PROVISION OF COMPULSORY PASSENGER INSURANCE AND ITS EFFECTIVENESS

PROVISION OF COMPULSORY PASSENGER INSURANCE

Section 3 of the Motor Vehicle (Third-Party Rules and Compensation) Act,[1] (hereinafter referred to as the principal Act) requires insurance or security in respect of third-party risks for use of a motor vehicle on the road. The risks specified in section 4(1) are in respect of death or bodily injury to third parties: not including, however, passengers (except those carried for hire or reward, or in pursuance of a contract of employment). Insurance cover for liability in respect of injury to gratuitous passengers is therefore not compulsory.

When compulsory motor insurance was introduced in the United Kingdom in 1930 liability to gratuituous passengers was excluded on the principle of *volenti non fit injuria.*[2] Singapore adopted this position in 1938.[3] The underlying principle for exclusion, if ever valid, has long ceased to be tenable: being a passenger in a motor vehicle is no longer an exceptional activity — it is part of modern living.

Whatever the lack of protection accorded to motoring passengers by statute, it was made worse by prevailing insurance practice. The insurance industry refused to provide passenger cover for riders on motor-cycles. Voluntary passenger insurance for motor vehicles by practice excluded household members. As insurance for passengers was not compulsory, the Motor Insurance Bureau did not meet liability in respect of passengers injured by uninsured or untraced drivers. The desire not to be ungrateful to the driver (who may be a friend or another family member) made the plight of motor vehicle passengers even worse. The position of negligent drivers was not always better. Those who did not obtain voluntary passenger insurance out of ignorance or carelessness faced the crippling prospects of compensating injured passengers with their own resources, if any.

In 1971, the United Kingdom belatedly introduced compulsory passenger insurance.[4] By this time, the United Kingdom was the only country left in Western Europe outside Italy without compulsory passenger insurance. This gap in the protection afforded to road victims was, at long last, closed.

1 Chapter 88 of the Singapore Statutes, Revised Edition 1970.
2 Road Traffic Act 1930, ss. 35, 36(1).
3 Straits Settlements, Road Traffic (Third-Party Insurance) Ordinance 1938 (No. 8), ss. 3, 4(1).
4 Motor Vehicles (Passenger Insurance) Act 1971 which came into force on December 1, 1972. The provisions of the Act are now enacted in the Road Traffic Act 1972.

In Singapore, the "Area Licensing Scheme" and the Government's encouragement of car pooling added greater urgency to the need for protection of motor vehicle passengers.[5] The Motor Vehicles (Third-Party Risks and Compensation) (Amendment) Act 1980 incorporated the 1971 U.K. amendments and introduced compulsory passenger insurance into Singapore. As from March 1, 1981 every passenger in a motor vehicle in Singapore has access to a source of compensation if he is injured by the negligence of his driver.[6] Passengers in motor vehicles are, at last, treated on the same footing as other third parties on the road. The measure will not by itself prevent accidents or provide automatic compensation — but it will, within the present scheme of road compensation, ensure that passengers will obtain the compensation that common law entitles them. The Minister in moving the Bill in Parliament said:[7]

> "We will have to step up our road safety programmes but we must also ensure that accident victims are adequately covered by insurance so that they will be adequately compensated and do not become a burden to society."

No exemption from passenger insurance was granted under the Act. In the United Kingdom the point was much debated — it was felt that it would be unfair to force motor vehicles which did not or could not carry passengers (single-seater motor-cycles or other *specialist/* heavy motor vehicles intended or adapted for use on roads) to take insurance for a non-existent risk.[8] Ultimately, however, no exemption was granted because it was too difficult to identify the type of vehicle that would merit exemption and it would also be impossible to ensure that such vehicles are not in fact used to carry passengers. Although this point was not debated in Parliament in Singapore, the wisdom of no exemption is incorporated in the Act.

