CHER (Appellant)  
and OON LONG KIANG (Respondent) Respondents

AND B E T W E E N

TAY KOH YAT BUS COMPANY LIMITED Appellant  
(Respondent)

AND

CHUA CHONG CHER Respondents  
(Appellant)

AND

20 TEO LAN KEOW (m.w.) (1st Respondent)

AND

HOCK LEE AMALGAMATED BUS  
COMPANY LIMITED (2nd Respondent)

CASE FOR THE APPELLANT

RECORD

1. These are appeals by the Appellant Tay Koh  
Yat Bus Company Limited from the judgments and  
Orders of the Federal Court of Malaysia  
30 (Appellate Jurisdiction) (Wee Chong Jin, C.J.,  
Tan Ah Tah and Chua, J.J.) dated 12th February

Record 24  
p.26  
p.31

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Record 25  
p.45 and  
49

Record 24  
p.18  
Record 25  
p.36-37

1970(No. 24) and 12th January 1970 (No. 25) allowing appeals by the Respondent Chua Chong Cher (the first Defendant in No. 24 and The Third Defendant in No. 25) herein from judgments of the High Court of the Republic of Singapore (Winslow, J.) dated 30th December 1969 (No. 24) and 19th November 1969 (No. 25).

2. The actions arose out of a collision between two omnibuses on the 9th March 1966 in River Valley Road, Singapore in which the respective Plaintiffs, Oon Long Kiang and Teo Lan Keow (m.w.) sustained personal injuries, loss and damage. In these appeals no question arises as to the Plaintiffs' entitlement to their damages, and the issues are :-

(1) whether the responsibility for the collision rests with the Appellant (as the Appellate Court held) or the Respondent (as the Trial Judge held).

(2) Whether the Respondent (as the Trial Judge held) or the Appellant (as the Appellate Court held) should be responsible in No. 25 for the costs of the Hock Lee Amalgamated Bus Company Limited (who had been the first Defendants in that action).

(3) Whether the Respondent or the Appellant (as the Appellate Court held) should be responsible in No. 25 to pay the sum of \$150-00 to the Solicitors for Teo Lan Keow (who was the Plaintiff in that action) for her costs of the Appeal as between party and party and to pay the sum of \$150-00 to the Solicitors for the Hock Lee Company (who had been the first Defendants in that action) for their costs of the appeal as between party and party.

3. In relation to issue (1) there is no distinction between these two appeals, and both in the High Court and the Appellate Court the result of No. 24 has been treated as being determined by the result of No. 25, which was the substantive action. Accordingly all the references that follow are to the Record in No. 25.

4. The two omnibuses which were owned respectively by the Appellant and the Hock Lee Company (the first Defendants In No. 25) had been travelling in opposite directions along River

Valley Road. The collision occurred at a T junction of the said road with Leonie Hill Road, Leonie Hill Road being on the offside of the Appellant's omnibus and on the nearside of the Hock Lee Company's omnibus.

10 5. Immediately prior to the said collision a collision occurred between the Appellant's omnibus and a motor cycle being ridden by the Respondent, Chua Chong Cher. It was common ground between the Appellant and that Respondent that up to a short time prior to the collision involving the motor cycle the motor cycle was stationary in the centre of the road at the mouth of the said T junction facing in the same direction as the Appellant's omnibus. The driver of the Hock Lee Company's omnibus at no time saw the Respondent or the motor cycle. He suffered a head injury which rendered him unconscious. p.14 L.34

20 6. The Appellant's case against the Respondent was that due either to inexperience - he had only held a provisional driving licence for less than two months - or to some other reason the Respondent suddenly moved away to his left from a stationary position immediately across the front of the Appellant's omnibus giving their driver no reasonable opportunity of avoiding a collision with the motor cycle although he swerved to his right; and that it was a consequence of that that the second collision occurred. p.23 L.22

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7. The Respondent's case against the Appellant was that he had never moved from a stationary position prior to the collision and that this first collision was caused by the failure of the Appellant's driver to keep a proper look out or due to his driving too fast or because he attempted to overtake a bicycle. p.23 LL39-40

