IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 69

CA 11/1999

Between

Parno

… *Appellant*

And

SC Marine Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Costs; Conflict of Laws — Choice of law — Tort; Tort — Negligence

Version No 1: 20 Nov 2026 (01:16 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Parno v SC Marine Pte Ltd

[1999] SGCA 69

CA 11/1999
Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
15 September 1999

1 (delivering the grounds of judgment of the court): This was an appeal from the decision of Lim Teong Qwee JC wherein he apportioned responsibility for personal injuries suffered by the appellant in the proportion of 75:25 in favour of the respondent. It was agreed between the parties at the trial that only the question of liability needed to be determined at that stage, with damages to be assessed separately. At the end of the hearing, we allowed the appeal by varying the apportionment of liability in the proportion of one-third to the appellant and two-thirds to the respondent. We now give our reasons.

2 ***The background***

3 This appeal arose out of an accident which occurred on board a dumb barge known as the Sumpile 8 owned by the respondent. At the time of the accident, the barge, a Singapore-registered vessel, was anchored off the port of Rangoon in Myanmar where it was engaged in pile-driving operations for the purpose of constructing a jetty.

4 The appellant, an Indonesian national, was employed by the respondent as a rigger under a contract of employment dated 13 September 1997 and was assigned to work on board the Sumpile 8.

5 Before proceeding to describe the circumstances of the accident, it is necessary to set out briefly the operating mechanism of the Sumpile 8 as well as the usual processes involved in pile-driving operations at sea.

6 ***The Sumpile 8***

7 The principal dimensions of the Sumpile 8 were 64.14m (L) x 26m (B) x 4.5m (D). A pile frame was mounted at one end of the barge while the accommodation, which housed the control room and other facilities, was located at the other end. The pile frame was a steel tower structure with hoists and leaders to guide the hammer. The hammer was a Mitsubishi MH-72B diesel hammer, which was essentially a diesel engine with an upper and lower cylinder containing a piston or ram. The hammer measured about 5.9m and was secured to two parallel leaders by four clamps. At the lower end of the upper cylinder of the hammer, there was an arrangement of lifting lugs which consisted of a pair of lugs with `eyes` through which a pin or bolt (`pin No 5`) was inserted and held in place by a small hairpin-shaped object (`pin No 16`) that was inserted through an opening at the end of pin No 5. There was a similar arrangement of lifting lugs at the diametrically opposite side of the hammer.

8 The hammer was started by what is known as a starter which was clamped to the leaders in such a way that it could be lowered to a position alongside the upper cylinder of the hammer. An operator in the control room would operate the hoists to either raise or lower the starter. To start the hammer, it was necessary to bring the starter alongside the upper cylinder of the hammer

Version No 1: 20 Nov 2026 (01:16 hrs)

where the starter would engage a latch. The starter would then be hoisted up, bringing with it the piston or ram within the hammer. This action allowed the fuel mixture in the upper cylinder to be pumped into the lower cylinder. At the designed height, the latch would be automatically released, causing the piston to fall. The resulting compression of the fuel mixture in the lower cylinder would produce the combustion necessary to cause an internal explosion which would create the downward thrust essential for driving the pile down. At the same time, the explosion would also create a reverse reaction which moves the piston back vertically upwards whereupon diesel and air would flow into the compression chamber to repeat the entire operation. The hammer could be stopped by manually releasing the compression.

9 To drive a pile of the length that the respondent was then engaged in driving, the hammer had to be raised by securing the hoisting cables to the lifting lugs and hoisting it up. Guy cables would be shackled to the pile which would then be positioned under the hammer. The guy cables would be operated by winches on deck so as to hold the pile in position. In order to start the piling, the starter would hoist the hammer vertically upwards. Thereafter, the starter would remain idle in that raised position throughout the piling operation. The hammer would then be lowered onto the helmet covering the top of the pile. When the pile had been driven by the hammer to about three-quarters in depth, the hammer would be stopped for the guy cables to be removed manually in order that the pile could be further driven into the seabed. Pursuant to standing instructions, the starter would be brought down immediately upon each stoppage of the hammer by the activation of a button in the control room. The reason for this practice was apparently to save time as well as to increase the efficiency of the operations. It was said by the respondent`s witness at the trial that it was essential to lower the starter immediately as any change in the water

Version No 1: 20 Nov 2026 (01:16 hrs)

current would cause the pile to lose its alignment quickly. In order to prevent this, the practice of lowering the starter contemporaneously with the stoppage of the hammer was adopted so that piling could recommence immediately after the guy cables were removed. At this point, the starter (now already in its lowered position) would hoist the hammer upwards in order to restart the piling again. In a 12-hour working shift on board the Sumpile 8, about four to six piles could be driven in while the operation to drive each pile to about three-quarters in depth normally took about two to three hours.

10 ***The accident***

11 On the day of the accident, the appellant was assigned to monitor the status and condition of the hammer from the piling tower deck. The piling tower consisted of decks, or platforms, positioned at regular intervals along its height for the workmen to stand on when monitoring piling operations. At the commencement of piling, the appellant would stand on the platform at which position his face would be about two metres from the top of the hammer, and on the same level as the starter. As each pile was driven deeper into the seabed, the hammer would follow it downwards making it necessary for the appellant to periodically descend to a lower platform in order to continue monitoring the operations.

12 The accident occurred at about 5pm on 2 February 1998. By this time, about four or five piles had already been driven in during the course of the day. The complement on that day consisted of the master or captain, one Mr Ishak bin Samat (`Ishak`), Mr Sazali and another man, both of whom were control room operators, Mr Ahmad (co-ordinator, radio officer and mechanic) (`Ahmad`), another mechanic, and about six other riggers aside from the appellant. It was not disputed that at the material time, piling operations had

Version No 1: 20 Nov 2026 (01:16 hrs)

stopped temporarily. However, the appellant and the respondent each gave differing accounts of why piling had stopped. At the end of the trial, the trial judge believed the respondent`s version. There was no appeal from this finding.

13 The trial judge found that at the time of the accident, piling had stopped solely because the pile had been driven three-quarters of the way down into the seabed and not for any other reason. As mentioned before, it was standard practice for piling operations to cease at this stage so that the guy cables on the pile could be removed.

