

No. 19 of 1974

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 :

- 1. TAN KENG HONG
  - 2. YOONG LEOK KEE CORPORATION LIMITED
- (Defendants)  
Appellants

- and -

NEW INDIA ASSURANCE COMPANY LIMITED

(Third Party)  
Respondents

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RECORD OF PROCEEDINGS

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*Philip Conway Thomas & Co.,*  
*61 Catherines Place*  
~~WILSON-FREEMAN,~~  
~~6/8 Westminster Palace Gardens,~~  
~~Artillery Row,~~  
London, SW1E 6HB  
Solicitors for the Appellants.

COWARD CHANCE,  
Royex House,  
Aldermanbury Square,  
London, EC2V 7LD.  
Solicitors for the Third

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 :

1. TAN KENG HONG  
2. YOONG LEOK KEE CORPORATION LIMITED (Defendants)  
Appellants
- and -
- NEW INDIA ASSURANCE COMPANY LIMITED (Third Party)  
Respondents
- 
- 

RECORD OF PROCEEDINGS

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\* The Respondents' Solicitors object to the reproduction of the documents so marked.

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(v)

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1.

No. 19 of 1974

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 :

1. TAN KENG HONG

2. YOONG LEOK KEE CORPORATION  
LIMITED

(Defendants)  
Appellants

- and -

NEW INDIA ASSURANCE COMPANY LIMITED

(Third Party)  
Respondents

RECORD OF PROCEEDINGS

No. 1

In the High  
Court

WRIT OF SUMMONS

(O.2, r.3)

No. 1

Writ of Summons  
1st October  
1965

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit 1965 No. 158

BETWEEN

Fatimah binti Abdullah (f) and Mohd  
Yusof bin Ibrahim as Administrators  
of the Estate of Ibrahim bin Kimpal,  
deceased

Plaintiffs

AND

10 1. Tan Keng Hong

2. Yoong Leok Kee Corpn. Ltd.

Defendants

The Hon'ble Dato Syed Sheh Barakbah, P.M.N.,  
D.P.M.K., P.S.B., Chief Justice of the High Court  
in Malaya in the name and on behalf of His  
Majesty the Yang di Pertuan Agong.

2.

In the High  
Court

To: 1. Tan Keng Hong  
23 Main Road,  
Port Dickson.

2. Yoong Leok Kee Corpn.  
Ltd. 28/31 Wilkinson  
Street, Seremban

          
No. 1

Writ of Summons  
1st October  
1965  
(continued)

WE COMMAND you, that within 8 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Fatimah binti Abdullah (f) and Mohd Yusof bin Ibrahim.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence. 10

WITNESS, Lee Moh Wah, Asst. Registrar of the High Court of Malaya this 1st day of October, 1965.

Sd.: N.Ramachandran  
Plaintiffs' Solicitor

Sd: Lee Moh Wah  
Assistant Registrar  
High Court, Seremban.

N.B. - This Writ is to be served within twelve months from the date thereof, or, renewed, within six months from the date of last renewal, including the day of such date and not afterwards. 20

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor, at the Registry of the High Court at Seremban.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court at Seremban. 30

I N D O R S E M E N T

The Plaintiffs as administrators of the estate of Ibrahim bin Kimpal deceased, claim damages for and on behalf of the estate of the deceased and for the benefit of the dependants of the deceased who have suffered damages by reason of the negligence of the first defendant as agent or servant of the second defendant in the driving of a motor vehicle No. NA 3664 on 1st June, 1963 whereby the said Ibrahim bin Kimpal was killed. 40



PARTICULARS PURSUANT TO SECTION 7 & 8 OF  
THE CIVIL LAW ORDINANCE 1956

In the High  
Court

The names of the persons on whose behalf this  
claim is filed :-

No. 1

Writ of Summons  
1st October  
1965  
(continued)

<u>No.</u>	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	Fatimah binti Abdullah	45	Wife
2	Mohamed bin Ibrahim	26	Son
3	Abd. Razak bin Ibrahim	20	Son
4	Zaleha binti Ibrahim	18	Daughter
10 5	Zakaria bin Ibrahim	17	Son
6	Shamsuddin b Ibrahim	13	Son
7	Noraini binti Ibrahim	12	Daughter
8	Norsiah binti Ibrahim	9	Daughter

Dated this 1st day of October 1965.

Sd. N. Ramachandran  
Solicitor for the Plaintiff

This Writ was issued by N. Ramachandran of  
Seremban whose address for service is at Yusof  
Building, Seremban, Solicitor for the said  
20 Plaintiff who resides at Kg. Bemban, Mambau,  
Seremban, N.S.

No. 2

STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
Civil Suit No. 158 of 1965

No. 2

Statement of  
Claim  
9th October  
1965

BETWEEN

Fatimah binti Abdullah (f) and Mohd  
Yusof bin Ibrahim as administrators  
of the Estate of Ibrahim bin Kimpal,  
30 deceased Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Defendants

STATEMENT OF CLAIM

1. The Plaintiffs are the Administrators of the

In the High  
Court

          
No. 2

Statement of  
Claim  
9th October  
1965  
(continued)

Estate of Ibrahim bin Kimpal, deceased and are the widow and eldest son respectively of the said deceased.

2. The Plaintiffs as Administrators of the Estate of the said deceased claim damages for and on behalf of the Estate of the deceased and for the benefit of the dependants of the deceased who have suffered damages by reason of the negligence of the First Defendant as agent or servant of the Second Defendants in the driving of a motor vehicle No. NA 3664 on 1st June 1963 whereby the said Ibrahim bin Kimpal was killed.

10

PARTICULARS PURSUANT TO SECTION 7  
& 8 OF THE CIVIL LAW ORDINANCE 1956

The names of the persons on whose behalf this claim is filed:-

<u>No.</u>	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	Fatimah binti Abdullah	45	Wife
2.	Mohamed bin Ibrahim	26	Son
3.	Abd. Razak bin Ibrahim	20	Son
4.	Zaleha binti Ibrahim	18	Daughter
5.	Zakaria bin Ibrahim	17	Son
6.	Shamsuddin bin Ibrahim	13	Son
7.	Noraini binti Ibrahim	12	Daughter
8.	Norsiah binti Ibrahim	9	Daughter

20

3. The First Defendant was at all material time the driver of motor lorry No. NA 3664 and the Second Defendants were at all material times the owners of the said motor lorry.

4. On 1st June, 1963 at about 4.00 p.m. the said deceased Ibrahim bin Kimpal was a passenger in the said motor lorry No. NA 3664, owned by the Defendants secondly named and being driven by the Defendant firstly named in the course of his employment with the Second Defendants.

30

5. The said motor lorry was proceeding from Kuala Pilah to Seremban and was loaded with

timber.

In the High  
Court

6. At or near the 9th milestone Kuala Pilah/  
Seremban Road the Defendant firstly named so  
negligently drove, managed or controlled the said  
motor lorry that the said lorry went off the road  
and landed on its side pinning the said Ibrahim bin  
Kimpal beneath it and causing him severe injuries  
from which he died a few hours later.

          
No. 2

Statement of  
Claim  
9th October  
1965  
(continued)

10 7. The negligence of the First Defendant  
consisted in:-

- (i) Driving too fast
- (ii) Driving at a speed which was too fast  
having regard to the nature of the road
- (iii) Failing to slow down and avoid the  
accident
- (iv) Failing to keep a proper look out
- (v) Failing to exercise proper control of the  
said motor lorry and permitting it to go  
off the road, and
- 20 (vi) Overloading the said motor lorry.

8. So far as it may be necessary the Plaintiffs  
will rely on the doctrine of res ipsa loquitor  
the particulars of which are as stated in para-  
graphs 6 and 7 above.

9. The deceased was a Forest Ranger in the employ  
of the Government and was 49 years old at the  
time of his death.

30 As a consequence of the said accident and  
the deceased being killed, the estate of the  
deceased and his wife and children have suffered  
damage.

10. By reason of the aforesaid negligence the  
deceased was killed and the estate has suffered  
damage and the Plaintiffs as administrators of  
the Estate of the said deceased claim for the  
benefit of the estate damages for the deceased's  
pain and suffering and loss of expectation of  
life.

PARTICULARS OF SPECIAL DAMAGES:-

40	(i)	Funeral expenses	₹750.00
	(ii)	Costs of extracting Letters of Administration	₹350.00

In the High  
Court

—  
No. 2

Statement of  
Claim  
9th October  
1965  
(continued)

11. Further by reason of the above the widow and children of the deceased have suffered damage in that they have been deprived of the pecuniary and other benefits which they would have received if the deceased had continued to live.

12. The deceased earned a basic salary of \$235.00 per month plus a further sum of \$130.00 by way of variable allowances. It is estimated that \$25.00 was spent on the food of the deceased. The widow and children have therefore lost \$340.00 per month.

10

WHEREFORE the Plaintiffs as administrators of the Estate of Ibrahim bin Kimpal claim damages:-

- (i) On behalf of the deceased's widow and children aforesaid
- (ii) On behalf of the Estate And
- (iii) Costs.

Dated this 9th day of October, 1965.

Sd. N. Ramachandran

Plaintiffs' Solicitor

20

To:

The Defendants abovenamed:-

1. Tan Keng Hong,  
23 Main Road,  
Port Dickson.
2. Yoong Leok Kee Corpn. Ltd.,  
28/31 Wilkinson Street,  
Seremban.

Filed by Mr. N. Ramachandran whose address for service is at Yusof Building, Seremban, Solicitor for the Plaintiffs who reside at Kg. Bemban 7½ m.s. P. Dickson Rd., Seremban.

30

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7.

No. 3

In the High  
Court

SUMMONS FOR LEAVE TO  
ISSUE THIRD PARTY NOTICE

No. 3

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit 1965 No. 158

BETWEEN

FATIMAH binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased

Plaintiffs

AND

1. Tan Keng Hong

2. Yoong Leok Kee Corpn. Ltd. Defendants

SUMMONS FOR LEAVE TO ISSUE AND SERVE THIRD  
PARTY NOTICE

LET ALL PARTIES concerned attend the Assistant  
Registrar in Chambers on Tuesday the 2nd day of  
November 1965 at 10.30 o'clock in the fore/noon  
on the hearing of an application on the part of  
the Second Defendants that they may be at liberty  
to issue and serve upon New India Assurance Company  
Limited of 116 Batu Road, Kuala Lumpur a Third Party  
Notice together with a copy of the Statement of  
Claim in this action.

Dated this 25th day of October, 1965.

Sd: Lee Moh Wah  
Assistant Registrar,  
High Court,  
Seremban.

To:

New India Assurance Company Ltd.,  
116 Batu Road, Kuala Lumpur.

This Summons in Chambers is issued on behalf  
of the 2nd Defendants by their Solicitor, Mr.  
Atma Singh Gill of Ruby Theatre (2nd floor) Jalan  
Tuan Sheikh, Seremban.

This Summons in Chambers will be supported by  
the Affidavit of Yoong Chin Ngian, the Managing  
Director of the 2nd Defendant affirmed on 20th day  
of October 1965.

In the High Court

AFFIDAVIT IN SUPPORT OF NO. 3

No. 4  
Affidavit in support of No. 3  
20th October 1965

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit 1965 No. 158

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

AND

10

- 1. Tan Keng Hong
- 2. Yoong Leok Kee Corpn. Ltd. Defendants

AFFIDAVIT FOR LEAVE TO ISSUE THIRD PARTY NOTICE

I, Yoong Chin Ngian, of full age and of Malaysian Nationality of No. 19 Jalan Dato Klana, Seremban, Managing Director of the above named Second Defendants make oath and say as follows:-

1. This action is brought against my Company by the above-named Plaintiffs for a claim of damages under Sections 7 and 8 of the Civil Law Ordinance for the alleged negligence of the First Defendant, who was at all material times in the employment of my Company as driver of Motor lorry NA 3664.

20

2. I am informed by my Solicitor Mr. Atma Singh Gill and I verily believe that an appearance has been entered by him on behalf of my Company on the 18th day of October 1965 and the Plaintiffs on the 12th day of October 1965 served their Statement of Claim. No further step has been taken in the action.

30

3. In the event of Judgment being given against the First Defendant, for which my Company is vicariously liable, my Company, the Second Defendants herein is entitled to an indemnity of the whole of the Judgment and costs thereto from New India Assurance Company Limited of 116 Batu Road, (first floor) Kuala



In the High Court

BEFORE THE ASSISTANT REGISTRAR,  
MR. LEE MOH WAH

          
No. 5

IN CHAMBERS

Order  
2nd November  
1965  
(continued)

This 2nd day of November 1965

O R D E R

Upon hearing Mr. Atma Singh Gill of Counsel for the 2nd Defendants herein and Mr. V.C. George of Counsel for the proposed third party and upon reading the Affidavit of Yoong Chin Ngian, the Managing Director of the 2nd Defendants, affirmed on the 20th day of October 1965 and filed the 25th day of October 1965 IT IS ORDERED that the 2nd Defendants, Yoong Leok Kee Corpn. Ltd., be at liberty to issue a third party notice and serve the same upon New India Assurance Company Ltd., of 116 Batu Road, Kuala Lumpur pursuant to Order 16 of the Rules of the Supreme Court

10

Dated the 2nd day of November 1965.

Sd. Lee Moh Wah,  
Assistant Registrar, High Court, Seremban.

20

No. 6

No. 6

Third Party  
Notice  
11th November  
1965

THIRD PARTY NOTICE

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
Civil Suit 1965 No. 158

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased

Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd.

Defendants

AND

New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur.

Third Party

30

THIRD PARTY NOTICE

Issued pursuant to the Order of the Assistant



Registrar, High Court, Seremban dated the 2nd day  
of November 1965.

In the High  
Court

To: New India Assurance Company Limited  
and/or their Solicitors,  
Messrs. H.W. Tan & George,  
106 Birch Road, Seremban.

          
No. 6

Third Party  
Notice  
11th November  
1965  
(continued)

10 TAKE NOTICE that this action has been  
brought by the Plaintiffs against the Defendants.  
In it the Plaintiffs' claim against the 2nd  
Defendants as employers of the First Defendant,  
damages suffered by the deceased, by reason of  
negligence of the First Defendant, in the driving  
of motor vehicle No. NA 3664 on 1.6.63 whereby  
the deceased named Ibrahim bin Kimpal was killed  
as appears from the Writ of Summons, a copy  
whereof is served herewith, together with a copy  
of the Statement of Claim.

20 The Second Defendants claim against you, as  
employers of the First Defendant, to be indemni-  
fied against the Plaintiffs' claim and costs of  
this action or contribution to the extent of the  
Plaintiffs' claim inclusive of costs, on the  
grounds that you are the Insurers of the said  
motor vehicle against Third Party risks under your  
Insurance Policy No. M.V.(C) 619/04/10223/63

30 AND TAKE NOTICE that if you wish to dispute the  
Plaintiffs' claim against the Defendants, or the  
Defendants' claim against you, an appearance must  
be entered on your behalf within 8 days, after the  
service of this notice on you, inclusive of the  
day of service, otherwise you will be deemed to  
admit the Plaintiffs' claim against the Defendants  
and the Defendants' claim against you and your  
liability to indemnify the Defendants or contribute  
to the extent adjudged at the trial and will be  
bound by any judgment or decision given in the  
action and the judgment may be enforced against  
you in accordance with Order 14A of the Rules of  
the Supreme Court 1957.

