

**DALAM MAHKAMAH MAJISTRET DI CAMERON HIGHLANDS**

**DI DALAM NEGERI PAHANG DARUL MAKMUR**

**GUAMAN SIVIL NO. CG-A73KJ-7-03/2022**

**ANTARA**

1. **SING KOK WAH (Plaintif adalah pendakwa yang dibawah umur diwakili oleh ibu dan sahabat wakil ZAITUN BT YOK JUNTAI)**

2. **S'NG LI LI**

**... PLAINTIF-PLAINTIF**

**DAN**

**LEUNG MUN YEW**

**... DEFENDAN**

**Grounds of Judgments**

**A) Introduction**

[1] This is my grounds of judgment in respect of the appeal filed by the Plaintiffs on the issue of liability and quantum.

**B) Backgrounds Facts**

**i. Parties**

[2] At the time of the accident, the First Plaintiff was riding a motorcycle bearing a registration number of AGH 1257 and the Second Plaintiff was the motorcycle's pillion rider.

[3] At the material time, Defendant was driving a Hilux bearing a registration number of AHE 6333.



**ii. Brief Facts**

[4] It is an undisputed fact that the collision occurred whilst the Defendant was trying to overtake another car in front of him. It is also an undisputed fact that there were no eyewitnesses to the collision between the Plaintiffs and the Defendant.

**iii. Plaintiffs' Version**

[5] On 19 January 2021 approximately at 10 am, the First Plaintiff was riding a motorcycle bearing a registration number of AGH 1257 together with the Second Plaintiff as a pillion rider, heading from Kampung Ubi to Tanah Rata.

[6] It is the Plaintiffs' version of the accident that they were riding the motorcycle heading from Kampung Ubi to Tanah Rata and upon reaching the KM 58.5 of the Jalan Besar Tanah Rata-Ringlet, a Hilux bearing a registration number of AHE 6333 driven by the Defendant suddenly changed its course by cutting off the car in front of him and went into the Plaintiffs' right of lane.

[7] According to the plaintiff, the defendant attempted to pass another vehicle while driving on a double line and caused the plaintiff's motorcycle to collide with the Defendant's Hilux.

**Defendants' Version**

[8] It is the Defendant's version of the accident that the Defendant was driving a Hilux bearing a registration number AHE 6333 and upon reaching the KM 58.5 of the Jalan Besar Tanah Rata-Ringlet, he collided with a motorcycle bearing a registration number AGH 1257 whilst he was trying to overtake another car in front of him.

[9] According to the Defendant, he had signalled before attempting to overtake the car in front of him.



## C) Findings

### 1. LIABILITY

#### **WHETHER THE PLAINTIFFS HAD PROVED ON THE BALANCE OF PROBABILITIES, THEIR CLAIM AGAINST THE DEFENDANT.**

[10] In accident matters, it is the duty of the Plaintiff to establish negligence on the part of the defendant. The legal principle with respect to this issue has been succinctly enunciated in the High Court case of **Che Pah Itam v. Chang Bek Lee [1998] 4 CLJ 517** as follows:

**It is trite law that the onus of proving negligence lies on the plaintiff. In Wong Thin Yit V. Mohamed Ali [1971] 1 LNS 151 Ong CJ (as he then was) held:**  
**In a negligence action the onus of proof rests wholly on the plaintiff, whether or not the defendant gives evidence.**  
**The plaintiff cannot succeed without proof of defendant's negligence.**

Hashim Yeop A. Sani J (as he then was) addressing the same issue in **Ng Chui Sia v. Maimon Ali [1982] 1 LNS 95[1983] 1 MLJ 110** had this to say at p. 111:  
**When an accidental harm is done it is not for the doer to excuse himself by proving that the accident was inevitable and that there was no negligence on his part.**  
**It is for the person who suffers the harm to prove affirmatively that the accidental harm was due to the negligence of the other person.**

S

[Emphasis added]

[11] I have perused all the documents filed by parties, exhibits tendered in court, evidence given by the witnesses as well as the written submissions, and found that the Plaintiffs had proved on the balance of probabilities, their claim against the Defendant. Accordingly, I have allowed the Plaintiffs' claim against the Defendant with costs.

[12] It is my finding that the Plaintiffs are 10% liable for causing the accident and the Defendant is 90% liable for causing the accidents. My findings stem from the following reasons:



**a. The evidence given by the Plaintiffs to support their version of how the accident occurred is consistent with exhibit P4 (a to c).**

**The First Plaintiff's Evidence**

[13] In essence, the Plaintiffs PW-2 and PW-3 testified that on 19 January 2021 approximately at 10 am, the First Plaintiff was riding a motorcycle bearing a registration number of AGH 1257 together with the Second Plaintiff as a pillion rider, heading from Kampung Ubi to Tanah Rata.

[14] As they were riding their motorcycle, a Hilux bearing a registration number of AHE 6333 driven by Defendant suddenly changed its course by cutting off the car in front of him and encroaching onto the Plaintiffs' lane.

[15] This has caused the plaintiff's motorcycle to have collided with the Defendant's motor Hilux.

[16] The evidence given by the First Plaintiff (PW-2) to support his version as to how the accident occurred can be seen in his Witness Statement (PS-SP2) in question and answer number 6 which is reproduced below:

6. S: Boleh beritahu Mahkamah bagaimana kemalangan ini berlaku?  
J: Kemalangan berlaku seperti di dalam laporan polis saya.

[17] During the Examination in Chief, the First Plaintiff (PW-2) admitted the content of the police reports lodged by him and explained how the accident had occurred. For convenience, his evidence during Examination in Chief is reproduced below:

- S : Rujuk soalan 4 Pernyataan Saksi dan Ikatan B muka surat 9, 10 dan 11. Adakah ini semua Laporan Polis kamu?  
J : Ya, ini Laporan Polis saya.
- PP : Pohon Laporan Polis tersebut ditandakan sebagai eksibit.  
Mah : Eksibit P4 (a)- Laporan Polis Trafik C/Highlands 76/21.  
Eksibit P4 (b)- Laporan Polis Trafik C/Highlands 78/21.  
Eksibit P4 (c)- Laporan Polis Trafik C/Highlands 80/21.



S : Rujuk soalan 6 Pernyataan Saksi. Terangkan macam mana berlaku kemalangan?