40 8. The Plaintiff Teo Lan Keow (m.w.) commenced proceedings by Writ of Summons issued on the 27th December 1966 and a Statement of Claim was served on the same date. This Plaintiff had been a passenger in the omnibus owned by the Hock Lee Company and suffered injuries as a p.1 p.3

RECORD

result of being thrown from her seat by the collision. She sued the two bus Companies and the Respondent motor cyclist alleging negligence on the part of the drivers or rider.

p.6  
p.8 and  
p.10

9. All three Defendants by their respective Defences delivered on the 20th February, 28th February and 29th April 1967 denied the negligence charged against them. The Hock Lee Company adopted the Plaintiff's allegations of negligence against the second and third Defendants 10

10. The Appellant did not blame the Hock Lee Company but alleged negligence on the part of the Respondent (third Defendant) and in particular alleged that the Respondent suddenly and without proper or any warning whatever turned left into the path of their bus and that notwithstanding evasive action taken by their servant or agent the accident was inevitable.

p.19 L.32

11. The Respondent adopted the Plaintiff's allegations of negligence against the first and second Defendants. Additionally the Respondent alleged that the Appellant's driver was negligent in further respects, and on the 3rd November 1969 during the course of the trial the Respondent was given leave to amend his Defence to make an additional allegation of negligence against the Appellant's driver. 20

p.18

12. Trial of the action took place on the 3rd and 4th November 1969. The Appellant's driver in examination in chief said that as he was approaching the Leonie Hill Road junction travelling at a distance of five or six feet from his nearside at between fifteen and twenty miles an hour behind a lorry he saw about thirty to forty feet away the motor cycle in the centre of the road waiting stationary to turn right into Leonie Hill Road. He said that when he was about seven to ten feet away the motor cyclist suddenly swerved left and that he swerved right in an endeavour to avoid colliding with him. He thought that if he had not swerved right the bus would have gone over the Respondent and if it had he was doubtful whether the Respondent would still be alive. 30 40

p.18 L.19

13. In cross-examination he said that he did not see the Respondent giving any signal indicating his intention to turn right but merely saw him stationary in the centre of the road with one foot on the ground.

10 14. The agreed plan Exhibit AB (8) showed the position of the motor cycle after the accident and its position appears in a number of the agreed photographs and in particular Exhibit Pl (c). As appears therefrom the motor cycle was on what had been the Appellant's near side carriageway only a short distance from the near side kerb.

p.59

15. The Respondent in examination in chief said that he was riding his motor cycle down River Valley Road and overtook the Appellant's bus at a bus stop. He said :-

p.22 L.25

20 "On approaching Leonie Hill Road I reduced speed. I showed right hand indicating "Stop". I stopped. There was a grey car "approaching from opposite direction. I "heard a loud sound behind me after I "stopped. When I turned head round to see "a Tay Koh Yat bus collided into me. I "fell down onto crown of road. I got up. "I saw two buses involved in collision."

p.22 L.27  
p.22 L.28  
to p.23 L2.

30 He said that he had stopped in the middle of the road because he wanted to turn right into Leonie Hill Road, and that he was stationary for some little time before he was hit. He produced a signed statement he had made to the Police on the 9th March 1966 (Exhibit AB (2)). This statement contained the following passage:-

p.53 LL20-24

"I stopped in the centre of the road because "a m/car from the opposite direction was "turning to the left into Lornie Hill Flat. "Just then a Tay Koh Yat m/bus No. ? hit "the rear of my m/cycle. I fell off".

By Lornie Hill Flat was meant Leonie Hill Road.

40 16. In cross-examination by the Appellant's Counsel the Respondent said that the grey car

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p.23 L.42 -  
p.24 L.3  
p.25 L.12

passed the junction before he was hit. He said that that car was not turning into Leonie Hill Road. He said "when I turned head round I was knocked. At the same time I saw the bus".

17. He was cross-examined on answers he had given to the Magistrate Mr. Cheong Yuen Hee on the 16th August 1967 when facing a charge of driving without due care and attention or without reasonable consideration for other persons using the road under Section 25 (1) of The Road Traffic Ordinance 1961 and in particular on the following statements made by him in the proceedings (a) in chief (b) in cross-examination: 10

"(a)

" (i) I turned to the rear and I saw "a Tay Koh Yat bus at the rear and collided "into me. The bus was travelling at about "30 m.p.h. I observed the danger. I "wanted to move my m/cycle and the bus "collided into my m/cycle". 20

" (ii) I saw at the rear a Tay Koh Yat "bus about 10 feet away which then collided "into the rear of my m/cycle".