40 Dated this 11th day of November, 1965.

Sd: Atma Singh Gill

Solicitors for the second  
Defendants abovenamed

In the High  
Court

DIRECTIONS FOR ENTERING APPEARANCE

\_\_\_\_\_  
No. 6  
Third Party  
Notice  
11th November  
1965  
(continued)

The person served with this Notice may enter an appearance in person or by a solicitor either by handing in the appropriate forms, duly completed, at the Registry of the High Court in Malaya at Seremban or by sending them to that office by post. The appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Assistant Registrar of the said High Court.

10

This Third Party Notice is issued by Mr. Atma Singh Gill, Solicitor for the Second Defendants of and whose address for service is Ruby Theatre (2nd floor), Jalan Tuan Sheikh Seremban.

No. 7  
Defence of  
First and  
Second  
Defendants  
17th November  
1965

No. 7

DEFENCE OF FIRST AND SECOND DEFENDANTS

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 158 of 1965

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased                      Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd.                      Defendants

AND

New India Assurance Company Ltd.  
116 Batu Road,  
Kuala Lumpur.    Third Party

20

30

DEFENCE OF THE FIRST AND SECOND  
DEFENDANTS

1. The Defendants have no knowledge of the averments contained in paragraph 1 of the Statement of Claim.

In the High  
Court

—  
No. 7

Defence of  
First and  
Second  
Defendants  
17th November  
1965  
(continued)

2. Save and except that the First Defendant was the agent or servant of the Second Defendants, who were owners of Motor Lorry NA 3664 which is admitted, the rest of the allegations contained in paragraph 2 of the Statement of Claim are denied. The First Defendant will contend that he was not guilty of the alleged or any negligence and that the matters complained of were not caused as alleged in the Statement of Claim OR ALTERNATIVELY the said matters were due to an inevitable accident caused by a latent defect in that the brakes suddenly failed to work and the said lorry while coming down hill went out of control on the wet road and turned turtle.
- 10
3. Paragraph 3 of the Statement of Claim is admitted
4. The Defendants deny that the said deceased was a passenger and will contend that he was a gratuitous passenger OR ALTERNATIVELY the Defendants being loggers were under an obligation to the said deceased to give him a lift back to Seremban as he was a forester or forest ranger, who usually checked the logs transported by the Defendants, in connection with their business as such.
- 20
5. Paragraph 5 of the Statement of Claim is admitted.
6. In reply to paragraph 6 of the Statement of Claim, the First Defendant repeats paragraph 2 of the Defence, supra.
- 30
7. Paragraph 7 of the Statement of Claim is denied.
8. Paragraph 8 of the Statement of Claim is denied and the Defendants repeat paragraph 2 of the Defence supra.
9. The Defendants admit that the said deceased was a forest ranger in the employ of the Government and was aged 49 years at the material time but make no admission as to the alleged damage.
10. In reply to paragraph 10 of the Statement of Claim the Defendants deny the allegation of negligence and repeat paragraph 2 of the Defence supra and make no admission to the alleged damage.
- 40

14.

In the High Court

No. 7

Defence of  
First and  
Second  
Defendants  
17th November  
1965  
(continued)

11. As to paragraph 11 and 12 of the Statement of Claim, no admission is made as to the alleged deprivation of pecuniary and other benefits and loss of the widow and children of the deceased.

12. Save and except as has been expressly admitted, each and every allegation in the Statement of Claim herein is denied as if the same were specifically set out and traversed seriatim.

Dated this 17th day of November 1965.

10

Sd: Atma Singh Gill  
Solicitor for Defendants

This Defence was filed by Mr. Atma Singh Gill, Solicitor for the First and Second Defendants above-named of and whose address for service is Ruby Theatre, 2nd floor Jalan Tuan Sheikh, Seremban.

No. 8

No. 8

Summons for  
Third Party  
Directions  
6th May 1966

SUMMONS FOR THIRD PARTY DIRECTIONS

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit 1965 No. 158

20

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased

Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd.

Defendants

AND

New India Assurance Company Limited  
116 Batu Road, Kuala Lumpur.

Third Party

30

SUMMONS FOR THIRD PARTY DIRECTIONS

LET ALL PARTIES concerned attend the Assistant Registrar in Chambers at the High Court, Seremban

on Friday the 13th day of May, 1966 at 10 o'clock in the forenoon on the hearing of an application on the part of the Defendants for an Order for Third Party Directions as follows :-

In the High Court

          
No. 8

Summons for  
Third Party  
Directions  
6th May 1966  
(continued)

(a) that the Defendants serve a Statement of their claim on the Third Party within 21 days from this date, who shall plead thereto within 14 days

10 (b) that the Defendants and the Third Party do respectively exchange lists of documents within 21 days after the close of pleadings and verify the name by Affidavit and that there be inspection of documents within 21 days thereafter.

(c) that the said Third Party be at liberty to appear at the Trial of this action and take such part as the judge shall direct, and be bound by the result of the Trial.

20 (d) that the question of the liability of the said Third Party to indemnify the Defendants be tried at the Trial of this action, but subsequent thereto.

(e) and that the costs of this application be costs in the Third Party proceedings and costs in the cause.

Dated this 6th day of May, 1966.

Sd: Lee Moh Wah  
Assistant Registrar,  
High Court,  
30 Malaya, Seremban.

Sd: Atma Singh Gill  
Solicitors for the  
Defendants

To:

(1) The Plaintiffs and/or their Solicitors  
N. Ramachandran Esq.,  
Yusof Building,  
Seremban.

(2) New India Assurance Co. Ltd. and/or  
their Solicitors,  
Messrs. H.W. Tan & George  
106 Birch Road,  
40 Seremban.

This Summons will be supported by the

In the High Court

No. 8

Summons for Third Party Directions 6th May 1966 (continued)

Affidavit of Yoong Chin Ngian affirmed on 20th day of October 1965 in support of the defendants' application for leave to issue Third Party Notice dated the 20th day of October 1966 and filed in Court and a copy whereof is annexed hereto.

This Summons is issued on behalf of the Defendants by their solicitor, Mr. Atma Singh Gill of and whose address for service is No. 1 Jalan Tunku Hassan, Seremban.

No. 9  
Order  
13th May  
1966

No. 9

10

ORDER

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit 1965 No. 158

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

AND

1. Tan Keng Hong 20  
2. Yoong Leok Kee Corpn. Ltd. Defendants

AND

New India Assurance Company Limited  
116 Batu Road, Kuala Lumpur. Third Party

BEFORE THE ASSISTANT REGISTRAR  
MR. LEE MOH WAH

IN CHAMBERS

This 13th day of May 1966

O R D E R

UPON HEARING Mr. Atma Singh Gill of Counsel 30  
for the Defendants herein and Mr. Atma Singh Gill  
mentioning on behalf of Mr. N. Ramachandran of  
Counsel for the Plaintiffs who had no objection



In the High  
Court

of the Assistant Registrar, dated the 13th day of  
May 1966.

          
No. 10

Statement of  
Claim against  
Third Party  
6th July 1966  
(continued)

1. The Plaintiffs' claim against the Defendants herein as appears by the Statement of Claim, a copy whereof was delivered to the Third Party on the 21st day of May 1966 is for damages for the alleged negligence of the 1st Defendant, in driving motor vehicle No. NA 3664 on 1st June 1963, as agent or servant of the 2nd Defendants.

2. The Defendants dispute the Plaintiffs' claim on the grounds appearing in their Defence, but in the event of their being held liable to the Plaintiffs they claim and are entitled to be indemnified by the Third Party, New India Assurance Company Limited, against the Plaintiffs' claim of any liability they may be under to the Plaintiffs under the following circumstances:

10

(a) the said motor lorry was at all material times insured under Policy No. M.V.(C) 619/04/10223/63, issued by the said Third Party, against all Third Party risks including liability to passengers travelling on the said lorry (other than for hire or reward) in connection with the Defendants' business.

20

(b) That at the material time the deceased was travelling on the said motor lorry, without payment of any hire or reward, but in connection with the Defendants' business.

(c) That the second Defendants had a licensed logging concession at Parit Tinggi, Kuala Pilah and have their Sawmill at the 4th mile Seremban/Kuala Pilah Road.

30

(d) That the Second Defendants' transport felled timber logs, by the said lorry from the working site at their aforesaid logging concession, to their aforesaid Sawmill. [sic]

(e) That on the material date, the deceased was an employee of the Forest Department as a Forester and as such was a person holding authority, whose request for a lift could not be refused for fear of reprisal.

40

(f) That a Forester has powers to stop a lorry loaded with logs for purposes of checking and can even demand to travel on it, to any



Company's Sawmill for checking logs already transported.

In the High Court

(g) That it is customary and also obligatory in the logging business to give a Forester a lift if he asked for it.

No. 10

Statement of Claim against Third Party 6th July 1966 (continued)

The defendants claim against the Third Party :-

(i) A declaration that they are entitled to be indemnified as aforesaid.

10 (ii) Judgment for any amount that may be found due from the Defendants to the Plaintiffs.

(iii) Judgment for the amount of any costs they may be adjudged to pay to the Plaintiffs and for the amount of their own costs of the defence and proceedings against the Third Party herein.

Delivered on this 6th day of July 1966.

Sd: Atma Singh Gill

Solicitor for the Defendants.

20 This Statement of Claim is filed by Mr. Atma Singh Gill, Solicitor for the Defendants of and whose address for service is No. 1, Jalan Tunku Hassan, Seremban.

No. 11

No. 11

AMENDED STATEMENT OF DEFENCE OF THIRD PARTY

Amended Statement of Defence of Third Party 11th October 1966

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 158 of 1965

BETWEEN

30 Fatimah binti Abdullah (f) and Mohd Yusof bin Ibrahim as Administrators of the Estate of Ibrahim bin Kimpal, deceased Plaintiffs

AND  
1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Defendants

AND  
New India Assurance Company Ltd.,  
116 Batu Road, Kuala Lumpur. Third Party

In the High Court

AMENDED STATEMENT OF DEFENCE OF THE THIRD PARTY

No. 11

Amended Statement of Defence of Third Party 11th October 1966 (continued)

1. Paragraph 1 of the Statement of Claim by the Defendants is admitted.

2. As to paragraph 2 the Third Party denies that the Defendants or either of them are entitled to be indemnified as alleged or at all.

3. Save and except that the said motor lorry was at all material times insured under Policy No. MV.(C)619/04/10223/63 issued by the Third Party each and every allegation contained in paragraph 2 (a) is denied. Paragraph 2 (a) is admitted. The Third Party further contends and will contend that under the terms of the said contract of insurance (hereinafter referred to as the said policy) it was agreed between the Defendants and the Third Party that the Third Party shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting onto or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises.

10

20

4. That the deceased travelled on the lorry without payment of any hire or reward alleged in paragraph 2 (b) is denied.

5. Paragraphs 2 (c) and 2 (d) are admitted.

6. As to paragraph 2 (e) it is denied that a request for a lift could not be refused as alleged or at all.

30

7. Paragraph 2 (f) is admitted but the Third Party contends that a demand by a Forester to travel on a lorry can be refused.

8. The Third Party denies the custom and obligation referred to in paragraph 2 (g)

The Third Party prays that the claim of the Defendants be dismissed with costs.

~~Delivered on this 3rd day of October, 1966.~~

40

Delivered on this 11th day of October, 1966.

Sd:  
Solicitors for the 3rd Party

21.

This Amended Statement of Defence of the Third Party is filed by M/s H.W. Tan & George, Solicitors for the Third Party whose address for service is at 106, Birch Road, 2nd Floor, Seremban.

In the High Court

          
No. 11

Amended  
Statement of  
Defence of  
Third Party  
11th October  
1966  
(continued)

10

No. 12

PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 158 of 1965

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate  
of Ibrahim bin Kimpal, deceased                      Plaintiffs

20 AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd.                      Defendants

AND

New India Assurance Company Ltd.  
Kuala Lumpur.    Third Party

NOTES OF EVIDENCE

IN OPEN COURT

This 30th day of May 1972

Coram: WAN SULEIMAN J

30 N. Ramachandran                      ..                      for Plaintiffs  
Atma Singh Gill                      ..                      for Defendants  
V.C. George                              ..                      for Third Party

Ramachandran puts in Agreed Bundle of Documents marked "A" - and Agreed Facts marked "B".

In the High Court

Right to begin - Paragraph 6 of Statement of Claim.

No. 12

Page 10 - paragraph 2 - onus on Defendants.

Proceedings  
30th May  
1972  
(continued)

Order : I hold that plaintiffs should begin.

Intd. W.S.

No. 13

No. 13

Plaintiffs' Evidence

AHMAD BIN KASSIM

Ahmad bin Kassim Examination

PWL: Ahmad bin Kassim, affirmed, states in Malay.

Aged 27 years - I work at Government Dental Clinic, Bahau.

10

In June, 1963 I was attendant on lorry NA 3664 - the proprietors of which were the second defendants. The first defendant is the driver.

An accident occurred in June, 1963 - on 1st June, 1963. The lorry was a timber lorry, and was carrying three logs, secured to it with chains, of above maximum permissible laden weight. Lorry had a trailer. I had been attendant on same lorry for about six months.

20

The speed limit marked on lorry was 20 miles per hour.

At about 5 p.m. the lorry left Kuala Pilah heading towards Seremban. At Kuala Pilah we picked up a person I do not know. He spoke to the driver and got into the lorry.

The man is now dead as a result of the accident mentioned earlier. It had been raining and the road was wet. We travelled at about 30 miles per hour from Kuala Pilah to the foot of the hill. It was on third or fourth gear, on going down the hill. I cannot remember the speed of lorry at this time.

30

As the lorry went down-hill the driver did not apply brakes. The driver could not control

lorry which overturned. There was a bend at place where lorry overturned and a bridge. I regained consciousness in hospital. There was no traffic in front or to rear of lorry before the accident - (See "A" Page 6 (i) - "A" Page 7 (iv) and "A" Page 2).

Intd: W.S.

In the High Court

—  
No. 13

Plaintiffs' Evidence

Ahmad bin Kassim  
Examination

10 Cross-examination:

Sometimes we travel from Kuala Pilah to Seremban twice, and sometimes once a day. The logging concession was about 10 to 12 miles from Kuala Pilah. The lorry would load the logs within the forest - 7 to 8 miles of winding earth road from the metalled road - an uneven earth road.

Cross-  
Examination by  
Defendants

20 That morning the lorry left the sawmill at Seremban for Bukit Tinggi to get the logs. The accident took place on its return journey. It was about 20 miles from sawmill to Kuala Pilah and about 12 miles from there to Bukit Tinggi, a total distance of about 32 miles.

During the journey from Seremban to Bukit Tinggi the driver had occasion to use brakes often and the brakes worked. The brakes worked during journey along forest road.

