

“With license comes great responsibility”

26th April 2020

Introduction

In the recent Johor Bahru High Court decision of **Muhammad Noor Redzuan Bin Misran v Muhammad Amirul Hafiz Bin Khairulazuin**, the Honourable Judicial Commissioner Awang Armadajaya Bin Awang Mahmud dealt with the principal issue of :-

Whether a person riding a motorcycle without a valid driving / riding licence has the right to be on the road and hence the protection of the law?

Facts

The appeal was against the Sessions Court decision apportioned the Appellant/ Plaintiff 80% liable while the Respondent/Defendant was held 20%. The Plaintiff was riding a motorcycle (JMT7056) along the EDL Highway at 1.15 am. The Defendant was riding another motorcycle (JRP8874) along the same highway when he collided into the Plaintiff who had stopped to make a phone call. The Defendant was travelling some 40 m behind the Plaintiff when he realised that the Plaintiff was in front of him and he was unable to stop in time. The Plaintiff was thrown off his motorcycle and was injured.

Decision

The JB High Court in coming to its decision, considered the provisions of the Road Transport Act 1987, which was enacted amongst others *”to make provision for regulation of traffic on roads”*. Section 26 of the RTA in particular provides the prohibition of driving/riding a motor vehicle without a valid licence,

The Honourable JC considered the case of *Siti Rohani Mohd Shah & Ors V. Hj Zainal Hj Saifiee & Anor [2001]* and *Chu Kim Sing & Anor v Abd Razak Amin [1994]* both cases drove the rationale that not having a valid driving license cannot in law make one negligent per se as the Plaintiff is still entitled to the same duty of care expected to be accorded to all road users.

The Honourable JC explored the **illegality defence** (*Ex turpi causa non oritur action*), a **legal doctrine** which states that a Plaintiff is unable to pursue **legal remedy** if it arises in connection with his own illegal act. He considered a string of English cases which prompted the usage of the doctrine. Reliance was placed on the case of *Patel V Mirza [2016]*. In *Patel*, nine justices of the Supreme Court of England and Wales decided in favour of a restitutionary award in response to an unjust enrichment, despite the illegal transaction on which that enrichment was based. The Court considered whether public interest would be harmed by the enforcement of the illegal agreement.

The Honourable JC in the instant appeal considered the operation of Section 90 of the RTA, in which all vehicles must have an insurance cover in respect of third party risks. Section 90 was read together with the Section 95(j) which provides the avoidance of restrictions on scope of third party risks policies to the driver at the time of accident not licensed to drive or not licensed to drive the particular vehicle.

Conclusion

Taking the road less travelled, the Honourable JC decision departed from the rationale in the authorities of *Siti Rohani* and *Chu Kim Seng (supra)*. The Honourable JC was of the view that a person who is a danger to both himself or anyone else on the account of his lack of a valid driving licence to drive or ride (as the case maybe) on a road, should not be on the road. It is public policy as reflected in the intention of the Parliament in ss 26 and 90, Road Transport Act 1987. The decision does not discuss the factual matrix of the case. This decision sends a message to educate society on what they stand to lose in allowing unlicensed drivers on the road. The Court dismissed the Plaintiff's appeal and further reversed the finding of liability against the Plaintiff to 100%. An affirmation of this decision by the Court of Appeal will be landmark unless it affirms earlier decisions on this point.