" (iii) "I fell towards the left side of "the road .... The m/cycle was resting about "5 feet from the left edge of the road."

" (iv) I swerved to avoid a collision "with the bus. I swerved to the left "towards the Straits Times Building. Before "I swerved the collision occurred. 30

"(b)

" (1) I turned behind to look. The "bus was travelling fast. I saw that it was "dangerous and then I swerved slightly to the "left."

" (2) He did not know where on the road "the collision between the bus and his motor "cycle had taken place.

18. The Respondent in answer to questions on these statements denied that he had swerved left 40

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but said that he had involuntarily turned his handle bar to the left as he looked behind turning his head to the right. He said that he fell on the left side of his body on the crown of the road. Although he had already marked on Exhibit AB (8) the position where he had been stationary, he said he could not mark on the plan the position where he fell. He said he had seen the bus ten feet behind him.

p.26 LL29.  
30.

p.59

10 19. On the 4th November 1967 the Respondent conceded that there was no negligence on the part of the Hock Lee Company

p.27 L.26

20. In the judgment of the learned trial Judge (who had reserved judgment from midday the previous day) given on the 5th November 1967 he said that he had given the evidence most careful consideration. He said :-

20 "Last night I went through my notes again particularly the evidence of the 2nd and 3rd Defendants. This morning I went through them again in conjunction with the transcript of the notes of evidence given by the 3rd Defendant before the Magistrate ".... I think there is very little I have not read through or digested ".... I have given this case the most anxious thought."

p.29 L36-to  
P.30 L.9

30 The learned Judge then considered the evidence of the Appellant's driver and of the Respondent, saying that he had observed them both closely during their evidence. He said of the Appellant's driver:-

40 ".... it did seem to me at one stage that there probably was no lorry immediately in front of him, but it makes little difference whether there was or was not, because insofar as he is concerned, the lorry did not impede his view in any way as to whatever was on its offside. I accept his version that he could see to the right-hand side of the lorry and that he saw the motor cyclist ".... in the middle of the road."

p.30 LL24-  
35

RECORD

p.31 LL.3-18.

"The Respondent is the man who was, as Mr. Wee put it, the causa causans of the whole accident. I observed him very carefully during the course of his evidence and the manner in which he gave it. I have also considered what he said before the Magistrate. The record speaks for itself. I think his credit has been successfully attacked by Counsel for the 2nd Defendant. I am not satisfied that he has told me the whole truth. I find that he did swerve to his left across the path of the Tay Koh Yat bus driven by the 2nd Defendant. 10

p.31 LL.19-35

"Having regard to the damage to the motorcycle, the sketch plan showing the course taken by the Tay Koh Yat bus and to the final positions of the vehicles. I don't believe that he fell on the crown of the road as he said here. The motorcycle swung round and faced the opposite direction after the Tay Koh Yat bus had caught it a glancing blow in its attempt to avoid him as he swerved to his left and he must have fallen only a few feet from the nearside of the road. He himself said before the Magistrate that he fell towards the left-hand side of the road. That is most probably what happened. I therefore find that he is solely to blame for this accident." 20

21. In giving the grounds of his decision in writing on the 17th December 1967 the learned Trial Judge said :- 30

p.35 LL.16  
-29

"I had no hesitation in substantially accepting the version given by the driver of the 2nd Defendant in preference to that of the 3rd Defendant who was a most evasive witness who continually shifted his ground. I did not believe the 3rd Defendant at all on any disputed fact. This is far from saying that the driver of the 2nd Defendant was a perfect witness in every way - he was clearly a little shaky on exact distances, and speeds - as indeed most witnesses in these cases tend to be but he was a better witness than all the other motorists 40



RECORD

"concerned in the case and I accepted him  
"as a truthful witness as to the crucial issue  
"in the case, i.e. whether the 3rd Defendant  
"swerved to his left across his path."

