

Imam Muhajir

Plaintiff

[In his personal capacity and as Administrator for the
Estate of **WAQINGATUL NGADAWIYAH** (Deceased)]

AND

Shahul Hameed Jahir Hussain
Koperasi Serbagunan Mukim Lumapas Bhd

1st Defendant
2nd Defendant

(Intermediate Court of Brunei Darussalam)
(Civil Suit No. 143 of 2005)

Lim Siew Yen, Judge
20 March, 2010.

Civil Law – Fatal Accidents and Personal Injuries Act – bus conductor – fell out of
bus through open door – res ipsa loquitor – negligence of bus driver –
excessive speed – opening bus door when bus in motion – safe system of work

This is a case where the estate of the deceased as administered by the deceased's
father claims against the defendants, under the Fatal Accidents and Personal Injuries
Act 1991, damages under section 11 of, loss of dependency under section 3,
bereavement under section 4 and funeral expenses under section 11 of the Act. A
Letter of Administration to the estate of the deceased was granted to the plaintiff on
8th July, 2003.

Background

The deceased came to Brunei on 31st March, 2001 and was employed as a bus
conductor by the 2nd defendant. The plaintiff alleged that on 15th September, 2002 at
about 1930 hours, the deceased, while in the course of her employment, was thrown
out of the bus bearing registration number BS5850 which was driven by the 1st
defendant. They alleged that when the 1st defendant approached the vicinity of km 2
of Jalan Lumapas, he drove the bus too quickly while turning into a road bend,
thereby causing the deceased to fall out of the bus door which had suddenly swung
open at that point. He claimed that the bus door was not in proper working condition
and the 2nd defendant failed to institute a safe system of work.

Res Ipsa Loquitor

The plaintiff relies on the maxim “*Res Ipsa Loquitor*, that the mere happening of the
accident “speaks for itself”. Charlesworth & Percy on Negligence (9th Ed.) at page
425 paragraph 5-88 states that this maxim comes into operation, when three
requirements are fulfilled:

1. On proof of the happening of an unexplained occurrence;
2. When the occurrence is one which would not have happened in the ordinary course of things without negligence on the part of somebody other than the plaintiff; and
3. The circumstances point to the negligence in question being that of the defendant, rather than that of any other person.

Essentially, the plaintiff attributes the fatal accident to the negligence of the 1st and 2nd defendants. The negligence of the 1st defendant has been particularized as, among others, failing to observe that the bus door had swung open; driving at an excessive speed and failing to slow down when approaching a bend in the road. *Inter alia*, the negligence of the 2nd defendant in failing to observe that the bus door was not in proper working condition; exposing the deceased to a risk of injury and failing to devise or institute a safe system of work for the deceased.

The accident

The working hours of the 2nd defendant were 6.00 am to 6.00 pm. Every morning, the conductor would go into the office at the Lumapas office located at Lumapas Petrol Station to collect the tickets and then work began. The 1st defendant remembered the accident happened on a Sunday 15th September, 2002 at around 7.00 pm. He drove bus No. 47 which covered the Bengkurong/Masin area. On that day, when they finished work, the deceased who had worked with him for about a month went into the office to hand over the tickets and cash. After that, it was their duty to clean the bus together. The driver was tasked to clean the exterior of the bus while the conductor would clean the interior.

However, on the day in question, they did not clean the bus because the deceased said she was tired and she asked the 1st defendant to send her home. According to the 1st defendant's second statement dated 11th March, 2004, he said that:

“On the way, I heard the conductor had opened the bus door so I asked her why you open the door? I did not see the bus conductor, I only saw her slippers. Then I stopped my bus and through the inside bus mirror, I saw that the conductor had fallen. When I stopped the bus, I was far from the bus conductor. I then came out of the bus and went to where she had fallen.”

He picked her up and put her inside the bus and drove back to the office where he alerted Aiani the Supervisor, of the accident. Aiani, the 1st defendant and another staff then sent the deceased to RIPAS in Aiani's Pajero. The deceased succumbed to her injuries the following morning.