J : Saya nak pergi Tanah Rata lebih kurang pukul 10 pagi dan lepas tu Hilux melanggar saya.

[18] For convenience, The First Plaintiff's Police Reports (Eksibit P4 (a)- Laporan Polis 76/21, Eksibit P4 (b)- Laporan Polis 78/21 and Eksibit P4 (c)- Laporan Polis 80/21) are reproduced below:

**Exhibit P4 (a)- Laporan Polis Trafik C/Highlands/ 76/21**

PADA 19/01/2021 JAM LEBIH KURANG 10:00 PAGI, SAYA MENUNGGANG MOTORSIKAL JENIS HONDA EX5 NOMBOR PENDAFTARAN AGH1257 DARI KAMPUNG UBI MENUJU KE PEKAN TANAH RATA. **APABILA SAYA SAMPAI DI SATU SELEKOH DI KM 58.5 JALAN BESAR TANAH RATA, RINGLET. TIBA-TIBA SEBUAH 4WD JENIS TOYOTA HILUX NOMBOR PENDAFTARAN AHE 6333 DATANG DARI ARAH BERTENTANGAN DAN TERLANGGAR PADA BAHAGIAN HADAPAN MOTORSIKAL YANG SAYA TUNGGANG. SEMASA KEJADIAN 4WD TERSEBUT CUBA MEMOTONG SEBUAH MOTORKAR YANG BERADA DI HADAPANNYA.** DALAM KEJADIAN ITU, SAYA MENGALAMI KECEDERAAN PATAH JARI TANGAN KANAN, LUKA PADA KAKI SEBELAH KANAN, KEROSAKAN MOTORSIKAL SAYA IALAH COVER SET HADAPAN TELAH REMUK, HANDLE TELAH BENGKOK, CERMIN SISI KIRI DAN KANAN TELAH PECAH, SPORT RIM TAYAR HADAPAN TELAH BENGKOK.

[Emphasis added]

**Exhibit P4 (b) Laporan Polis Trafik C/Highlands 78/21**

BERKAIT LAPORAN TRAFIK CH (T): 76/21 SAYA INGIN MEMBUAT PENAMBAHAN LAPORAN. SAYA MENGALAMI KECEDERAAN PATAH KAKI SEBELAH KANAN DAN SAYA TELAH MENERIMA RAWATAN SELAMA (5) HARI DI HOSPITAL RAJA PERMAISURI BAINUN IPOH. SEKIAN LAPORAN SAYA.



S/N iqq0j4bTbEq4n7l3kQbLJw

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal

**Exhibit P4 (c)- Laporan Polis Trafik C/Highlands 80/21**

PADA HARI INI 19/02/2021 JAM LEBIH KURANG 1020 PAGI, BERKAIT REPORT CH (T): 76/ 2021 SAYA INGIN MEMBUAT PENAMBAHAN REPORT DIMANA SEMASA KEJADIAN SAYA MENUNGGANG MOTORSIKAL JENIS HONDA EX5 NOMBOR PENDAFTARAN AGH 1257 BERSAMA PEMBONCENG IAITU KAKAK SAYA NAMA: S'NG LI LI KPT: 020726-06-0140 ALAMAT KAMPUNG SNGAI UBI 3900 TANAH RATA C/ HIGHLANDS PAHANG. SEMASA KEJADIAN, KAKAK SAYA MENGALAMI KECEDERAAN PATAH PEHA KANAN DAN MENDAPAT RAWATAN DI HOSPITAL KUALA LIPIS SELAMA (21) HARI. SEKIAN LAPORAN SAYA.

[19] During cross-examination, the First Plaintiff (PW-2) also reaffirmed his version of the accident. The relevant evidence given by the Plaintiff (PW-2) during the Cross Examination is reproduced below:

S : Rujuk Laporan Polis. Jelaskan bilakah kamu lihat kenderaan tersebut?

J : Lebih kurang 5 meter.

**S : Kamu sempat lihat kenderaan dalam masa 5 meter sahaja?**

**J : Sebab dia nak overtake kereta lain.**

**S : Bagaimana kamu tahu?**

**J : Saya nampak kenderaan dibelakang motorkar lain.**

S : **Selepas nampak motorcar keluar dari lane**, apa kamu buat untuk mengelakkan kemalangan

J : Saya tidak sempat buat apa-apa.

[Emphasis added]

[20] Hence, based on the above evidence given by the First Plaintiff (PW-2), it can be seen that the evidence given by the First Plaintiff (PW-2) is consistent during Examination in-Chief and Cross-Examination as well as with exhibit P4 (a), exhibit P4 (b) and exhibit P4 (c).



## The Second Plaintiff's Evidence

[21] The evidence given by the First Plaintiff (PW-2) was corroborated by the Second Plaintiff (SP3) as per in her Witness Statement (PS-SP3) in question and answer number 1 to 3 which states as follows:

1. S: Pada tarikh 19/01/2021 lebih kurang jam pukul 10.20 pagi, apakah yang berlaku kepada kamu?  
J: Saya telah terlibat dalam kemalangan jalanraya pada tarikh dan masa tersebut di KM58.5 Jalan Besar Tanah Rata -Ringlet.
2. S: Pada masa kemalangan tersebut, kenderaan apakah yang dinaiki oleh kamu dan yang bernombor pendaftaran tersebut?  
J: Pada masa tersebut saya membonceng m/sikal pendaftaran No. AGH 1257 dengan menunggang Sing Kok Wah.
3. S: Kamu masih ingat pelanggaran dengan kenderaan apa dan apakah nombor pendaftaran kenderaan tersebut?  
J: Saya terlibat dalam kemalangan dengan sebuah m/kar No. Pendaftaran ADX 9497.

[22] Hence, based on the Second Plaintiff's (PW-3) evidence above, it can be seen that the evidence given by the First Plaintiff's (PW-2) and the Second Plaintiff's (PW-3) are consistent.

### **b. The Defendant admitted that the collision occurred whilst he was trying to overtake a car in front of him.**

[23] It is undisputed that the collision occurred while the Defendant was trying to overtake a car in front of him. The defendant did admit during Examination in Chief and Cross Examination that the collision occurred whilst he was trying to overtake the car in front of him.