30 The lorry was travelling at a moderate speed just before accident. Deceased sat between me and driver. Just before coming to the bend I saw driver pressing on brake pedal and said - "The brakes are not working" - He held on to the steering and asked me to jump. I did not do so, because I was shocked and afraid. I did not see if he tried to change gear. Before that the lorry had negotiated bends. Though I did not see him apply brakes, I did feel slowing down at times which I think was due to braking. There were  
40 four forward gears and one reverse gear to this lorry, as far as I can remember. In going down-hill that day it was on third or fourth gear.

The idea of going on lower gear is to slow down vehicle.

In the High  
Court

\_\_\_\_\_  
No. 13

Plaintiffs'  
Evidence

Ahmad bin  
Kassim

Cross-  
Examination by  
Defendants  
(continued)

I saw him changing gears but I cannot say which gear he engaged in doing so, I heard the revving as if he was changing from first or second gear - at the top of the hill before we came to the bridge and it kept going on that gear. He was about 30 or 40 yards from bridge when he applied brakes and the brakes did not work.

The brakes had never failed at any other time during the previous six months. As a driver I know that the driver of lorry could have changed down the gears and applied hand brakes to slow down lorry.

10

When driver told me brakes were not working, I was so frightened that I did not notice what action he took to avoid accident.

(Referred to "A" Page 11 - "it was not raining then and the road was not wet"). I maintain it was raining just before the accident, but the rain stopped about two miles before place of accident. The road was wet.

20

Intd: W.S.

---

Cross-  
Examination by  
Third Party

Cross-examination: (By George on behalf of  
Third Party)

I had never seen deceased before, but after he had got into lorry he told me he worked in the Forest Department.

From logging area we went to Kuala Pilah forest checking station where timber on lorry was checked.

30

The checking station is about  $\frac{1}{4}$  mile from Rex Cinema, Kuala Pilah, where the deceased stopped the lorry. He spoke to the driver, but I did not hear what he said, because he spoke to driver from off-side and the engine was running.

There was no other checking station between Kuala Pilah station and sawmill - and I cannot say

whether there was any checking at sawmill -  
 (Referred to "A" Page 10 - "Near Rex Cinema  
 ..... a male Malay asked for a lift  
 .....") - I assumed he had asked for a  
 lift, but cannot say what he spoke to the driver  
 about. He did not tell me why he was going to  
 Seremban.

Intd: W.S.

Re-examination:

I do not know why driver applied the brakes  
 before coming to the bridge. It is possible  
 that he was trying to slow down. The lorry was  
 not going very fast - less than 30 miles per  
 hour. Sometimes the speedometer on lorry does  
 not work. When the lorry was travelling at low  
 speeds below 20 miles per hour the meter does  
 not work - I did not see the driver apply his  
 hand brakes. Every time the lorry approached  
 corners, the driver applied brakes. The lorry  
 had hydraulic brakes.

I do not know if driver pressed brake pedal  
 hard before coming to bridge.

Intd: W.S.

Cross-examination: (By Atma Singh) (By leave of  
 Court)

Never during the six months had any official  
 from Forest Department obtained lift from our lorry.  
 I had never seen any official from the Department at  
 sawmill.

Intd: W.S.

By consent, evidence of income of deceased -  
 put in and marked "C" - and paragraph 12 of  
 Statement of Claim is amended: for \$130.00  
 substituted by \$42.50 and for \$340 substituted by  
 \$252.50.

Intd: W.S.

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In the High  
 Court

-----  
 No. 13

Plaintiffs'  
 Evidence

Ahmad bin  
 Kassim

Cross-  
 Examination by  
 Third Party  
 (continued)

26.

In the High  
Court

No. 14

FATIMAH BINTI ABDULLAH

No. 14

Plaintiffs'  
evidence

Fatimah binti  
Abdullah

Examination

PW2: Fatimah binti Abdullah, affirmed states in  
Malay.

Aged 50 years. Deceased was my husband.  
At the time of death his salary was \$277.50.  
He did not smoke. He lived at forest quarters  
at Simpang Pertang and would return home only  
once weekly. He would cook his own food.

10

Intd: W.S.

Cross-  
examination  
by Defendants

Cross-examination: (By Atma Singh)

Deceased purchased all household goods -  
he did not give me a lump sum for me to purchase  
household necessities. Mohamed bin Ibrahim was  
then not employed and lived with me.

Intd: W.S.

Cross-  
examination  
by Third  
Party

Cross-examination: (By V,C. George)

Simpang Pertang is in Jelebu District, near  
forest. His work involved going into jungle.

20

Intd: W.S.

No re-examination

Intd: W.S.

No. 15

Defendants'  
Evidence

Tan Keng  
Hong

Examination

No. 15

TAN KENG HONG

CASE FOR PLAINTIFF

First Defendant - Tan Keng Hong, affirmed,  
states in Hokkien.

Aged 43 years - of 23 Main Road, Port  
Dickson. On 1.6.1963 I was employed by

30



In the High  
Court

—  
No. 15

Defendants'  
Evidence

Tan Keng  
Hong

Examination  
(continued)

10 second defendant as lorry driver - and I drove motor lorry NA 3664. It had a trailer and was an Austin. I had driven this lorry for about six months. I carried logs where second defendants had the sawmill. I made one or two trips daily. The concession is about 32 miles from sawmill. On 1.6.1963 I left second defendant's sawmill at about 12 noon for Bukit Tinggi arriving at the concession about 2 p.m. Three logs were loaded onto my lorry. The logs were secured with chains. I came to a forest checking station. After obtaining receipt I left checking station.

20 On arriving near Rex Cinema, a male Malay stopped my lorry. I recognised him as a person who worked in Forest Department - used to see him around Kuala Pilah. He told me he wanted a lift to Seremban. I agreed to give him lift - and he sat between me and PW 1. No fare was agreed upon. I was afraid to refuse him lift for fear his feelings would be hurt - and he being a Forest Department employee I feared he might cause delay in checking my logs or cause other trouble.

30 I then proceeded towards Seremban. When I went downhill I would change my gear - from second to third gear. Before coming to the bridge in pictures I negotiated a number of bends - some of them sharp bends and applied my brakes. The brakes worked but not very effectively - and I had to change down gear to slow down lorry. I first noticed the lack of effectiveness of brakes about 47 ft before the bend at which accident occurred. I now say I noticed this about one chain away from place of accident. From Seremban to Bukit Tinggi and on the way back until then the brakes worked properly. I applied brakes before the bend because I was travelling fast when approaching bend. I was 40 then on third gear and doing about 15 miles per hour.

The brakes failed, and whilst I was negotiating corner the lorry overturned. I pulled my hand brakes when I found the foot brakes ineffective but to no avail. I also tried to swerve to my right, but did not change down gear. I was then on second gear.

The lorry turned turtle - on to my near side of road.

In the High Court

No. 15

Defendants' Evidence

Tan Keng Hong

Examination (continued)

Deceased was pinned under lorry - and I saw PW 1 lying down near bonnet of lorry. I was slightly injured on right hip. I lodged report at Police Station subsequently. I cannot give my reasons for failure of brakes. This had never happened to me before.

Intd: W.S.

No. 16

Defendants' Evidence

Wong Ah Pin Examination

No. 16

WONG AH PIN

CW 1: Wong Ah Pin, affirmed, states in English :

10

I am Chief Clerk, Forest Department, Negri Sembilan/Malacca. I knew deceased. He was a Forester I at the time of his death. He had 33 years' service at the time of death. He would have retired at 55 years of age. He would have received \$5,030/- as gratuity (quarter pension) and an annual pension of \$1,223/-.

Intd: W.S.

20

Cross-examination

Cross-examination: (By Atma Singh Gill)

The Department paid widow of deceased a death gratuity of \$2,820/-. A Forester I's duties include inspection of forest areas. Might even be asked to inspect sawmills.

Intd: W.S.

Cross-examination by Third Party

Cross-examination: (By V.C. George)

A Ranger is superior to Forester I. A Forester I need not have duties in forest - may check sawmill or be at checking station. I do not know his duties at the time of his death. According to records - he was

30

working in Kuala Pilah District. E.P.F. payments to widow amounted to \$3,399.96.

In the High Court

Intd: W.S.

No. 15

Defendants' Evidence

Wong Ah Pin

Cross-examination by Third party (continued)

Re-examination:

Re-examination

He was entitled to a monthly pension besides the E.P.F. payment.

Intd: W.S.

No. 17

No. 17

TAN KENG HONG

Defendants Evidence

10 First Defendant - Tan Keng Hong, affirmed, states in Hokkien :

Tan Keng Hong

Cross-examination

Cross-examination:

The lorry speedometer does not work only at low speeds. I cannot say if it is out of order. It has been in that condition a few days - 2 or 3 days before accident.

20 Before getting to the bridge ("A" Page 6 (i)) one has to go down an incline. I had been driving a lorry with a trailer for about six months - this particular lorry. Before that I drove lorry without trailer. If one drives fast the trailer would sway, but not if one drives at reasonable speed.

I guessed the speed was 15 miles per hour before I braked - but did not see speedometer. I did not feel trailer sway.

(Referred to "A" Page 8 - "on arrival .....

In the High Court

..... trailer behind was swaying ..... not successful.")

No. 17

I admit having said these words at the inquest.

Defendants' Evidence

Tan Keng Hong

Cross-examination (continued)

I did not say "I was not travelling fast .... from side to side." (Referred to "A" Page 9E ) (Referred to "A" Page 10C ) - I did say "When I felt the trailer swaying from side to side, I tried to stop the lorry by applying the brakes gradually."

10

I cannot remember what I said at the Inquest so long ago. (After carefully explaining the effect of his admission of what he had said at "A" Pages 8 and 10 , first defendant states : - I now admit the trailer swayed once or twice. The road was wet."

I did not mention about braking in the report "A" Page 1.

I cannot say why I did not say anything about the brake failure in the lower Court. I deny having travelled at a very high speed causing me to lose control. In a lorry with trailer, attendant would sit in the driver's cab.

20

Intd: W.S.

No cross-examination by V.C. George

Intd: W.S.

Re-examination

Re-examination:

I attribute this accident to brake failure. I cannot say if in police report I mentioned that brakes failed but did say that I applied the brakes.

30

The trailer swayed whilst I was going down the incline - before I applied the brakes.

Intd: W.S.



31.

No. 18

In the High  
Court

MICHAEL YOONG CHIN NGIAN

DW 2: Michael Yoong Chin Ngian, affirmed states  
in English:

No. 18

Defendants'  
Evidence

Aged 52 years. I am Managing Director of  
Yoong Leok Kee Corporation Ltd.

Micahel Yoong  
Chin Ngian

Examination

10 One of the lorries owned by my company is  
NA 3664 - which has a trailer. First defendant  
was the driver and PW 1 the attendant of this lorry.  
In 1963 my company had a forest concession at  
Pelangi, Bukit Tinggi, and the lorry would carry  
logs from that place to my sawmill.

The Insurance Policy covering lorry appears  
on "A" Pages 14 - 17.

20 On 1.6.1963 it was involved in an accident  
and one Ibrahim bin Kimpal, a Forester lost his  
life. He supervised the concession belonging to  
the company. I am aware of occasions when Forest  
Department employees take rides on company lorries.  
Forest Department employees do make surprise visits  
to the sawmill for inspection purposes. They also  
often take rides in company vehicles to get to  
logging compartments deep in jungle and to get out  
to town.

Intd: W.S.

No cross-examination - by Ramachandran

Intd: W.S.

Cross-examination: (By V.C. George)

Cross-  
examination by  
Third Party

30 I do not know why deceased travelled in the  
lorry that day. In 1963 we had five lorries  
carrying logs from concession to sawmill. Two  
trips by the lorries per day would be normal.

It is not unusual to give Forest Department  
employees lifts.

Intd: W.S.

No re-examination.

Intd: W.S.

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In the High Court

Adjourned to 5.6.72. at 10.30 a.m.

Intd: W.S.

No. 18

Defendants' Evidence  
Michael Yoong  
Chin Ngian  
Cross-examination by Third Party  
(continued)

No. 19  
Proceedings  
5th June 1972

No. 19

PROCEEDINGS

IN OPEN COURT

This 5th day of June, 1972

Coram : WAN SULEIMAN J

N. Ramachadran	..	for Plaintiffs	
Atma Sing Gill	..	for Defendants	
V.C. George	..	for Third Party	10

Atma Singh Gill - applies for leave to insert the following amendments:

In paragraph 2 (b) of Statement of Claim (against Third Party) - to add after the word "business" a comma in place of the full-stop and the words "or alternatively getting a lift for social, domestic or pleasure purposes," and between the words "passenger" and "or alternatively" in paragraph 4 of Statement of Defence insert the words earlier mentioned i.e. "or alternatively getting a lift for social, domestic or pleasure purposes".

20

Intd: W.S.

V.C. George: No objection  
Court orders accordingly.

Intd: W.S.

IBRAHIM BIN HAJI SAID

No. 20

Defendants'  
EvidenceIbrahim bin  
Haji Said

Examination

DW 3: Ibrahim bin Haji Said, affirmed, states in  
Malay:

10 Forest Ranger, Special Grade - stationed at  
Seremban. Ibrahim bin Kimpal, a Forester, who  
used to work in Kuala Pilah District, died in a  
road accident about nine years ago. Before his  
death it was common for Foresters and Rangers to  
get lifts from timber lorries. After this accident,  
the State Forest Officer gave instructions to all  
Foresters and Rangers not to get lifts in timber  
lorries. A Forester has a duty to inspect timber  
lorries at the checking station, or on the way to  
a sawmill for the purpose of determining if they had  
paid royalty on the logs being carried.

Intd: W.S.

No cross-examination - (by Ramachandran)

Intd: W.S.

20 Cross-examination - (by V. C. George)Cross-  
examination  
by Third  
Party

I am not suggesting that Forest Rangers and  
Foresters have a legal right to demand lifts from  
timber lorry drivers. Lifts are merely a gesture  
of courtesy accorded to us.

Since I was already stationed in Seremban at  
the time of accident I cannot say what the nature  
of deceased's duties were, and I do not know why  
he boarded the lorry.

Intd: W.S.

30 No re-examination

Intd: W.S.

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34.

No. 21

PROCEEDINGS

CASE FOR DEFENDANTS

In the High Court

          
No. 21

Proceedings  
5th June  
1972

George: Third Party does not intend to call any witnesses. Documents already in Agreed Bundle.

Intd: W.S.

Atma Singh Gill (for defendants)

Defence - paragraph 4.

Charlesworth on Negligence - Fourth Edition  
Page 550.

10

Tan Chye Choo & v. Chew Kew Moi - (1965) 2 MLJ 198  
Ors.

- do -                   - do - (F.C.) (1966) 2 MLJ 4.

- do -                   - do - (F.C.) (1970) 1 MLJ 1.

Atma Singh wishes to call expert evidence on condition of foot-brakes of lorry.

Intd: W.S.

Adjourned to 12.7.72 at 9 a.m.

Intd: W.S.