10 "If the 3rd Defendant had been stationary  
"in the centre of the road giving a signal  
"with his right hand as he claimed and if  
"the 2nd Defendant's bus had been travelling  
"on its correct side at a distance of 5 or 6  
"feet from its nearside edge of the road  
"there was nothing to prevent the 2nd  
"Defendant's driver from continuing his  
"journey with absolute safety to all  
"concerned unless that one or the other has  
"been lying outrageously."

p.35 LL30-  
38

20 "From the final position of the Tay Koh Yat  
"bus it is clear that it must have been on  
"its correct side before it swerved right.  
"After the collision its offside rear ("H"  
"on AB8) was 7 feet 2 inches from the left  
"hand edge of the road. The road is 30  
"feet 2 inches wide and the bus is 7 feet  
"2 inches wide. In short, the whole of the  
"rear of the bus after the accident was on  
"its correct side."

pp.35-36  
L39-L.1.p.  
36

30 "If the 3rd Defendant had been where he said  
"he was in the middle of the road the bus  
"driver's action is only explicable on the  
"basis that he deliberately swerved into the  
"motor cyclist in order to mow him down and  
"that the latter swerved to his left to  
"avoid the bus."

p.36 LL.2-9

40 "All things considered, I found that the 3rd  
"Defendant was not stationary in the centre  
"of the road when hit. If he had been he  
"would have been killed on the spot. I  
"found that for reasons best known to  
"himself or as a result of his inexperience  
"he changed his mind about entering Leonie  
"Hill Road to his right and swerved to his  
"left across the path of the bus driver who  
"had no alternative except to swerve to the  
"right himself."

p.36 LL 10-  
19

RECORD

p.37 L.13

22. The learned Judge ordered inter alia that the Hock Lee Company's costs of and incidental to the action as between Party and Party be taxed and paid by the Respondent to the Hock Lee Company's Solicitors.

23. On the 19th November 1969 the Respondent gave notice of Appeal to the Federal Court of Malaysia (Appellate Jurisdiction) and on the 30th December 1969 filed a Memorandum of Appeal. In neither document did the Respondent appeal against 10 the Order set out in paragraph 22 herein. In his Memorandum of Appeal he contended that the learned Trial Judge erred in fact and in law in a number of respects.

24. The Respondent served both the Notice of Appeal and the Memorandum of Appeal on the Plaintiff and the Hock Lee Company but failed to state that their attendance on the Appeal was unnecessary.

25. The Appeal was heard on the 12th January 1970. The Plaintiff and the Hock Lee Company were represented by Counsel. Notwithstanding that the Appellant had in no way been responsible for such attendance the Court of Appeal ordered that \$150 costs in respect of the Appeal should be awarded against whichever of the Appellant or Respondent lost the Appeal. 20

p.44 L.24

26. In the course of arguing the Appeal the Respondents were given leave to amend the Memorandum of Appeal. 30

p.49

27. The Federal Court of Appeal allowed the Appeal and held the present Appellant wholly to blame for the collision. It ordered that the Appellant should pay to the first Defendant the costs referred to in paragraph 22 hereof which the learned Judge had ordered should be paid by the Respondent. Additionally it ordered the Appellant to pay the costs referred to in paragraph 25 hereof. In its judgment the following passages occur :- 40

p.47 LL21  
to 31

"It must be borne in mind that this claim is  
"by a passenger who was travelling in the

"Hock Lee bus and that the collision was  
"between the two buses. It was the Tay  
"Koh Yat bus that went to the wrong side  
"of the road .... The onus, therefore,  
"rests upon the 3rd Respondent to show  
"that the Tay Koh Yat bus went to the wrong  
"side of the road without any negligence on  
"the part of their driver.

p.47 -  
LL21-31

10 " The main question is, was the third  
"Respondent discharged that onus. In our  
"view they have not.

.....

"It is clear ..... that the Trial Judge  
"did not base his preference for the version  
"of the driver of the bus on demeanour and  
"furthermore this Court, as an Appellate  
"Court, is under a duty to rehear the case  
"by examining the evidence and arriving at  
"its own finding, but always bearing in mind,  
"it has neither seen nor heard the witnesses  
"and paying due regard to the Trial Judge's  
"finding and his reasons therefore.

p.47 L 40  
to p.48  
LL. 1-2

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.....

