

Yap Chwee Khim v American Home Assurance Co and Others
[2000] SGHC 185

Case Number : Suit 600211/2000
Decision Date : 08 September 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Edmond Pereira and Tan Yew Cheng (Edmond Pereira & Partners) for the plaintiff; Lek Siang Pheng and Vivienne Lim (Helen Yeo & Partners) for the defendants
Parties : Yap Chwee Khim — American Home Assurance Co; NTUC Income Insurance Co-operative Limited; QBE Insurance (International) Limited; AXA Insurance Singapore Pte Ltd; Winterthur Insurance (Far East) Pte Ltd

JUDGMENT:

Grounds of Decision

1 The Plaintiff is the Executrix and sole beneficiary of the estate of the late Lim Mah Chan ("the deceased"). Her claim against the five Defendants was in respect of seven insurance policies taken out by the deceased. Five of these were travel insurance policies for a total insured sum of \$800,000. The other two policies were issued by the Second Defendants – a personal accident policy issued on 22 January 1996 and renewed on 27 December 1996 for \$20,000 and a life assurance policy issued on 25 January 1996 for \$7,000.

2 The crux of the Plaintiff's claim was that the 60 year old deceased died through accidental drowning in a bath tub in a hotel while on holiday in Cambodia with his nephew, Lim Chok Young, the Plaintiff's ex-husband, and that the five Defendants breached the contracts of insurance by failing or refusing to pay the insured amounts. The Cambodian trip was a five-day tour from 30 May to 3 June 1997. On 2 June 1997, the deceased was found naked and lying face down in a filled bath tub in the hotel room by his nephew who was sharing the hotel room with the deceased.

3 The five Defendants claimed that death by accidental drowning was not proved and/or the deceased was a victim of homicide by the Plaintiff's ex-husband and that it was therefore against public policy to allow the Plaintiff's claim. Alternatively, they averred that the Plaintiff and her ex-husband conspired to kill the deceased in order to claim the insured amounts. The Defendants also raised several other defences relating to material non-disclosure and breach of the insurance policies.

4 It was not in dispute that, besides the seven insurance policies in issue, there was another insurance policy taken out in the name of the deceased with Great Eastern Life Insurance Co Ltd ("GE Life") for \$100,000 and that the insured amount had been paid by GE Life to the Plaintiff upon a claim being made. It was also agreed that applications for three personal accident policies in the deceased's name were made on 23 May 1997 (one week before the tour) to the American International Assurance Co Ltd ("AIA") and were rejected by AIA on 10 June 1997 (one week after the tour). These three AIA policies were for a total insured sum of \$310,000.

5 For easy reference, the various policies, as tabulated by the Defendants, are listed below (in addition to the two policies issued in 1996 by the Second Defendants mentioned in paragraph 1 of this judgment):

"LIST OF TRAVEL & PERSONAL ACCIDENT POLICIES TAKEN UP ON/ APPLIED FOR MR LIM MAH CHAN JUST BEFORE THE TRIP"

<u>S/No.</u>	<u>Date of issue of policy</u>	<u>Insurer</u>	<u>Premium paid</u>	<u>Insured sum [death]</u>

1.	21.04.97	American Home Assurance Co. ("the 1 st Defendant")	S\$79.00	S\$200,000.00
2.	15.05.97	Union Des Assurances de Paris-IARD (now "the 4 th Defendants")	S\$65.00	S\$200,000.00
3.	20.05.97	Great Eastern Life Insurance Co. Ltd	S\$10.82 (monthly)	S\$100,000.00
4.	23.05.97 (applied 19.05.97)	Winterthur Insurance (Far East) Pte Ltd ("the 5 th Defendants")	S\$36.00	S\$100,000.00
5.	Nil (applied 23.05.97)	American International Assurance Co Ltd	\$60.15 (semi-annually)	S\$ 5,000.00
6.	Nil (applied 23.05.97)	American International Assurance Co Ltd	\$60.15 (semi-annually)	S\$ 5,000.00
7.	Nil (applied 23.05.97)	American International Assurance Co Ltd	\$644.02 (semi-annually)	S\$300,000.00
8.	27.05.97	QBE Insurance (International) Ltd ("the 3 rd Defendants")	S\$35.00	S\$100,000.00
9.	27.05.97	NTUC Income Insurance Co-operative Ltd ("the 2 nd Defendants")	S\$60.00	S\$200,000.00
			S\$1,050.14	S\$1,210,000.00"

-

THE PLAINTIFF'S CASE

6 The first three witnesses of the Plaintiff were Cambodians. They were part of an Investigation Committee formed to look into the death of the accused. The Plaintiff did not manage to file their affidavits of evidence-in-chief and they therefore testified orally. All three gentlemen spoke in the Khmer language.

7 Hun Sothy has been a police officer in Cambodia for about 17 years. His duties and training included going to study the scenes of crime and to analyse any bodies found. He explained that an Investigation Committee comprising representatives from various government departments would be established whenever there was a case involving the death of a foreign national.

8 On 2 June 1997, he received a report from the police sometime after 1 pm that a man had died in Room 505 of the Pailin Hotel. He ordered the room to be sealed.