How the accident happened

The only person who knew what occurred minutes before the deceased met her death was the 1st defendant. In his evidence-in-chief, the 1st defendant said that on the way home about a kilometer from the Lumapas Petrol station, and away from Bus No. 47's usual route, the deceased was seated two seats behind him next to the stairs leading down to the passenger door and not the single seat to his left or the seat behind that seat that has been designated to bus conductors. At some point in time, the 1st

defendant saw from the rear view mirror that the deceased got up from the seat and was walking around the bus as she picked up rubbish and pieces of paper from the floor of the bus.

Then, she wanted to throw the rubbish in a bucket. The bucket had some water due to frozen ice from passengers' frozen fish. The deceased opened the door manually. The 1st defendant slowed down the bus and turned around to ask her why she opened the door. He did not see her, he only saw her slippers. Only when he did not see her then he immediately stopped the bus and went over to where the deceased had fallen.

Faulty Passenger Door

The plaintiff alleges that the accident happened due to the negligence of the 1st defendant and the faulty door mechanism; the passenger door through which the deceased fell off had swung open when the 1st defendant went out of the junction onto the main road. After the accident, the mechanic, Shah Alam Shaikh who worked for the 2nd defendant was instructed to inspect the bus the next day. He did not find any fault with the door or the door switch that could result in the conductor falling out of the bus. The police did not undertake any independent inspection of the bus. From this, it can be concluded that they agreed with the finding of Shah Alam.

The plaintiff's allegation of a faulty door was based purely on the 1st defendant's 2nd ordinary statement which was recorded on 11th March, 2004. Sergeant Basri used the Malay language to communicate with him but in court, the 1st defendant gave his evidence through a Tamil/English Interpreter. The 1st defendant who is an Indian national, did not appear to have a good grasp of the Malay language. To the question, "Is there any automatic system for the door of Bus 47 registration number BS5850?" His recorded answer was "Yes, there is an automatic system but it was already faulty and it can be opened by the bus conductor."

Since Shah Alam did not find any fault in the door and the police seemed to hold the same view, he could not have meant that the door was out of order. He explained in his evidence-in-chief that what he meant was that the deceased had overridden the bus driver's control of the door by switching the control to manual so that the door could not be opened by the driver. The bus, as manufactured by the manufacturer, had the control switch located at the passenger door near the stairs where passengers board and alight.

By overriding the driver's automatic control, the door could only be opened manually at the passenger door. Normally, the bus driver would open the door from the driver seat whenever he stopped the bus to let passengers alight. The automatic switch is located next to the steering wheel. Whenever this switch is switched to manual, the bus driver will not have any control over the opening of the passenger door. By this, he meant it was out of order. I accept that there has been a misunderstanding between the 1st defendant and the Sergeant on this part of the statement. I have no reason to doubt his evidence. I find him a trustworthy witness.

I do not believe that the bus door had swung open during the journey. This would mean that the bus door was faulty, in which case, the normal practice is for the 1st defendant or the deceased, the bus conductor, to lodge a complaint with the mechanic.

There was no record of any such complaint so it can be safely assume that the door was not faulty. Moreover, if it was faulty, it would not warrant the 1st defendant asking the deceased why she had opened the door. This question presupposes that the door was shut in the first place for it to be opened during the journey. The door was in perfect working condition when it left the Lumapas Petrol Station with the deceased in it.

The plaintiff challenges the assumption that the deceased had opened the passenger door. It is not in dispute that there were only two persons in the bus at the time. The 1st defendant was at the wheel so it can be safely assumed that the other person in the bus who was freely moving around in the compartment of the bus and who also had access to the switch of the door had opened the passenger door. As a bus conductor, the deceased knew about the mechanics of the door and how to open it manually. This, I think, is a safe inference to make in view of the circumstances. It is not a conjecture or speculation. There are sufficient objective facts from which this inference could be made (*Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152).

Negligence of the 1st defendant

The plaintiff also alleges that the 1st defendant drove too fast as he went round the 'bend' on the road which resulted in the deceased falling out of the door.

The so called 'bend' was later clarified by the 1st defendant. It was actually a junction where the minor road on which the Lumapas Petrol Station was located joined the main road. Based on the 2nd ordinary statement of the 1st defendant, the Investigation Officer Sergeant Basri bin Marali concluded that the fatal accident has happened due to the high speed in which the 1st defendant drove as he approached the junction.