14 It was not disputed that at the material time, pin No 16 on the hammer had become loose. The appellant must have seen that this was the case and sought to rectify the situation by attempting to temporarily replace the loose pin with a small wire normally used for welding. It was agreed that if pin No 16 were to fall off, then there was a risk that pin No 5 would fall off as well, in which event it would not have been possible to restart the hammer. Although no one witnessed the actual accident, it was never in doubt that the appellant, whilst trying to replace the loose pin No 16, must somehow have stepped away from the platform and moved towards the hammer before the starter came down. It was never at any time suggested that the appellant had stepped away from the platform for any other reason or for no reason at all. Unfortunately, it was during the course of his moving away from the platform that the starter fell onto his buttocks, injuring him very seriously.

15 ***The appellant`s case in the court below***

16 At the trial, the appellant raised four issues, namely:

17 1 breach of statutory duty under the Factories Act (Cap 104);

Version No 1: 20 Nov 2026 (01:16 hrs)

18 2 common law negligence on the part of the respondent as employers of the appellant;

19 3 res ipsa loquitur; and

20 4 contributory negligence.

21 The issue of res ipsa loquitur was abandoned at the appeal and as such we need not go into that.

22 The appellant had been a rigger for seven years before the accident, having started work a year after completing his secondary school education. Before starting work as a rigger, he never received any training on how to repair mechanical equipment. Before he joined the Sumpile 8, he had never worked on a piling barge. When he came on board the Sumpile 8 about three months before the accident, it was Ahmad, the coordinator, who had explained to him the functions of the barge and the method of tying up piles. During those three months, Ishak had personally instructed the appellant on his duties as a rigger only about four or five times. A fellow colleague had explained to the appellant the workings of the piling equipment on board. He had only worked on the platform in the piling tower for just one and a half weeks before the accident. Ahmad, who had assigned him to work in the piling tower, had explained to the appellant that he would be required to attend to any oil spills or loose equipment in the machinery.

23 Basically, the appellant understood that his job included having to observe the movement of the hammer downwards and to make sure that everything was working properly. In addition, if he should discover any simple defect which was within his competence to rectify, then he should execute the

Version No 1: 20 Nov 2026 (01:16 hrs)

repairs himself although he had not received any strict instructions on this. Where a defect was serious, the appellant would be required to inform Ahmad who would then either attend to it himself or direct one of the mechanics to do so. However, the appellant was not told specifically what defects were serious and what were not. Neither was he told that he could not repair anything without the prior approval of either Ahmad or Ishak. He knew however, from his own observation and common sense, that no one ought to approach the hammer until the starter had come down.

24 On the day of the accident, after piling had stopped, the riggers at the foot of the piling tower proceeded to remove the guy cables while Ahmad supervised them. The appellant took it upon himself to replace the loose pin No 16 with a temporary wire because he thought it was a serious matter and was concerned that pin No 5 might fall off if the problem was not rectified immediately. He knew he could have obtained a proper replacement for pin No 16 from the barge store, but did not do so as he felt that the situation then was one of urgency. He thought it his duty to ensure that the piling operations were not affected although he agreed with counsel for the respondent that there was no likelihood of pin No 5 falling off once piling operations had ceased. He also agreed that Ahmad was the best person to decide on the most appropriate measure to adopt in the situation, but felt nevertheless that there was no need to tell Ahmad about the loose pin as he could fix it himself. In any event, he asserted that at the material time, he did not even know where Ahmad was. His first thought was of the danger which the loose pin would pose to the entire piling operation. He admitted, however, that he did not look to see if the starter had come down before stepping away from the deck. He conceded that if he had taken the time to observe, he would have been aware that the starter had not yet

Version No 1: 20 Nov 2026 (01:16 hrs)

come down. He also knew fully well that the starter would come down every time piling stopped.

25 The appellant called an expert witness, Mr Bobby Ho Eng Hean, to testify. Ho is a senior partner of a firm of civil and structural consulting engineers and has had several decades of experience in civil engineering consultancy work. Ho has also designed, constructed and worked on a dumb barge with a piling frame not dissimilar from the one used on board the Sumpile 8. To this it may be added that Mr Ho has had the experience of using diesel hammers for no less than fifteen years.

26 Ho opined that on board a barge like that of the Sumpile 8, with a piling frame mounted at one end and the control room situated at the other, it was necessary for a coordinator to be present at all times at the foot of the piling tower. The coordinator would be responsible for communicating with the control room via radio in order that all movement of persons or equipment around the piling frame could be made known to the control room operators. It was also Ho`s opinion, having observed various photographs of the layout of the Sumpile 8, that persons in the control room could not clearly see the riggers who were stationed on the piling tower platforms that were situated above eye level. Ho was also of the view that the hydraulic jack control of the piling frame further obscured the vision of the control room operators. As such, Ho felt that it was the co-ordinator`s duty to carefully monitor the riggers on board all the platforms whenever piling was in progress. Only then could the co-ordinator accurately relate the situation outside to the persons in the control room, as well as convey information about any problems which might surface in the equipment. It was his view that the co-ordinator should keep all the riggers in sight at all times.

Version No 1: 20 Nov 2026 (01:16 hrs)

27 Ho also surmised, inter alia, that the starter ought not to have been lowered without the coordinator (ie Ahmad) first informing the control room to do so. In his opinion, the systematic lowering of the starter could endanger the safety of riggers on the platform who might at any time be carrying out simple rectification works on the hammer. Ho also stated that it was part and parcel of the duty of a rigger to carry out simple adjustments and repairs to the hammer, which would include something like the re-fixing of pin No 16 whenever it became loose. It could be put right by putting something through pin No 5 to prevent it from falling off. But he agreed that the appellant should nevertheless have informed the coordinator about the problem anyway although it was only for major repairs that the services of a mechanic would be required. Ho did not think that it was absolutely necessary for the appellant to obtain a replacement for pin No 16 from the barge store as any temporary measure in the interim would equally suffice.

28 ***The defence***

29 The respondent called only one witness to testify, the barge-master, Ishak who had worked on board the Sumpile 8 since 1982. He was promoted to bargemaster sometime around April 1994. He said he was very familiar with both the layout of the barge and the operational procedures of marine piling.