[24] For convenience, the Defendant's evidence can be seen in his Examination in Chief which is reproduced below:

- S : Ada keluaran signal **semasa overtake kenderaan hadapan?**  
J : Ada.



S : Apakah kenderaan hadapan encik?  
J : Proton Waja.

S : Adakah kamu boleh estimate kelajuan motorcar dihadapan kamu?  
J : Semasa itu Waja tak laju dan beri saya space untuk potong. **Ada kesempatan, saya potong sahaja.**

[Emphasis added]

[25] During the cross-examination, the Defendant consistently admitted that the collision occurred whilst he was trying to overtake the car in front of him.

[26] For convenience, the relevant evidence given by the Defendant (DW-1) is reproduced below:

S : **Setuju kemalangan berlaku semasa memotong kenderaan dihadapan?**  
J : **Ya.**

[Emphasis added]

[27] Further, the Defendant's Police Report also admitted that the collision occurred whilst he was trying to overtake the car in front of him. For convenience, the Defendant's Police Report is reproduced as follows:

Pada 19/1/2021 jam L/ kurang 1000 HRS semasa saya memandu M/ Hilux No Pend AHE633 dari Tanah Rata menghala ke Bertam Valley, tiba di KM 58.5 Jalan Tanah Rata-Ringlet, selepas Bengkel Liew Jalan selekoh ke kanan. **Saya ingin memotong kenderaan yang berada dihadapan saya**, sebelum memotong saya pasti tiada kenderaan yang berada di arah bertentangan. **Semasa saya memotong secara tiba-tiba** sebuah m/ sikal no pendaftaran AGH1257 datang dari arah bertentangan dan saya cuba mengelak tetapi berlaku pelanggaran. M/Hilux saya mengalami kerosakan pintu hadapan sebelah kanan telah kemek dan lain-lain kerosakan tidak pasti. Saya tidak mengalami sebarang kecederaan. Sekian laporan saya.

[Emphasis added]





[28] Hence, based on the evidence above, it is clear that Defendant admitted to causing the collision while attempting to overtake a car in front of him.

**c. Mute testimonies of the sketch plan, photographs, nature of the damage to each vehicle and the observations of the investigating officer.**

[29] It is trite law that when Plaintiff and Defendant have given two diametrically opposite versions as to how the collision occurred, the court may refer to the photographs, sketch plan and measurements of the scene, and the nature of the damage to each vehicle as guidance. This principle of law has been succinctly explained by **Justice Edgar Joseph Jr** in the High Court case of **Lee Ewe Teik v. Ariffin Hussain [1990] 2 CLJ 191** as follows:

**In such a situation where the plaintiff rider and the driver have given two diametrically opposite versions as to how the collision occurred, the photographs, plan and measurements of the scene, and the nature of the damage to each vehicle must provide the most reliable guide by which their versions can be tested. (See San Seong Choy & Ors. V. Yuson Bien [1962] 1 LNS 181, per Ismail Khan J (as he then was).**

**In this case, the damage to the vehicles as evidenced by the photographs taken by the police on the day of the collision was, in my view, most material.**

[Emphasis added]

[30] Further, it is also a trite law that the Plaintiff may discharge his duty on the balance of probabilities by relying on the mute testimonies of the sketch plan, photographs, nature of the damage to each vehicle and the observations of the investigating officer as guided by the Federal Court case of **Yew You & Anor v. Mah Poay Koh & Anor [1969] 1 LNS 209** which illustrated as follows:

Such being the case, it remains to be considered whether or not any case of negligence on the part of the lorry driver had been made out. As I have said earlier, the defendants had committed themselves to their story, which was held to be false. There is no point in speculating on any other explanation, however plausible, which the defence might have been able to offer. That course is no longer open to them. **It is elementary law that the onus on the plaintiffs is satisfactorily discharged**



**once it appears to the Court on balance of probabilities that the circumstances are more consistent than not with the defendants' negligence. Evidence in support of the plaintiffs' case is not necessarily confined to what is adduced on their behalf, but the whole of the evidence, from whatever source, must also be taken into consideration.**

In my view, accordingly, the mere fact that the evidence of the alleged eyewitness proved worthless is far from conclusive against the plaintiffs. **In the nature of things the plaintiffs were compelled to rely mainly on the mute testimony of the sketch plan and photographs, together with the observations of the investigating officer as the foundation of their case. They could also avail themselves of admissions by the defence.** A fact, not to be lost sight of, is that only the self-serving evidence of the lorry driver and his mate tells us where the injured man was lying on the road before they removed him. There were no eye-witnesses. The possibility, therefore, cannot be ruled out that, if the lorry driver was at fault, his foremost concern would be to do what he could to exculpate himself. The evidence presented by the defendants ought, therefore, to be scrutinised carefully, if not with some suspicion, since they had no fear of contradiction by a dead man.

[Emphasis added]

[31] I have perused the photographs of the damaged vehicles specifically at exhibit P2 (A to H). It is my observation of exhibit P2 (E, F, G and H) that the Plaintiffs' motorcycle was damaged at the front and it is also my observation from exhibit P2 (A, B, C and D) that there appeared some scratch marks on the right front of the Hilux of driver's door.

[32] It is my findings that the evidence of the damage to the motorcycle and the motorcar is consistent with the Plaintiff's version of how the collision occurred as well as consistent with the First Plaintiff's and Defendant's Police Report.

[33] In respect of the sketch plan and the key at exhibit P1 (a) and exhibit P1 (b), it is my findings that the sketch plan had assisted the court by indicating the point of impact. It is also my findings that the sketch plan has supported the Plaintiffs' version of how the collision had occurred.

[34] Although when the Investigation Officer arrived at the place of the accident, all the vehicles had already been removed from their original position, however, the indication of the debris of the vehicles on the road supported the version of the Plaintiffs on how the collision had occurred.



**d. What is done or omitted to be done by the Plaintiffs in the agony of the moment cannot be fairly treated as negligence.**

[35] Defendants contended that the collision could have been avoided if Plaintiff had given his full attention whilst he was riding his motorcycle or kept a safe distance between his motorcycle and Defendant's Hilux since Defendant had given a signal before overtaking the car in front of him.

[36] Respectfully, I disagree with the arguments advanced by the Defendants as the First Plaintiff had consistently explained that the collision had occurred in a fast manner when Defendant's Hilux had suddenly swerved into his lawful path of the road.