9 When he arrived at the hotel at about 2 pm, some members of the Investigation Committee were there. They waited for the rest to arrive before entering the hotel room.

10 He interviewed Lim Chok Young, a chambermaid of the hotel and an employee from the photography shop near the hotel. The timing of the incident as told by the latter two was consistent with that narrated by Lim Chok Young. The Investigation Committee examined the bedroom and the bathroom and found nothing unusual. There was nothing present at the scene that could have been used as a weapon. There was no sign of forced entry or of struggle. The floor in the bathroom was slippery because it was wet. The water level in the bath tub was very low because the water had been flowing slowly into the drainage hole. There was no blood stain in the bedroom or in the bathroom.

11 The deceased's body (now clothed) had been placed on the bed earlier. It was moved by the Investigation Committee to the floor. They examined the body and found a scratch mark on the left cheek measuring 1 cm long and 0.5 cm wide. There was no blood seen at the scratch. Another similar scratch mark was found on the right arm of the deceased near the wrist.

12 Based on all the above, the Investigation Committee concluded that the deceased had died from drowning. The investigations concluded at about 5 pm that day.

13 The translated report of the Investigation Committee stated as follows:

"KINGDOM OF CAMBODIA
NATION RELIGION KING

Phnom Penh Municipal Police
Police Technical and Criminal Office
No. 088/97 S.N.R

Phnom Penh, 02 June 1997

At 13h30, received from Mr. Houy Song, Chief of Criminal Section, 7 Makara District, reported that a dead man, which happened at 12h15, on 02 June 1997, in the room 505, Pailin Hotel, Preach Monivong Street, Sangkat Orussei IV, 7 Makara District.

Composition of the Committees are:

- Mr Prach Nhat, Occupation : Chief
- Mr. Chim Panna + Mr. Sann Sopat + Mr. Try Sovannara
- Mr. Houy Song, Chief of Criminal Section, 7 Makara District
- Mr. So Vandy, Deputy Chief of Immigration Section
- Mr. Sou Sara, Chief of Police Section, Orussei IV
- Mr. Lek Se, Forensic medical doctor of Phnom Penh city
- Mr. Thoung Rany, Representative of Procurator of Phnom Penh City.

The Witness:

- Mr. Lim Chok Young, Nephew of the dead

The Committees started to examine at 14h00, on 02 June 1997.

- The weather is fine with sun shine
- The accident place : changed

The Committees examine the place :

In the room 505, Pailin Hotel, Preach Monivong Street, Sangkat Orusse IV, 7 Makara District.

The view around the room :

- I. The North part of the accident room is room No. 506
- II. The South part of the accident room is room No. 504
- III. The East part of the accident room is Preach Monivong Street
- IV. The West part of the accident room is an exit-way

We examined the accident place in the bath tub.

This bath tub is 1,70m long, 0,50m wide, 0,40m tall, 0,40m deep with water and without cover. We asked, Mr. Lim Chock Young, sex : male, age : 44, tourist, staying in the hotel in the accident room, who is the nephew's corpse, was known that the victim was died in this bath tub. Around the accident place we found nothing or anything else to be noticed.

Examine the body's corpse : Mr. Lim Mah Chan, sex : male, age : 64, tourist, Nationality : Singaporean, staying in room 505, Pailin Hotel (holder of passport No. 07099840, arrived in Phnom Penh on 30-05-97), the corpse is white (color), rather thin, 1,63m tall and his clothes was changed already.

Examine the scratches on the body corpse

- There are 2 small scratches on the left cheek, 1c.m long and 0.50c.m wide.
- There is a scratch on the wrist (right hand) 1c.m long and 0,50c.m wide.
- When we press his abdomen, there was some water coming out from his mouth.
- Besides these, nothing else to be noticed.

For investigation the Committee has :

I. Make photo :

The accident room and the corpse.

II. Draw the plan of :

The accident place and make note on the scratches.

The committee has finished the examination at 17h00, on 02 June 97. After read the note, the above Committees signed as follow :

<u>Participants</u>	<u>Responsible examine</u>	<u>Reporter</u>
Mr. Houy Song	Mr. Prach Nhat	Mr. Chim Panna
Mr. So Vandy		

Mr. Sou Sara	<u>Witness</u>
Mr. Lek Se	Mr. Lim Chok Young
Mr. Thoung Rany.	

"

14 Although the above report did not state what the Committee's findings were, Hun Sothy explained that they found no foul play and concluded that the deceased had slipped, fallen into the bath tub and drowned. They left the report containing the Committee's conclusions to the medical specialist, Dr Lek Se.

15 Under cross-examination, Hun Sothy said that Lim Chok Young did tell them that he had tried to resuscitate the deceased after he was removed from the bath tub but could not recall what exactly Lim Chok Young had said. Asked how the deceased could have ended up lying face down in the bath tub, he replied that it all depended on whether the deceased fell into the bath tub face up or face down. The Committee was informed that the deceased was naked and lying face down in the water. He could not recall whether Lim Chok Young said anything about the position of the deceased's right arm when he was found in the bath tub.