The cost of passenger insurance is an important matter when such insurance is made compulsory, especially in respect of those whose contingent liability for injury to passengers is potentially small. The need to protect passengers must be balanced against the cost incurred in doing so. Since Singapore has a developed insurance market, it is hoped that free competition would force insurers to offer the best possible price for such cover. If this does not happen, the increase in insurance cost may contribute to pricing some means of transport off the road. This would be especially unfortunate in respect of

5 The "Area Licensing Scheme" which was introduced in 1975 required motor vehicles entering the central business district of Singapore to pay a surcharge during certain peak hours. The aim of the scheme was to reduce congestion. Passenger cars carrying four or more persons were exempted from the surcharge. Owing to the oil crisis (1973) and this, the Government encouraged car pooling. The insurance industry made two concessions: (i) it undertook not to terminate gratuitous passenger insurance when passengers made payment under car pooling arrangements and (ii) it undertook to provide free insurance cover in respect of motor vehicles carrying passengers in car pools without passenger insurance. The concessions, however, did not extend to household passengers and did not operate outside the scheme, although the scheme and the oil crisis led to the increase in the total volume of passengers in motor vehicles. See Poh Chu Chai, "Car Pools and Passenger Protection", [1980] 2 M.L.J. xii.

6 The Amendment Act came into operation on March 1, 1981: G.N. S 49/81. The least protected road user to-day is the driver himself.

7 Singapore Parliamentary Debates, Vol. 39, Col. 1573.

8 Hansard, Vol. 810, Col. 2068-126; Vol. 814, Col. 1112-20.

motor-cycles which are largely used as a cheap and necessary means of transport.

Foreign (including Malaysian) motor vehicles in Singapore are subject to the compulsory passenger insurance requirement; no exemption is granted under the Act for such vehicles. At present there is no compulsory passenger insurance for motor vehicles in Malaysia. These motor vehicles entering Singapore over the causeway technically commit an offence under the principal Act. It may be that it is Government policy not to require such vehicles to possess compulsory passenger insurance because they would probably carry non-Singaporeans. If this is the position, exemption should have been provided. On the other hand, it could be argued that it is probably more prudent to require all vehicles in Singapore to carry passenger insurance so that all passengers are covered. If so, machinery must be established to provide passenger insurance for foreign vehicles entering Singapore without such insurance.

EFFECTIVENESS OF THE PROVISION

In addition to making passenger insurance compulsory for motorists, the Act also restricts the exclusion of their liability to passengers. The driver's relationship with his passenger is different from that of other third parties on the road. The other road users are strangers to the driver — they are not in a position to agree to his negligent driving; his own passengers may, however, do so. The legislative intent here is clearly to prevent avoidance of passengers' entitlement to insurance, if the driver is negligent.

Section 3 of the Act faithfully reproduces the "no contracting out" and "no *volenti"* provisions of the U.K. statute:[9]

> "Where... a person uses a motor vehicle in circumstances such that under section 3 of this [principal] Act there is required to be in force in relation to his use of it such a policy of insurance or security... then, if any other person is carried in or upon the motor vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held —
>
> (a) to negative or restrict any such liability of the user in respect of persons carried in or upon the motor vehicle as is required by section 4 of this [principal] Act to be covered by a policy of insurance; or
>
> (b) to impose any conditions with respect to the enforcement of any such liability of the user,
>
> and the fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negativing any such liability of the user."

The "no contracting out" provision which covers both contractual and non-contractual arrangement includes both exclusion and modification of a driver's liability to his passengers. The apparent "no *volenti"* provision follows after this provision. Unfortunately, these provisions are far from being well drafted and they may not in effect give passengers the protection intended.

[9] Road Traffic Act 1972, s. 148(3), S. 3 of the Act is now s. 4(A) of the principal Act.

Express Volenti

A passenger in a motor vehicle can expressly consent to the risk of negligent driving by the driver. In *Bennett* v. *Tugwell*[10] a notice stating "passengers travelling in this vehicle do so at their own risk" was affixed to the dashboard of the defendant's car. The plaintiff accepted a lift. The defence of *volenti* succeeded when the defendant drove negligently and injured the plaintiff. The decision, though legally correct, was unfortunate as there was, in fact, a voluntary passenger insurance covering the plaintiff.[11] Such a notice would, therefore, allow motor insurance companies to collect premiums to cover a non-existent risk of liability. The "no contracting out" provision was especially formulated to take care of *Bennett's* decision. It would be clearly irrational to allow contracting out of passenger liability after compulsory insurance has been introduced.

It so happens in *Bennett's* case that there was no contractual consent. Even if the consent were contractual the "no contracting out" provision would have been equally applicable. In fact, the Unfair Terms Contract Act 1977 would also be applicable to prohibit exclusion of liability for death or injury by contractual term or notice in a business context.[12] Therefore, express *volenti* — that is bilateral consent— either orally or by dashboard notices between passenger and driver, whether contractual or non-contractual, cannot exclude the latter's liability.

