CIVIL LIABILITY FOR MOTOR VEHICLE ACCIDENTS: PERSPECTIVES AND PROSPECTS

BY

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ABSTRACT

The liability for personal injuries and/or property damage resulting from motor vehicle accidents on account of intentional conduct, negligence, contributory negligence and 'no-fault' of the parties is comparatively of recent origin. The applicable law is not only based on common law principles but has been also supplemented by statutory provisions in most countries of the world including Malaysia. The judicial approach to the common law principles and enacted provisions has not been consistent and uniform. On several occasions, no real justice has been done to the victim and also the defendant has been burdened in several cases beyond his financial capabilities.

This work is an attempt to address all the above highlighted issues by identifying the legal issues involved in motor vehicle accidents, the statutory provisions operating in Malaysia and the other selected countries, the judicial approach to the statutory provisions and the problems which have been solved and have got evolved because of judicial approach.

Finally, it has been suggested in this work that in view of its practical weaknesses, the present state of the law in Malaysia needs reform. Attention has been drawn to the law operating in Australia, New Zealand, Canada and some parts of the United States of America where the legislature and the courts have adopted the concept of "No Fault Liability" in relation to motor vehicle accidents under a scheme that compensates all victims of motor vehicle accidents without having any regard to their blameworthiness for the accident. The claimant needs only to prove that he has suffered a personal injury and/or loss in a motor vehicle accident without regard to the faulty behaviour of anyone. This scheme does not, however, replace the alternative of full-fledged tort action where the victim can insist that he was an innocent party and deserves full compensation under different headings of damages for personal injury. If the victim succeeds in his action, then the amount he has received under the 'no-fault' scheme is deductible. The 'no-fault' scheme thus enables the victim or his dependants to get compensation in a short time without the usual legal hassles and at the same time without compromising with his or their right to get compensated under tort law.

It is the convinced opinion of the writer that in view of the social progress and economic development, this type of law will prove worthwhile for Malaysia.

ملخَّص البحث

إن المسؤوليَّة عن الجراحات البشريَّة أو إفساد الممتلكات نتيجةً لحوادث السيارات النَّاتجة عن تصرُّف متعمَّد، أو إهمالٍ أو المساعدة في الإهمال أو عدم ذلك، يعتبر أمراً ذا جذور حديثة بالمقارنة بغيره. كما أن القانون المطبّق على هذه الأحوال لا يقوم فقط على القانون العام بل كذلك على التَّشريعات القانونيَّة في معظم البلدان بما في ذلك ماليزيا. إلا أنَّ تعامُل المحكمة مع هذه التَّشريعات أو القانون العام لم يكنْ متَّسقا أو موحَّداً. فهناك عدول عن العدالة في حقِّ الضحايا في بعض الحالات كما أنَّ هناك إجحافاً بالمتهم في حالات أخرى وذلك بفرض غراماتٍ مجحفة.

يعتبر هذا البحث محاولةً لمعالجة هذه الأمور وذلك ببيان الجوانب القانويَّة في حوادث السيارات والقوانين المطبَّقة عليها في القانون الماليزيِّ وباقي الدُّول المختارة في هذا البحث. كما يتعرَّض البحث لطرق تعامُل المحكمة (القضاء) مع هذه القضايا.

وفي الختام، تقدَّم البحث باقتراحٍ يقوم على أنَّ هناك حاجة إلى تعديل قانونيٍّ نظراً للقصور في الجوانب التَّطبيقيَّة للقانون بهذا الجانب في ماليزيا كما لفت البحثُ الانتباهَ إلى القوانين المعمول بها في كلٍّ من: استراليا، نيوزيلاند، كندا، وبعض الولايات في الولايات المتحدة الأمريكية، حيث اتَّجه التَّشريع والقضاء إلى اعتماد مبدأ "عدم الخطأ" بخصوص حوادث السَّيارات حيث يتمُّ تعويض جميع ضحايا حوادث السَّيارات دون النَّظر إلى مدى تسبُّبهم في الحادث. وهكذا فإن المصاب عليه فقط بيان أنَّه تأثَّر بجروحٍ أو فساد ممتلكات دون النَّظر إلى التَّصرُّفات الخاطئة، إلاَّ أنه لا بدَّ من الإشارة إلى أنَّ هذا القانون لا يستبدل قانون التَّعويضات حيث بإمكان المعتدى عليه بيان أنه بريءٌ ويستحقُّ بذلك تعويضاً كاملاً.