16 Hun Sothy emphasized that the Committee's conclusion was a collective one made after all the individual members, who were specialists in their own field, had expressed their opinion. They felt that the scratch marks on the deceased's left cheek could have been caused by him falling and scratching against a hard object, which could have been the bath tub, the tap or the wall. It was most likely the bath tub as the deceased could have fallen on a hard object with a smooth surface. He did not think the scratch marks on the cheek were indicative of a defensive injury which would be larger. Further, if there was an attacker, there should also be injuries on the deceased's head and chest. They did not think it appropriate to ask Lim Chok Young about the injury on the deceased's cheek as it was the Committee's task to investigate. They also did not examine Lim Chok Young's body.

17 As for the deceased's legs, if the lower portion of his body did not hit against anything hard, there would be no injuries there.

18 Hun Sothy explained that his opinions were based on his 17 years of experience as a police officer during which he examined about 200 dead bodies annually. Although this was the only bath tub drowning case that he had investigated, he had experience with more than 40 cases of drowning. Lim Chok Young did not pay any money to the Investigation Committee.

19 The Chairman of the Investigation Committee was Prach Nhat, the Chief of the Technical and Scientific Bureau of the Municipal Police, whose duties included the identification of thumbprints and of documents and the examination of scenes of crime. According to him, the Committee concluded that the death was by drowning from the information given that the deceased was weak and had travelled a lot, from the condition of the bathroom and the other information gleaned from the interviews with Lim Chok Young and the two chambermaids of the hotel. Although the conclusions of the Committee were not in their report proper, the Medical Expertise Report dated 3 June 1997 by Dr Lek Se, another member of the Investigation Committee, formed part of the Committee's report. The Medical Expertise Report stated:

"Medical Expertise Report

- At the request of technical and scientific police unit of the Ministry of Interior.
- Following the instruction of the director of Phnom Penh Municipal Health Directorate,

On Monday, 2nd June 1997 at 16 h00mn in room No. 505, on fourth floor of Pailin hotel,

We, Dr. Lek Se, a surgeon of Phnom Penh hospital and forensic medical doctor, accompanied by Mr. Yim Chan in charge of Phnom Penh municipal sanitation, Mr. Prach Nhat, Chief of scientific and

technical bureau, Mr. Hun Sothy, deputy chief of technical and scientific bureau, examined the body of Lim Mah Chan, sex: male, born in 1936, race: Singaporean, home address: Singapore, passport No. 5078984, entry visa dated 30 May 1997.

a) Circumstances surrounding the dead:

- According to the nephew named Lim Chok Yung, sex: male, born: in 1955, race: Singaporean, who traveled with him on tourist tour, on 2nd June 1997 at 12h 15 minutes, Mr. Lim Mah Chan went to the bath room, but Mr. Lim Chok Yung himself came down to pick up the photo on ground floor for about 20 minutes. When returned to the room, he didn't see his uncle in the room, and being alarmed, he pushed the door of the bathroom open. At that time he saw Mr. Lim Mah Chan in the bath tub full of water. He shouted to Sreng Sokhim, sex: female, age: 23, race: Khmer and Yem Sophea, sex: female, age: 20, race: Khmer, occupation: room cleaners in the hotel, for helping him to carry his uncle out of the bath tub and to give first aid to his uncle. But the effort failed to render any result, since the victim had already passed away.

- Before his death, Mr. Lim Mah Chan did not have any appetite for the food.

- The hotel employees noticed that the victim looked very tired and pale.

b) The body examination:

- The body was naked, lying face up. There was some water coming out from his mouth as we pressed his abdomen. Nothing else was noticed.

Conclusion:

- Based on the account given by Mr. Lim Chok Young, the victim's nephew.

- Based on the account provided of the hotel employees.

- According to the actual examination of the body.

We make a conclusion that Mr. Lim Mah Chan was really dead of fainting spell and drowning in the bath tub.

Phnom Penh, 3rd June 1997

forensic medical doctor

"signed"

Seen and approved

Phnom Penh, 5th June 1997

Director of Phnom Penh Municipal Health Directorate

Dr. Suor Salom

"signed and sealed" Dr. Lek Se"

20 Prach Nhat also emphasized that the views of the Committee were reached after discussions and were consensual. The Committee did not receive any payment from Lim Chok Young. He remembered Lim Chok Young telling them that the deceased was found face down in the bath tub and that one leg was at the top of the bath tub. He could not recall what Lim Chok Young said about the other leg.

21 The final Cambodian witness was Dr Lek Se, Chief of Surgeon, Gynaecology Unit and Forensic Pathology in Phnom Penh University Hospital since 1988. He has investigated more than 50 cases of victims who died in water. Unfortunately, Cambodia did not have the facilities for full autopsies. If there was a bullet wound, he would do a partial autopsy on the relevant part of the body. Due to this lack of facilities, the Committee investigating a cause of death would have to consider all aspects of the case, e.g. information from people who were living with the deceased, the presence of any unusual objects and an examination of the dead body. If there were suspicious circumstances, the Committee would inform the higher authorities. The forensic pathologist would work closely with the police in conducting investigations.