Implied Volenti

The common law defence of *volenti* can also operate in the unilateral sense when a passenger impliedly consents with knowledge and free choice to the dangerous physical condition of a driver or his car. Here the passenger does not communicate his consent to the driver. There is therefore no bilateral consensus between the passenger and driver as in the express *volenti* situation: there is no agreement or understanding to assume the risk of the driver's negligence.

In a New Zealand case, *Poole* v. *Stewart,*[13] the plaintiff suffered severe injuries while travelling as a passenger in a motor car driven negligently by the defendant. The defendant was drunk while so driving. The plaintiff knew this and, in fact, helped the defendant to drink more while he was driving. The plaintiff submitted that the defence of *volenti* was barred by section 87A of the New Zealand Transport Act 1962 which provides:

> "In any action brought against the owner or person in charge of a motor vehicle, or against an insurance company... in respect of an accident causing the death of or bodily injury to any person who... at the time of the accident in respect of which the claim has arisen was a passenger in the vehicle, any agreement or stipulation which excludes

[10] [1971] 2 Q.B. 267.

[11] See also the earlier case of *Buckpitt* v. *Oates* [1968] 1 All E.R. 1145. The case also concerns a dashboard notice excluding passenger liability. *Volenti*, as in *Bennett's* case, was held to apply. In this case, however, the driver was not insured against passenger liability.

[12] S. 2.

[13] [1969] N.Z.L.R. 501.

> or modifies the liability of the owner or of any other person to pay damages in respect of accidents due to the negligence or wilful default of the owner, his servants, or agents or person in charge of the vehicle shall be void....''

Moller J. in the Supreme Court held that the "no contracting out" provision in section 87A did not cover the implied *volenti* situation in the case:[14]

> "I have given this matter considerable thought, and while I am not prepared to speculate as to what types of 'agreement or stipulation' the section applies to, I am at least prepared to say that I do not think it applies to the sort of situation which gives rise to the defence of *volenti non fit injuria.* Moreover, I do not think that the wording of the section is sufficiently clear and definite to justify a finding that, in legislating in these terms, Parliament intended, in cases such as these, to sweep aside the long-established principle of the common law expressed in the maxim. If this had been the intention it would have been very easy to say so in plain and unmistakable words. This was not done."

The defendant driver could, therefore, rely on the defence of implied *volenti* notwithstanding the "no contracting out" provision.

The U.K. and Singapore provisions are, however, wider. The "no contracting out" provision is followed by a further provision which provides:[15]

> "and the fact that a person *so carried* has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negativing any such liability of the user."

Does this latter provision take care of the *Poole* v. *Stewart* implied *volenti* type of situation? The answer depends on what "so carried" refers to.

If the phrase "so carried" refers to any passenger carried in or upon the motor vehicle, then the effect of the provisions cancels out both express and implied *volenti.* This interpretation results in two limbs in the material part of section 3 of the Act: the first "no contracting out" provision covering express *volenti* (discussed earlier) followed by, the second, "no *volenti"* provision covering implied *volenti.*[16] In a recent English case of *Gregory* v. *Kelly*[17] the plaintiff passenger rode in the defendant's car which had an inoperative foot-brake. This defect was known both to the defendant and the plaintiff before they commenced their journey. As a result of this and the defendant's fast driving the plaintiff was injured. The defendant raised the defence of implied *volenti.* The learned judge held that the equivalent U.K. statutory provisions excluded the defence. His decision was, unfortunately, laconic and it depended upon defence counsel's concession of the point. The case cannot therefore be taken as having

[14] [1969] N.Z.L.R. 501, 507.

[15] Italics added. See full provision in the text above.

[16] See Raisbeck, "Injured Passengers — The Road to Compensation", [1973] J.B.L. 322. The author notes that the provisions are poorly worded but on balance feels that this wider interpretation of the provisions is more appropriate.