[37] The evidence given by the First Plaintiff (PW-2) to explain the reason for his inability to avoid the collision can be seen in his Examination in Chief which is reproduced below:

S : Rujuk Laporan Polis. Jelaskan bilakah kamu lihat kenderaan tersebut?

J : **Lebih kurang 5 meter.**

S : **Kamu sempat lihat kenderaan dalam masa 5 meter sahaja?**

J : **Sebab dia nak overtake kereta lain.**

S : Bagaimana kamu tahu?

J : Saya nampak kenderaan dibelakang motorkar lain.

S : **Selepas nampak motorcar keluar dari lane, apa kamu buat untuk mengelakkan kemalangan**

J : **Saya tidak sempat buat apa-apa.**

[Emphasis added]

[38] I have perused all the evidence before me and find that the First Plaintiff had acted reasonably and given a reasonable response of a person who is put in a perplexed or agitated situation when exposed to danger by the wrongful act of a defendant.

[39] After considering all the evidence before me, I am satisfied that First Plaintiff had taken reasonable care for his safety and thus he should not be penalised for what is done or omitted to be done in the agony of the moment.



[40] I came to these findings by seeking guidance from the judgment of **Justice Raja Azlan Shah in the High Court case of Govinda Raju & Anor v. Laws [1965] 1 LNS 45** which enunciated as follows:

It was urged upon me that the plaintiffs contributed to the negligence of the defendant by driving at an excessive speed in the circumstances thereby failing to avoid the accident by going round the motor-vehicle when a part of it was some four to five feet on the bitumen. I cannot accept this proposition in the light of all the surrounding circumstances. It is not the case of a car being stationary and leaving some four to five feet of it on the bitumen. It is the case of a moving vehicle trying to turn right in the path of an on-coming motorcycle and intending to enter a lane to a house. The plaintiff saw the motorvehicle swerving into his path. Perplexed by being exposed to the danger created by the defendant he also swerved to his right in an attempt to avoid the accident but failed. **To my mind, when a plaintiff is perplexed or agitated when exposed to danger by the wrongful act of a defendant, it is sufficient if he shows as much judgment and control in attempting to avoid the accident as may reasonably be expected of him in the circumstances. To that extent I am satisfied that the plaintiff had so acted in the circumstances. What is done or omitted to be done in the agony of the moment cannot be fairly treated as negligence. I therefore hold that there is no contributory negligence on the part of the plaintiffs.**

[Emphasis added]

[41] Hence, based on the above reasons, it is my finding that the Plaintiff had proved on the balance of probabilities, his claim against the Defendants.

#### **WHETHER THE FIRST PLAINTIFF HAD CONTRIBUTED TO THE NEGLIGENCE BY RIDING THE MOTORCYCLE WITHOUT A MOTORCYCLE LICENSE.**

[42] The subsequent issue that must be considered by this court is whether the Plaintiffs had contributed to the negligence of the accident when the First Plaintiff was riding the motorcycle without a motorcycle license.

[43] It is a trite law that riding or driving without a valid licence *per se* is not negligent. However, the manner of riding or driving the vehicle or his conduct on the road would contribute to the negligence of the collision.



[44] It is germane, at this juncture, to quote a passage from the judgment from the High Court case of **Siti Rohani Bte Mohd Shah & Ors v. Haji Zainal Bin Saiffee [2001] 5 MLJ 8** which states as follows:

**It is very clear riding or driving without a valid licence *per se* is not negligent.** Perhaps some other violations of the Highway Code, such as failure to give way to through traffic, may enter, depending on the facts, into the cause of an accident. **But riding or driving without a valid licence *per se* would not enter into the cause of an accident. Rather, it is the manner of the riding or driving and/or conduct on or in relation to the road that enter into the cause of a motor accident or collision. In the present case, the fact that the first appellant was riding the motorcycle without a valid driving licence, without a safety helmet and even with a pillion rider, could not and did not enter into the cause of the collision.** The fact of the matter was that on the balance of probabilities, the first appellant did not cause or contribute to the cause of the accident. Also, the first appellant did not contribute to her injuries. In not wearing a safety helmet, she was not being prudent, for a reasonably prudent man would foresee that the wearing of a safety helmet might result in less harm being caused to him, whether by someone else or by himself, if he is involved in an accident or collision while riding a motorcycle. But she did not sustain any head injuries, and the wearing of a safety helmet would not have reduced her injuries. In all respects, she could not be faulted for the collision, or for the extent of her injuries. She should not have been penalised.

[Emphasis added]

[45] A similar view was espoused in the High Court case of **Chu Kim Sing & Anor v Abdul Rahman Bin Amin [1999] 6 MLJ 433** which enunciated as follows:

**In my judgment, the fact that the respondent did not have a valid driving licence, and was not wearing a safety helmet and the fact that the motorcycle ridden by him was without a road tax, an insurance and was not fitted with a horn cannot in law make him negligent.** There was no duty on the part of the respondent to minimise the effects or probable consequences of any injury that he may suffer, but which he has yet to suffer, through the negligence of another. It was not foreseeable for the respondent to foresee that harm would fall on others as to make him liable for actionable negligence by riding the motorcycle while those extraneous factors were contravened by him and neither would the respondent foresee that by riding the motorcycle with these extraneous factors being contravened by him would result in harm to himself and thereby contribute to the cause of the accident.

[Emphasis added]



[46] Based on the above authorities, it is my finding that the Plaintiffs did not contribute to the negligence of the accident when the First Plaintiff was riding the motorcycle without a motorcycle licence *per se*.

**WHETHER THE FIRST PLAINTIFF HAD CONTRIBUTED TO THE NEGLIGENCE BY RIDING THE MOTORCYCLE NEAR THE MIDDLE LANE.**

[47] To determine whether the Plaintiffs had contributed to the negligence of the collision, the court may evaluate how the First Plaintiff was riding his motorcycle or his conduct on the road.