22 When the Committee arrived at the hotel room, the deceased had been placed on a bed and had a t-shirt and a pair of shorts on. The body was still a little wet. They interviewed Lim Chok Young about the medical history of the deceased and then checked the deceased's belongings to verify his statements as they "did not believe 100% the statement of Lim Chok Young". Lim Chok Young told him that the deceased had no previous health problems but was tired and had no appetite after his arrival in Cambodia. That was consistent with what the hotel's staff had seen. The Committee found no drug prescriptions, drugs or sleeping pills and saw no sign of forced entry or of struggle in the room.

23 Lim Chok Young also told Dr Lek Se that the deceased had fallen into the water, that his head was inside the water while his buttocks were above the water, that one leg was inside the tub while the other was outside. That was again corroborated by the two chambermaids. When the naked body was taken out from the bath tub, clothes were put on it to protect the modesty of the two chambermaids. They had tried to revive the deceased by moving his arms and legs up and down.

24 The Committee then carried the deceased from the bed to the floor of the bedroom and removed his clothes. They then examined the body, noted the minor scratches on the face and the wrist and took black and white photographs thereof. There was no blood, no blackness and no swelling at the scratch marks. They were however recent injuries. They were not sure what could have caused the scratches, although they could not have been the result of physical blows as there were no bruises or fractures. Water emerged from the deceased's mouth and nose when the abdomen was pressed. His private parts did not show the presence of sperm and his anus did not have unusual stool. Dr Lek Se stressed that the physical examination lasted more than an hour and was a very careful one.

25 After considering all the physical and oral evidence, the Committee concluded that death was a result of syncope (or a fainting spell) and then drowning in the bath tub. This was because there was water in the lungs and in the stomach. They opined the deceased had syncope because he was a foreigner who had travelled a lot and the temperature was very hot in Cambodia. Further, the deceased had been seen by the hotel's staff to be very weak and Lim Chok Young had said that he had very poor appetite and the drowning was just before lunch time. While knocking the head onto something or falling into water could revive a fainting man, the deceased was weak and his head was in the water. In the Committee's view, drowning was the sole cause of death.

26 Dr Lek Se agreed that in theory, an autopsy should have been done but said that was not possible in the circumstances. The Committee had done their duty in the best possible way in the situation. If foul play was suspected, the Public Prosecutor, a member of the Committee, would be informed accordingly. Further, if an autopsy was deemed necessary, information would be given to the Courts which could approach the relevant embassy to have the body repatriated to the country of origin for a full autopsy to be conducted. In this case, there was no suspicion of foul play and neither did Dr Lek Se consider an autopsy necessary. It would have taken a long process to repatriate the body in any event and the effectiveness of an autopsy would be affected by the lapse of time.

27 It was difficult to exclude the possibility that the deceased might have been drugged but the Committee did not suspect that. Where there was no suspicion of foul play, the body would be released to the next-of-kin. However, about six to eight hours

after the occurrence of death, the body would be checked again in case there were signs of change. Dr Lek Se did inspect the body again at about 7 pm that same day at the temple where cremation was to take place and he saw no unusual signs.

28 Under cross-examination, Dr Lek Se said he had performed about 20 to 30 cases of partial, localized autopsy but never a complete autopsy. He agreed that it was incorrect to say the cause of death was drowning merely because water came out of a corpse's mouth when the stomach was pressed but added that the other circumstances, in this case, the witnesses' statements, were taken into account as well. He also added that the Medical Expertise Report prepared by him was not a detailed report but was a "summary report".

29 Dr Lek Se opined that it was not possible to sustain the scratch marks on the left cheek if the deceased was standing outside the bath tub when he fell. It was possible if he were standing inside the bath tub when he fell. He did not think the light impact that caused the scratches could have rendered the deceased unconscious. He opined that the deceased fell into the water, tried to get up but could not and hence drowned.

30 Insofar as the light scratch on the right wrist was concerned, Dr Lek Se said it could have been caused when the deceased struggled to get up. Asked how the injury could have been caused if the right arm was at the back of the deceased's body, he replied that he did not know what the deceased was doing prior to putting his hand at his back. He did not agree that the deceased could have been held in an arm-lock and then forced into the water.

31 Asked whether it was a medical fact that when injury was inflicted, the bruise might only show up after one full day, Dr Lek Se said he would estimate it as a couple of hours and agreed that it depended on the size and the depth of the bruise.

32 Dr Lek Se estimated that the body was in the water for some 15 to 20 minutes. The Committee excluded the possibility of drug overdose or of poisoning through their examination of the scene of the incident which showed no sign of any drugs. They also detected no unusual smell from the body and he saw no chemical change in the body later that evening. This was the procedure that obtained in Cambodia although he agreed that in theory, a post-mortem toxicology analysis would have been necessary in order to exclude medically the possibility of drug overdose or of poisoning. They could have been drawn a sample of the deceased's blood or urine but the difficult part was to get it analysed.