[17] [1978] R.T.R. 426.

settled the interpretation of the statutory provisions on this wide basis to exclude both express and implied *volenti.*[18]

If the phrase "so carried" refers merely to a passenger who has entered into an antecedent agreement or understanding with the driver (referring to the provisions immediately preceding it), then the combined effect of the provisions would be to exclude express *volenti* only.[19] If this narrower interpretation is correct, then the protection given to passengers is incomplete — the defence of implied *volenti* between passenger and driver would still continue to operate notwithstanding the statutory provisions. This is against the underlying legislative intent of the statutory provisions. It is also ridiculous that this interpretation of the statutory provisions would exclude the defence of implied *volenti* if combined with express *volenti*, but not when operating alone. Nevertheless, it is a plausible literal interpretation of the statutory provisions. *Dann* v. *Hamilton*[20] and *Nettleship* v. *Weston*[21] (where the defence of implied *volenti* failed in situations of clear drunken and inexperienced driving) may, however, mitigate this loop-hole: the cases show that it is extremely difficult for a defendant driver to succeed on the defence of implied consent on the part of the passenger. Courts appear reluctant to infer *volenti* from circumstances where there is no agreement to assume the risk of negligence.[22] All the same, as long as the ambiguity of "so carried" in the statutory provisions remains, it may operate to lessen the protection intended for passengers. A learned commentator referring the statutory provisions stated:[23]

> "…by attempting to cater in one sentence of 183 words for both 'dashboard sticker' situation, and arguably any other situation of acceptance of risk, the legislators have opened the door to a plethora of interpretative case law."

No Duty

Even assuming that the Act excludes both express and implied *volenti*, there is yet another way by which a negligent driver could possibly escape liability for causing injury to his passengers. Street states:[24]

18 See, however, the more recent case *Ashton* v. *Turner* [1980] 3 All E.R. 870 (referred later in the text) involving passenger injury and issues of *ex turpi causa, volenti* and contributory negligence. The learned judge referred to *Gregory* v. *Kelly* but held that the statutory provisions did not exclude the defence of implied *volenti.* He emphasized that the decision in *Gregory* v. *Kelly* was based upon counsel's concession and that the facts of his case were different. It is humbly submitted, that the difference is not easily discernable.

19 See Symmons, "Volenti Non Fit Injuria and Passenger Liability", (1973) 123 N.L.J. 373, and another article by the same author, "Impact of Third Party Insurance Legislation on the Development of the Common Law", (1975) Anglo-American L.R. 426.

20 [1939] 1 All E.R. 59.

21 [1971] 3 All E.R. 581, C.A.

22 Lord Denning M.R. in *Nettleship* v. *Weston*, *ibid*, at p. 587, even said: "[T]he defence of *volenti non fit injuria* ... has been severely limited.... Nothing will suffice short of an agreement to waive any claim for negligence." This, currently, is an extreme view though.

23 Raisbeck, *supra* at p. 326.

24 Street, *The Law of Torts* (1976), at p. 162. See also, Rogers, *Winfield and Jolowicz on Tort* (1979), at pp. 664-5. Duty in the tort of negligence can be approached, in the extremes, in two ways: through the concept of "notional duty" or "duty in fact". "Notional duty" involves the broad a *priori* cate-

> "Assumption of risk is looked at by the courts in two different ways. On one view it imports that the defendant has not in the circumstances broken a duty of care; on the other, there is a breach of duty, but a plea of assumption of risk removes the effect of that negligence."

The first approach in the use of *volenti* is the exclusionary "no negligence" approach which prevents the creation of a duty of care. The second approach is the standard defence approach — *volenti* negates liability.

In *Nettleship* v. *Weston* [25] where a passenger-instructor was injured by the negligent driving of a learner-driver because of the latter's inexperience, Salmond L.J. states:[26]

> "Any driver normally owes exactly the same duty to a passenger in his car as he does to the general public, namely to drive with reasonable care and skill in all the relevant circumstances.... [H]owever, there may be special facts creating a special relationship which displaces this standard or even negatives any duty.... [W]hen, to the knowledge of the passenger, the driver is so drunk as to be incapable of driving safely; [then], [q]uite apart from being negligent, a passenger who accepts a lift in such circumstances clearly cannot expect the driver to drive other than dangerously....
>
> Accordingly in such circumstances, no duty is owed by the driver to the passenger to drive safely, and therefore no question of *volenti non fit injuria* can arise. The alternative view is that if there is a duty owed to the passenger to drive safely, the passenger by accepting a lift has clearly assumed the risk of the driver failing to discharge that duty."

The learned judge acknowledges the two possible alternative approaches in the use of *volenti.* In the case itself, the assurance that the plaintiff passenger was covered by insurance prevented *volenti* from being used either as a defence or as a negation of the *prima facie* duty of care.