[48] In our present case, Defendant had encroached onto Plaintiff's lane while he tried to overtake a car in front of him. Based on exhibit P1 (a) and exhibit P1 (b) i.e. the Sketch Plan and Key, it can be seen that the debris or fragments of the Plaintiff's motorcycle in the position marked as 'L' would indicate that the point of impact was scattered near the middle lane. Further, perusing exhibit P2 (H) could also indicate that the collision occurred near the middle lane of the Plaintiff's lane. These could indicate that the Plaintiffs were riding the motorcycle near the middle lane before the collision occurred.

[49] It is my finding that the Plaintiffs should have travelled more to the side and not towards the middle lane. Not travelling more to the side and travelling in the middle lane had caused the Plaintiffs to be partly liable for the collision.

[50] Since the sketch plan showed that the glass fragments and their location were on the plaintiff's right of way, it could be inferred that the point of impact of the accident was at the plaintiff's lawful side of the road. Although the collision occurred within the Plaintiff's right of way, however, it is my finding that the plaintiff was partly to blame, as the First Plaintiff was riding his motorcycle near the middle lane.

[51] My findings are guided by a High Court case of **Law Kok Leong & Anor v. Nor Hapiza Abu Hassan [2016] CLJU 1424** where the liability imposed on the Plaintiff for contributory negligence by riding the motorcycle near the middle lane is apportioned at 10% as follows:

**[11] The learned SCJ however held that the plaintiff was partly to blame, based on the fact that his motorcycle was near the middle lane.** He opined that the



plaintiff should have travelled more to the side and not towards the middle. He also made this conclusion based on the damage caused to the motorcycles.

...

**[16]** It is perfectly permissible for the learned SCJ to have made his finding based on the silent evidence, as the court had since time immemorial placed great emphasis on the sketch plans and keys to draw the correct inferences and arriving at a conclusion; *Low Kean Giap v. Shaik Alawdeen* [1999] 7 CLJ 44.

**[17]** I am also in agreement with the learned SCJ's apportionment of 10% liability on the plaintiff, based on his finding that the plaintiff was partly negligent in travelling near the middle of the road and not more to the side. Sharma J. in *Goh Beng Seng v. Dol bin Dolah* [1969] 1 LNS 220; [1970] 2 MLJ 95 held:-

**"There can be no territorial or geometrical division of the road. The centre line remains a guide and a reminder only. One's duty is to ensure safety for oneself and for others. The attitude of mind that because the driver coming from the opposite direction is encroaching a few inches of my side of the road, I can treat him as a trespasser and proceed on my half of the road as if it was my exclusive domain and that I am totally immune from liability if I drive within the exact limits of that 'realm' even though I know that an accident may thereby happen on my side of the road, is the attitude of an irresponsible and an irrational being. I owe a duty to others on the road just as others owe a duty to me."**

[Emphasis added]

[52] My findings are also guided by a High Court case of **Devi Magamuthu v Wong Wai Hoong** [2017] 1 LNS 310 where the liability imposed on the Plaintiff for contributory negligence by riding the motorcycle near the middle lane is apportioned at 30% as follows:

**[18]** After having perused the judgment of the learned SCJ, this Court found the learned SCJ did not err in her finding of facts which led to the apportionment of liabilities on the respective parties. The learned SCJ found the rider was indeed riding in the middle of the road when the accident occurred. The rider was not supposed to be riding in the middle of the road (between A1 and A2, see p. 256 Rekod Rayuan, Rajah Kasar, exhibit P2 [hereinafter referred to as the sketch plan]).

**[19]** The rider's account of the accident was that she was riding on the left side of the road, i.e. closer to point 'A' (see sketch plan) when the accident occurred. **If that was true, the damage on the defendant's vehicle ought to be on the left side. But the damage was found almost at the centre of the front of the defendant's vehicle** (see pictures 'F' and 'D' of Rekod Rayuan, pp. 250-1). **Hence, an inference could be made out that the accident occurred at the centre of the road which**



**is consistent with the defendant's version where the collision took place.** No evidence was led that the defendant had driven his vehicle on the far left of the road. Thus, the finding of fact by the learned SCJ that the rider was on the middle of the road when the collision took place was highly probable. **It was in evidence that the rider did not possess a motorcycle licence at the material time of the accident. After taking into account of these facts, the apportionment of 30% liability on the rider as contributory negligent to the accident was justifiable.** This Court finds no reason to disturb the finding of the learned SCJ on the issue of apportionment of liabilities on the parties.

[Emphasis added]

[53] I also sought guidance by referring to the High Court case of **Kuik Kean Heang & Anor v Teoh Swee Hock & Anor [2010] 1 LNS 148** where the liability imposed on the Plaintiff for contributory negligence by riding the motorcycle near the middle lane is apportioned at 30% as follows:

[8] On the totality of the evidence, I found that the learned trial judge had made findings against the weight of evidence. **PW1 had proved on a balance of probabilities that the collision had been caused by the negligence of D1 who had encroached into his path while overtaking a bus. Nevertheless, even by his own telling and by the physical evidence, PW1 was travelling close to the middle of the road with no explanation being offered for this conduct. Had he kept more to the left, the accident may have been avoided.** The bend was a right hand bend for D1 and bearing in mind that there is a tendency for drivers negotiating right hand bends to cut corners, PW1 should have been more vigilant. For the grounds stated, **I set aside the finding of the trial court on liability and substituted it with an apportionment of liability on the basis of 30:70 as between the 1st plaintiff and the defendant.**

[54] I also sought guidance by referring to the Session Court case of **Saifudeen Apandi & Anor v Lenggang AK Nuing [2011] SMCU 2** where the liability imposed on the Second Plaintiff for contributory negligence by riding the motorcycle near the middle lane is apportioned at 20% as follows:

[20] **Therefore, looking at the point of impact, the collision had occurred almost in the middle of the road though it is still within the second plaintiff's right of way (lane).** At this juncture, I would like to quote:

Rule 3 of the Road Traffic Rules 1959 (LN 166/1959) which read as follows:





Every vehicle shall ordinarily be driven on the left hand side of the road, that is to say that part of the road which lies between the centre thereof and the left hand edge of the road; and shall allow all traffic which is proceeding in the open.

[21] The sketch plan clearly showed that the point of impact was not at the left hand side (edge of the road) of PW2's lane. This is because the point of impact as I had mentioned earlier was almost to the middle of the road of PW2's lane. This fact clearly showed that he has contributed to the collision whereby, if he is traveling at the edge of the road (to his left) on his lane, there is a possibility that he would be able to avoid the collision if the car suddenly encroached on his lane.

