**DALAM MAHKAMAH RAYUAN MALAYSIA**
**(BIDANGKUASA RAYUAN)**
**RAYUAN SIVIL NO. W – 04 – 197 – 2004**

ANTARA

TEOH CHU THONG … PERAYU

DAN

1. ANANTHA KIRUISAN P.S.R. @ ANANTHA KRISHNAN
2. S. RAMLI B. ABDUL LATIF … RESPONDEN-RESPONDEN

(Dalam Perkara Guaman Sivil No: R2-12-541-2000
Dalam Mahkamah Tinggi Malaya di Kuala Lumpur

Antara

1. Anantha Kiruisan P.S.R. @Anantha Krishnan
2. S. Ramli B. Abdul Latif … Perayu-Perayu-

Dan

Teoh Chu Thong … Responden)

Coram: Gopal Sri Ram, J.C.A.
Suriyadi bin Halim Omar, J.C.A.
Hasan bin Lah, J.C.A.

## JUDGMENT OF GOPAL SRI RAM, J.C.A.

1. This is a case of a road accident. The matter was tried by the sessions court which found for the plaintiff. It held the defendant to be solely to blame for the collision. The High Court reversed. It dismissed the plaintiff's claim. It did so on the ground that the sessions court had erred in its evaluation of the evidence. The

plaintiff appealed to us. We allowed the appeal and restored the judgment of the sessions court. In cases of this sort we do not, as a general rule, produce written reasons for our decision. First, because these kinds of cases merely turn on an assessment of facts: they do not involve any novel or important principle of law. Second, because in matters that originate in a subordinate court, this Court is the final arbiter and no further appeal lies to the Federal Court. That is provided for in section 96 of the Courts of Judicature Act 1964 which, *inter alia*, states that an appeal shall lie to the Federal Court from "any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction." Notice the words "exercise of its original jurisdiction". In the present instance, the High Court exercised its **appellate** and not its **original** jurisdiction. As such, on a reading of the plain words of the statute, the Federal Court has no jurisdiction over this case. Yet, the respondent before us appears to have moved that Court.

2. The main issue in this appeal is whether the High Court was correct in interfering with the sessions court's finding of pure fact based on evidential credibility. The plaintiff's case at first instance was that he was riding his motor cycle along Jalan Loke Yew. He was headed in the direction of Cheras. The defendant who was a taxi driver overtook the plaintiff and obstructed his

path. Because of the suddenness of the defendant's movement of his vehicle, the plaintiff ran into the rear of the taxi and was injured. The defendant's version was that he was proceeding along Jalan Loke Yew when the plaintiff suddenly collided into the rear of the former's taxi. There were then two diametrically opposed versions presented to the sessions court. The sessions court preferred the plaintiff's version and found the defendant solely to blame for the collision. In doing so, the sessions court thought it likely that the defendant's taxi must have suddenly pulled up to pick up a passenger from the kerb and that must have accounted for the way in which the vehicle was driven. The judicial commissioner who reversed the sessions court took the view that as there was no evidence suggesting that there had been any person on the kerb reversed the sessions judge.

3. Now, there was nothing improbable in the plaintiff's story when he said that the defendant taxi had overtaken him and obstructed his path. You will see that sort of thing happening everyday in Kuala Lumpur. It is a common a occurrence in Kuala Lumpur for a taxi to suddenly pull up to the kerb for the purpose of either picking up a passenger or dropping one off. So the sessions court was clearly entitled to suggest that as a probable cause for the way in which the defendant's taxi behaved. This in no way flawed its judgment.

4. The judicial commissioner does appear to have appreciated the role of an appellate court in a case such as this. That role was set out by **Clarke v Edinburgh Tramways Co. per Lord Shaw Dunfermline in 1919 SC (HL) 35, 36**, where he said:

> "When a judge hears and sees witnesses and makes a conclusion or inference with regard to what on balance is the weight of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the judge makes any observations with regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression

> upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put to himself, as I now do in this case, the question, Am I — who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case — in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment."

5. More recently, **Ryan v Jarvis [2005] UKPC 27**, an appeal from Antigua & Barbuda Lord Hoffmann stated the appellate practice in this way:

> "It is of course most unusual for an appellate tribunal to reverse a trial judge's findings on credibility on the ground that the evidence which

> he rejected has the ring of truth. The true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record."

6. So too here. The ring of truth or falsity in the evidence of the witnesses who gave evidence before the sessions court would have been more audible to that court than to the judicial commissioner who heard the intermediate appeal. Having concluded that the High Court had erred in interfering with the sessions court's findings, this Court had no alternative but to allow the appeal and to restore the judgment entered at trial. Other consequential orders that usually follow a successful appeal were made.

7. My learned brothers Suriyadi bin Halim Omar and Hasan bin Lah, J.J.C.A. have seen this judgment in draft and have expressed their agreement with it.

Dated: 5 December 2007.

Gopal Sri Ram
Judge, Court of Appeal
Malaysia
Putrajaya

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| Counsel for the appellant: | Nelson Cherian |
| Solicitors for the appellant: | Tetuan Shahriza Varegheese & Chandran |
| Counsel for the respondent: | M. Ravendran |
| Solicitors for the respondent: | Tetuan G. Pereira & Associates |