

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO.C-02-811-2002

ANTARA

SUMARNI ... PERAYU/PEMOHON

DAN

1. YOW BING KWONG ... RESPONDEN-
2. CHON CHEW LIN ... RESPONDEN

Dalam Perkara Rayuan Sivil No. 12-18-2001
Dalam Mahkamah Tinggi Malaya di Temerloh
Dalam Negeri Pahang Daru

Antara

SUMARNI ... Perayu

Dan

1. YOW BING KWONG ... Responden-
2. Chon Chew Lin ... Responden

CORAM: JAMES FOONG CHENG YUEN, HMR
ABDULL HAMID EMBONG, HMR
ZAINUN ALI, HMR

GROUND OF JUDGMENT

1. I have read the judgment in draft of my learned brother James Foong JCA and am in agreement with my learned brother's finding that a sum of RM 20,000 be awarded to the plaintiff as general damages for her loss of earning capacity. I too would allow this appeal with no order as to costs.

2. As for the preliminary objection raised by the defendants that this appeal by the plaintiff should have been filed and heard separately, and not as was done here, filed as a cross appeal and heard simultaneously with the defendants' appeal on liability, I find no flaw arising from the action taken by the plaintiff to file a cross appeal. As was explained by learned counsel for the plaintiff, the defendants had earlier filed an appeal against the finding of liability by the learned sessions judge, even before the plaintiff could file his appeal on the quantum awarded. Under that situation the plaintiff may rightly act under 0.55 r.3 of the Rules of High Court 1980 and file a cross appeal within 7 days, which was duly done. In essence a cross appeal although tagged to the defendants' initial appeal operates as an

independent appeal and the appellate court may rehear both the appeals together. In fact to file a cross appeal under 0.55 r.3, Rules of High Court as was done by the plaintiff here was quite regular and ultimately be a time and cost saving exercise. The objection taken by the defendants on this matter is thus without merit and should be dismissed.

Dated: 5th October, 2007

DATO' ABDULL HAMID EMBONG
Judge Court of Appeal
Malaysia

Counsel for the Appellant

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(M/s S. Siva & Co.)

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Encik Wan Kuzaini Azli bin Wan Abu Bakar
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