...

[23] For the reasons stated above, I rule that the liability to be apportioned between the second plaintiff (20%) and the defendant (80%) for causing the accident...

[55] Following from the authorities above, it can be seen that the liability imposed on the Plaintiff for contributory negligence by riding the motorcycle near the middle lane is apportioned between 10% to 30%.

[56] After perusing all the documents filed by parties, exhibits tendered in court, evidence given by the witnesses as well as the written submissions filed by parties, I found that the Plaintiff had proved on the balance of probabilities, his claim against the Defendants. Accordingly, I have allowed the Plaintiff's claim against the Defendants with costs. It is my finding that the Plaintiffs are 10% liable for causing the accidents and the Defendant is 90% liable for causing the accidents.

## 2. QUANTUM

[57] In determining or assessing the damages, the court must enquire its findings based on cogent evidence. The Federal Court in the case of **Inas Faiqah Mohd Helmi (A Child Suing Through Her Father And Next Friend; Mohd Helmi Abdul Aziz) v. Kerajaan Malaysia & Ors [2016] 2 CLJ 885** enunciates as follows:



[20] It is trite that damages serve as compensation, not a reward, less still a punishment (see *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 2 MLJ 324). **In assessing damages, the court should not be motivated by sympathy and award fair compensation based on cogent evidence.** The court should not descend into a domain of speculation. The evaluation of those evidence, which form the basis of any risk of future damage, must therefore still be undertaken. And the trial judge can only evaluate such evidence based on the recognised balance of probabilities standard. As was stated in *Schrump*:

Thus, future contingencies which are less than probable are regarded as factors to be considered, **provided they are shown to be substantial and not speculative.** (emphasis added)

The qualification as underscored in that sentence is in our considered view, necessary to be proven on a balance of probabilities.

[58] Further, the purpose of awarding the damages is to give the claimant compensation for the damage, loss or injury he had suffered as guided by the Federal Court in the case of **Datuk Mohd Ali Hj Abdul Majid & Anor v. Public Bank Bhd** [2014] 6 CLJ 269 which enunciates as follows:

**[31] The object of an award of damages is to give the claimant compensation for the damage, loss or injury he has suffered.** The general principle governing the measure of damages has its origin in the words of Lord Blackburn in *Livingstone v. Rawyards Coal Co* [1880] 5 App Cas 25 where he said:

**... that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.**

**[32] It is trite law that a claimant claiming damages must prove that he has suffered the damage.** The claimant has the burden of proving both liability and quantum of damages, before he can recover the sum claimed. This follows from the general rule that the burden of proving a fact is upon him who alleges it and not upon him who denies it so that where a particular allegation forms an essential part of a person's case, the proof of such allegation falls on him. (See s. 103 of the Evidence Act 1950 ). If he fails to prove both the liability and the quantum of damages, he loses the action.

**[33] Therefore, in a claim for damages, it is not sufficient for the plaintiff to merely state the amount of damages that he is claiming, he must prove the damage that he had in fact suffered to the satisfaction of the court.** This principle is borne



out in the case of *Bonham-Carter v. Hyde Park Hotel* [1948] 64 TLR 177 where Lord Goddard CJ observed:

**Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the court, saying: 'This is what I have lost, I ask you to give me these damages'. They have to prove it.**

[59] In our present case, both parties have agreed on the medical reports below subject to the written submissions:

- (a) Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 19 and 20 in Bundle B);
- (b) Medical Report from Raja Perempuan Bainun, Ipoh dated 15.4.2021 (at pages 21 and 22 in Bundle B);
- (c) Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 23 to 27 in Bundle B);
- (d) Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 30 to 32 in Bundle B);
- (e) Medical Report from Hospital Kuala Lipis dated 16.8.2021 (at pages 33 and 34 in Bundle B);
- (f) Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 35 to 38 in Bundle B).

## **GENERAL DAMAGES**

### **FIRST PLAINTIFF**

[60] Based on the agreed medical reports, the First Plaintiff had claimed the following injuries:



**(a) Closed comminuted fracture of midshaft right femur.**

[61] Based on the Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 19 and 20 in Bundle B), Medical Report from Raja Perempuan Bainun, Ipoh dated 15.4.2021 (at pages 21 and 22 in Bundle B) and Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 23 to 27 in Bundle B) the First Plaintiff was diagnosed with a **closed comminuted fracture of midshaft right femur.**

[62] The First Plaintiff submitted that for the injury of the closed comminuted fracture of the midshaft right femur, RM28,000 is the proportionate and reasonable award for the injury suffered by the First Plaintiff due to the accident. Defendant on the other hand submitted that an award of RM12,000 would be a fair and reasonable award.

[63] The guideline for awarding compensation for this type of injury as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM21, 500 to RM48, 500.

[64] In the case of **Muhammad Firdaus b Abu Bakar & Anor v Maznah bt Mat [2012] 1 PIR [6]**, the court awarded RM20,000 for the injury of a closed fracture of the right femur.

[65] Hence, after perusing all the evidence especially, the medical report and all the written submissions of parties, the authorities above as well as considering the medical report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 26 in Bundle B) which states that the fracture midshaft of femur suffered by the First Plaintiff has united with nail and screws inserted, I have awarded **RM 20,000** for **closed comminuted fracture of midshaft right femur suffered by the Plaintiff.**

**(b) Closed midshaft right 5th metacarpal fracture and base of right 3<sup>rd</sup> metacarpal fracture.**

[66] Based on the Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2020 (at pages 19 and 20 in Bundle B), Medical Report from Raja Perempuan Bainun, Ipoh dated 15.4.2021 (at pages 21 and 22 in Bundle B) and Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 23 to 27 in Bundle B), the



Plaintiff was diagnosed with closed midshaft right 5<sup>th</sup> metacarpal fracture and base of right 3<sup>rd</sup> metacarpal fracture.

[67] Plaintiff submitted that for the injury of closed midshaft right 5<sup>th</sup> metacarpal fracture and base of right 3<sup>rd</sup> metacarpal fracture, RM10,000 is the proportionate and reasonable award for the injury suffered by the Plaintiff due to the accident. The Defendant on the other hand submitted that an award of RM4,000 would be a fair and reasonable award.