33 In re-examination, Dr Lek Se went on to explain why he did not think that the deceased had been held in an arm-lock and then forced into the water. That was because there were no signs of any struggle and neither were there any hair loss or bruises. If the deceased had died before immersion, he could not have water in the stomach and the lungs.

34 The Committee's consensus was that the deceased was standing near the bath tub or with one leg inside the bath tub, which was slippery, when he had syncope and fell into the water. Due to his poor health and the long travel, he could not get out of the water and he therefore drowned. The tap or the edge of the bath tub could have caused the scratch marks found on his body.

35 Asked by the Court whether he would have done anything differently if he had been told that the deceased had taken out about US\$450,000 in insurance policies, that his nephew had helped procure those policies, that the beneficiary was the ex-wife of the nephew and they were then living together again, Dr Lek Se replied that they would look further but would have the same conclusion.

36 The Defendants' expert, Dr Gilbert Lau, Director of Forensic Pathology in the Department of Forensic Medicine, was the next witness to testify although the Plaintiff had not closed her case. I shall deal with his testimony when I narrate the Defendants' case.

-

THE DEFENDANTS' NOTICE FOR FURTHER DIRECTIONS

37 On the morning of the third day of the trial, there was a small measure of drama. The Defendants applied by way of Notice for Further Directions for liberty to re-amend their Defence at paragraph 15 (b) thereof to include an averment that they require the Plaintiff to prove the alleged relationship of Lim Chok Young to the deceased and for leave to call a further witness.

38 Lek Siang Pheng, Counsel for the Defendants, in his affidavit filed on 19 July 2000, said that on the morning of 18 July 2000, he received a telephone call in his office from one Tan Yong Chong who informed him that he was calling on behalf of a relative of the deceased who could not speak English. When Lek told the caller that he was able to converse in Mandarin, the caller told him to contact one Sim Chye Huat.

39 Lek then spoke to Sim Chye Huat who claimed to be the brother of the sister-in-law of the deceased. He said that he had seen the photograph of the deceased published in The New Paper on 15 July 2000 and in the Chinese press on 17 July 2000. He alleged that the deceased did not have a nephew named Lim Chok Young and that the deceased's family was shocked to learn of his death and that someone was passing himself off as the nephew. Sim then faxed to Lek's office a copy of an obituary dated 24 January 1992 as well as a photograph of the deceased when he was alive and attending Sim's wedding. He said that the deceased had a brother and a sister and the obituary was that of the wife of the deceased's late brother.

40 Lek went on to state that he had given a copy of the said obituary and the photograph to Counsel for the Plaintiff when the Court adjourned for lunch on 18 July 2000.

41 The Defendants' representative who went to interview Sim found out that the deceased's brother had passed away in 1998 but his adopted sister Lim Kim Poh was still alive and would be willing to testify in Court. The Defendants therefore applied for leave to call Lim Kim Poh as an additional witness. Sim Chye Huat was subsequently also called as a witness.

42 The Plaintiff had no objections to the application but responded by asking for leave to call three more witnesses – the mother, the brother and the adopted sister of Lim Chok Young – to testify that while Lim Chok Young was not a blood relative of the deceased, his father was the deceased's "sworn brother".

43 I granted the Defendants' application and the Plaintiff's consequential application.

–

THE PLAINTIFF'S CASE (CONTINUED)

44 The Plaintiff, a sales promoter drawing a basic monthly salary of \$1,000 is the executrix and beneficiary of the estate of the deceased by virtue of a will made on 22 February 1997. She claimed to be related to the deceased through her former husband, Lim Chok Young, as the deceased was his uncle.

45 The Plaintiff and Lim Chok Young were living in a three-room HDB flat in Hougang ("the Hougang flat") until after their divorce in 1994 when she transferred her share in the Hougang flat to Lim Chok Young. In 1995, the Plaintiff purchased a new five-room HDB flat in Woodlands ("the Woodlands flat").

46 The deceased started visiting the Plaintiff and Lim Chok Young at the Hougang flat more than ten years ago. Lim Chok Young invited him to stay with them after learning that he was not happy staying with his friends. The Plaintiff did not object as she found the deceased to be a simple, undemanding and quiet man with smoking as his only vice.

47 After the deceased moved into the Hougang flat, the Plaintiff helped him with his laundry and cooked for him. About seven or eight years ago, he told the couple that he had received advice from a Taoist deity to "adopt" a god-child and asked the Plaintiff if she would like to be his god-child. Upon her consent, a simple tea ceremony was held to solemnize the relationship.

48 After their divorce in 1994, the Plaintiff and Lim Chok Young stayed in contact with each other as they had a daughter (now 14 years old) whom they both loved. Lim Chok Young would go to visit the daughter regularly.

49 In November 1996, the divorced couple converted to Christianity and attended instruction classes together at the St Andrew's Cathedral. Their relationship improved and Lim Chok Young visited the Plaintiff and their child more frequently at the Woodlands flat and stayed overnight there occasionally. In 1998, Lim Chok Young, who had purchased a three-room HDB flat in Yishun ("the Yishun flat") after the divorce, sold the Yishun flat and moved in with the Plaintiff and their daughter. They were happy to be reunited as a family.