No. 22

No. 22

20

Defendants'  
Evidence

OMAR BIN MUSAYEE

Omar bin  
Musayee

IN OPEN COURT

Examination

This 12th day of July, 1973

Coram: WAN SULEIMAN J

N. Ramachandran           ..           for Plaintiffs

Atma Singh Gill           ..           for Defendants

V.C. George               ..           for Third Party



DW 4: Omar bin Musayee, affirmed, states in English:

In the High Court

MIAME, AMIRTE, R. Tech. Engineering.

No. 22

I am a retired Army Captain and now work with Borneo & Orchard Motors as Engineer.

Defendants' Evidence

I am conversant with the workings of hydraulic brakes on motor lorries, particularly in respect of lorries with trailer attached. A trailer is attached to a truck by means of coupling - which is hooked in.

Omar bin Musayee  
Examination  
(continued)

10

The foot-brake is connected to the trailer by means of a rubber hose. I produce Exhibit D 1 - a sketch plan which will assist Court in understanding how the hydraulic braking system works.

A flexible rubber hose, enclosing a tube with fluid inside is connected to each of the four wheels. One end is connected to the back place of the brake drum and the other leads to the master cylinder (also called the master pump on Exhibit D 1). This fluid works under pressure when the foot-brakes are applied. The rubber hose can be damaged by (1) fair wear and tear, or (2) through being cut by a sharp instrument or stone, or (3) due to pressure on it being caught in anything. There is a considerable amount of movement in the hose - when the wheel is turned right or left. Sudden turn of the steering wheel cannot dislodge it.

20

The sway of the trailer would vary with speed of travel.

(Refers to evidence of PW 1 and DW 1 re the effectiveness of brakes until just before the accident) - The failure of the brakes in the circumstances described must be due to breaking of the rubber hose resulting from one of the causes I have earlier described. It can also be due to a latent defect of the hose itself or to the points at which it is connected to the metal ends. It is unlikely to snap because of the overturning of lorry.

30

(Note: See "A" Page 4 (2)).

The breakage or leak in one hose would result in failure of the braking system.

40

If a lorry is going downhill on second or third gear and the brake fails, it would go faster because

In the High  
Court

—  
No. 22

Defendants'  
Evidence

Omar bin  
Musayee

Examination  
(continued)

of momentum. An experienced driver could change from third to second gear but not from second to first gear. If the failure happens near a sharp bend, the driver would try to steer vehicle and trailer would sway. In changing down from third to second gear, the driver would have to double clutch. The engine braking system would help to a certain extent but on a steep decline and bend it would be difficult for engine to help braking system. Exhibit D 2 is the hose used in a 1960 model Austin lorry. 10

The 1960 Austin lorry does not have synchronized gears - changing from second to first would therefore be impossible whilst lorry is in motion, but from third to second possible with difficulty. Handbrake would be of no assistance when lorry is descending hill.

Sudden pressure on foot-brakes, unless hose is very old, will not cause it to snap. An old hose can easily be detected when the lorry is serviced. 20

Intd: W.S.

Cross-  
examination  
by Plaintiffs

Cross-examination: (by Ramachandran)

I do not know where the brake-hose in this lorry was broken. If someone says that the hose had been broken by sudden pressure on foot-brakes, I would agree with him provided one of the conditions I have mentioned exists. I agree the best person to give expert evidence would be one who has seen the hose soon after accident. 30

The lorry would be used together with other types of trailers. The task of connecting flexible hose to trailer would be that of person who couples trailer to lorry.

If the flexible hose connected to the trailer snaps or leaks the whole braking system will not work.

Overturning of the lorry can result in the snapping of flexible hose leading to trailer. 40

Intd: W.S.

No cross-examination (by V,C. George)

Intd: W.S.

Re-examination:

If as appears from examination of "A" Page 6 (ii), (iii) and (v) the lorry and trailer came to rest against embankment, then flexible hose to trailer will not snap.

Exhibit D 2 would be called a "front wheel flexible hose" and that leading to trailer a "main flexible hose or connector hose". Exhibit D 2 could also be called a "foot-brake flexible hose".

10

Intd: W.S.

By Court:

The word "flexible hose" on "A" Page 4 can refer to any of the flexible hoses.

A small cut or fracture on flexible hose will not result in immediate failure of braking system - but can gradually, with use of the foot-brakes cause it to break resulting in failure after a time. This would also be true of the main or connector hose.

20

From my experience vehicles often used on rough terrain would be more prone to this sort of brake failure.

Intd: W.S.

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 No. 23
PROCEEDINGSAtma Singh Gill - (continues Submission)

Driver's report - "A" Page 1 - (appears to be in English) - Might have in the heat of the moment omitted to mention failure of brakes.

30

"A" Page 10 - PW 1's evidence - at Inquest.

Duty of care to passengers or licensee

Charlesworth on Negligence - Fourth Edition - Page 422.

In the High Court

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 No. 22

Defendants' Evidence

Omar bin Musayee

Re-examination

No. 23

Proceedings  
12th July 1973

In the High  
Court

—  
No. 23

Proceedings  
12th July  
1973  
(continued)

"Common law duty to licensees"

Fairman (Pauper) v. Perpetual Investment Building  
Society - (1923) A.C. 74.

Was the danger of brake failure known to driver?

Warning to jump off

Lewys v. Burnett and Dunbar and Anor - (1945)  
2 All E.R. 555.

Harris v. Perry & Co. - (1903) 2 K.B. 219, at  
225

Statement of Claim on paragraph 7 - no allegation  
of unroadworthiness. 10

Wong Eng v. Chock Mun Chong & Ors. - (1963) MLJ 204  
at 206, left hand column H.

Quantum: Basis earnings of deceased \$277.50 per  
month

Amount of difference claimed \$252.50

Submits \$150 fair

Tan Giok Hue vs. Lim Swee Peng (1960) MLJ 190 @ 193

Acceleration of payments received by widow - from  
Government - Daniels v. Jones - (1961) 1 WLR 1103 20

Acceleration of receipts - Gratuity and E.P.F. to  
be deducted.

None of the dependants listed are still dependants

Tan Sing Ngen v. Yaw Pan San - (1964) MLJ 1x - \$10,000

Tay Seow Huah v. L.C. Chua & Anor.

Collisions on Land - Gibb - Third Edition - Page 4

Intd: W.S.

Ramachandran:

Inevitable accident - burden on defendant

Southport Corporation v. Esso Petroleum Co. 30  
LD. and Another - (1954) 3 WLR 200. - also cited in  
Clarke & Lindsell on Torts - Page 985

The report

In the High  
Court

Swaying of trailer - evidence of speed -  
Laurie V. Raglan Building Co. Ltd. - (1941)  
3 All E.R. 332, at 336 D - G.

\_\_\_\_\_  
No. 23

Lorry without speedometer.

Proceedings  
12th July  
1973  
(continued)

Defence was failure of braking system - flexible  
hose.

Section 114 (g) of Evidence Act - as against  
Vehicle Examiner's report ("A" Page 4(2)).

10 Handbrakes - Page 107 R 15 (2) - See Langton  
and Anor v. Johnson - (1956) 3 All E.R. Page 474.

No accident had vehicle not been speeding

The warning - any effect?

Gratuity and EPF payments should not be taken into  
account.

Intd: W.S.

20 Res ipsa not applicable -  
Joginder Kaur & Anor v. Malayan Banking Ltd. & Anor -  
(1971) 1 MLJ 98 - doctrine does not apply where cause  
of accident known.

PW 1 did say brakes did not work.

Intd: W.S.

V.C. George:

Paragraph 2 A of Statement of Claim - Statement  
of Defence of Third Party - Para 2 -  
The Policy - "A" Page 14  
General Exceptions I (b) (i)  
"Limitations as to Use"  
(Not taking advantage of the no trailer clause)

30 The first 3 limitations further narrowed down.  
Court concurred with Section II

Exception to Section II - (iii)

Section 75 of Road Traffic Ordinance, 1958.

This Policy offers the minimum average required  
by law at minimum costs.

In the High Court

Could have paid higher premium to cover carriage of Foresters.

No. 23

Halsbury's Laws of England - Volume 22  
Page 368 Paragraph 755.

Proceedings  
12th July  
1973  
(continued)

"General exclusion of passengers".

Shawcross on Law of Motor Insurance - Page 483 -  
Road Traffic or Act Cover (repeats previous agreements)

(Contract of employment - Izzard v. Universal Insurance Co. - (1937) A.C. 773).

10

Ivamy - Hire & Motor Insurance - Page 250

McGallivray's - Fifth Edition - Page 1005  
(Baker's case) referred to Statement of Claim of defendants - no pleading that carriage was by way of employment - deceased's travel not arising out of contract of employment - merely being given lift.

Intd: W.S.

To 14.7.72 at 10.30 a.m.

(Ramachandran excused from attendance)

20

Intd: W.S.

14th July  
1972

IN OPEN COURT

This 14th day of July 1972.

Coram: WAN SULEIMAN J

Atma Singh Gill .. for Defendants

V.C. George .. for Third Party

(Ramachandran for plaintiffs excused)

George:

P.R. Panicker v. Chwee May Kwong &  
Anor - (1958) M.L.J. 136.

30

Intd: W.S.

Atma Singh Gill:In the High  
CourtRefers to defendant's statement of claim  
against Third Party.

No. 23

Amendment to paragraph 2.

Proceedings

"A" Page 14 - construction

14th July  
1972  
(continued)Conflict between Exception to Section II (ii) and  
(iii)Statement of Defence of Third Party - Paragraph  
3 - Main clause on which Third Party relying.10 The stamped Limitations to Use endorsement  
overrides the printed portions of Policy.McGallivray on Insurance Law - Fifth Edition  
Volume 1 - Paragraphs 702 and 703. Paragraphs 710,  
711, 715 General and Special Clauses.Section 74 (1) of Road Traffic Ordinance, 1958.  
Also Section 75 (1) (b).McGallivray on Insurance Law - Fifth Edition -  
Volume 2 - paragraphs 2059 and 2068.20 Izzard v. Universal Insurance Co. - (1937) A.C. 773  
at page 778.Barnet .. v. Eagle Star Insurance Co. Ltd. -  
(1959) 1 Q.B. 107.Manap bin Mat v. General Accident Fire & Life  
Assurance Corporation Ltd. - (1971) 1 MLJ 134Thakur Gopal Singh v. Mutual Indemnity and Finance  
Corporation (India) Ltd. and Anor - (1937) A.I.R.  
Allahabad 535 at 537.Provincial Insurance Co. Ltd. v. Morgan and Anor -  
(1933) A.C. 240 at 250.30 Shawcross on Law of Motor Insurance - Page 631 -  
"Endorsements"

"A" Page 16 - Endorsement (3)

Bingham's Motor Claims Cases - Fourth Edition -  
Page 667 - lifts given to friends - social purposes

In the High Court

No. 23

Proceedings

14th July 1972 (continued)

Allen v. John - Page 682

Piddington v. Co-operative Insurance Society Ltd. - (1934) 2 K.B. 236.

Paragraph 2 (b) of Defendant's Statement of Claim.

Paragraph 4 merely denies that part relating to hire or reward.

Intd: W.S.

George:

Provincial Insurance Co. Ltd. and Barnet's case Izzard's case.

10

Exceptions from Section II - (ii) and (iii) not contra - comes from Road Traffic Ordinance, 1958 - Section 75 (1) (b)(ii)

Intd: W.S.

C.A.V.

Intd: W.S.

23rd October 1973

IN OPEN COURT

This 23rd day of October 1973

Coram: WAN SULEIMAN J

P.S. Maniam for N. Ramachandran for Plaintiffs - also mentioning on behalf of V.C. George for Third Party

20

Atma Singh Gill .. for Defendants

Order: I deliver Judgment.

Defendants' claim against Third Party dismissed with costs.

Defendants to pay Plaintiffs the sum of \$21,600/- in damages and costs.

Sd: Wan Suleiman J

\_\_\_\_\_



43.

No. 24

In the High  
Court

JUDGMENT

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 158 of 1965

No. 24

Judgment  
23rd October  
1973

BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

10 AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corporation Ltd. Defendants

AND

New India Assurance Company Ltd.  
Kuala Lumpur. Third Party

J U D G M E N T

20 The Plaintiffs are the administrators of the  
Estate of Ibrahim bin Kimpal, a Forest Ranger in  
the employ of Government, who was killed when the  
lorry he was travelling in driven by the first  
defendant, an employee of the second defendant  
company, overturned. The defendants joined the  
insurers of the motor lorry as a Third Party.

30 It was agreed that the accident occurred on  
1st June 1963, at about 4 p.m. at or near the 9th  
mile Kuala Pilah/Seremban Road, and that the  
defendants' motor lorry NA 3664 was a timber lorry  
with a trailer attached to it. It was also agreed  
that the accident took place at a bridge situated  
at a bend shown in the Agreed Bundle Exhibit "A"  
Page 7, whilst deceased was seated in the driver's  
cab next to first defendant and that he died as a  
result of the accident.

As their first witness, plaintiffs called  
Ahmad bin Kassim, who was the lorry attendant at  
the time of the accident. Laden almost up to its  
maximum capacity the lorry had according to Ahmad,  
left Kuala Pilah at about 5 p.m. after picking up  
the deceased in that town. Apparently the road was

In the High  
Court

—  
No. 24

Judgment  
23rd October  
1973  
(continued)

wet, though rain had stopped about two miles before the bend where the accident occurred.

During the journey from Seremban to the logging compartment earlier that day and back along the forest road the brakes had worked, but just before the bend he saw the driver pressing the brakes pedal and then heard the latter say - "The brakes are not working". It would appear that when negotiating bends just before coming to the bridge, the brakes were still functioning because Ahmad felt the lorry slow down on these occasions. The driver then lost control of the lorry which overturned at the bend. 10

First defendant the lorry driver was vague about when he first noticed signs of brake failure. At first he said that when negotiating a number of bends before the accident he had found the brakes not very effective and had to change down the gear in order to slow down. Later he said that the brakes had functioned properly all the way until about one chain from the bridge. He claimed that he was doing only 15 miles per hour when he applied the brakes on that last occasion before the accident. 20

At first, whilst admitting that when driving fast the trailer would sway, something which did not happen at reasonable speeds, he claimed that he had not felt the trailer sway. However confronted with what he had said at the Inquest into the death of the deceased, he admitted that the trailer had indeed swayed once or twice. He had also to admit that he had said nothing about brake failure at the Inquest. Instead he had said (Refer to "A" Page 10C ) - "..... I tried to stop the lorry by applying the brakes gradually." It is remarkable that there was also no mention of brake failure when he made the Police report "A" Page 1 about one hour after the accident. Instead he stated therein that his lorry had skidded. 30 40

The report of the Vehicle Examiner of the Road Transport Department, Negri Sembilan - at "A" Page 4 - in connection with the foot-brakes shows that a flexible hose was found to be broken.

The Examiner was not called by the Defendants. Instead a Mechanical Engineer was called. The term "Flexible hose" he said could refer either to a "front wheel flexible hose" such as Exhibit D 2 or a "main flexible hose or connection hose" which connects a trailer with the braking system of a lorry. The front wheel flexible hose is unlikely to snap as a result of a lorry overturning, and judging from the photos on "A" page 6, he thought that the "main flexible hose or connection hose" did not snap as a result of the accident either.