Street states:[27] "whichever of these two judicial approaches [in the use of *volenti]* is made, the consequences are likely to be the same...." The statement is clearly not true when *volenti* is used in relation to the Act. The statutory provisions assume the use of *volenti* in its standard form as a defence and excludes the application of the defence between passenger and driver. The provisions do not, however, prevent the non-standard use of *volenti* to exclude the creation of a duty of care between driver and passenger. A passenger will, therefore, not be protected if *volenti* is used in the non-standard way to exclude

gorization of relationships on foreseeability of harm and policy considerations. Duty in fact involves the narrower *ex post facto* categorization of relationships on foreseeability of harm. In this approach, duty is tied closely to the particular facts — duty and breach of it is combined. The use of *volenti* to exclude duty employs *volenti* considerations in this narrower determination of duty.

[25] [1971] 3 All E.R. 581, C.A.

[26] *Ibid* at pp. 589-590. Salmon L.J. quotes, with minor reservations, Sir Owen Dixon in *Insurance Commissioner* v. *Joyce* (1948) 77 C.L.R. 39 (H. Ct., Australia) to support his proposition. The other two learned judges, Denning M.R. and Megaw L.J. disapproved of the non-standard use of *volenti.* However, Asquith J., in *Dann* v. *Hamilton* [1939] 1 All E.R. 59, 60, also favours the non-standard use of *volenti* when he said: "As a matter of strict pleading, it seems that the plea of *volenti* is a denial of any duty at all, and, therefore, of any breach of duty, and an admission of negligence cannot strictly be combined with the plea". See also *Wooldridge* v. *Sumner* [1962] 2 All E.R. 978, C.A.

[27] Street, *loc. cit.*

duty and thus liability. Since the standard use of *volenti* is excluded by the Act, it is expected, in the future, that the non-standard use of *volenti* would be more vigorously pursued by insurers and drivers to exclude their liability to passengers.

Ex Turpi Causa

Another way by which a negligent driver could avoid liability to his passenger and save his insurance company from compensating his victim is by barring the recovery of his passenger on the ground of *ex turpi causa non oritur actio.* Megaw L.J. in *Nettleship* v. *Western* said *obiter dicta:*[28]

> "There may... sometimes be an element of aiding and abetting a criminal offence; or, if the facts fall short of aiding and abetting, the passengers mere assent to benefit from the commission of a criminal offence may involve questions of *turpis causa."*

Ex turpi causa ("a rather obscure corner of the law")[29] is seldom used and the basis by which it excludes recovery in tort is uncertain. A learned Australian High Court judge was of the opinion that:[30]

> "[T]he... formulation [of *ex turpi causa]* can be regarded as founded on the negation of duty, or some extension of the rule *volenti non fit injuria,* or simply on refusal of the courts to aid wrongdoers."

If *ex turpi causa* is founded upon some extension of *volenti* its application as a defence between driver and passenger is excluded by the Act.[31] If it is founded on public policy privation of actions or on the concept of exclusion of duty, the Act does not exclude its application.

In *Ashton* v. *Turner*[32] (the only direct English case on *ex turpi causa)* the doctrine was used on the exclusionary basis to prevent the creation of a duty of care between the defendants and the plaintiff passenger. Here the second defendant owned the car. The first defendant drove the car with the plaintiff to commit burglary. As the plaintiff and the first defendant were leaving the burgled shop in the car they were chased. The first defendant drove at high speed to try to escape. The car skidded causing severe injuries to the plaintiff. Ewbank J. held:[33]

> "... [T]he law of England may in certain circumstances not recognise the existence of a duty of care by one participant in a crime to another participant in the same crime, in relation to an act done in connection

28 [1971] 3 All E.R. 581, 595.

29 Heuston, *Salmon on the Law of Torts* (1977), at p. 508.

30 *Per* Windeyer J., *Smith* v. *Jenkins* (1970) 119 C.L.R. 397, 422.

31 It submitted that it is most unlikely that *ex turpi causa* is founded upon the *volenti* principle. *Volenti* is a much wider defence. It may, therefore, cover situations of *ex turpi causa.* But, in formulation, *ex turpi causa* is different from *volenti* — it involves "illegality" whereas *volenti* involves "willingness." Ford, "Tort and Illegality: Ex Turpi Causa Defence in Negligence Law", (1977) 11 M.U.L.R. 32 (Part I), 164 (Part II), and Fridman, "The Wrong-doing Plaintiff", (1972) McGill L.J. 275, are two recent comprehensive articles on *ex turpi causa.*

32 [1980] 3 All E.R. 870. See also *supra,* note 18.