50 The deceased would visit the Woodlands flat with Lim Chok Young or by himself. He would also stay overnight there occasionally. The deceased had bought a three-room HDB flat at Petir Road ("the Petir Road flat") through the financial assistance of Lim Chok Young.

51 The Plaintiff was aware that Lim Chok Young and the deceased had travelled to Thailand and to Malaysia for holidays. She had never travelled with the deceased but had gone on holiday with Lim Chok Young to China in 1995 and to the USA and South Korea in 1996.

52 The Plaintiff was not aware of the travel insurance policies that the deceased had taken out for his trips and was also ignorant of the fact that the deceased had made a will and named her as the sole beneficiary. She discovered all these only after his death in Cambodia. The will dated 22 February 1997 appointed her as the sole executrix and trustee and devised and bequeathed the Petir Road flat and all of the deceased's properties to the Plaintiff.

53 In 1997, Lim Chok Young telephoned the Plaintiff one night from Phnom Penh to tell her that the deceased had died in an accident. She was very surprised and shocked. She knew that the deceased was fine before he left for the tour with Lim Chok Young and that he had never complained about any major illness. Lim Chok Young asked her whether they should bring the deceased's body back to Singapore. When she learned that it would be very costly to do so, she agreed with Lim Chok Young that the deceased be cremated in Phnom Penh and his ashes be brought home.

54 Subsequently, Lim Chok Young brought the deceased's ashes to Singapore and placed his remains at the Mandai Columbarium. Lim Chok Young did some prayers there. However, the Plaintiff was not there as she was very busy working. There was no funeral or announcement of the death through an obituary.

55 Later, Lim Chok Young informed the Plaintiff about the travel insurance policies and she asked him to help her notify the insurance companies in question.

56 The Plaintiff went on to state that she could not understand why the Defendants were refusing to pay on the policies when the Cambodian authorities had already certified that the deceased drowned in the bath tub. She was very surprised that the Defendants were alleging criminal conduct on the part of Lim Chok Young and that she was part of the conspiracy to murder the deceased for the insurance monies. Lim Chok Young was very close to the deceased and she did not believe that "he would want to cause his uncle's death to gain from the travel insurance policies".

57 In cross-examination, the Plaintiff said that the deceased started to visit them at the Hougang flat in 1988 and, since mid 1988, started to bring along some of his belongings to the flat. The deceased told them he was a general worker then. Lim Chok Young treated the deceased well and the deceased liked him very much. She did not know whether the two men were related by blood but they were "something like father and son". Lim Chok Young only told her that the deceased was his uncle or his father's younger brother. She did not know about the deceased's siblings or anything about him being a sworn brother of Lim Chok Young's father until the second day of the trial.

58 Asked whether stating that the deceased had "no other relative" in a Statutory Declaration dated 11 June 1997 (AB 264) meant that she had already known that the deceased and Lim Chok Young were not related, she disagreed and stated that she did not know why Lim Chok Young, as the nephew of the deceased, could not have sworn the Statutory Declaration himself. She meant that the deceased was not married and had no offspring.

59 Asked when her relationship with Lim Chok Young became good again after their divorce, the Plaintiff said that it was after

they attended counselling sessions at the church and were baptised in November 1996.

60 It was Lim Chok Young who came up with the money for the deceased's Petir Road flat. The deceased did live in that flat but she was uncertain about the period. One of the two bedrooms there was rented out. The deceased would still stay at the Plaintiff's Woodlands flat every now and then. She did not know who collected the rental but Lim Chok Young did give the deceased money for his living expenses. She did not know why the Petir Road flat was given to her instead of Lim Chok Young.

61 Asked when Lim Chok Young started to live with her in the Woodlands flat, her reply was, "After our baptism in November 1996, after he sold his Hougang flat, he came to stay with me". She added that Lim Chok Young had also stayed over at the Woodlands flat after their divorce and before their baptism. The Plaintiff agreed that she, Lim Chok Young and their daughter had gone to South Korea on holiday together in November 1996, by which time she had regarded Lim Chok Young as her husband again.

62 Asked whether she agreed that the deceased was not a person who would plan financially for his future, the Plaintiff said he was like that previously until she suggested to him that he should keep some money for himself by saving. The deceased listened and nodded and began to change a lot by taking care of himself. The deceased was very happy when he was with the Plaintiff who cared so much that she would remove the bones from the fish she cooked for his meals before serving it to him.

63 The Plaintiff also agreed that the deceased had no regular source of income and when he had no money, he would often go hungry. He did not have any bank account and had no savings. He would always spend his money on cigarettes while buying rice and canned food occasionally. Occasionally, the deceased won in 4-D lotteries and would buy and bring a lot of things home. He would also speak to a female insurance agent who went to the Woodlands flat but the Plaintiff did not ask him whether he bought any policies.

64 The deceased was unemployed during the period before his demise. The Plaintiff did not know why he required so much insurance coverage in April and May 1997, something she found strange. She was not aware that he had also applied to AIA for three other policies in May 1997.