30 Ishak described the duties of a rigger on board the Sumpile 8 as being very general in nature. The riggers assisted in manoeuvring and operating the vessel, as well as helped in the operation of the equipment on board under his direction. He admitted, however, that part of the duties of a rigger included the carrying out of minor adjustments and repairs to the machinery but that a rigger was not qualified to effect significant repairs which involved the removal of machinery parts. The riggers would also normally be assigned to different parts

Version No 1: 20 Nov 2026 (01:16 hrs)

of the vessel for different duties. Ishak affirmed that each time a rigger was reassigned to a different part of the barge, he would personally make sure that the rigger was fully briefed on his duties if he was not already otherwise experienced in that particular aspect of the job. He also claimed that either he or another experienced rigger would normally supervise the riggers but that supervision was not ordinarily required because of the simple nature of the job. Ishak also gave evidence that every time a new rigger was assigned to the Sumpile 8, he would personally spend time introducing the new rigger to the other crew members as well as to the equipment on board. He would explain the nature of the work involved as well as brief the new employee on the necessary safety precautions. In addition, all the riggers would undergo a period of initial supervision to ensure that they understood their instructions. It is not clear however who supervised the riggers or what method was adopted to ensure that they had understood their tasks. Neither did Ishak describe how detailed his briefings or explanations to the riggers were. He did admit, however, that the initial briefing on a rigger`s first day took only about five minutes.

31 Ishak claimed that when the appellant joined the Sumpile 8, he personally briefed the latter on his duties. He explained to the appellant the respondent`s operating procedures in driving piles, including the manner in which the hammer and starter worked. In particular, in or about November/December 1997 (ie three months before the accident), Ishak directed the appellant to monitor the status of the hammer during piling. Ishak alleged that he personally explained to the appellant that his duty was only to ensure that the hammer was in position at all times and to observe the general condition of the hammer during piling in case a shackle or a nut should become loose. If the appellant should observe any fault, his duty would be to shout or signal to the coordinator, who was permanently stationed at the foot of the piling tower.

Version No 1: 20 Nov 2026 (01:16 hrs)

It was then up to the coordinator to relay the problems to the control room via radio. Following this, Ishak, in the control room, would check on the nature of the problem and decide on what action to take. It was further alleged that the appellant was instructed that he should never carry out repairs of his own accord without first informing Ishak of the problem. The reason for this, Ishak claimed, was the danger that a rigger might not be able to tell a minor fault from a major one which would require the attention of a mechanic.

32 No one witnessed the accident. Ishak did not even know that the mishap had occurred until both the shackles had been removed from the pile and after piling operations had already ceased for some time. It was only at this point that Ishak `happened to` glance upwards at the hammer and noticed the appellant clinging on to the cables supporting it. In fact, another vessel had to sound its horn in order to alert the rest of the crew on the Sumpile 8 to the appellant`s plight. Despite this, Ishak maintained that the appellant`s action in trying to replace the loose pin No 16 was unauthorised as he had not reported the fault or waited for further instructions from Ishak as he had been told to do. He alleged that the appellant had been monitoring the hammer on the Sumpile 8 for at least three months before the accident.

33 Under cross-examination, Ishak admitted that he had no formal certificates or qualifications for his job. Moreover, he had never undergone any technical training in marine piling as the respondent had never arranged any formal training for him in the course of his employment. He had never worked as a rigger for the respondent and could not remember the period in which he worked as a coordinator. He testified that occasionally, his job entailed him having to switch roles from being bargemaster to coordinator. Ishak also conceded that the view of the piling tower platforms from the control room depended on where one stood. At certain positions in the control room, not all

Version No 1: 20 Nov 2026 (01:16 hrs)

the workers outside could be seen. Often, riggers standing on the higher decks of the piling frame were not within sight of the control room operators. He also conceded that he was not able to see the whole hammer from the control room as the piling tower (situated between the hammer and the control room) partially obstructed his vision.

34 Ishak said that on the morning of the accident, he had checked all the equipment on board the vessel but that took only about five to ten minutes. He admitted that at the time of the accident he did not receive any signal from Ahmad, the coordinator, to drop the starter. He said that if he (or the other control room operators) had known that someone was standing near the hammer, the button would not have been activated to lower the starter. He also admitted that from where Ahmad was positioned at that time, it was difficult for him to see the riggers who were standing in front of the hammer above him. In fact, Ahmad would have had to look up from over the edge of the deck in order to see them. It was also conceded that as the appellant was required to report all faults to Ahmad, it was therefore incumbent that both were able to see each other at all times. Finally, Ishak also admitted that the substitution of pin No 16 with a temporary wire was a very minor adjustment and repair and that the appellant`s fear that pin No 5 would fall off in the event that a temporary measure was not taken as soon as possible was fully justified.

35 ***The decision below***

36 The trial judge was of the view that the appellant had `properly conceded` that the Factories Act did not apply to the Sumpile 8 while it was anchored at sea off the port of Rangoon in Myanmar, but did not elaborate on the reasons for this save for the fact that he agreed with counsel for the appellant that the Factories Act does not have extra-territorial application. Counsel had

Version No 1: 20 Nov 2026 (01:16 hrs)

sought to argue in the court below that the Factories Act was nevertheless applicable in this case on the ground that the respondent had not in its defence contended otherwise. This argument was rejected by the trial judge who felt that the defence was in fact sufficiently pleaded.

37 The trial judge considered the English cases of **Joseph Smith (Pauper) v Charles Baker & Sons** [1891] AC 325 and **Wilsons and Clyde Coal Co Ltd v English** [1938] AC 57 and had no doubt that the duty owed by an employer to his employee involved the taking of reasonable care to provide proper appliances, to maintain them in a proper condition, and to carry on his operations so as not to subject his employees to unnecessary risk.

38 The trial judge was of the view that there had been a breach of the duty to take reasonable care for the appellant`s safety on the respondent`s part. In particular, he was influenced by the fact that the starter had remained idle throughout the time that a pile was being driven into the seabed. When piling operations stopped some two or three hours later, almost the entire crew on board the Sumpile 8 would then be engaged in either removing the guy cables or in supervising the operation. As such, the trial judge felt that the starter should not have been lowered without first examining that it was safe to do so. He felt that a safer system would have entailed having a workman in the appellant`s position (who was best placed to see if it was safe) give a signal to the operator in the control room to bring the starter down. Alternatively, he suggested that there should at least have been some kind of alarm to alert those at risk before the starter commenced its descent. As no warning of any kind was given before or during the lowering of the starter, it was held that the respondent had failed to take reasonable care for the safety of its workmen.