10

He went on to say that a front wheel flexible hose can be damaged - (1) by fair wear and tear, (2) through being cut by a sharp instrument or stone, or (3) due to pressure in it being caught in anything. Besides that it could also be due to the latent defect of the hose itself, or to the points where it is connected to the metal ends.

20

Sudden pressure on footbrakes would only cause a hose to snap if it is very old. However he found from experience that vehicles working in rough terrain are most prone to gradual brake failure due to small cuts or fracture in either types of flexible brake hose.

30

As regards changing down gears the first defendant was not quite sure whether he was on third or second gear just before the accident. He could not have changed into first gear in a lorry of this sort and in any case this expert witness said that where the brakes had failed on a steep decline, the engine braking system would be of little use.

The defence denies negligence and in the alternative pleads inevitable accident.

40

"Inevitable accident amounts essentially to a denial that due care was not exercised. The defence is in effect but another way of saying that the defendant has not been negligent and, as such, shows only that an essential ingredient of liability, namely, carelessness, had not been established." - Clerk & Lindsell on Torts - Thirteenth Edition - Paragraph 975.

In his report first defendant would appear to attribute the accident to a skid. In Laurie v.

In the High  
Court

—  
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Judgment  
23rd October  
1973  
(continued)

In the High  
Court

—  
No. 24

Judgment  
23rd October  
1973  
(continued)

Raglan Building Co. Ltd. (1) it was held that the fact that an accident was due to the skidding of a lorry was neutral, and the onus was upon the defendants to show that their driver was not negligent in the circumstances.

There is evidence that first defendant was going at a speed which, permissible in other vehicles, is regarded by the Road Transport Department as being unsafe for a lorry with trailer of this type. At the Inquest he admitted going at a speed of about 30 miles per hour. According to Ahmad (PW 1) the maximum permissible speed of lorry and trailer was 20 miles per hour. As I have mentioned earlier on being pressed he admitted that the trailer had swayed from side to side, and as he had said at the Inquest, he had tried to stop the lorry by applying the brakes gradually.

10

"The burden rests on the defendant to show inevitable accident. To sustain that, the defendants must do one of two things. They must either show what was the cause of the accident, and show that the result of that cause was inevitable, or they must show all the possible causes. one or other of which produced the effect, and must further show with regard to everyone of these possible causes that the result could not have been avoided".  
- per Lord Justice Fry on *The Merchant Prince*. (2)

20

30

On the balance it would appear that the cause of the accident was excessive speed. Apart from the reluctant admission of the first defendant himself that the trailer had swayed from side to side immediately before the accident and that such swaying would only occur when it was travelling fast, the mechanical engineer called by the defendants confirmed that the sway of the trailer would vary with speed. I am therefore inclined to believe that first defendant approached this bend on a downward incline, on a wet road at a speed excessive in the circumstances. That would account for the

40

(1) (1941) 3 All E.R. 332  
(2) (1892) P 179

skid, and flexible hose had probably broken when the driver in a desperate effort to avert disaster had stepped hard on the brake pedal. The snapping of the flexible hose (and this covers both types of flexible hoses) was therefore the result of defendant's act of negligence i.e. speeding in circumstances fraught with danger, and not the cause.

In the High  
Court

—  
No. 24

Judgment  
23rd October  
1973  
(continued)

10 Having decided that defendants are wholly to blame for the accident which occurred through the driver's negligence, the next issue is whether they are entitled to be indemnified by the Third Party, the Insurers of the lorry.

20 In paragraph 2 (b) of Defendants' Statement of Claim against the Third Party, defendants allege that at the material time the deceased was travelling in their motor lorry without payment of any hire or reward, but (1) in connection with defendants' business, or (2) alternatively getting a lift for social, domestic or pleasure purposes. Defendants no doubt had in mind the stamped endorsement of the policy under the heading "Limitations as to Use".

The Insurers contend that they are not liable by virtue of Exception (iii) to Section II of the Policy which reads as follows:-

"The Company shall not be liable in respect of:

30 (iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises".

40 Mr. Atma Singh Gill for the defendants would like me to consider the question of liability to indemnity on the basis of whether there is a conflict between Exceptions (ii) and (iii) to Section II and the Limitations as to Use endorsement. He submitted that the latter endorsement overrode the exceptions earlier mentioned.

For the purposes of this action I think it will be more useful to decide whether in the first place there had been a user of the lorry contrary to the "Limitations as to Use" endorsement.

In the High  
Court

—  
No. 24

Judgment  
23rd October  
1973  
(continued)

The proposal and declaration form filled in by the second defendant and referred to in the preamble to the policy should have been produced since it forms part of this contract of insurance, and would no doubt tell us the exact nature of second defendant's business. The nature of defendant's business is not mentioned anywhere in the policy itself. However in view of the Insurer's admission in his Statement of Defence regarding paragraphs 2 (b) and (c) of the Defendants' Statement of Claim, I assume that it is not disputed that second defendant's business was logging and the processing of logs at his sawmill.

10

The lorry attendant at the time of the accident - (PW 1) - was not even acquainted with the deceased, merely saying that the latter had got into the lorry at Kuala Pilah after speaking to first defendant. First defendant however recognized him as an official of the Forest Department, Deceased told him he wanted a lift to Seremban and the driver agreed to give him a lift free of charge, fearing to annoy one in a position of authority in the timber trade. There was no suggestion that deceased's trip to Seremban was in order to inspect second defendant's sawmill there or that it was in the course of his duties as Forest Ranger. Neither of his colleagues Wong Ah Pin (CW 1) nor Ibrahim (DW 3) were able to say if the deceased had been travelling in the course of his duties. I am satisfied that he was merely getting a free lift, which Ibrahim said was commonly taken by Foresters and Rangers before this accident, from timber lorries.

20

30

In so far as the deceased was concerned I am of the view that this gratuitous giving of a lift is not within Limitations as to Use clauses (1) and (2).

Does this lift, given in fear of possible consequences of a refusal, come under clause (3) of the Limitations as to Use viz. "Use for social, domestic and pleasure purposes" ?

40

Whether a vehicle on a particular occasion was being used for a private or business purpose is usually a pure question of fact. However, it would be useful to consider a dictum of du Parcq, J in *Passmore v. Vulcan Boiler & General* (3) (1936) 54 Ll. L.R. 92

that "if the insured as a matter of kindness, courtesy or charity, gave a lift ..... to someone who happened to be on business of his own, I have no doubt that the proper view would be that the car was, for the time being, being used for a social purpose". On the evidence I would without hesitation hold that a lift given largely out of fear of the passenger is not a use for social, domestic and pleasure purpose being given neither out of kindness, courtesy or charity.

In the High Court

—  
No. 24

Judgment  
23rd October  
1973  
(continued)

For use outside the "Limitations as to Use" clause the Insurers are therefore not liable to indemnify the Defendants.

It was also submitted on behalf of the defendants that deceased had been carried "by reason of or in pursuance of a contract of employment". My attention was drawn to the decision in Izzard v. Universal Insurance Co. (4), where it was held by the House of Lords (in construing a clause identical to Exception (iii) to Section II of the Policy) that the "contract of employment" need not be necessarily with the Insured, but also applies to "persons who are on the insured vehicle for sufficient business or practical reasons, and has taken a contract of employment in pursuance of which they are on the vehicle". If for instance deceased was on his way to inspect second defendant's sawmill, then the Insurers would be liable. However on the evidence I would say that deceased was merely taking a free lift to Seremban for purposes of his own so that under this exception the Insurers are again not liable.

Defendants' claim against the Third Party is therefore dismissed with costs.

Because of the proviso to Section 7 (3) of the Civil Law Ordinance, 1956, the gratuity payment to the widow will not be taken into account in assessing damages.

I would place the extent of dependency at \$200 per month. Deceased was 49 years old at the time of his death. Had it not been for the accident, he would have continued working until his retirement at the age of 55 years on a pension of \$1,223 per annum (if he had taken 1/4 pension in the form of gratuity). Taking into account the possibility of obtaining other sources of earnings

(4) (1937) A.C. 773.

In the High  
Court

\_\_\_\_\_  
No. 24

Judgment  
23rd October  
1973  
(continued)

after retirement and the vicissitudes of life, I think a multiplier of 9 would be appropriate, so that general damages would amount to  $\$200 \times 12 \times 9 = \$21,600$ .

Since the Plaintiffs have omitted to give evidence of special damages, there shall be no award under this heading.

The defendants shall also pay the Plaintiffs' costs.

Signed : Wan Suleiman bin  
Pawan Teh,  
JUDGE, HIGH COURT,  
MALAYA.

10

SEREMBAN,

23rd October, 1973.

N. Ramachandran, Esq., of  
Messrs. N. Ramachandram & Co.,  
of Seremban. .. for Plaintiffs

Atma Singh Gill, Esq., of  
Messrs. Atma Singh Gill & Gill  
of Seremban. .. for Defendants

20

V.C. George, Esq., of Messrs.  
Ng Ek Teong & Partners of  
Kuala Lumpur. .. for Third Party

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51.

No. 25

IN THE HIGH COURT IN MALAYA AT SEREMBAN

In the High  
Court

Civil Suit No. 158 of 1965

No. 25

BETWEEN

Order  
23rd October,  
1973

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

AND

1. Tan Keng Hong  
10 2. Yoong Leok Kee Corporation Ltd. Defendants

AND

New India Assurance Company Ltd.,  
Kuala Lumpur. Third Party

BEFORE THE HONOURABLE MR. JUSTICE  
WAN SULAIMAN BIN PAWAN TEH

IN OPEN COURT

This 23rd day of October 1973

O R D E R

20 This Suit coming for hearing on the 30th  
May, 1972; the 5th June, 1972 and the 12th  
July, 1972 and on 14th July, 1972 in the  
presence of Mr. N. Ramachandran of Counsel for  
the Plaintiffs herein, Mr. Atma Singh Gill of  
Counsel for the Defendants and Mr. V.C. George  
of Counsel for the Third Parties UPON READING  
the pleadings herein AND UPON HEARING the  
evidence of the parties and what was alleged by  
Counsel for the parties aforesaid IT WAS  
30 ORDERED that this suit be stood down for  
judgment and upon this suit coming up for  
Judgment this day in the presence of Mr. P.S.  
Maniam mentioning on behalf of Mr. N. Ramachandran  
and in the presence of Mr. Atma Singh Gill  
aforesaid who also mentioned on behalf of Mr.  
V.C. George IT IS ORDERED that the Defendants  
do pay the Plaintiffs General Damages based  
on a dependency of \$200.00 per month on a  
purchase of 9 years in the sum of \$21,600/-

In the High  
Court

          
No. 25

Order  
23rd October  
1973  
(continued)

only AND IT IS ORDERED that there be no order as to the claim of Special Damages, AND IT IS FURTHER ORDERED that the Defendants' action against the Third Parties be and is hereby dismissed AND IT IS LASTLY ORDERED that the Defendants do pay the Plaintiffs and the Third Parties respectively the costs of this suit as taxed by a proper officer of this Court based on the Higher Scale as shown in the Schedule of Costs.

10

Given under my hand and the Seal of  
this Court this 23rd day of October, 1973.

Sd: Kang Hwee Gee

Senior Assistant Registrar,

(L.S.)

High Court,

Seremban.

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No. 26

In the Federal  
CourtNOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL No. 136 of 1973

No.26

Notice of  
Appeal  
14th November  
1973

BETWEEN

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Appellants

AND

10 Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Respondents

AND

New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur Respondents(In the Matter of Civil Suit No. 158 of  
1965 in the High Court in Malaya  
at Seremban

20 BETWEEN

Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Defendants

AND

30 New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur. Third Party )NOTICE OF APPEALTAKE NOTICE that Tan Keng Hong and Yoong Leok Kee  
Corpn. Limited being dissatisfied with the decision  
of the Honourable Mr. Justice Wan Suleiman bin  
Pawan Teh given at the High Court at Seremban on the  
23rd day of October 1973, appeal to the Federal Court

In the Federal Court against the whole of the said decision.

Court

Dated this 14th day of November, 1973.

No.26

Sd. Atma Singh Gill & Co.

Solicitors for the Appellants

Notice of  
Appeal  
14th November  
1973  
(continued)

To:  
(1) The Chief Registrar  
Federal Court  
Kuala Lumpur.

and to:

(2) Senior Assistant Registrar  
High Court,  
Seremban.

10

And to:

(3) The Respondents and/or their Solicitors  
Messrs. N. Ramachandran & Co.,  
Yusof Building,  
Seremban.

And to:

(4) The Third Party and/or their Solicitors  
Syarikat Ng Ek Teong, Zain & Selvarajah  
Bangunan Persatuan Hokkien Selangor,  
Jalan Weld, Kuala Lumpur.

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No.27

In the Federal  
CourtMEMORANDUM OF APPEAL

IN THE FEDERAL COURT IN MALAYSIA

No.27

(APPELLATE JURISDICTION)

Memorandum of  
Appeal  
24th December  
1973FEDERAL COURT CIVIL APPEAL NO. 136 of 1973

BETWEEN

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Appellants

AND

10 Fatimah binti Abdullah (f) and Mohd  
Yusof bin Ibrahim as Administrators  
of the Estate of Ibrahim bin Kimpal,  
deceased Respondents

AND

New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur. Respondents

(In the Matter of Civil Suit No. 158  
of 1965 in the High Court in Malaya  
at Seremban

20 BETWEEN

Fatimah binti Abdullah (f) and Mohd  
Yusof bin Ibrahim as Administrators  
of the Estate of Ibrahim bin Kimpal,  
deceased Plaintiffs

AND

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Defendants

AND

30 New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur. Third Party)

MEMORANDUM OF APPEAL

TAN KENG HONG and YOONG LEOK KEE CORPORATION LTD.  
abovenamed first and second Defendants appeal against  
the whole of the decision of the honourable Mr. Justice  
Wan Suleiman bin Pawan Teh given at Seremban on the

In the Federal Court 23rd day of October, 1973 on the following grounds:-

No.27

Memorandum of Appeal  
24th December 1973  
(continued)

1. The Learned Judge erred in law in making a finding of fact of negligence on the part of First Defendant and or alternatively the said finding is against the weight of evidence in that the cause of accident was due to the alleged excessive speed and the alleged skid thereto because:-
  - (i) There was no evidence of speed or alternatively contradictory evidence of speed and the Learned Judge should have rejected the evidence. 10
  - (ii) There was no evidence of skid or alternatively the alleged evidence of skid in the police report which was lodged under strain of mind of the said driver due to the fatal accident, ought to have been disregarded.
2. The Learned Judge erred in law in rejecting the Defence of inevitable accident as there was ample evidence on record of the latent defect of the braking system in that:- 20
  - (i) in the testimonies of PW 1; DW 1 as to the effectiveness of the brakes prior to the accident;
  - (ii) in the testimonies of PW 1 and DW 1 as to the sudden failure thereto;
  - (iii) the testimony of the expert DW 4 as to the latent as opposed to patent defect of the braking system. 30
3. The Learned Judge misdirected himself when he failed to consider the evidence and Submissions on behalf of the Defendants as to their liability towards the deceased at Common Law, who was merely a licensee travelling as a gratuitous passenger, having found that such lifts to such licensees were customary.
4. The Learned Judge erred in law as to the quantum of award to the Plaintiffs in that:-
  - (i) In arriving at a dependency of \$200.00 per month when there was absolutely no 40

evidence on record of such payment or receipt by the widow and the deceased lived at the forest quarters at Simpang Pertang and maintained himself from his said monthly income and only bought sundries for the family's household.