وبناءً على هذا، فإذا تمكَّن المعتدىَ عليه من بيان براءته، فإنَّ على المحكمة طرح المبلغ الذي حصل عليه سابقاً بناءً على مبدأ "عدم الخطأ" من مبلغ التَّعويض الكامل. وهكذا، فإن مبدأ "عدم الخطأ" يُمكِّن ضحايا حوادث السَّيارات أو من في ولايتهم من الحصول على تعويضاتٍ خلال فترة وجيزةٍ دون اللُّجوء إلى الإجراءات القانونيَّة العادية المزعجة، وعدم التَّفريط في حصولهم على تعويضاتٍ كاملة على حسب قانون التَّعويضات. وهكذا، يبدو للباحث، ونظراً للنُّمو الاجتماعيِّ والاقتصاديِّ، فإنَّ هذا القانون له أهميَّته في ماليزيا.

APPROVAL PAGE

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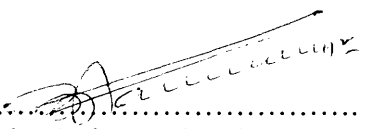

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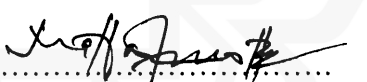

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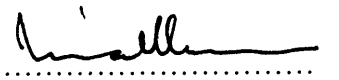

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DECLARATION

I hereby declare that this thesis is the result of my investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

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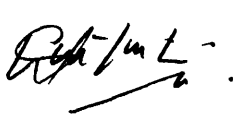
Signature: 

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PERSPECTIVES AND PROSPECTS

Affirmed by Charles Nicholson. 9th.November 2001

This dissertation is dedicated to the fond memory of my late parents, V.N. Nicholson and Maria Fernandez.

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I am also greatly indebted to the University for allowing me the use of the library facilities where I have conducted the greater part of my research and study for the dissertation.

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Chapter 1

INTRODUCTION

In the present days there has been a remarkable increase in the use of motor vehicle as an indispensable conveyance for private and public transport with a corresponding increase in the number of motor vehicle accidents resulting in bodily injury, damage to property and, more often than not, in death. Despite the presence of elaborate road traffic rules, stringent legal provisions and the constant road safety warnings and exhortations by the road transport authorities to road users to minimise road accidents, the number of accidents have kept on increasing. It has been reported by the Road Safety Council in Malaysia that there were 225,166 road accidents involving 331,860 vehicles in 1999 and at least 909 vehicles have been involved in accidents every single day[1]. The situation has been aptly described by an Indian judge, Fazal Ali in *Manjusri Raha & others v B.L. Gupta*[2] in the following words:

> "With the emergence of an ultra-modern age, which has led to the stride of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune. Such are the cases of the victims of motor accidents resulting from rash and negligent driving which take away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill afford to lose so many precious lives every year .... Our lawmakers, being fully conscious of the expanding needs of our nation, have passed laws and statutes to minimise motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in the motor accident ...."

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[1] Kandiah Chelliah, '*Setting up claims tribunal*' New Straits Times, 10 March 2001.
[2] 1977 ACJ 134; AIR 1977 SC 1158.

In the United Kingdom, the Royal Commission on Civil Liability and Compensation for Personal Injury appointed in 1973 had the following observations to make with regard to injuries resulting from motor vehicle accidents:

> "First, motor vehicle injuries occur on a scale not matched by any other category of accidental injury within our terms of reference, except work injuries (which are already covered by a no-fault scheme). Secondly - and here they are to be distinguished from work injuries – they are not confined to any particular group of victims. Thirdly, they are particularly likely to be serious, so that they highlight the difficulties for compensating for prolonged incapacity. Fourthly, road transport itself is an essential part of everyday life, of fundamental importance to the economy as a whole and to the mobility of individuals".

Section 2 of the Road Transport Act 1987, Malaysia has defined a "motor vehicle" to mean " a vehicle of any description, propelled by means of mechanism contained within itself and constructed or adapted so as to be capable of being used on roads, and includes a trailer".

But the meaning of the term 'accident' has not been made clear. It is often used to indicate an incident or occurrence for which no person is to be blamed. It is not an act that was intentional or deliberate. Even if the act may have been intended, the consequences that have resulted from the intentional act may not have been intended. They may have been accidental suggesting that the resulting consequences were not foreseen or foreseeable to likely flow from the intended act.