39 ***Contributory negligence***

Version No 1: 20 Nov 2026 (01:16 hrs)

40 Turning to the question of contributory negligence, the trial judge found that the appellant knew that the starter would come down to restart the hammer. Likewise, he knew that no one should approach the hammer until the starter had come down, not because someone had told him so but simply because it was an obviously dangerous thing to do and hence, the appellant, knowing that he should not have done it, had failed to take reasonable care for his own safety. The trial judge felt that this want of care on the appellant`s part contributed significantly to the injury sustained by him. As such, the appellant was much more to blame and was consequently held three-quarters responsible for his injuries.

41 ***The appeal***

42 The appellant appealed on essentially two main grounds, namely, that the trial judge had erred:

43 1 in holding that the Factories Act was not applicable to the case at hand; and

44 2 in failing to consider all the evidence before him in proper perspective so that the consequent apportionment of liability was erroneous.

45 ***Applicability of the Factories Act***

46 Counsel for the appellant conceded, both in the appeal and at the trial, that the Factories Act did not ***per se*** have extra-territorial application. She argued however that the Act did apply in the present case for the following reasons:

Version No 1: 20 Nov 2026 (01:16 hrs)

47 (a) that the respondent had not in its defence disputed its statutory duties to the appellant under s 33(3) of the Factories Act nor had it stated that the appellant`s claim under the Act was misconceived; and/or

48 (b) that the case was substantially connected to Singapore because

49 i the Sumpile 8 was a Singapore-registered vessel;

50 ii the appellant`s contract of employment provided that the law of the vessel`s registry applied to the agreement;

51 iii the said contract of employment provided that the employee would be covered by the Workmen`s Compensation Insurance Scheme (the Workmen`s Compensation Act) in accordance with the country of the vessel`s registry; and

52 iv the said contract also provided that the agreement could be terminated if the employee should commit a breach of any of the rules and regulations regarding discipline and work or be convicted under the laws of the country of the vessel`s registry.

53 In support of contention (a) above, the appellant cited the case of **Goh Chok Tong v Tang Liang Hong** [1997] 2 SLR 641 . In that case, the tort of defamation had been committed by the defendant against the plaintiff in Malaysia. The defendant sought to plead that the statement of claim did not disclose any cause of action as the plaintiff had not pleaded that an action for defamation could be brought under the laws of Malaysia. Lai Kew Chai J held that the present law in Singapore on the applicable choice of law rule is based

Version No 1: 20 Nov 2026 (01:16 hrs)

on the much-celebrated pronouncement by Willes J in the case of **Phillips v Eyre** [1870] LR 6 QB 1:

> *As a general rule, in order to found a suit in England for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in England. Secondly, the act must not have been justifiable by the place where it was done.*

54 Lai Kew Chai J further held that the above rule of double-actionability has since been modified by the House of Lords in **Boys v Chaplin** [1971] AC 356, it being generally accepted that the rule is not immutable and may be departed from in appropriate circumstances. In ***Boys v Chaplin*** , supra, English law was applied to a tort committed in Malta by one British subject against another in order to take account of the varying interests and policy considerations that arose when one or more foreign elements were present.

55 In support of contention (b), the appellant relied on **Johnson v Coventry Churchill International Ltd** [1992] 3 All ER 14. In that case, the plaintiff entered into a contract of employment with the defendant company which placed English personnel seeking to work abroad. The plaintiff was assigned to work in Germany where he was injured on a building site when a plank on which he was crossing a trench collapsed. The plaintiff brought an action in negligence against the defendants in England. Under English law, this would give rise to liability in negligence for breach of the employer`s duty to provide a safe system of work, but no liability lay under German law in the absence of a wilful breach. It was held by JW Kay QC, sitting as a deputy judge of the English High Court, that the double-actionability rule should be displaced in favour of the lex fori as England was the country with which the occurrence and the parties had the most significant relationship: the parties were both English, the contract was expressly made subject to English law and the fault which gave rise to the

Version No 1: 20 Nov 2026 (01:16 hrs)

accident arose from decisions taken in England. The interest of justice also dictated the application of English law as the defendants had in fact taken out insurance cover against any liability under that law and would hence not be disadvantaged. It is interesting to note from the judgment that the plaintiff had initially included a claim for breach of statutory duty in his writ of summons and statement of claim. However, this was held by the learned judge to be `clearly inappropriate`, and thus properly abandoned by counsel at the outset of the hearing. (see p 16 para j of the judgment).

56 Also relied on by the appellant was the Privy Council decision of **Red Sea Insurance v Bouygues SA** [1995] 1 AC 190[1994] 3 All ER 749 where it was held that the flexible exception to the double-actionability rule is applicable to both limbs of the rule. In particular, it was held that English law could be applied in circumstances where the wrong was actionable by the lex loci but not under the lex fori.

57 The gist of the appellant`s argument in (a) above was simply this: As neither party had pleaded foreign law, Singapore law should, by default, be applied. It was contended that as the appellant had not alleged that the respondent`s acts were wrongful under the law of Myanmar (the law of the tort), the claim in this case, whilst involving foreign elements, should nevertheless be treated as if it were a domestic Singapore case. Moreover, it was also said that the respondent had not itself raised an issue of conflict of laws in its pleadings. In the absence of such a conflict, the appellant submitted that the lex loci delicti and the lex fori should be treated as the same. As such, the court ought to apply the law of the forum in which it sits, which law includes the Factories Act.

58 Alternatively, the appellant submitted on (b) that even if a conflict of laws was in fact raised by the pleadings, then the exception to the double-

Version No 1: 20 Nov 2026 (01:16 hrs)

actionability rule as formulated in ***Boys v Chaplin,*** supra, should apply to allow for the application of Singapore law as the facts of this case were substantially connected to Singapore. In this respect, great reliance was placed by counsel for the appellant on the fact that the contract of employment specifically provided for Singapore law to be the governing law of the contract. Furthermore, counsel also sought to rely upon the fact that under the employment contract the respondent was obliged to insure its employees under the local Workmen`s Compensation Insurance Scheme, to support her contention that the Factories Act was applicable in this case.