[68] The guideline for awarding compensation for this type of injury as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM4000 to RM6,000.

[69] In the case of **Anderias Uvang v Mohd Azlan b Abdul Rahman & Anor [2012] MLJU 1557**, the court awarded RM5,000 for the injury of the closed midshaft right 5<sup>th</sup> metacarpal fracture.

[70] Hence, after perusing all the evidence especially, the medical reports and all the written submissions of parties, the authorities above as well as bearing in mind the medical report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 26 in Bundle B) which states that the fracture base of 3<sup>rd</sup> metacarpal bone and midshaft 5<sup>th</sup> metacarpal bone has united, I have awarded **RM6,000 for closed midshaft right 5<sup>th</sup> metacarpal fracture and base of right 3<sup>rd</sup> metacarpal fracture suffered by the Plaintiff.**

### **(c) Scars**

[71] Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2020 (at pages 19 and 20 in Bundle B), Medical Report from Raja Perempuan Bainun, Ipoh dated 15.4.2021 (at pages 21 and 22 in Bundle B) and Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 23 to 27 in Bundle B), the Plaintiff suffered the following healed scars:

- (i) 4 cm longitudinal surgical scar over the lateral aspect of the right hip.
- (ii) 2 cm longitudinal surgical scar over the lateral aspect of the proximal right thigh.



- (iii) Two 3 cm longitudinal surgical scars each over the lateral aspect of the distal right thigh.
- (iv) Multiple pin track scars over the dorsal aspect of the right hand.

[72] The plaintiff submitted that for the scars suffered, RM5,000 is the proportionate and reasonable award for the scars suffered by the Plaintiff due to the accident. The Defendant on the other hand submitted that an award of RM3,000 would be a fair and reasonable award.

[73] The guideline for awarding compensation for minor scarring to the leg as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM1,300 to RM3, 300 and the guideline for awarding compensation for minor scarring to the arm is between RM2,200 to RM3, 850.

[74] In the case of **Mohamad Shahnny bin Rahaman @ Zainal v Orathai @ Fatimah binti Abdullah [2009] MLJU 556**, the court awarded RM4,000 for the injury of multiple scars.

[75] Hence, after perusing all the evidence especially, the medical reports and all the written submissions of parties as well as the authorities above, I have awarded **RM 4,000 for multiple scars suffered by the Plaintiff.**

**(d) Pain and suffering**

[76] Based on the Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 19 and 20 in Bundle B), Medical Report from Raja Perempuan Bainun, Ipoh dated 15.4.2021 (at pages 21 and 22 in Bundle B) and Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 23 to 27 in Bundle B), the Plaintiff was diagnosed with pain and suffering.

[77] The plaintiff submitted that for the pain and suffering, RM3,000 is the proportionate and reasonable award for the pain and suffering suffered by the Plaintiff due to the accident. The Defendant on the other hand submitted that the damages for pain and suffering claimed by the First Plaintiff overlapping with scars and pain and suffering.



[78] In the case of **Visalini Perumal v. Ngeoh Yan Hui [2022] CLJU 2666**, the court awarded RM 3,000 for the injury of pain and suffering.

[79] Hence, after perusing all the evidence especially, the medical reports and all the written submissions of parties as well as the authority above, I have awarded **RM2,000 for the pain and suffering suffered by the Plaintiff.**

## **SECOND PLAINTIFF**

[80] Based on the agreed medical reports, the Second Plaintiff had claimed the following injuries:

### **(a) closed comminuted fracture of the midshaft right femur**

[81] Based on the Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 30 to 32 in Bundle B), the Medical Report from Hospital Kuala Lipis dated 16.8.2021 (at pages 33 and 34 in Bundle B) and the Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 35 to 38 in Bundle B) the Second Plaintiff was diagnosed with a closed comminuted fracture of midshaft right femur where there was a real shortening of the right leg by 1.0cm at the femoral segment.

[82] The Second Plaintiff submitted that for the injury of the closed comminuted fracture of the midshaft right femur, RM36,000 is the proportionate and reasonable award for the injury suffered by the Second Plaintiff due to the accident. Defendant on the other hand submitted that an award of RM12,000 would be a fair and reasonable award.

[83] The guideline for awarding compensation for this type of injury as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM36,000 to RM60,000.

[84] Hence, after perusing all the evidence especially, the medical report and all the written submissions of parties I have awarded RM 20,000 for a closed comminuted fracture of the midshaft right femur suffered by the Second Plaintiff.



### **(b) Scars**

[85] Based on the Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 30 to 32 in Bundle B), the Medical Report from Hospital Kuala Lipis dated 16.8.2021 (at pages 33 and 34 in Bundle B) and the Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 35 to 38 in Bundle B) the Second Plaintiff was diagnosed with the following healed scars:

1. 27 cm longitudinal surgical scar over the lateral aspect of the right thigh.
2. 4 pin track scars over the dorsal aspect of the right thigh.

[86] The Second Plaintiff submitted that for the scars suffered, RM8,000 is the proportionate and reasonable award for the scars suffered by the Second Plaintiff due to the accident. The Defendant on the other hand submitted that an award of RM3,000 would be a fair and reasonable award.

[87] The guideline for awarding compensation for minor scarring to the leg as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM1,300 to RM3, 300 and the guideline for awarding compensation for minor scarring to the arm is between RM2,200 to RM3, 850.

[88] In the case of **Mohamad Shahnny bin Rahaman @ Zainal v Orathai @ Fatimah binti Abdullah [2009] MLJU 556**, the court awarded RM4,000 for the injury of multiple scars.

[89] Hence, after perusing all the evidence especially, the medical reports and all the written submissions of parties as well as the authorities above, I have awarded RM 4,000 for multiple scars suffered by the Plaintiff

### **(c) Muscle wasting**

[90] Based on the Medical Report from Sultanah Hajjah Kalsom Hospital dated 5.4.2021 (at pages 30 to 32 in Bundle B), the Medical Report from Hospital Kuala Lipis dated 16.8.2021 (at pages 33 and 34 in Bundle B) and the Medical Report from Dr Wong HY Orthopedic Specialist Centre Sdn Bhd dated 9.2.2022 (at pages 35 to 38 in Bundle B) the





Second Plaintiff was diagnosed with a moderate wasting of the right thigh and right calf muscles with decreased in muscle girth by 2 cm.