With these introductory remarks, it is endeavoured in this dissertation to deal, *inter alia,* with motor vehicle accidents that result from a situation where the parties who were involved in the accident were either instrumental in causing the accident or did not in any manner contribute to the accident. A significant part of this work will look at situations where the parties although having never really intended the accident but had in some manner or form failed to exercise the degree or standard of care and caution that was reasonably expected of them in circumstances where the law had imposed on them a duty, both statutory and common-law, towards other road users and owners of properties situated beside the highways to drive in such a fashion that others will not suffer any loss, damage or injury as a consequence of their negligent driving. I will be primarily concerned with the causes of these accidents to see whether it was contributed by human activity rather than to examine the resulting consequences or effects of the accidents on the injured party, or the relatives/dependants of the deceased person. Who was responsible for the plaintiff's 'losses'? Were the injuries and/or losses caused intentionally or negligently by the defendant or altogether without the fault of anyone? And was the plaintiff himself completely free of any fault or had he contributed partly for the injuries he had sustained?

Action for damages arising from personal injuries and loss of dependency form the great bulk of all civil litigation in the subordinate courts in this country at the present day. But we must also be aware of the great multitude of cases which are settled by negotiations and which therefore do not come up

for trial in court. But the maximum amount of compensation which has been paid out as a result of a single personal injury claim or a dependency claim, is relatively small compared to the maximum which may be involved in a single commercial claim arising out of an important contract or a claim for defamation although the total amounts involved as a result of negligence cases is a different matter. It is therefore clear that in quantitative terms the tort of negligence is of paramount importance today regarding compensating people for accidental personal injury and death; and it is on this tort, therefore, that this work is mainly concentrating.

a) Literature Review

There are very limited numbers of books on the area of the law relating to civil liability in relation to motor vehicle accidents. Dato' R K Nathan's book '*Nathan on Negligence'*, is one of the books that is popular among legal practitioners handling third party insurance claims arising from motor vehicle accidents, claims' executives in general insurance companies, police officers who prosecute offenders of road traffic laws and students doing the Certificate in Legal Practice examinations. The book, *inter alia*, examines the evidences that are usually relied upon by the parties in motor vehicle accident cases and the civil procedure that is required to be observed in these proceedings. The book also explains the law of damages and kind of losses that the plaintiff may claim. However, the historical development of the law on liability in motor

vehicle accidents and the future prospects of the law in the light of some of its practical weaknesses have not been examined in this book.

This dissertation, on the other hand, amongst others, traces the historical development and growth of the law relating to liability in motor vehicle accidents being based on fault, the present position of the law and its application in factual situations and some of its practical weaknesses and limitations that have been instrumental in having prompted some common law jurisdictions to abandon the tort action in favour of one that is based on 'No Fault' liability. The dissertation therefore looks at the position of the law operating in New Zealand, Canada, Australia, and in some states in the United States of America and analyses it critically with the view of proposing a similar system of liability to be adopted in this country.

b) Methodology

The methodologies employed by the writer in his research into the dissertation subject involved predominantly library-based research, which included law reports, statutes, textbooks, articles from newspapers and journals. In addition, the writer has had discussions with legal practitioners specialized in this area of the law on some of its practical weaknesses besides depending on his own experiences as an advocate and solicitor.

Chapter 2

CIVIL LIABILITY: A HISTORICAL BACKGROUND

During the medieval period the principle upon which the law as to civil liability was based can be stated somewhat as follows: A man is liable for all the harm which he has inflicted upon another by his acts, if what he has done comes within one of the forms of action provided by the law, namely, "trespass" and "case", whether that harm has been inflicted intentionally, negligently, or accidentally. A man acts at his own peril.[3] This absolute liability for damage caused by an act which comes within one of the forms of action, even though the damage is the result of pure accident, was restated by Bacon[4] at the end of the sixteenth century where he accurately summed up the law as it existed then and in his day:

> "In capital cases, *in favorem vitae,* the law will not punish in so high a degree, except the malice of the will and intention do appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrongdoer. ... So if a man be killed by misadventure, as by an arrow at butts, this hath a pardon of course; but if a man be hurt or maimed only, an action of trespass lieth, though it be done against the party's mind and will, and he shall be punished in the same as deeply as if he had done it of malice. ... So if an infant within years of discretion, or a madman, kill another, he shall not be impeached thereof; but if he put out a man's eye, or do him like corporal hurt, he shall be punished in trespass."

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[3] Sir William Holdsworth, *A History of English Law,* Vol. VIII Methuen & Co. Ltd. and Sweet & Maxwell Ltd. 1982 [Reprint 1991] p. 446.