59 It is clear that the applicable choice of law rule in Singapore with respect to torts committed overseas is that laid down in ***Philips v Eyre,*** supra. It is also incontrovertible that the exception to the rule as formulated in ***Boys v Chaplin*** , ***Johnson v Coventry Churchill*** and ***Red Sea Insurance*** is part of our law: see ***Goh Chok Tong v Tang Liang Hong,*** supra. But in our opinion neither the double-actionability rule nor its exceptions were relevant in determining the applicability of the Factories Act to the case at hand. The reason for this is because the Factories Act is a statutory enactment which falls within that category of statutes that create new rules and standards of conduct which need only be followed by the specified class of persons at whom those statutes are specifically targetted. Such statutes may be contrasted with other statutes which do not create new rules of conduct, but merely remove certain exceptions to common law liabilities, such as the Contributory Negligence and Personal Injuries Act (Cap 54), or provisions which attach new liabilities to the violation of existing rules of conduct, such as s 12 of the Civil Law Act (Cap 43) which confers upon the personal representatives of a deceased person a right of action for the wrongful death of that person for the benefit of his dependants: see Dicey & Morris, ***The Conflict of Laws*** (12th Ed, 1993) at pp 1513-1514.

Version No 1: 20 Nov 2026 (01:16 hrs)

60 A particularly instructive case in this area is **Yorke v British & Continental SS Co Ltd** [1945] 78 Lloyd LR 181. In that case, the plaintiff was injured from a fall from the `tween decks into the lower hold of the defendants` ship while it was moored in the harbour at Gibraltar. One of the plaintiff`s claim was for a breach of the Dock Regulations 1934 which were promulgated under the United Kingdom Factory and Workshop Act of 1901 and continued by the Act of 1937. It was held by the English Court of Appeal that the English Dock Regulations did not have extra-territorial effect. Following some of the earlier English cases in this area (**R v Jameson & Ors** [1896] 2 QB 425; **Tomalin v S Pearson & Son Ltd** [1909] 2 KB 61), Scott LJ, delivering the leading judgment of the court, said:

> *It is quite clear that the principle of law is that our territorial legislation does not extend out of the Realm, or at any rate outside territorial waters, unless Parliament has expressly said so. This legislation does not purport to apply outside the jurisdiction of our courts and in my opinion it would be quite wrong to treat Regulations under Factory Acts (sic), made primarily in respect of docks and harbours in this country and in regard to ships because they are in those docks and harbours, as extending to a British ship anywhere else, as for instance, when anchored in the harbour of Gibraltar.*

61 In the circumstances, the plaintiff`s claim for breach of statutory duty failed.

62 The facts in ***Tomalin*** also merit recounting. In that case, an English workman in the employment of English contractors was sent out by them to work in Malta, and was fatally injured in the course of his employment. His widow sought to sue the employers under the Workmen`s Compensation Act 1906. It was held by the Court of Appeal that the Act had no application outside the territorial limits of the United Kingdom, except for certain classes of workmen whose cases had been specifically provided for by the Act. Cozens-

Version No 1: 20 Nov 2026 (01:16 hrs)

Hardy MR cited with approval the following passage from ***Maxwell on The Interpretation of Statutes*** :

> *In the absence of an intention clearly expressed or to be inferred from its language, or from the object or subject-matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate beyond the territorial limits of the United Kingdom.*

63 The application of the above principle is illustrated by a decision of this court in **PP v Taw Cheng Kong** [1998] 2 SLR 410 , which was a criminal reference brought by the Attorney General in respect of the issue of the constitutionality of s 37(1) of the Prevention of Corruption Act (Cap 241, 1993 Ed) (`the PCA`). Section 37(1) of the PCA provides that the PCA has effect, in relation to citizens of Singapore, outside as well as within Singapore; and where an offence under the PCA is committed by a Singapore citizen in any place outside Singapore, he may be dealt with in respect of that offence. This court in ***Taw Cheng Kong*** cited with approval the following passage from ***Libman v R*** 21 CCC (3d) 206 at pp 228-229:

> *... other States may legitimately take umbrage if a country attempts to regulate matters taking place wholly or substantially within their territories. For these reasons the courts adopted a presumption against the application of laws beyond the realm.*

64 It was held in ***Taw Cheng Kong*** that s 37(1) of the PCA is an example of a provision which expressly evinces Parliament`s intention to depart from the general presumption that all statutes do not ordinarily have extra-territorial effect. The result therefore was that the PCA applied to Singaporeans, both inside and outside of Singapore.

65 Turning to the provisions of the Factories Act, there is nothing which expressly provides that the Act is applicable to factories located beyond the boundaries of Singapore. The Factories Act is essentially an Act which provides

Version No 1: 20 Nov 2026 (01:16 hrs)

for the regulation of safety and other health standards which are required to be adhered to by the occupiers of certain industrial premises. The overall administration of the Act rests with the Commissioner for Labour appointed under the Employment Act (Cap 91). In addition, the Act also provides for the appointment of a Chief Inspector as well as other Inspectors who are empowered to make regular checks and inspections on factories which fall within the purview of the Act. There is also provision for a register of factories to be kept by the Chief Inspector, and all factories, save for a few exempted ones, are required by law to be formally registered, failing which, the occupiers of these factories will be guilty of a criminal offence. Furthermore, provision is also made for the formal notification to the Chief Inspector of accidents and dangerous occurrences, following which the Chief Inspector may order an investigation into the cause of the accident or occurrence. In addition, the Minister is also empowered to direct that a formal inquiry be held.

66 In view of all these provisions, it is beyond doubt that Parliament could not have intended the Factories Act to apply to premises abroad as enforcement of the Act would be impossible without infringing on the sovereignty of another state, let alone the practical difficulties associated with such enforcement worldwide. The main object of the Act is clearly to protect and ensure the safety of the many workmen who work on industrial premises in Singapore. To hold that the Factories Act is applicable to the case at hand, when there is no doubt that the Sumpile 8 was at the material time within the territorial waters of Myanmar, would be to intrude into the jurisdiction of another state.

67 The fact that the contract of employment in this case provided for the applicability of Singapore law was of no avail to the appellant. All that that meant was that Singapore law applied, but only to questions of interpretation of

Version No 1: 20 Nov 2026 (01:16 hrs)

the contract of employment, or where a claim is brought by either party for a breach of the contract.

68 In the circumstances, the trial judge`s decision that the Factories Act was inapplicable to the case at hand could not, with respect, in any way be impugned. The appellant`s appeal on the ground of breach of statutory duty was therefore completely without merit. As we reached the view that the Factories Act was not applicable, it was not necessary for us to consider the appellant`s arguments for bringing the Sumpile 8 within the purview of the said Act or the respondent`s alleged breaches of it.