[91] The Second Plaintiff submitted that for the injury of Muscle Wasting, RM5,000 is the proportionate and reasonable award for the injury suffered by the Second Plaintiff due to the accident. Defendant on the other hand submitted that an award of RM2,500 would be a fair and reasonable award.

[92] The guideline for awarding compensation for this type of injury as suggested by the Compendium of Personal Injury Awards (Revised as of July 6, 2018) is between RM3, 000 to RM5, 000.

[93] Hence, after perusing all the evidence especially, the medical report and all the written submissions of parties I have awarded RM 3,000 for a moderate wasting of the right thigh and right calf muscles with decreased in muscle girth by 2 cm suffered by the Second Plaintiff.

### **SPECIAL DAMAGES**

[94] On the issue of Special Damages, the High Court case of **Sidek Ibrahim & Satu Lagi lwn. Ibnu Asyakir Mohd Ghazali & Satu Lagi [2016] 8 CLJ 406** succinctly explained the principle of Special Damages as follows:

**[60]** Di dalam kes *Mariam Mansor v. JD Peter* [1975] 1 LNS 101; [1975] 1 MLJ 279 misalnya mahkamah memutuskan seperti yang berikut:

in considering what compensation the court shall award, it is impossible to arrive an accurate figure, however, all the court can do is to award her a sum which would compensate her for pain and suffering she had undergone and will, in all probability, continue to undergo. I feel that the sum awarded should be a fair sum to compensate the Plaintiff for the injuries suffered, but it should not be too excessive to constitute an injustice to the defendant. **It is trite law that any claim for special damages must be specifically pleaded and strictly proved as opposed to general damages which is subject to assessment** (See *Sam Wun Hoong v. Kader Ibramshah* [1981] 1 LNS 103; [1981] 1 MLJ 295



at 297, FC). In *Yeap Cheng Hock v. Kajima-Taisei Joint Venture* [1973] 1 MLJ 230 at 236 Syed Agil Barakbah, J held:

The general principle is that **plaintiff must be prepared to prove his special damages unless it has been agreed. It is not enough for him to write down the particulars and leave them for the court to decide.** It is for him to prove them;.

[95] Hence, based on the above authorities, the principle of Special Damages requires the Plaintiff to specifically plead his claims and strictly proved his claims. The plaintiff must prove his special damages unless it has been agreed by the parties.

[96] The items that the First Plaintiff claimed for special damages are as follows:

- (a) RM 80 for the costs of purchasing medical report for the Plaintiff (Pages 1 and 4 at Bundle B);
- (b) RM620 for the costs of purchasing specialist report for the Plaintiff (Pages 43 at Bundle B);
- (c) RM2000 for the future surgery costs for the Plaintiff (Pages 27 at Bundle B); and
- (d) RM1050 for the costs for an implant for the Plaintiff (Pages 41-42 at Bundle B).

[97] The items claimed by the Second Plaintiff for special damages are as follows:

- (a) RM 80 for the costs of purchasing medical report for the Plaintiff (Pages 2 and 3 at Bundle B); and
- (b) RM535 for the costs of purchasing specialist report for the Plaintiff (Pages 44 at Bundle B);

[98] I have perused the documents for the purpose of finding proof of the special damages claimed by First Plaintiff. Accordingly, I have awarded RM3750 for the award of special damages for the costs of:



- (a) RM 80 for the Costs of purchase medical report for the Plaintiff (Pages 1 and 4 at Bundle B);
- (b) RM620 for the Costs of purchase specialist report for the Plaintiff (Pages 43 at Bundle B);
- (c) RM2000 for the future surgery costs for the Plaintiff (Pages 27 at Bundle B); and
- (d) RM1050 for the costs for an implant for the Plaintiff (Pages 41-42 at Bundle B)

[99] I have also perused the documents for the purpose to find proof of the special damages claimed by the Second Plaintiff. Accordingly, I have awarded RM615 for the award of special damages for the costs of:

- (a) RM 80 for the Costs of purchase medical report for the Plaintiff (Pages 2 and 3 at Bundle B); and
- (b) RM535 for the Costs of purchase specialist report for the Plaintiff (Pages 44 at Bundle B);

#### **D) Conclusion**

[100] After perusing all the documents filed by parties, exhibits tendered in court, evidence given by the witnesses as well as the written submissions filed by parties, I found that the Plaintiff had proved on the balance of probabilities, his claim against the Defendants. Accordingly, I have allowed the Plaintiff's claim against the Defendants with costs. It is my finding that the Plaintiffs are 10% liable for causing the accidents and the Defendant is 90% liable for causing the accidents.

[101] Consequently, I have awarded the followings:

#### **First Plaintiff**

- (a) General Damages:



- I. RM 20,000 for closed comminuted fracture of midshaft right femur suffered by the First Plaintiff.
- II. RM 6,000 for closed midshaft right 5th metacarpal fracture and base of right 3<sup>rd</sup> metacarpal fracture suffered by the First Plaintiff.
- III. RM4,000 for Scars suffered by the First Plaintiff.
- IV. RM2,000 for Pain & Suffering suffered by the First Plaintiff.

(b) Special Damages of RM3750

(c) Interest for general damages is 5% and special damages is 2.5%.

**Second Plaintiff**

(a) General Damages:

I. RM 20,000 for closed comminuted fracture of midshaft right femur suffered by the Second Plaintiff:

II. RM4,000 for Scars suffered by the Second Plaintiff

III. RM3,000 for Muscle wasting suffered by the Second Plaintiff

(b) Special Damages of RM 615

(c) Interest for general damages is 5% and special damages is 2.5%.

(d) Costs of proceedings is as per Rules of Court 2012

Dated: 11<sup>th</sup> January 2024

..... t.t .....

**(QASIRATUL JANNAH USMANI BINTI OTHMAN)**  
**Magistrate**  
**Magistrate Court**  
**Cameron Highlands, Pahang Darul Makmur**

For the Plaintiffs- Encik Selvam Nadarajan; Messrs. Selvam N & Co

For the Defendant - Puan Ester Ong; Messrs. V P Nathan & Partners



S/N iqq0j4bTbEq4n7I3kQbLJw

\*\*Note : Serial number will be used to verify the originality of this document via eFILING portal