If he has come to this conclusion, one would expect him to include this material 'bend' in the sketch plan that he had drawn at the scene at the time of the accident. However, the Sergeant did not seem to think it important to incorporate it into the plan at the time. In Court, seven years later, then he sought to add the 'bend' in the sketch plan to support his conclusion. This Court views this with suspicion and could only infer that this conclusion was an after-thought. Since then, the 'bend' no longer exists as it has been absorbed into the widened road.

In his evidence, the 1st defendant said that from the Lumapas Petrol Station, he was traveling at 50 km per hour. When he approached the junction, he reduced his speed to 40 km per hour and was on third gear before he turned left into the main road; after ensuring that there was no traffic on the main road. That was his speed when he was at the spot where the accident happened. According to him, the accident happened about 100 feet from the junction. The Court could only rely on his estimate of the distance since the police did not measure this distance for inclusion in their sketch plan. The 1st defendant had slowed down to ensure that there was no traffic on the main road before he joined the main road.

I accept the evidence of the 1st defendant that he was traveling at 40 km per hour and that speed is by no means fast. It is unthinkable to suggest that this speed is excessively fast. If the 1st defendant has driven the bus at a high speed which resulted

in the deceased slipping out of the bus door, one would expect her to fall out at or near the junction and not 100 feet away from the junction.

The distance from the junction before the fatal accident happened also suggests that the bus must have been traveling at a fairly slow speed as it rounded the bend. This deceptively slow speed unfortunately made the deceased thought that it was safe to open the bus door then in order to empty the rubbish bin.

The plaintiff had alleged that the 1st defendant had failed to stop the bus as soon as he discovered that the deceased had fallen out of the bus. This is a statement made without having in mind the braking distance of any vehicle. When the brake is applied, any vehicle in motion would come to a full stop a distance from where the brake was first applied.

Medical evidence

The slow speed of the bus is also corroborated by medical evidence of Dr. P U Telisinghe, the Specialist Pathologist at RIPAS who was called by the plaintiff to explain the cause of death. According to him, the deceased suffered three sets of injuries. Firstly, contusion with surrounding abrasion on the back of her head measuring 10 by 6 cm with underlying fracture of the skull. Secondly, graze abrasion on the back of the right groin measuring 8 by 3 cm. Thirdly, graze abrasion on the back of the left hip measuring 12 by 4 cm and fourthly, a small abrasion on the right shoulder.

He further explained that the contusion under the skull was 24 by 12 cm. The fracture of the skull was with separation of the suture line on frontal segital (side) splitting the skull into three parts. The brain was markedly swollen with diffused sub-arachmoid haemorrhage. The haemorrhage was focal pin-point on the cerebral cortex and there was laceration of both frontal poles of the brain.

In the opinion of the pathologist, the way the three abrasions tailed off meant that after the fall, the body moved forward. The deceased probably hit her waist on the steps of the bus, fell out of the bus legs first and then as she slipped out, her body and head hit the road. The pathologist was very certain that she had fallen on her back and hit her head on rough surface probably on the road but not on any sharp or blunt object. The dragging along the road caused the tailing off of all three abrasions.

In the Pathologist's opinion, she had fallen on a flat surface because if she had fallen on the edge of a sharp object, then there should be a laceration on the scalp. In the deceased's case, she had fallen on a flat surface so that there was no laceration as the force was absorbed through a wider area. There was no external broken skin, only contusion due to haemorrhage inside the skull.

The Pathologist did not think the bus was moving fast. If the bus was fast, the deceased would suffer injuries on the front as well as the back of her body because as she fell out, she would also roll on the road after the fall. The rolling of the body would cause her to experience injuries to the front and back of her body. Since all the injuries were to the back of her body, it shows that the bus was moving very slowly.

A safe system of work

Before commencing work, the bus driver and the bus conductor have been trained by the 2nd defendant. This includes the rule governing the operation of the passenger door. The rule is that the door is not to be opened manually when the bus is in motion. It is also not to be opened manually unless the automatic switch is out of order. It is difficult for the conductor to pull open the door manually as the door would be heavy. Therefore, any fault would be attended to immediately by the mechanic. If the door mechanism is out of order, the door will be jammed and it cannot be opened even manually. The bus is air-conditioned so the bus door must be closed at all times.