69 ***Negligence***

70 As neither party had either pleaded Myanmar law with respect to the alleged negligence or raised any point of Myanmar law, then following ***Goh Chok Tong v Tang Liang Hong,*** supra, it was the Singapore common law of negligence which applied. The lex loci delicti was thus treated as the same as the lex fori, that being the basis upon which the trial proceeded and this appeal canvassed.

71 ***Proper system and effective supervision***

72 The common law duty of employers vis-Ã -vis their employees is clear. This was laid down in ***Wilsons and Clyde Coal Co Ltd v English,*** supra, where the House of Lords held that the obligation was threefold - to provide a competent staff of men; adequate material; and a proper system and effective supervision.

Version No 1: 20 Nov 2026 (01:16 hrs)

73 For the purpose of this case, the aspect of the duty which was in issue was that of a proper system of work. The employer must devise a suitable system and instruct his men in what they must do: see **Pape v Cumbria County Council** [1992] 3 All ER 211. In devising a safe system, the employer should be aware that workmen are often careless for their own safety, and his system must, as far as possible, reduce the effects of an employee`s own carelessness: see **General Cleaning Contractors Ltd v Christmas** [1953] AC 180 at pp 189-190 per Lord Reid. The employer must also take reasonable care to ensure that his system is complied with, but he is not obliged `to stand over workmen of age and experience at every moment they are working ... to see that they do what they are supposed to do`: see **Woods v Durable Suites Ltd** [1953] 2 All ER 391 at p 395C; [1953] 1 WLR 857 at p 862 per Singleton LJ.

74 As mentioned above, the trial judge in the present case found the respondent negligent in failing to implement a safe system of work. He was of the view that the system was unsafe because it did not provide for a warning to be given before the starter was brought down. Neither did the respondent`s system of work provide for a signal to be given that it was safe to bring the starter down.

75 With respect, we were of the opinion that the respondent`s negligence in this case extended to more than just the fact that there was no warning or signal given before activating the starter. An employer`s general duty to provide a safe system of work and effective supervision is much broader than was considered by the trial judge. The employer is responsible for the general organisation of the factory or undertaking; in short, he decides the broad scheme under which the premises, plant and men are put to work. This organisation or `system` includes such matters as coordination of different departments and activities; the lay-out of plant and appliances for special tasks; the method of

Version No 1: 20 Nov 2026 (01:16 hrs)

using particular machines or carrying out particular processes; the instruction of apprentices and inexperienced workers; and the general conditions of work: see John Munkman, **Employer`s Liability at Common Law** [1985] at pp 131-132. We will deal with the respondent`s negligence under the following heads.

76 **(i) Faulty coordination between the riggers on the upper platforms of the piling tower, the coordinator stationed at the foot of the tower and the control room operators.**

77 The only means of communication between a rigger standing on an upper platform and the control room was via the coordinator. It was admitted by Ishak that he was not able to see the whole hammer from inside the control room. As stated before, Bobby Ho also opined that the vision of the control room operators was considerably obscured by the presence of the hydraulic jack control and the piling frame. As such, it was important for the coordinator to keep all the riggers within his view at all times and to receive signals from them in order that he could accurately communicate their signals to the control room. However, at the material time Ahmad`s attention was focused on the removal of the guy cables. Even if he had wanted to, the appellant would not have been able to inform Ahmad about the loose pin as Ahmad`s attention was diverted elsewhere. Neither could the appellant have signalled the problem to the control room as they would not have been able to see him whilst he was standing on the upper platform. The flaw in the entire system was the respondent`s failure to provide the appellant with a communication set with which he could communicate with the control room or with Ahmad.

78 As the piling works naturally generate a considerable amount of noise, it would obviously have been difficult for the appellant to inform Ahmad of the loose pin before piling operations came to a stop as the latter would, in all

Version No 1: 20 Nov 2026 (01:16 hrs)

probability, have been unable to hear him anyway. It should be remembered that from where Ahmad was standing, it was difficult for him to see the appellant, let alone realise if the appellant was trying to give him a signal. A system which requires a rigger to inform the coordinator of any defects in the machinery but yet does not provide adequate means for doing so is obviously a defective system.

79 **(ii) Inadequate instructions given to the appellant.**

80 There was a conflict of evidence given by Ishak and the appellant with respect to the sufficiency and frequency of the instructions which were given to the appellant. What was clear however, was the fact that the appellant had never worked on a piling barge before so he was a relatively inexperienced worker. What was also clear was the fact that the initial briefing given by Ishak to the appellant lasted for only five minutes, during which period Ishak was alleged to have introduced all the equipment on board to the appellant and to have explained the nature of the work and the corresponding safety precautions to him. Ishak`s competence to even give instructions in the first place was also thrown into serious question by the fact that he himself had no formal certificates or qualifications for the job and had never undergone any technical training in marine piling. Neither had the respondent ever arranged any formal training for him in the course of his employment.

81 We noted that the respondent did not call any other rigger in its employ to testify as to the nature of the instructions that were given to them with respect to their duties. Ishak himself was somewhat inconsistent in his evidence with regard to the precise scope of the appellant`s duties. On the one hand, he had testified that the appellant`s duty was only to observe the hammer and not to effect any repairs himself. Yet on the other, Ishak also admitted that part of the

Version No 1: 20 Nov 2026 (01:16 hrs)

duties of a rigger included the carrying out of minor adjustments and repairs to the machinery. In fact, Ishak had specifically conceded that the temporary replacement of pin No 16 with a wire was a very minor adjustment and repair.

82 From the above, it seemed to us that the instructions given to the appellant were vague and inadequate. He was not told specifically what repairs he could effect and what he could not. Rather, he was left on his own to decide what repairs were minor enough for him to rectify and what were not. The obvious inference to be drawn from all this was that there was never any proper explanation given to the appellant of the dangers involved in effecting any form of repair at all. There is no doubt that when dealing with an inexperienced worker, an employer`s duty to properly instruct him of his duties and to warn him of the risks involved in the job is necessarily more onerous than when one is dealing with a worker with many years of experience.

83 **(iii) There was inadequate supervision of the appellant.**

84 The trial judge accepted that the appellant had only been working on the piling tower for one and a half weeks before the accident. Yet, no one supervised the appellant while he was working on the platform. Ishak, as bargemaster, had all along been stationed in the control room, from which he could not even see the appellant. Ahmad, as co-ordinator, was pre-occupied with supervising the other riggers on the lower platforms of the barge. It was not suggested by the respondent that there was ever at any time anyone else who was in charge of supervising the appellant. A higher duty of care is owed to a workman who has insufficient experience of the job and is unfamiliar with its dangers. He must be given adequate supervision and guidance in order to protect him from his own incompetence: see **Byers v Head Wrightson & Co Ltd** [1961] 2 All ER 538[1961] 1 WLR 961. An employer`s duty includes checking to ensure that

Version No 1: 20 Nov 2026 (01:16 hrs)

the system is followed by its employees. In this case, no one even realised that the appellant had been injured by the starter until a passing ship sounded its horn to alert the crew of the appellant`s plight!