In the Federal  
Court

\_\_\_\_\_  
No. 27

Memorandum of  
Appeal  
24th December  
1973  
(continued)

10

(ii) He gave 9 years purchase for a man of 49 years of age, and calculated the same by straight multiplier of  $\$200.00 \times 12 \times 9 = \$21,600.00$ , instead of adopting the actuarial table.

(iii) And making a global award when there were no dependants except the last three children and the youngest of whom was over 18 years when the case was heard in 1972 and thereafter leaving the deceased's wife only as his dependant.

20

5. The Learned Judge erred in law in not considering adequately the liability of the 3rd Party under the Contract of Insurance (Commercial Policy No. 10919) as to the "Limitations of Use" clause 1, the use of which was in connection with that of their assured's business, and if so found then the Insurers were liable and the Learned Judge having made a specific finding of such a fact erred to hold otherwise and clause 2 use for the carriage of passengers (other than for hire and reward) in connection with Insured's business.

30

6. The Learned Judge erred in law in rejecting the Defence that the said lift to the deceased was being given by the 1st Defendant to the deceased for social domestic and pleasure purposes as covered by Clause 3 of "Limitations of Use" Endorsement and the said Policy being a Commercial policy and not merely a 3rd party compulsory insurance Policy, required by law and furthermore the Defendants had proved the custom of Foresters and Rangers to get lifts from timber lorries as an act of courtesy.

40

Dated this 24th day of December, 1973.

Sd: Atma Singh Gill & Co.  
Solicitors for the Appellants

In the Federal Court

No.27

To:

The Chief Registrar  
Federal Court, Malaysia,  
Kuala Lumpur.

Memorandum of Appeal  
24th December 1973  
(continued)

And to:

The Respondents and/or their Solicitors,  
Messrs. N. Ramachandran & Co.  
Yusof Building,  
Seremban.

And to:

The Respondents/Third Party and/or  
their Solicitors,  
Messrs. Ng Ek Teong & Partners,  
Bengunan Persatuan Hokkien Selangor,  
Jalan Weld,  
Kuala Lumpur.

10

The address for service of the Appellant is  
Messrs. Atma Singh Gill & Co., of No. 1 Jalan  
Tunku Hassan, Seremban.

No.28

Judgment  
2nd March  
1974

No.28

JUDGMENT

20

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL No. 136 of 1973

(Seremban High Court Civil Suit No.158/1965)

BETWEEN

- 1. Tan Keng Hong
- 2. Yoong Leok Kee Corpn. Ltd.

Appellants/  
Defendants

AND

- 1. Fatimah binti Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate  
of Ibrahim bin Kimpal,  
deceased

Respondents/  
Plaintiffs

30



2. New India Assurance Co. Ltd.,  
Kuala Lumpur.

Respondents/  
Third Party

In the Federal  
Court

Coram: Suffian, C.J., Malaya;  
Gill and  
H.S. Ong, F.JJ.

-----  
No.28

Judgment  
2nd March 1974  
(continued)

SUFFIAN, C.J. MALAYA  
(delivering Judgment of the Court)

10 On 1st June, 1963, Ibrahim bin Kimpal was riding on a lorry, being driven by Tan Keng Hong, the first defendant employed by Yoong Leok Kee Corporation Ltd. (the second defendant) along the Kuala Pilah-Seremban road. Going down a slope at the bottom of which was a bend, the lorry loaded with timber overturned because of brake failure and as a result Ibrahim was killed. The administrators of his estate (plaintiffs) won judgment for damages in negligence against the two defendants, but the learned trial judge held that the insurers of the lorry, the New India Assurance Company Ltd., who had  
20 been made a third party, were not liable to indemnify the defendants, who would therefore have to pay damages out of their own pocket.

The defendants appeal to us.

During the course of the arguments for reasons stated then, we indicated to counsel that we dismissed the appeal against liability and against quantum.

30 It now remains for us to deal with the question whether or not the insurers are liable to indemnify the defendants.

The policy provides by section II that -

"The company (third party) will subject to the limits of liability indemnify the insured (the second defendant and his servant the first defendant) in the event of accident caused by or arising out of the use of the motor vehicle ... which the insured shall become legally liable to pay in respect of .... death to any person."

40 Then "Exceptions to Section II" mention eight exceptions to the above undertaking by the insurers, two of which are material. The material parts are

In the Federal  
Court

-----  
No.28

Judgment  
2nd March 1974  
(continued)

exceptions (ii) and (iii) which read:

"The company shall not be liable in respect  
of -

(ii) death of .... any person in the  
employment of the insured arising out  
of and in the course of such  
employment;

(iii) death of .... any person (other than  
a passenger carried by reason of or in  
pursuance of a contract of employment)  
being carried in or upon .....the  
motor vehicle at the time of the  
occurrence of the event out of which  
any claim arises."

10

We are concerned mainly with the words under-  
lined.

On the authority of Izzard v. Universal  
Insurance Co. Ltd.(1), a House of Lords decision,  
which we respectfully follow, it is clear that the  
above provisions of the policy mean this, that -

20

(1) the insurers will indemnify the second  
defendant and his servant against third party  
risks, but this is subject to the limits of  
liability stated in the policy;

(2) in accordance with the limits of liability  
stated in the policy;

(a) the insurers will not be liable to  
indemnify the defendants in respect  
of third party claims from persons  
in the employment of the second  
defendant whose death arose out of  
and in the course of that employment;  
and

30

(b) the insurers will not be liable in  
respect of death of any person being  
carried in the lorry at the time of  
the accident;

(3) but - and this is an important qualification -  
the insurers will be liable to indemnify the  
defendants in respect of the death of any

40

(1) (1937) A.C. 773.

passenger carried on the lorry by reason of or in pursuance of a contract of employment. This is clear from the words underlined in exception (iii) to section II.

In the Federal  
Court

\_\_\_\_\_  
No. 28

10 In this case, the contract of employment cannot mean contract of employment with the second defendant, because exception (ii) clearly excludes the insurers from liability in respect of death of any person in the employment of the second defendant arising out of and in the course of such employment. So it is clear that the words underlined can only mean that the insurers will be liable to indemnify the defendants in respect of the death of a passenger not employed by the second defendant and carried by reason of or in pursuance of a contract of employment.

Judgment  
2nd March 1974  
(continued)

20 From the above it is clear that the insurers are liable to indemnify the defendants if Ibrahim bin Kimpal was a passenger carried on the lorry by reason of or in pursuance of a contract of employment between him and his employer not being the second defendant.

30 On the authority of Baker v. Provident Accident and White Cross Insurance Co. Ltd. (2), a decision of Cassels J., we hold that a person is carried "by reason of" a contract of employment if, for instance, he is directed by his employer to travel in a vehicle, and the employer is able to give that direction because of the relationship of employer and employee; and that a person is carried "in pursuance of" a contract of employment if it is a term of the contract that he shall be carried.

The question then arises: what was the status of the deceased when he was riding on the lorry?

40 The second defendant had a timber concession in the jungle at Bukit Tinggi and 32 miles away in Seremban they had a sawmill. On the day of the accident their driver (the first defendant) drove the company lorry to the concession area, leaving at about noon and arriving at the area at about 2 p.m. He loaded up with timber and then left the area. Soon he arrived at the Government forest checking station in Kuala Pilah about 10 or 12 miles away where the timber was checked by the Forestry

In the Federal  
Court  

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No.28  
Judgment  
2nd March 1974  
(continued)

He left the station and, on arriving near the Rex Theatre about a quarter of a mile away, the deceased (a Forester working for the Forestry Department) stopped the lorry, asked for and was given a lift to Seremban. It is not unusual for timber lorries to give lifts to Forestry Department employees who wish to visit logging areas in the jungle and who wish to go to town. It was while they were on the way to Seremban that the lorry overturned and killed the deceased. The deceased's job included the inspection of forest areas and the inspection of sawmills. He supervised the concession belonging to the company. A Forester may also have to inspect timber lorries at checking stations or on the way to sawmills to see whether royalty had been paid on logs being carried. But there was no evidence that the deceased was on duty when he boarded the lorry. On the evidence the learned trial judge's finding was that the deceased was merely getting a free lift. 10 20

There was no evidence that it was a term of the contract of employment between the deceased and the Forestry Department that he shall be carried in the second defendant's lorry, so it cannot be said that at the time of the accident he was being carried on the lorry "in pursuance of" a contract of employment between him and his employers, the Forestry Department.

There was evidence as stated that his employers, the Forestry Department, could have directed the deceased to travel in the lorry as part of his official duty to check timber on the lorry and the Department would have been able to give that direction because of the relationship of employer and employee, but there was no evidence that the deceased was on the lorry on the fatal day on official duty, and in the face of the learned trial judge's positive finding that the deceased was then getting merely a free lift to Seremban, we are respectfully of the opinion that the learned judge was right in holding that the insurers are not liable under the policy to indemnify the defendants. 30 40

We would therefore dismiss this appeal with costs. Appellants' deposit to respondents against taxed costs.

Judgment delivered in Kuala Lumpur on 2nd March 1974.

M. Suffian  
(Tan Sri Mohamed Suffian)  
CHIEF JUSTICE, MALAYA.

NotesIn the Federal  
Court

1. Arguments in Kuala Lumpur on 18.2.1974.

2. Counsel:

Mr. Atma Singh Gill of M/s Atma Singh Gill  
& Co., Seremban, for appellants.Mr. N. Ramachandran of Serembsn for first  
respondents.Mr. V.C. George of M/s Ng Ek Teong & Partners,  
Kuala Lumpur, for second respondents.No.28  
Judgment  
2nd March 1974  
(continued)10 3. Authorities cited other than those mentioned  
in Judgment:

(1) (1966) 2 MLJ 4.

(2) (1971) 2 MLJ 24, 26.

(3) (1952) MLJ 69.

(4) Lewys (1945) 2 AER 555, 558-9.

(5) (1923) A.C. 74.

(6) (1969) 1 MLJ 49.

(7) (1969) 1 MLJ 215.

(8) (1962) MLJ 239.

20 (9) 2 MacGillivray, 5th Edition, paras. 2068  
and 2069.

(10) (1958) MLJ 139.

(11) (1967) 2 MLJ xxix.

TRUE COPY

Sd: Illegible  
Secretary to Chief Justice  
High Court, Malaya  
13 Mar 1974

64.

In the Federal  
Court

No. 29

ORDER

No.29

Order  
2nd March 1974

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL No. 136 of 1973

BETWEEN

1. Tan Keng Hong		
2. Yoong Leok Kee Corpn. Ltd.	Appellants	
AND		10
Fatimah binti Abdullah (f) and Mohd Yusof bin Ibrahim as Administrators of the Estate of Ibrahim bin Kimpal, deceased	Respondents	
AND		
New India Assurance Company Ltd. 116 Batu Road, Kuala Lumpur.	Respondents	
(In the Matter of Civil Suit No. 158 of 1965 in the High Court in Malaya at Seremban		20

BETWEEN

Fatimah binti Abdullah (f) and Mohd Yusof bin Ibrahim as Administrators of the Estate of Ibrahim bin Kimpal, deceased	Plaintiffs	
AND		
1. Tan Keng Hong		
2. Yoong Leok Kee Corpn. Ltd.	Defendants	
AND		
New India Assurance Company Ltd. 116 Batu Road, Kuala Lumpur.	Third Party)	30

CORAM: SUFFIAN, CHIEF JUSTICE, HIGH COURT, MALAYA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA;  
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 2nd DAY OF MARCH 1974

O R D E R

In the Federal  
Court

No.29

Order  
2nd March 1974  
(continued)

THIS APPEAL coming on for hearing on the 18th day of February, 1974, in the presence of Mr. Atma Singh Gill of Counsel for the Appellants and Mr. N. Ramachandran and Mr. V.C. George of Counsel for the First and Second Respondents respectively;

10 AND UPON READING the Record of Appeal and the written submission of Mr. Atma Singh Gill AND UPON HEARING Counsel as aforesaid, IT WAS ORDERED that this Appeal do stand adjourned for judgment:

AND the same coming on for judgment this 2nd day of March 1974 in the presence of Mr. Atma Singh Gill of Counsel for the Appellants and Mr. N. Ramachandran of Counsel for First Respondents and Mr. N. Ramachandran mentioning on behalf of Mr. V.C. George of Counsel for Second Respondents:

IT IS ORDERED that the Appeal of the Appellants be and is hereby dismissed with costs:

20 IT IS FURTHER ORDERED that the aforesaid Appellants do pay to the First Respondents the sum of \$21,600/- (Dollars Twenty-one thousand and Six hundred only) with costs;

AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars: Five hundred) only deposited in Court as security for costs of this Appeal to be paid to the Respondents against their taxed costs;

GIVEN under my hand and the Seal of the Court this 2nd day of March, 1974.

30

Sd: E.E. Sim  
CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

In the Federal  
Court

No. 30

No. 30

ORDER GRANTING FINAL LEAVE TO APPEAL TO  
HIS MAJESTY THE YANG DIPERTUAN AGURG

Order granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang Dipertuan  
Agurg  
19th August  
1974

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 136 of 1973

BETWEEN

- |                               |            |    |
|-------------------------------|------------|----|
| 1. Tan Keng Hong              |            |    |
| 2. Yoong Leok Kee Corpn. Ltd. | Appellants | 10 |

AND

- |  |             |  |
|--|-------------|--|
| 1. Fatimah binti Abdullah (f) and<br>Mohd Yusof bin Ibrahim as Admini-<br>strators of the Estate of<br>Ibrahim bin Kimpal deceased |             |  |
| 2. New India Assurance Company Ltd.<br>No. 116, Batu Road,<br>Kuala Lumpur.  | Respondents |  |

(In THE MATTER OF CIVIL SUIT NO. 158 OF 1965 IN THE HIGH COURT IN MALAYA AT SEREMBAN		20
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BETWEEN

Fatimah binti Abdullah (f) and Mohd. Yusof bin Ibrahim as Administrators of the Estate of Ibrahim bin Kimpal deceased	Plaintiffs
--	------------

and

- |                               |            |
|-------------------------------|------------|
| 1. Tan Keng Hong              |            |
| 2. Yoong Leok Kee Corpn. Ltd. | Defendants |

and

New India Assurance Company Ltd. No. 116, Batu Road, Kuala Lumpur.	Third Party)	30
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CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA;  
ALI, JUDGE, FEDERAL COURT, MALAYA;  
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 19TH DAY OF AUGUST 1974



O R D E R

In the Federal  
Court

          
No. 30

Order granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang Dipertuan  
Agung  
19th August  
1974  
(continued)

10        UPON MOTION made unto Court this day by Mr.  
Atma Singh Gill of Counsel for the Appellants  
abovenamed in the presence of Mr. N. Ramachandran  
of Counsel for the 1st named Respondent and  
Mr. V.C. George of Counsel for the 2nd named  
Respondents abovenamed AND UPON READING the  
Notice of Motion dated the 29th day of July 1974  
and the Affidavit of Mr. Atma Singh Gill affirmed  
the 20th day of July 1974 and filed in support of  
the Motion AND UPON HEARING Counsel as aforesaid  
IT IS ORDERED that final leave be and is hereby  
granted to Appeal to His Majesty the Yang  
Dipertuan Agung from the Judgment of this Court  
given on the 2nd day of March 1974 against the  
Second Respondents, the New India Assurance  
Company Limited only AND IT IS LASTLY ORDERED  
that the costs of this application be costs in the  
cause.