65 Asked when she discovered the deceased's will, the Plaintiff explained that she and Lim Chok Young went to the deceased's Petir Road flat after his death and she found some documents inside a box which she showed to Lim Chok Young as she was not literate in English. Lim Chok Young then told her that the deceased had bought insurance.

66 When Lim Chok Young and the deceased travelled together overseas, they did not tell her about the trips before they left. In fact, she did not even know that the two of them had gone to Cambodia until the telephone call came from Lim Chok Young bringing news about the death which caused her to cry. She did not even know where Cambodia was. Lim Chok Young asked her over the telephone to go to the travel agency at Golden Mile to fax over a document stating that she was the deceased's relative. There was no discussion about any insurance policies.

67 In re-examination, the Plaintiff said that Lim Chok Young and the deceased would visit her daughter at the Woodlands flat together. Occasionally, the deceased would go to the flat by himself and would also stay overnight. She had given them the keys to the Woodlands flat. She gave the keys to Lim Chok Young because their daughter was still young and he said he would like to visit their daughter. The Plaintiff had to work and could not afford a maid. Initially, she was not happy about the two men's visits as she and Lim Chok Young had already gone through the divorce. However, she permitted them to visit because of her daughter.

68 Although probate of the deceased's estate was granted to the Plaintiff, it was Lim Chok Young who was administering the estate.

69 She reiterated that she was very upset by the allegations of criminal conduct and by the publicity in the press concerning this case. She maintained that she had cared for the deceased and was happy with her life, giving hardly any thought to money. Even if she hated someone, she would not go to the extent of killing him.

70 In reply to my questions, the Plaintiff explained that after the divorce in 1994, she continued to live at the Hougang flat for about a year or so because her daughter was schooling in the vicinity. She and Lim Chok Young had applied for a five-room Woodlands flat from the HDB some time back and she took over this flat after the divorce. She obtained possession of the Woodlands flat sometime about 1996. The matrimonial home – the Hougang flat – was sold at the end of 1995 for \$130,000 and she got back her CPF contributions, together with interest, paid for that flat. The Woodlands flat cost \$130,000. It was purchased direct from the HDB and the instalment payments were currently being serviced through her CPF account.

71 The Plaintiff also said that after the Hougang flat was sold, Lim Chok Young moved to the Woodlands flat and agreed that after their divorce, both never ceased to stay together. When questioned about Lim Chok Young's ownership of the Yishun flat, she replied that he bought that three-room flat because he wanted to earn extra income from renting out one of the two bedrooms. She then added that Lim Chok Young lived at two places – sometimes at the Woodlands flat and sometimes at the Yishun flat. When they quarrelled, Lim Chok Young would stay at the Yishun flat. She then added further that she and Lim Chok Young would stay sometimes at the Yishun flat and sometimes at the Woodlands flat.

72 The deceased would also stay in both the said flats except that he stayed at the Yishun flat most of the time.

73 The Plaintiff said that she was angry because Lim Chok Young spent a lot of time with the deceased in 1995 and 1996. When asked what led to the divorce in 1994, the Plaintiff explained that she and Lim Chok Young hardly talked to each other after the deceased moved in with them at the Hougang flat. The two men got along very well with each other and did not bother about her. On one occasion, Lim Chok Young was out of the house for a few days and when questioned by her concerning his whereabouts, he told her not to bother him. At times, he would shout at the Plaintiff or was very cold when he spoke to her.

74 After she moved to the Woodlands flat, Lim Chok Young asked for access to their daughter. She then gave him the keys to that flat. She also did not want her daughter's schoolmates to find out about their divorce. She then added that Lim Chok Young and the deceased were still living in the Hougang flat after she had moved out. However, because of their daughter's problems with transport, she moved back to the Hougang flat and would return to the Woodlands flat on weekends and on her days off from work.

75 Asked how long such an arrangement lasted, the Plaintiff said it was not very long. After the Yishun flat was bought by Lim Chok Young, the Hougang flat was sold and they moved to the Yishun flat. There, they again could not get along with each other and the Plaintiff returned to the Woodlands flat. Lim Chok Young remained at the Yishun flat and gradually moved to the Woodlands flat. She explained it was because of all this that she was so confused in her testimony about which flat she was living in. None of the HDB flats in question had a long bath tub in the bathrooms. The conservancy and utility charges for the Woodlands flat were paid by Lim Chok Young since he had gone to live there with the Plaintiff.

76 The Plaintiff also said that she and Lim Chok Young had resumed an occasional sexual relationship after the divorce. She could not remember when they resumed such a relationship because it was not a recent event. She confirmed what Lim Chok Young had stated in his Affidavit of Evidence-in-Chief, that they intended to re-marry. She explained that it was for the sake of their daughter.

77 The divorced couple still had a POSB account in their joint names. The Plaintiff explained that that was an old account used by Lim Chok Young to pay the utility bills. The Plaintiff had never used this account herself. As for the \$100,000 insurance money paid out by GE Life, the Plaintiff said the cheque was made out in her name but she could not recall where she banked it into. Money was not that important to her, she explained. (Lim Chok Young would testify later that the \$100,000 cheque was used to open a fixed deposit account in their joint names.)

