

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

1. YEW BON TEW also known as
YONG BOON TIEW
2. GANESAN S/O THAVER (an
infant) suing by his guardian and
next friend, YEW BON TEW
also known as YONG BOON TIEW
- Appellants
(Plaintiffs)

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- and -

KENDERAAN BAS MARA

Respondent
(Defendant)

CASE FOR THE RESPONDENT

1. This is an appeal from the judgment of the Federal Court of Malaysia (Raja Azlan Shah, C.J., Chang Min Tat F.J. and Syed Othman F.J.) dated the 27th November, 1979, which allowed the Respondent's appeal from a judgment of the High Court in Malaya (Azmi J.) dated the 13th day of April, 1977. The trial judge had overruled the Respondent's (Defendant in the action) preliminary objection on a point of law and had given judgment on the claim by the Appellants (Plaintiff in the action) for Malaysian Ringgit Sixteen Thousand Eight Hundred (MR \$16,800/-) for the First Appellant and for Malaysian Ringgit One Thousand (MR \$1,000/-) for the Second Appellant and costs for the Appellants in the sum of Malaysian Ringgit Two Thousand (MR \$2,000/-).

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2. The preliminary objection raised by the Respondent was whether the Appellants action was time barred by virtue of Section 2(a) of the Public Authorities Protection Ordinance 1948 which was later amended by Amending Act 252 which came into force on 13th June, 1974.

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3. Section 2(a) of the Public Authorities Protection Ordinance 1948 provides:-

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Where, after the coming into force of this Ordinance, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect -

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- (a) the suit, action prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

4. The Amending Act 252 which came into effect on 13th June, 1974, amended Section 2(a) of the Public Authorities Protection Ordinance 1948 by the deletion of the words "twelve months" wherever appearing in paragraph 2 and substituting therefore the words "thirty six months". There is no mention whatsoever in the Amending Act that it is to apply retrospectively.

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5. It has been conceded that the Respondent (Defendant in the action) is a Statutory Body and entitled to the protection of Section 2(a) of the Public Authorities Protection Ordinance 1948.

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6. The accident giving rise to this case occurred on the 5th of April, 1972. The Writ was issued by the Appellants on the 20th March, 1975 and served on the Respondent on the 27th of March, 1975. At the time of issue of the Writ the twelve months period under Section 2(a) of the Public Authorities Protection Ordinance prior to amendment had lapsed.

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7. At the hearing of the action in the High Court at Kuala Lumpur (Azmi J.) on the 13th of April, 1977, the Respondent raised a preliminary objection on a point of law that the Appellants' claim was barred by Section 2(a) of the Public Authorities Protection Ordinance 1948 as the claim was commenced after the expiry of the period of twelve months provided by Section 2(a) of the Ordinance aforesaid.

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8. On the same day i. e. the 13th of April, 1977, Azmi J. gave judgment for the Appellants overruling the Respondent's preliminary objection. In overruling the Respondents preliminary objection the Learned Judge held the Amending Act 252 of 1974 to be procedural and therefore retrospective in its operation, and as the period of twelve months had been increased to thirty six months the Appellants' claim was not time barred.

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10 9. The Respondent appealed to the Federal Court of Malaysia (Raja Azlan Shah C.J., Chang Min Tat F.J. and Syed Othman F.J.) against the decision of Azmi J. overruling the preliminary objection. On the 27th day of November, 1979, the Federal Court gave judgment allowing the Respondent's appeal and ordered the Appellants to pay the Respondent the costs of the hearing in the High Court and of the Appeal in the Federal Court.

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20 10. The judgment of the Federal Court was delivered by Raja Azlan Shah C.J. who, as regards the Appeal disagreed with the decision of Azmi J. and held that in the circumstances of this case, the time for the claim was not enlarged by the Amending Act 252 and that the Act is not retrospective in operation and has no application to a cause of action which was already barred before the Amending Act came into operation.

30 11. On the 19th day of May, 1980, the Federal Court of Malaysia made an Order granting final leave to appeal to His Majesty the Yang di-Pertuan Agong.

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12. The Respondent submits that this Appeal should be dismissed with costs for the following

R E A S O N :-

BECAUSE the judgment of the Federal Court of Malaysia with respect to the question of law raised in the Appeal was right.

ROBERT GATEHOUSE

ZAINUR ZAKARIA

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL No. 36 of 1980

O N A P P E A L

FROM THE FEDERAL COURT OF
MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

YEW BON TEW also known
as YONG BOON TIEW and Appellants
Another (Plaintiffs)

- and -

KENDERAAN BAS MARA Respondent
(Defendant)

CASE FOR THE RESPONDENT

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