85 Ho testified that ordinarily only two riggers were required to remove the guy cables from a pile and yet the respondents had used six riggers for the process coupled with additional help from Ahmad. Ho, who had worked on a similar piling barge before, further opined that it was critical for Ahmad to keep his attention on the riggers stationed on the upper platforms at all times. The respondent on the other hand asserted that constant supervision was not required because a rigger`s job was relatively easy. However, the respondent did not adduce any evidence whatsoever of the general practice followed by other companies involved in marine piling. Neither did it give any explanation as to why up to seven persons were required to remove the guy cables in this case. In any event, Ho was not cross-examined on his view that constant supervision was paramount in the circumstances, given the perilous position of the appellant. In the result, it was clear that the respondent had failed in its duty to properly supervise the appellant.

86 **(iv) There was inadequate inspection and maintenance of the piling machinery**

87 It was not in dispute that pin No 16 had become loose. It was also not disputed that this gave rise to a risk that pin No 5 would consequently fall out and injure someone on the head. All three witnesses in the court below testified that the danger which a loose pin No 16 posed was potentially serious. Yet this defect was not discovered by Ishak who had allegedly inspected the machinery on the morning of the day of the accident. He found that everything was in order. There was no doubt however that the alleged inspection had taken Ishak only

Version No 1: 20 Nov 2026 (01:16 hrs)

five, at most ten minutes. It was thus fair to infer that any inspection done must only have been a cursory one. Ishak himself had never undergone any technical training in marine piling and could not possibly have been competent to carry out a proper inspection of the equipment. Neither was it in the respondent`s evidence that Ishak was in any way qualified as a mechanic. In these circumstances, it appeared to us that there was a failure to provide for adequate maintenance and inspection of the piling equipment.

88 In light of the above, we were of the view that the trial judge had viewed the cause of the accident too restrictively, and had not given sufficient consideration to the extent of the respondent`s negligence. We felt that the respondent`s negligence in this case was significantly more serious than that attributed by the trial judge.

89 ***Contributory Negligence***

90 Counsel for the appellant submitted that it was wrong to hold that the appellant was contributorily negligent to the extent of three-quarters. She admitted that he owed himself a duty to take reasonable care but submitted that he did not breach that duty in view of the work conditions and obligations that were present when the injury occurred.

91 The classic statement of the law on contributory negligence was expounded by Lord Denning MR in the well-known case of **Froom v Butcher** [1976] QB 286 at p 291:

> *Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man`s carelessness in breach of duty to others. Contributory negligence is a man`s carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen*

Version No 1: 20 Nov 2026 (01:16 hrs)

> *that, if he did not act as a reasonable prudent man, he might hurt himself.`*

92 Section 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 1994 Ed) provides as follows:

> *Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks* ***just and equitable*** *having regard to the claimant`s share in the responsibility for the damage. [Emphasis ours.]*

93 In **Stapley v Gypsum Mines Ltd** [1953] AC 663, Lord Reid said at p 682 that a court must deal broadly with the problem of apportionment and in considering what is just and equitable, must have regard to the blameworthiness of each party. The claimant`s share in the responsibility for the damage cannot however be assessed without considering the relative importance of his acts in causing the damage apart from his blameworthiness. In **Davies v Swan Motor Co (Swansea) Ltd** [1949] 2 KB 291 at p 326 Denning LJ said that no true apportionment can be reached unless both the factors of blameworthiness or fault, and causation are borne in mind.

94 ***Causation***

95 While in particular circumstances the determination of causation could be a matter of some difficulty, there was no doubt that in the present case the appellant`s negligence in approaching the hammer before the starter had come down was an operative cause of his injuries. Putting it another way, he would not have been injured but for the fact that he had stepped away from the platform and moved towards the hammer. This was as the trial judge had found and no issue was made of it in the appeal.

Version No 1: 20 Nov 2026 (01:16 hrs)

96 ***Blameworthiness***

97 This is the major factor which a court has to consider when apportioning liability. The desirability of treating blameworthiness as the primary criterion in situations of this kind was clearly expressed by Lord Pearce in **Miraflores v George Livanos (Owners)** [1967] 1 AC 826 at p 845:

> *Suppose that the workman was a normally careful person who, by a pardonable but foolish reaction, wanted to save an obstruction from blocking the machine and so put his hand within the danger area. Suppose further that the factory owner had known that the machine was dangerous and ought to be fenced, that he had been previously warned on several occasions but through dilatoriness or on the grounds of economy failed to rectify the fault and preferred to take a chance. In such a case, the judge, weighing the fault of one party against the other, the deliberate negligence against the foolish reaction, would not assess the workman`s fault at anything approaching the proportion which causation alone would indicate.*

98 Previous cases showing how the courts have apportioned liability can be no more than illustrations. At the end of the day the question of fault must in each case depend on its own facts and circumstances. A few general principles can nevertheless be drawn from the authorities in this area. Courts have generally been reluctant to hold an employee to be at fault if his actions were taken in the heat of the moment following an emergency created by the employer`s carelessness. Courts would also be slow to scrutinise to the minute detail the conduct of a conscientious employee as the primary responsibility for ensuring safety rests with the employer. Additionally, the fact that the plaintiff had to take a risk does not amount to contributory negligence on his part if the risk were created by the negligence of the defendant and was one which a reasonably prudent man in the plaintiff`s position would take. Broadly, it would seem that employees have more often than not been judged by less exacting standards than employers. It is also pertinent to note that courts are generally

Version No 1: 20 Nov 2026 (01:16 hrs)

more lenient to employees in cases of breach of statutory duty than they are in cases of common law negligence, as statutes like the Factories Act exist in the first place to protect workmen from the consequences of their own carelessness. Finally, it is also clear that mere errors of judgment do not ordinarily count against a plaintiff, for a person`s conduct in the face of sudden emergency cannot be judged from the standpoint of what would have been reasonable in the light of hindsight. To this end, courts often draw a distinction between mere heedlessness or errors of judgment on the one hand, and culpable neglect on the other.