33 See Symmons, "Ex Turpi Causa in English Tort Law", (1981) 44 M.L.R. 585, who says that it is uncertain whether the *ex turpi causa* formulation as used by Ewbank J. was grounded on public policy privation of actions or on the concept of exclusion of duty.

> with the commission of that crime. That law is based on public policy .... Having regard to all the facts in this case I have come to the conclusion that a duty of care did not exist between the first defendant and the plaintiff during the course of the burglary and during the course of the subsequent flight in the get-away car."

The *ex turpi causa* doctrine therefore indicates a way out of the Act for negligent drivers in respect of their liability to passengers. Indeed it is expected that the exclusion of *volenti* by the Act, together with the earlier legislative apportionment reform of contributory negligence,[34] will give greater significance to *ex turpi causa* in motoring cases in the future.

Contributory Negligence

The last way by which a negligent driver and his insurance company can limit their liability to passengers is by the use of contributory negligence. This is not excluded by the Act. Since the defence of *volenti* is probably excluded, careless drivers will, in the future, place greater reliance on this partial defence of contributory negligence. For example, in *Gregory v. Kelly*[35] consent to riding in a car without foot-brake was excluded as a defence by the statutory provisions—but this very same element, taken as the passenger's negligence with regard to his own safety, was used to reduce his claim for damages. In the same way, in *Ashton* v. *Turner*,[36] the plaintiff's ride in a get-away car used by him and the driver to escape speedily after committing theft was taken by the court as contributory negligence, if *ex turpi causa* or *volenti* were, in any way, inapplicable in the case.

It must, however, be emphasized that *volenti* and contributory negligence do not always overlap: they are separate defences and may involve entirely different factual elements. The cases nevertheless illustrate that exclusion of the defence of *volenti* by itself does not always fully protect passengers. However, it may be that here passengers should not be better off than other third parties on the road — the other road users' claim to recovery is also always reduced by any contributory negligence on their own part when injured on the road.

CONCLUSION

The introduction of compulsory passenger insurance is most welcome: at long last passengers in motor vehicles are given the same protection in insurance coverage as other third-party road users. To ensure that passengers receive this protection the defence of *volenti* is excluded between driver and passenger. The statutory exclusion as drafted may, however, anomalously fail to exclude implied *volenti*. *Volenti* used on the exclusionary basis to bar duty is also not prohibited. So are *ex turpi causa* and contributory negligence. It is expected that these "defences" will feature more prominently

[34] Contributory Negligence and Personal Injuries Act, Chapter 31 Singapore Statutes, Revised Edition 1970, s. 3.

[35] [1978] R.T.R. 426. See *supra.*

[36] [1980] 3 All E.R. 870. See *supra.*

between driver and passenger in place of *volenti* in the future.[37] Owing to the proximate relationship between the passenger and driver these "defences" tend to overlap.

TAN KENG FENG *

[37] There are only a handful of cases in Singapore and Malaysia involving passenger liability. *Chang Kan Nan* v. *Ludhiana Transport Syndicate* (1950) 16 M.L.J. 299, *Tan Guan Cheng & Anor.* v. *Kuala Lumpur Omnibus Co.* [1971] 1 M.L.J. 49 and *Yeo Lian Hwa & Anor.* v. *Tan Hock Lee Amalgamated Bus Co.* (1961) 27 M.L.J. 153 involved liability in respect of omnibus passengers. In the last case contributory negligence on the part of the passenger was successfully raised. Apart from these omnibus cases, there are two other cases involving passengers in a car and a van. In the Malaysian case, *Che Jah binte Mohamed Ariff* v. *C.C. Scott* (1952) 18 M.L.J. 69, the driver was held not liable for injuries to his passenger because the brake failure in his car was due to an inevitable accident. In the Singapore case, *Chan Kum Fook & Others* v. *The Welfare Insurance Co.* [1975] 2 M.L.J. 184, two passengers were injured in a motor van owned by their employer and driven negligently by another employee. They recovered against the defendants who insured the vehicle. Being passengers in the motor vehicle by reason of employment they were covered by compulsory insurance. No defence was raised in the case. The Singapore case of *Wong Ah Gan* v. *Chan Swee Yuen & Anor.* [1970] 2 M.L.J. 25 did not involve passenger liability but it is interesting to note that the Court of Appeal unanimously decided that failure by a motor-cyclist to wear a crash helmet did not constitute contributory negligence. In the case itself there was no evidence that the non-use of the helmet contributed to the motor-cyclist's injuries.

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