20        GIVEN under my hand and the  
Seal of the Court this 19th day of August, 1974.

L.S.

Sd: E. E. SIM  
CHIEF REGISTRAR,  
Kuala Lumpur.

EXHIBITS

"A"(1)

Accident Report No. 35/63

A ..... muka .....

POLIS DI-RAJA MALAYSIA

SALINAN REPORT

30        No. Report: 35/63        Rumah Pasong: Paroi  
Pada: 6.25 p.m. petang    1.6.1965 Fasal        sic  
Aduan: Tan Keng Hong I/C NS 260946 (0237231)

Exhibits

          
"A" (1)

Accident  
Report  
No. 35/63  
1st June 1963

Exhibits

Bangsa: Chinese Umor: 31 tahun Kerja: Lorry Driver

"A" (1)

Dudok di: No. 23 Main Street, Port Dickson, NS

Accident Report

Jurubahasa Daripada Kapada

No. 35/63

1st June 1963

Saksi-nya

(continued)

Kata aduan:

On 1st June, 1963 at about 4.45 p.m. I left Kuala Pilah by a motor lorry No. NA 3664 loaded with timber together with a forester - a male Malay and an attendant named Ahmad Rassim for Seremban. On arrival at the 9th milestone Kuala Pilah/Seremban Road, my lorry skidded and landed on the side of an embankment. At that time both the forester and the attendant was pinned beneath the lorry so I stopped a taxi and headed to my office "Yoong Leok Kee Sawmill" to look for help. After getting the necessary assistance we proceeded to the scene of the accident and established that the forester and the attendant had been taken away to hospital. That's all I have to say.

10

20

Sa'in .....

Checked and Found correct  
 by Foong Kuan Fatt  
 Sgd:

Certified true copy  
 Sgd: Illegible  
 (Yusof Ismail) A/DSP  
 Pegawai Penjaga Daerah Polis  
 Seremban, Negri Sembilan

-----

69.

"A" (2)

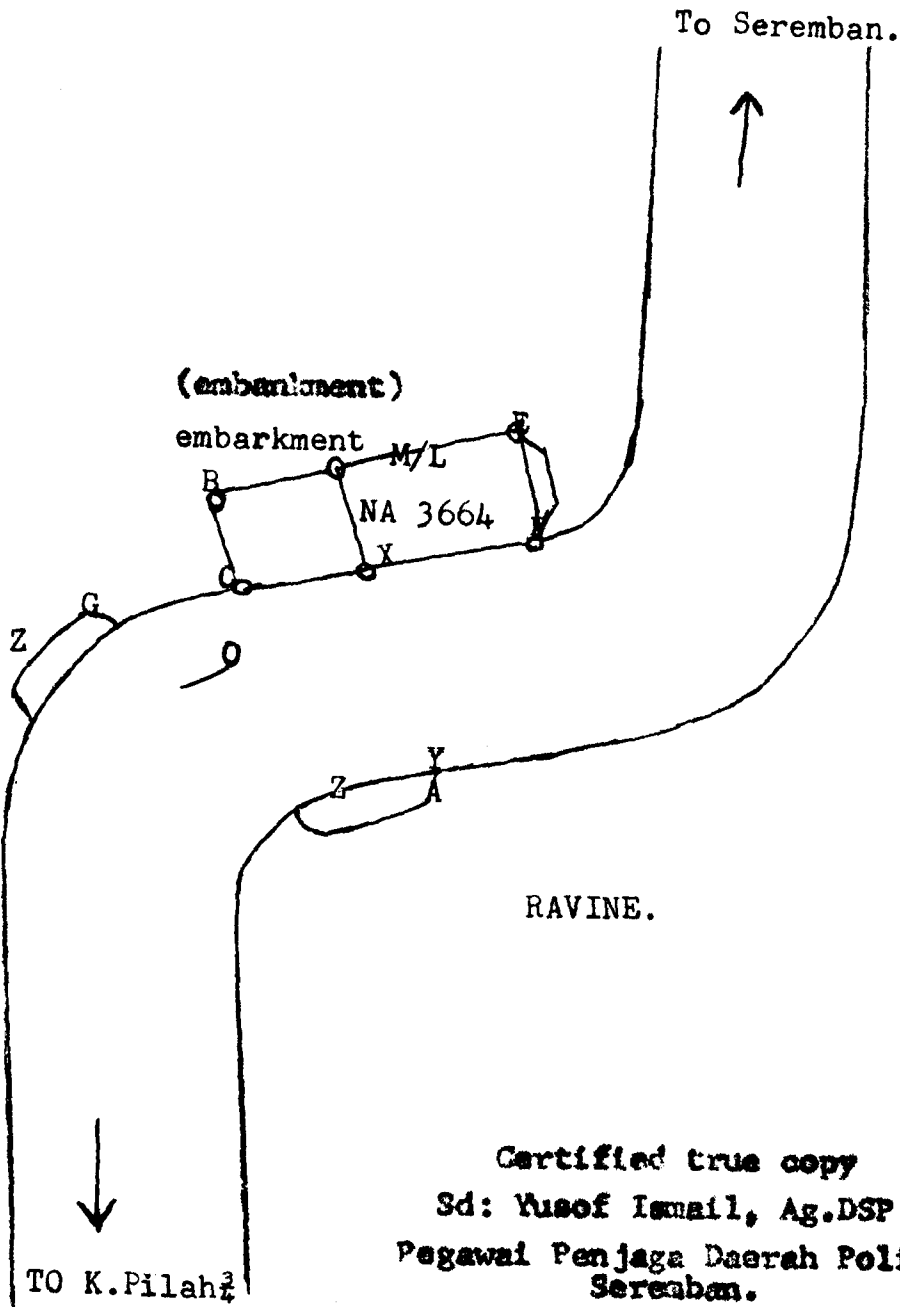
SKETCH PLAN OF PAROI REPORT  
35/63 1.6.63

Exhibits

"A" (2)

Sketch Plan  
with Key

PLAN NOT TO SCALE



Certified true copy  
Sd: Yusof Ismail, Ag.DSP  
Pegawai Penjaga Daerah Polis  
Seremban.

Traced by,  
Sd: Illegible

ExhibitsKey to sketch plan of Paroi  
35/63 1.6.1963

"A" (2)	A	..	Fix Point	
Sketch Plan with key (continued)	B and C		End of the trailer tyres	
	D	..	Centre tyres	
	E & F		Front tyres	
	O	..	Skid marks	
	X	..	Left hand side of the road when facing Seremban from K.Pilah.	
	Y	..	Right hand side of the road when facing Seremban from K.Pilah	10
	Z	..	Bridge	

Measurements

A	to	B	-	49	feet
A	to	C	-	20'	6"
A	to	D	-	28'	5"
A	to	E	-	41'	
A	to	F	-	36'	4"
X	to	Y	-	16'	6"
B	to	G	-	50'	4"
Z	to	z	-	26'	3"
O	to	x	-	3'	

20

Certified True Copy

Sgd:

(Yusof Ismail) Ag. DSP  
Pegawai Penjaga Daerah Polis  
Seremban.

"A" (3)

Vehicle Examination Report

Form PG.14

C.W. 289-90/63  
Magistrates' Court,  
Seremban.Exhibit "P.3"  
Inquest No.42/63  
Sd. ?  
Magistrate,  
Seremban.

Exhibits

"A" (3)Vehicle  
Examination  
Report  
9th July 1963

10

ROAD TRANSPORT DEPARTMENT  
FEDERATION OF MALAYA

Report on the Examination of a vehicle.

Requested by O.C. Traffic Police, Seremban.

Vehicle No. NA 3664 Make ... Austin ... (Class ..  
Good) was inspected + T/N ~~and-road-tested~~ /Tractor  
S/Trailer by the undersigned at Traffic Yard,  
Seremban on 4.6.63.

20

I found as follows:-

+ (1) That owing to accident damage the vehicle could not be tested by driving it on a road<sup>+</sup> A static test of the condition of the brake and steering was carried out ~~with-the-road-wheels raised-off-the-ground.~~

(2) The condition of the foot brake. flexible hose broken - unable to determine.

(3) The condition of the hand brake appeared to be in order.

30

(4) The condition of the steering appeared to be in order.

(5) The condition of the tyres was:-

Near side front .. 40% .. near side rear 80% .. 80%  
Offside front .. 40% .. offside rear 80% .. 80%

(6) The condition of other components was: .....

(7) Damage which appeared to have been caused in an accident was:-

Exhibits"A" (3)

Vehicle  
Examination  
Report  
9th July 1963  
(continued)

Tractor (1) Front bumper was tiled upwards  
(2) Front n/s mudguard was pressed in  
(3) Bonnet had dents on the n/s (?) Cab-  
pillars are bent; n/s wooden pillar was  
cracked. The whole roof was missing. The  
back of cab is on the slant. The seats were  
missing (4) Tool tray-planks were missing and  
rear beam broken (5) Exhaust pipe - bent &  
broken.

(8) The general condition of the vehicle (dis- 10  
counting the effects damage) was:-

Unable to determine

Date: 9.7.63. Signature .....?

+ Delete where not applicable

Appointment: Examiner

ROAD TRANSPORT DEPARTMENT  
NEGRI SEMBILAN

SEREMBAN POLICE  
DISTRICT REGISTRY

Date: 17 Jul 1963. Recd.

20

"A" (5)

Inquest  
Notes  
10th April  
1964

"A" (5)Inquest Notes

Before me in the Open Court  
This 10th day of April 1964.

Sd: Mohd Yusof  
Magistrate, N.S.  
Sitting at Seremban.

R.I. 42/63  
SDR. 40/63

Enquiry into the death of  
Ibrahim bin Kimpal

30

Chief Inspector Harbhajan Singh for

police. W.l. -

Tan Keng Hong a/s in Hokkien.

Lorry driver living at Yoong Leok Kee Sawmill,  
Paroi.

10 On 1.6.63 about 12.00 noon I left the sawmill driving lorry NA 3664 for Kuala Pilah. The lorry was with a trailer. One, Ahmad b. Kassim, was the attendant (Ahmad bin Kassim idd.) At about 3.00 p.m. I arrived at Bukit Tinggi and after loading the timber logs left Bukit Tinggi. There were about 3 logs. They were long logs of about 20 ft in length. They were placed in the lorry and bound with steel chains.

20 When I left Bukit Tinggi, the lorry attendant was seated by my side in the cab. When I had left the K.P. checking station and on my way opposite the Rex K.P. Theatre I met a Malay Male. I know the person but I do not know his name. He was working in the Timber checking station. This man stopped my lorry and told me that he wanted a lift to Seremban and I agreed to take him along. He was seated beside me between the attendant and me.

On arrival at the 9th milestone Seremban/K.P. Road after negotiating a bend I felt the trailer behind was swaying about. I tried to control the lorry but was not successful. Finally the lorry fell on its left side and landed with all its wheels in the air.

30 I managed to crawl out of the cabin. I saw the attendant pinned under the roof of the cabin and the other person by the side also pinned down. The attendant was able to get himself free but I failed to pull the other person. A van passed by on its way from K.P. I wanted to ask for help from the occupants of the van but they were all females. A taxi then passed by and I requested the taxi-driver to help me but he told me to inform my towkay. I went in the taxi to Paroi. The towkay was subsequently informed. I went to Paroi P/S.

40 I was injured on my right hip. One of his legs were fractured. There were 3 passengers in the taxi and I asked all of them to help but they refused. I left K.P. about 4.10 p.m. The accident occurred sometime past 5.00 p.m.

Exhibits

"A" (5)

Inquest  
Notes  
10th April  
1964  
(continued)

Exhibits

"A" (5)Inquest  
Notes10th April  
1964

(continued)

I was going about 30 m.p.h. just before the accident. At this stretch of road, the road is going downhill. There was a bridge and a bend nearby. The surface of road was wet as it was after a rain. I was not travelling fast but I cannot explain why the trailer should sway from side to side.

I have been a lorry driver for the past 6 - 7 years. I had been driving this particular lorry 6 months prior to incident.

10

After informing the towkay and making report I returned to the scene with the sawmill clerk. When I returned to the scene the police had already arrived and I found that the injured persons were no more there. I was told that the injured persons were taken away by a passing motorist.

There was a Cpl. and P.C. at the scene. There was no Inspector. I arrived at the scene sometime past 6.00 p.m. and left with Cpl. and P.C. at about 7.00 p.m. (Insp. Hashim called in) I did not see this Inspector at the scene.

20

On that very night, the lorry was towed to Seremban.

I do not know whether the lorry was examined by the R.I.M.V. (NRIC of Ibrahim bin Kimpal shown and produced as Exh. A for identification). This is the photo of deceased to whom I gave a lift.

This lorry which I was driving was a timber lorry. When I felt the trailer swaying from side to side I tried to stop the lorry by applying the brakes gradually.

30

Sd: Yusof

10.4.

W.2 -

Ahmad bin Kassim a/s in Malay:-

Lorry attendant living at Kg. Paroi, Seremban. Aged 19. I am employed by Yoong Leok Kee Sawmill, Paroi.

On 1.6.63 at 12.00 noon I was the attendant of lorry NA 3664 with W.1 as driver from the sawmill to



Bukit Tinggi. At Bukit Tinggi 3 timbers were loaded on the lorry and then we left for Seremban. At Forest checking office K.P. we stopped and proceeded on to Seremban. Near Rex K.P. Theatre a male Malay asked for a lift and he sat between me and W.1.

Exhibits

"A" (5)

Inquest  
Notes  
10th April  
1964  
(continued)

10 We left K.P. about 5.00. At about 5.45 p.m. we reached the 9 m.s. Seremban/K.P. Road. At the sawmill before we left I checked the brakes and I found them in order. When we reached the 9 m.s. we were going down hill and I saw W.1 applied the brakes but had no effect. The lorry proceeded on at a speed down the slope. W.1 then manouvered the lorry by following the road and the lorry gathered speed.

20 After negotiating a bend, W.1 could not control the lorry anymore and the lorry turned turtle. I did not see the speedometer as there was no speedometer in the lorry. I think the lorry was going at about 30 - 35 m.p.h. before it capsized. When it capsized I did not remember what had happened next. I was really unconscious and regained consciousness at the Hospital.