When the bus is in motion, with or without passengers, the rule is that the bus conductor will sit on the single seat to the left of the driver or the seat behind that seat. Behind these seats are the stairs and the passenger door. I do not think it is right to say that the 1st defendant 'allowed the deceased to walk around the bus while the bus was in motion' and the failure of the 1st defendant in stopping the deceased resulted in the 1st defendant breaching the rule. It is more accurate to say that the deceased had disobeyed the rule, knowing fully well the rules of the 2nd defendant. The 1st defendant was not the deceased's supervisor and it was not established that he had authority over the deceased's movement when the bus was in motion.

The buses were to be cleaned at the Lumapas Petrol Station and not when the bus was in motion. In these respects, the deceased had breached the work regulations, thereby endangering herself. While the bus was in motion, the deceased had opened the passenger door; the heaviness of the door most probably made her lose her balance and resulted in her being propelled out of the bus compartment. I appreciate that the police did not find the rubbish bin by the road side. At the place where she fell, they only found a pen, bottle and broken makeup box. On the other hand, no question was asked of the 1st defendant or the police as to whether they had seen any bin in the vicinity of the accident. It is possible that she did not manage to throw any rubbish out of the bus at all as she did not manage to open the door successfully without endangering herself.

In the ordinary course of business, I do not think this accident would have happened but for the deceased disobeying the working regulations. The circumstances point to the negligence of the deceased and not that of the defendants. At that material time, the passenger door was in the management and control of the deceased and she exposed herself to danger by opening the door. By virtue of that, I do not think that the doctrine of *res ipsa loquitur* applies as the cause of the accident is known.

Since the facts do not speak for themselves for the doctrine to work, then on the facts, are the defendants negligent? Again, I would say that the defendants were not negligent. The 2nd defendants have provided a safe system of work for the deceased to work in and as I have found above, the 1st defendant did not drive at an excessively high speed. The deceased herself had been negligent by departing from the established system of work. The police seem to have held the same view because to date, the 1st defendant has not been prosecuted for the accident and the Sergeant agreed that there was no offence to charge the bus driver with.

I therefore find that the 1st defendant was not negligent nor had the 2nd defendants breached a common duty of care to the deceased. The deceased was solely responsible for this unfortunate accident that resulted in her death. In view of this conclusion, I will not concern myself with the question of whether the accident happened during the course of employment or not. I therefore dismiss the claim of the plaintiff. Since the defendants succeeded in defending the plaintiff's claim, the cost should follow the event. I order cost to the defendant, to be taxed, if not agreed.

Workmen's Compensation Act [Cap. 74]

Lastly, I need to address the issue of the compensation paid to the plaintiff under Workmen's Compensation Act. The defendants have produced before the court receipt which shows that the plaintiff has received on 12th May, 2003 the workmen's compensation sum of B\$18,048.00 in respect of the accident on 15th September, 2002. The defendants sought to rely on this document to support their contention that the money was received as full and final settlement of the plaintiff's claim and the case is to be considered closed.

Such language in the receipt can only be regarded as improper in view of the spirit of the Workmen's Compensation Act. In particular, section 44 of the Act clearly states that the Act does not limit a workman's right to claim against his employer in respect of any injuries caused by the negligence of his employer. The right of the workmen to claim against a negligent employer under common law remains in spite of any compensation paid under this act. The Act recognizes a workman's right of action under Common Law and this right persists despite the payment of compensation.

This right of action is subject to a caveat which is stated in the proviso of the same section:

“Provided that any damages awarded to a workman in an action at common law or under any Act in respect of any such negligence, breach of statutory duty or wrongful act or omission, shall be reduced by the value of any compensation which has been paid or is payable under the provisions of this Act in respect of the injury sustained by the workman.”

Had the plaintiff succeeded in his claim against the 2nd defendant, whatever sum received by him in compensation under the Act has to be set off against the damages awarded in the suit so that he would only receive the difference between the two sums. He is not permitted to double benefit from the unfortunate accident. It is therefore the duty of the counsel to bring to the attention of the court such payment in order to prevent double benefit to the plaintiff, that is all and nothing more.

LIM SIEW YEN
Judge, Intermediate Court