[4] Bacon, Maxims, Regula vii, Works (ed. Spedding) vii 347,348. See Sir William Holdsworth, *A History of English Law,* Vol. 111 Methuen & Co. Ltd. and Sweet & Maxwell Ltd 1982 [Reprint 1991] p. 375.

This absolute liability for damages was used in the seventeenth century to point the contrast between criminal and civil liability. Incapacities such as infancy, madness, compulsion, or necessity did not excuse the person suffering from them from a liability to a civil action for damages for the wrong done because such a recompense was not by way of penalty, but a satisfaction of damage done to the party; but in cases of crimes and misdemeanours, where the proceedings against them are *ad poenam,* the law in some cases took notice of these defects, and reduced the severity of their punishments[5].

In adjudicating upon questions of civil liability the law made no attempt to try the intent of a man. Brian C.J. had said:

> "It is common knowledge that the thought of man shall not be tried, for the Devil himself knoweth not the thought of man".[6]

In the case of *Hulle v. Orynge*[7], also known as the *Case of Thorns,* the plaintiff brought an action against the defendant for trespassing on his land to collect thorns that had fallen in the process of clipping a hedge on their common boundary. The defendant pleaded that he was cutting thorns upon his own land, that some of the thorns fell, *ipso invito,* (against his will) on the plaintiff's land, that he came on to the plaintiff's land and collected them, and that this was the trespass complained of. The court held that the plea as

[5] Ibid.
[6] Ibid.
[7] (1466) B & M 327.

pleaded went only to intention. Intention was relevant in felony, but not in an action for damages. It disclosed no defence. Choke J. said, "If he wants to make a good plea out of this, he should show what he did to prevent the thorns from falling, so that we can judge whether he did enough to excuse himself". The only likely excuse for someone clipping a boundary hedge in such circumstances would have been a sudden gust of wind; and Choke J. chose that as his example of a possible defence.

> "The law would deem that the intent of a man is not triable, and the conception of negligence had as yet hardly arisen. It took account, not of the moral shortcomings of the defendant, but only of the loss of the plaintiff. When the main object of the law was to suppress the blood feud by securing compensation to the injured person or his kin, it was to the feelings of the injured person or his kin that attention was directed, rather than to the conduct of the wrongdoer. The compensation payable to the plaintiff was regarded, not as a penalty for wrongdoing, but as a means whereby the plaintiff was induced to forego his right to take revenge."

But as damage was the gist of the action on the case, the court in coming to a conclusion whether or not a defendant could be made liable in such an action, was bound to consider whether or not the damage alleged could be said to be a sufficiently proximate consequence of the defendant's act to entail liability; and this question could only be answered by asking whether any ordinarily prudent man would have foreseen that damage would probably result from his act. Thus the courts were gradually familiarized with the conception of negligence.

In the sphere of tort it seems that the conception of negligence was at first applied where the duty owed by the defendant to the plaintiff arose out of

some contractual, quasi-contractual, or proprietary relation. In 1601, in the *Countess of Shrewbury's Case*[8] Coke laid it down that "where a man delivers a horse to another to keep safe, the defendant *equum illum tam negligenter custodivit, quod ob defectum bonae custodiae interiit,* the action on the case lies for this breach of trust; so if my shepherd, whom I trust with my sheep, and by his negligence they be drowned, or otherwise perish, an action on the case lies". Similarly, persons like smiths or innkeepers, who were bound by law to exercise their callings skillfully, were under a duty of a delictual or quasi-contractual nature, if they caused damage by their negligence.

This conception of common liability was extended in 1676 in the case of *Mitchell v. Alestry*[9]. In that case the defendants had brought an unruly horse into Little Lincoln's Inn Fields for the purpose of breaking him. There were many people walking about. The horse escaped from the defendant and kicked and injured the plaintiff. The court held that the plaintiff could recover. The essence of the wrong was in bringing the horse into a London square for breaking in, 'improvidently, rashly, and without due consideration of the unsuitability of the place'. The plaintiff's case on the merits was undeniably strong; the defendants could hardly deny their awareness that the horses needed taming, and it was obvious that they had chosen the wrong place to attempt it. "It was the defendant's fault to bring a wild horse into such a place, where mischief might probably be done, by reason of the concourse of people. Lately, in this Court, an action was brought against a butcher, who had made

[8] (1601) 5 Co. Rep. 14a.
[9] (1676) B & M 572; 1 Vent. 295.