I was admitted to Hospital for about 4 months. I was injured on my right leg. It was not raining then and the road was not wet.

(Exh. A idd.) This was the person who got the lift.

30 Sd: Yusof  
10.4.

W.3 -

Hashim bin Abdul Rahman a/s in English:

Sr. Police Inspector O.C. Traffic Seremban.

40 On 1.6.63 at 7.05 p.m. as a result of information received I proceeded to 9 m.s. S'ban/K.P. accompanied by a police photographer. On arriving at the scene, there was a timber lorry on the right side of the road as one faces K.P. The lorry was NA 3664. It was a timber lorry with trailer. All its wheels were in the air. It had overturned.

The whole of the cab was smashed. There was

Exhibits"A" (5)

Inquest  
Notes  
10th April  
1964  
(continued)

no one at the scene. From the P.C. who was there I found out that a Malay male who was seriously injured had been taken to Hospital.

As one proceeds to Seremban, it is a down hill slope. There was left hand bend as one proceeds towards K.P. and it was about 10 yds away and it was a sharp bend. At the bend there was a bridge.

There was a skid mark.

I took measurements of the road and drew a sketch plan (sketch plan produced as Exh. P.1 and Key P.1 K.).

10

I instructed the photographer to take 3 photos of the scene that night and another 2 the following morning. (5 photos identified produced as Exh. B 1 - 5).

This lorry was carrying 3 logs. One was longer than the other 2. They were bound by steel chains. The whole logs were not intact. The chain had broken.

20

I then proceeded to the Hospital, where I found a male Malay, Ibrahim b. Kimpal. When I arrived there, he had died. I was informed he died at 8.00 p.m. I took possession of his NRIC. (Exh. A now becomes Exh. P.2.). I saw W.2. at the Hospital.

I instructed that the lorry be removed to Seremban Transport Yard.

I then issued a P.M. order.

On the following day I identified the body to the medical officer for p.m.

30

On 4.6.63 the lorry was examined by the Vehicle Examiner and I received the report on 9.7.63 (produced as Exh. P.3.).

On 5.8.63 I received the p.m. report (produced as Exh. P.4).

Sd: Yusof  
10.4  
(Witness released)

W.4 -

Zainal b. Hj. Ahmad a/s in Malay.

D/P.C. 25139 stationed at Seremban.

On 1.6.63 at 7.05 p.m. I accompanied W.3 to 9 m.s. S'ban/K.P. Rd. On his instruction I took 3 photos and on the next morning I took another 2 photos. These are the negatives (produced as Exh. P.5 A - E and Exh. B. 1 - 5 now becomes Exh. P.6 A - E).

Exhibits

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"A" (5)

Inquest  
Notes  
10th April  
1964  
(continued)

10

Sd: Yusof  
10.4.

Verdict:

Death by misadventure but the Court cannot exclude the possibility of the driver being careless in driving the lorry.

Cause by death:

Stoved in chest from multiple fracture of ribs and rupture heart, when deceased was pinned underneath the cab of lorry NA 3664 when it overturned at 9 m.s. S'ban/K.P. Rd.

20

Sd: Yusof  
10/4

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Exhibits

"A" (6)

MOTOR POLICY NO. M.V.(C) 619/04/10223/63

"A" (6)

Motor Policy  
No. M.V. (C)  
619/04/10223/63

5462



COMMERCIAL VEHICLE

STAMP OFFICE  
12/10/63

THE  
**NEW INDIA ASSURANCE**  
COMPANY LIMITED.

Kuala Lumpur Branch :  
Indian Chamber of Commerce Building,  
118, Batu Road,  
P. O. Box 788  
Kuala Lumpur.

Head Office :  
Mahatma Gandhi Road  
P. O. Box 1003  
Kuala Lumpur.

**Motor Policy**  
(COMMERCIAL VEHICLE).



**Whereas** the Insured by a proposal and declaration which shall be the basis of the Policy, deemed to be incorporated herein has applied to THE NEW INDIA ASSURANCE COMPANY LIMITED (hereinafter called 'The Company') for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance

**Now this Policy Witnesseth:-**

That in respect of events occurring during the Period of Insurance and subject to the terms, exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this policy)

**SECTION I—LOSS OR DAMAGE.**

1. The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon
  - (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear
  - (b) by fire external explosion self-ignition or lightning or burglary housebreaking or theft
  - (c) by malicious act
  - (d) Whilst in transit (including the process of loading and unloading incidental to such transit) by
    - (i) road rail inland waterway lift or elevator
    - (ii) direct sea route across the straits between the island of Penang and the mainland
2. At its own option the Company may pay in cash the amount of the loss or damage or may repair, replate or replace the Motor Vehicle or any part thereof or its accessories or spare parts. The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts. The Insured's estimate of value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage.
3. If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained.
4. The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that:—
  - (a) the estimated cost of such repair does not exceed the Authorised Repair Limit
  - (b) a detailed estimate of the cost is forwarded to the Company without delay

**EXCEPTIONS TO SECTION I.**

The Company shall not be liable to pay for

- (i) consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages
- (ii) damage caused by overloading or strain
- (iii) damage caused by explosion of any boiler forming part of attached to or on the Motor Vehicle
- (iv) damage to tyres unless the Motor Vehicle is damaged at the same time

**SECTION II—LIABILITY TO THIRD PARTIES**

1. The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of
  - (a) death of or bodily injury to any person
  - (b) damage to property
2. In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver
  - (i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply
  - (ii) is not entitled to indemnity under any other policy.

In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of this Section provided that such representatives shall as though they were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply

## Exhibits

"A" (6)

Motor Policy  
No. M.V. (C)  
619/04/10223/63  
(continued)

4. The Company will pay all costs and expenses incurred with its written consent
5. In the event of accident involving indemnity under this Section to more than one person the limits of liability shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the Insured.
6. The Company may at its own option
  - (a) arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section
  - (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section

## EXCEPTIONS TO SECTION II.

The Company shall not be liable in respect of

- (i) death bodily injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taking away of the load from the Motor Vehicle after unloading therefrom
- (ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment
- (iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises
- (iv) damage to property belonging to held in trust by or in the custody of or control of the Insured or a member of the Insured's household or being conveyed by the Motor Vehicle.
- (v) damage to any bridge weighbridge or viaduct or to any road or anything beneath by vibration or by the weight of the Motor Vehicle or of the load carried by the Motor Vehicle
- (vi) damage to property caused by sparks or ashes from the Motor Vehicle if steam driven
- (vii) damage to property caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle
- (viii) death or bodily injury caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle except so far as is necessary to meet the requirements of the Legislation

## SECTION III—TOWING DISABLED VEHICLES.

This Policy shall be operative whilst the Motor Vehicle is being used for the purpose of towing any one disabled mechanically propelled vehicle and the Company will indemnify the Insured in terms of Section II in respect of liability in connection with such towed vehicle provided that

- (a) such towed vehicle is not towed for reward
- (b) the Company shall not be liable by reason of that Section in respect of damage to such towed vehicle or property being conveyed thereby

## NO CLAIM DISCOUNT.

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of this Policy the renewal premium for such part of the insurance as is renewed shall be reduced as follows:

Period of Insurance	Discount
The preceding year	10%
The preceding two consecutive years	15%
The preceding three or more consecutive years	20%

If the Company shall consent to a transfer of interest in this Policy the period during which the interest was in the Transferor shall not accrue to the benefit of the Transferee

If more than one motor vehicle is described in the Schedule the No Claim Discount shall be applied as if a separate Policy had been issued in respect of each such motor vehicle

## AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this Policy or of any other person to recover an amount under or by virtue of the Legislation

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation

## GENERAL EXCEPTIONS.

The Company shall not be liable in respect of

1. Any accident loss damage or liability caused sustained or incurred
  - (a) outside the Geographical Area
  - (b) whilst the Motor Vehicle is
    - (i) being used otherwise than in accordance with the Limitations as to Use
    - (ii) being driven by or is for the purpose of being driven by him in charge of any person other than an Authorised Driver
2. Any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of nature invasion the act of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war strike riot civil commotion mutiny rebellion revolution insurrection military or usurped power or by any direct or indirect consequences of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accident loss damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim.
3. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement
4. any sum which the Insured would have been entitled to recover from any party but for an agreement between the Insured and such party

Exhibits

"A" (6)

Motor Policy  
No. M.V. (C)  
619/04/10223/63  
(continued)

SCHEDULE.

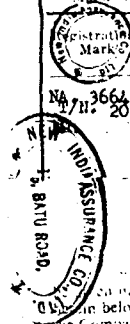
Policy No. M.V. (C)  
619/04/10223/63.

Insured: Name **Messrs. Young Leok Kee Corpt. Ltd,** Trailer..... Premium: \$126.00  
 Address **28/31, Wilkinson Street, Soremban.** Less 20% N.C.B. .... \$ 10.00  
 Carrying on or engaged in the business of and no other for the purposes of this Insurance: \$136.00  
 Stamp duty..... .25  
**\$109.05**

Period of Insurance:  
 (a) From **1st May, 1963.**  
 to **30th April, 1964.** (both dates inclusive)  
 (b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium

Motor Vehicle: Any of the following :-

Registration Mark	Make and Type of Body	Cubic Capacity or H.P.	Year of Manufacture	Carrying or Seating Capacity including Driver	Insured's Estimate of Value including Accessories and Spare Parts	
					Vehicle	Trailer
NA 3664/20	Austin Lorry	29Hp	1960	5 Tons	Third Party Only.	



NOTICE

Any notice, communication, intimation or information given or required to be given or required to be given under the Policy must be given to the Company in writing addressed at its Registered address shown below. No notice or communication or intimation or information addressed to or given to any agent of the Company would constitute or would be deemed to constitute a valid notice or intimation to the Company. The Registered addresses of the Company at any of which all communications, notices etc. concerning this Policy should be addressed are:

- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.
- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.
- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.
- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.
- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.
- THE NEW INDIA ASSURANCE CO. LTD. (Incorporated in India) 116, BATU ROAD, KUALA LUMPUR.

IMPORTANT NOTE: This notice must be read in conjunction with all conditions contained in this Policy.

Limitations as to Use:

Limitations as to Use:

- Use for purposes other than the Insured's business.
- Use for the purpose of pleasure (other than for the purpose of the Insured's business).
- Use for the purpose of racing, pace-making, speed trials or other similar purposes.
- Use for the purpose of towing any other mechanically propelled vehicle.

Date of Signature of Cover Note No. 17722.  
 Renewal of Policy No. 10919/62.

Notwithstanding anything stated herein the Company shall not be liable in respect of any amount of loss or damage in respect of which indemnity is provided by the policy in the general knowledge and consent of the Insured or his representative whilst under the influence of intoxicating liquor or drugs.

IN WITNESS whereof the undersigned being duly authorised by the Directors of the Company has/have hereunto set his/their hand at Kuala Lumpur this 7th day of May, 1963

Examined **MT.** For THE NEW INDIA ASSURANCE CO., LTD.  
 Entered **Branch Secretary**

Exhibits

"A" (6)

Motor Policy  
No. M.V. (C)  
619/04/10223/63



**NEW INDIA**  
ASSURANCE COMPANY, LIMITED.  
(Incorporated in India)

**MOTOR POLICY**  
(COMMERCIAL VEHICLE).

Policy No. M.V. (C) 619/04/10223/63.

Name Messrs. Yoong Loek Kee Corpt. Ltd.

Expires on 30th April, 1964.

Notice of the happening of any  
accident or loss covered under this  
Policy should be given immediately to  
the Company.

Please read your Policy and its Conditions  
and if incorrect return to the Company.

Jathar & Co., 1905-61.

NP 5664

**CONDITIONS.**

1. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.
2. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company.
3. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examining the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy.
4. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured shall have knowledge of any impending prosecution request or fatal enquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender.
5. No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if so desired to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
6. At any time after the happening of any event giving rise to a claim or series of claims under Section II-1 (b) of this Policy the Company may pay to the Insured the full amount of the Company's liability under Section II-1 (b) and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for any damage alleged to have been caused to the Insured in consequence of any alleged action or omission of the Company in connection with such defence settlement or proceedings or of the Company relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.
7. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current Period of Insurance) the Insured shall be entitled to a return of premium less premium at the Company's Short Period rates for the period the Policy has been in force.
8. If at any time any claim arises under this Policy there is any other insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expenses. Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under proviso (ii) of Section II-2 of this Policy.
9. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Empire appointed in writing by the Arbitrators before entering upon the reference. The Empire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
10. The due observance and fulfilment of the Terms of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

Exhibits

"B"

Statement  
of Agreed  
Facts  
29th May  
1972

Statement of Agreed Facts

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 158 of 1965

BETWEEN

Fatimah binte Abdullah (f) and  
Mohd Yusof bin Ibrahim as  
Administrators of the Estate of  
Ibrahim bin Kimpal, deceased Plaintiffs

AND 10

1. Tan Keng Hong  
2. Yoong Leok Kee Corpn. Ltd. Defendants

AND

New India Assurance Company Ltd.  
116 Batu Road, Kuala Lumpur Third Party

AGREED FACTS

1. That the accident in this Suit occurred on 1st June 1963 at about 4.00 p.m. at or near the 9th mile Kuala Pilah/Seremban Road area in Kuala Pilah District, State of Negri Sembilan. 20
2. That motor vehicle No. NA 3664 is a timber lorry with a trailer attached to it.
3. That there was no other traffic on the road at the time of the accident.
4. That there is a bridge at the said bend.
5. That the centre photograph at page 7 in the Agreed Bundle of Documents show the bend and bridge in question.
6. That the deceased Ibrahim bin Kimpal was seated in the driver's cab of the said motor lor lorry next to the first Defendant at the time of the accident. 30
7. That the deceased died as a result of the



accident.

Dated this 29th day of May, 1972.

Sd: N. Ramachandran & Co.

Solicitors for the  
Plaintiffs

Sd: Atma Singh Gill  
& Co.

Solicitors for the  
Defendants

Exhibits

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"B"  
Statement  
of Agreed  
Facts  
29th May  
1972  
(continued)

This Agreed Facts was filed by Messrs. N. Ramachandran & Co., Solicitors for the Plaintiffs and whose address for service is at Yusof Building, Seremban.

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 :

1. TAN KENG HONG  
2. YOONG LEOK KEE CORPORATION LIMITED (Defendants)  
Appellants

- and -

NEW INDIA ASSURANCE COMPANY LIMITED (Third Party)  
Respondents

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RECORD OF PROCEEDINGS

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*Philip Conway Thomas & Co.,*  
*61 Catherine Street,*  
~~WILSON FREEMAN,~~  
~~67/8 Westminster Palace Gardens,~~  
~~Artillery Row,~~  
London, SW1E 6HB

Solicitors for the Appellants.

COWARD CHANCE,  
Royex House,  
Aldermanbury Square,  
London, EC2V 7LD.

Solicitors for the Third  
Party Respondent.