"The question remains, which version is the  
"more probable of the two?" It is  
"impossible to accept as true or possible the  
"bus driver's evidence that travelling at a  
"speed of between 15 to 20 m.p.h., his bus  
"not more than 7 to 10 feet from the motor  
"cyclist, stationary on the middle of the  
"road, that the motor cyclist would swerve  
"left suddenly and be across the path of his  
"bus and that he could manage to, at the  
"same time, swerve violently right and  
"manage to strike a mere glancing blow on  
"the motor cycle.

p.48 LL.16-  
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"As often happens a Court on the evidence  
"before it, has to decide which of two  
"conflicting versions is the version to  
"accept. In such a case, a Court in  
"considering which is the more probable one,  
"ought to try and derive what assistance it  
"can get from undisputed facts, if any, which

p.48 LL 27-  
36

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"are relevant for the purpose. A Court  
"also ought to consider, from undisputed  
"facts, whether a version put forward as  
"evidence is one which is inherently  
"improbable or not.

p.48 LL 37-  
41.

"For all these reasons, we had no  
"hesitation at the conclusion of the hearing  
"in coming to the conclusion that the motor  
"cyclist's version was the more probable one  
"and accordingly we allowed the appeal."

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28. An Order was made on the 6th April 1970  
granting leave to appeal to Her Majesty in  
Council.

29. The Appellant humbly submit that this  
Appeal should be allowed, the judgment of the  
Federal Court of Malaysia (Appellate  
Jurisdiction) set aside, and the judgment of the  
learned Trial Judge affirmed, and that the  
Respondent be ordered to pay the costs of all  
parties at first instance, in the Court of Appeal 20  
and the costs of the Appellant of this Appeal  
for the following among other

R E A S O N S

(1) BECAUSE the issues in the case were all  
issues of fact for the learned Trial Judge, who  
had the advantage of hearing and seeing the  
witnesses

(2) BECAUSE there was ample evidence to support  
the findings of fact of the learned Trial Judge.

(3) BECAUSE the Court of Appeal erred in  
treating the case as one of res ipsa loquitur.

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(4) BECAUSE the Court of Appeal erred in  
stating that it was clear that the learned  
Trial Judge did not base his preference for the  
version of the bus driver on demeanour.

(5) BECAUSE the Court of Appeal erred in  
deciding the Appeal, on a question of fact,  
simply on the basis that in its view the  
Respondent's version of events was more probable  
than that of the Appellant.

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(6) BECAUSE the Court of Appeal erred in that, without there being any compelling evidence in support of the Respondent's rather than the Appellant's account, the Court of Appeal substituted its own findings of fact, on the basis that they were inherently more probable than those accepted by the learned Trial Judge.

10 (7) BECAUSE the Court of Appeal erred in failing to direct itself that the greatest weight ought to be attached to the findings of the learned Trial Judge who saw and heard the witnesses.

20 (8) BECAUSE the Court of Appeal erred in deciding that the Appellant's version of the facts was "impossible to accept as true": and, in particular, in permitting itself to be influenced in support of that view by the Appellant's statement in evidence that he was 7 to 10 feet from the motor cycle when the latter swerved, without allowing for the learned Trial Judge's express finding that the Appellant's driver was (like most witnesses in such cases) unsure on exact distances and speeds.

(9) BECAUSE the Appellant's version of events was in fact no less probable, but rather more probable, than that of the Respondent.

30 (10) BECAUSE there was no material upon which the Court of Appeal could exercise its discretion to Order the Appellant to pay the costs at first instance of the second Respondents, Hock Lee Amalgamated Bus Company, whom the Appellant had never blamed at any stage.

(11) BECAUSE there was no material upon which the Court of Appeal could exercise its discretion to Order the Appellant to pay the costs of the first Respondent Teo Lan Keow or of the second Respondents on Appeal.

JAMES FOX-ANDREWS Q.C.

No. 24 of 1970  
No. 25 of 1970

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  
HOLDEN AT SINGAPORE (APPELLATE  
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TAY KOH YAT BUS COMPANY  
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AND

HOCK LEE AMALGAMATED  
BUS COMPANY LIMITED 2nd Respondent

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CASE FOR THE APPELLANT

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LINKLATERS & PAINES,  
59-67 Gresham Street,  
London E.C.2.