99 ***The proper apportionment of liability***

100 Following from the above principles, it was our view that the trial judge`s assessment of the degree of fault on the part of the appellant was much too strict. While it was no doubt true that the appellant had approached the hammer at a time when the starter had not yet come down, it must be remembered that this was not a deliberate act of folly on the appellant`s part. At the material time, the appellant had clearly overlooked that the starter had not come down or that it would do so within the course of the next few seconds. It was not the respondent`s case that the appellant had consciously stepped into the path of the starter knowing full well that it was on the way down. At most, it was only a momentary lapse on the appellant`s part.

101 It is also noteworthy that the accident occurred at around 5pm in the evening, when it was nearly approaching the end of the workday which had begun as early as 6am in the morning. The riggers on board the Sumpile 8 worked long and gruelling 12-hour shifts with only a short break for lunch in between. In the circumstances, the appellant could not reasonably be expected to possess the same level of alertness at 5pm in the evening as he would have

Version No 1: 20 Nov 2026 (01:16 hrs)

had at the start of piling operations at dawn. In any event, it should be borne in mind that it was the respondent`s defective work system which provided the setting for the occurrence of the accident in the first place. The whole object of the law imposing a duty on employers to provide a safe system of work is precisely to protect an employee from his own inadvertence or carelessness.

102 In the present case, it is important to bear in mind the reason why the appellant had stepped away from the platform. It was not in dispute that the appellant had wanted to replace pin No 16 in the hammer which had become loose, failing which a grave risk would have been posed to the entire piling operation. While it might not have been part of the appellant`s duty to replace a loose pin No 16, it was nevertheless a matter of common sense for the appellant to do so and in any case, no one in the employ of the respondent had ever bothered to tell the appellant what repairs were minor enough for him to effect and what were not. In fact, Ishak conceded that the replacement of the pin was a minor repair, and that the appellant`s fear of the danger which the loose pin posed was fully justified in the circumstances.

103 It is also pertinent to note that prior to working on the Sumpile 8, the appellant had never worked on a piling barge before. At the time of the accident, he had only been monitoring piling operations from the piling tower for a mere one and a half weeks. He had never received any formal instruction or training with respect to his duties and at the relevant time, was not supervised by a single person on the barge. While the appellant knew that he should not have approached the hammer before the starter had come down, he had momentarily overlooked that safety aspect in his anxiety to replace the loose pin, as he was concerned for the safety of the entire piling operation. Of course, the appellant could have run down to the barge store to get a replacement pin rather than attempt to insert a temporary one. But under the circumstances, there was really

Version No 1: 20 Nov 2026 (01:16 hrs)

nothing wrong in what the appellant did. It might not have been the best course to take, but Ho said that it was not an imprudent one either. Of course the appellant could also have first informed Ahmad of the loose pin, but in view of the fact that Ahmad was busy supervising the removal of the guy cables below, it was unlikely that Ahmad would have been able to hear or see the appellant even if the latter had tried to communicate with him. The appellant did what he thought, at that moment, was best for the safety of the entire operation. In his view, the situation was one of urgency. Of course in the light of further knowledge, we now know that any emergency which the loose pin might have posed during piling ceased the moment piling operations were stopped. We felt, however, that it would be imposing too onerous a burden on the appellant to require that he ought to have known this for a fact at the material time, given his position as the most inexperienced rigger on board.

104 ***Should the apportionment of liability be varied?***

105 An appellate court should not, in cases of contributory negligence, normally interfere with the discretion exercised by the trial judge. However, it is nevertheless open to the court to do so where there has been a substantial misappreciation of the factual basis of apportionment. Hence, where the appellate court is satisfied that the assessment made by the trial judge was plainly incorrect or that some very material aspects of the evidence of either party should have been rejected or accepted by the trial judge, having regard to his findings of credibility of the witnesses, the court may reassess the apportionment: see ***Stapley v Gypsum Mines Ltd,*** supra, where the trial judge`s apportionment was altered by the Court of Appeal.

106 In view of the fact that the trial judge had significantly under-estimated the degree of negligence on the part of the respondent in failing to consider the

Version No 1: 20 Nov 2026 (01:16 hrs)

factors highlighted above, and in view also of the fact that he had substantially misjudged the degree of blame on the part of the appellant, we felt that a re-apportionment of the respective liabilities of the parties was clearly called for. It was undoubtedly a case of a failure by an employer to provide a safe working system as against a singular momentary inadvertence of an employee who had worked for long hours under tiring and difficult circumstances.

107 Having regard to all the factors and considerations we have enumerated above, we apportioned responsibility for the appellant`s injuries in the proportion of one-third to the appellant and two-thirds to the respondent. The appeal was thus allowed to that extent.

108 ***Costs***

109 The trial judge awarded the appellant half costs at the end of the trial. The appellant submitted that as the trial was concerned with liability only, the general rule that costs normally follow the event should be applied in this case such that the appellant should be given full costs of the trial.

110 The question of costs is a discretionary matter. But the discretion should always be exercised judicially. Generally, costs would follow the event. The court ought not to exercise its discretion against a successful party except for some reason connected with the case. From his grounds of decision, it would seem that the trial judge decided to reduce the appellant`s entitlement to costs to half because the proceeding before him was only for liability. That would be a wrong basis for exercising his discretion to reduce the appellant`s costs. It was by agreement of the parties that the trial proceeded only on the question of liability. The appellant should thus not be faulted for that.

Version No 1: 20 Nov 2026 (01:16 hrs)

111 In any event, in the light of our decision that liability for the accident should be apportioned one-third and two-thirds between the appellant and the respondent respectively, it was clear that the appellant had succeeded substantially, though not wholly. The stand taken by the respondent had all along been that the appellant was wholly to blame for the injuries he suffered. We found however that there was nothing in the conduct of the appellant, or in any other material, which warranted reducing the costs due to the appellant. Accordingly, we awarded the appellant full costs for this appeal and in the trial below. We also ordered that the security for costs furnished by the appellant be returned to him or his solicitors.

112 **Outcome:**

113 Appeal allowed in part.

Chao Hick Tin JA
L P Thean JA
Yong Pung How CJ

Jeanny Ng (Jeanny Ng) for the appellant
Simon Yuen (Tan & Lim) for the respondent

Version No 1: 20 Nov 2026 (01:16 hrs)