78 When they discovered the insurance policies and the will in the Petir Road flat after the deceased's death, the Plaintiff was shocked that the deceased had left so much money for her and was concerned that people might misunderstand the situation. Lim Chok Young also wondered why the deceased had given her so much money. He was also surprised that the deceased had all those insurance policies and had made a will.

79 When Lim Chok Young telephoned her from Cambodia to inform her about the deceased's demise, he told her to fax over a letter of authorization as there was a requirement there that only the relative of the deceased could claim the deceased's ashes after cremation. She faxed it over the next day. She did not know why that was necessary as Lim Chok Young was the deceased's nephew while she was only his god-daughter. The Cambodian authorities apparently wanted someone from Singapore to fax over the said document. Asked why she was described as "step-daughter" of the deceased by the Singapore Embassy in Phnom Penh in their letter dated 3 June 1997 to Lim Chok Young to authorize him to have the deceased's body for cremation, the Plaintiff said that the person in the tour agency who prepared the letter of authorization for her must have translated "god-daughter" wrongly.

80 In response to her own counsel, the Plaintiff explained that she had divorced Lim Chok Young in 1994 because she was very angry with him. She wanted to use the divorce to frighten him into treating her well again. During the divorce proceedings, Lim Chok Young tried to dissuade her from proceeding but she was adamant. She maintained that the divorce was no sham. While she remained in the Hougang flat after the divorce, she was still hoping for a reconciliation. When she moved to the Woodlands flat, she had lost all hopes of reconciliation. She had gone to Lim Chok Young's Yishun flat and walked about aimlessly, eventually going up to his flat probably because she was still thinking about him. The church counselling was then going on and she was still hoping that they could get back together. Their decision to get back together again had nothing to do with the insurance monies in question. It was due to the counselling sessions and to Lim Chok Young consoling her when she felt down. She felt that he still loved her and their daughter.

81 Lim Chok Young affirmed two Affidavits of Evidence-in-Chief. In the first one, he said he was working for the Ministry of the Environment as a container truck driver earning a month salary of about \$1,600. The deceased was his father's younger brother. He had met the deceased at family gatherings. Sometime in the 1980s, he met his uncle again and learned that he was staying with some friends and was then an odd job labourer. He then invited the deceased to the Hougang flat.

82 The deceased began to visit him and the Plaintiff frequently and would stay overnight for several days. They all got along well with one another. The deceased complained about his living arrangements with his friends and, as his relative, Lim Chok Young felt sorry for him and invited him to live with his family temporarily. The deceased accepted.

83 His uncle was not married and had no children. About seven to eight years ago, he decided to take the Plaintiff as his god-daughter. He was a quiet man of simple needs and not given to consuming alcohol. He would usually smoke a packet of cigarettes daily and sometimes would go to a Taoist temple to pray.

84 In 1994, Lim Chok Young and the Plaintiff divorced. In her petition dated 23 May 1994, the Plaintiff stated the following:

"9. That the marriage has irretrievably broken down.

10. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. (Section 88(3)(b), Cap. 353).

PARTICULARS

a) That since marriage, the Respondent failed to provide sufficient maintenance to the Petitioner and the child. The Respondent gave meagre sum towards maintenance and only on demand. As a result, the family and household expenses were provided for by the Petitioner.

b) That since marriage, the Respondent was in the habit of keeping late nights. When questioned about his late nights, the Respondent would quarrel with the Petitioner and the Petitioner was told not to interfere in his private affairs.

c) That due to the attitude and behaviour of the Respondent, there were frequent quarrels between the Petitioner and the Respondent whereby the Petitioner became mentally depressed and could not

concentrate in her works.

d) That throughout the marriage, the Respondent neglected the family and never showed any love and concern for the Petitioner and the child. The Respondent often went out alone without bringing the family along.

e) That since early 1993, the Respondent behaved very cold towards the Petitioner and the Respondent had for no apparent reason moved into another room and had without the consent of the Petitioner, refused to resume cohabitation with the Petitioner."

Lim Chok Young did not enter an appearance and the divorce was not contested. Decree Nisi was pronounced on 25 August 1994. On 25 November 1994, a consent order was made on the ancillary matters as Lim Chok Young had signed a draft consent order containing the same terms on 27 October 1994 before the solicitor acting for the Plaintiff in the divorce petition. The Plaintiff was given custody of their daughter with reasonable access to Lim Chok Young. Lim Chok Young was to pay the Plaintiff \$250 per month as maintenance for the child and the Plaintiff was to transfer her share and interest in the Hougang flat to Lim Chok Young upon repayment to her CPF account of the monies withdrawn (and interest) for the flat.

85 In 1996, Lim Chok Young sold the Hougang flat and bought the Yishun flat in the open market. The deceased moved with him from the Hougang flat to the Yishun flat.

86 Despite their divorce, the couple stayed in contact with each other and Lim Chok Young would go to the Woodlands flat to visit the daughter and to give her the maintenance money. In November 1996, they were baptised after attending instruction classes together. Lim Chok Young went to say:

"As a result of our new religious belief, we started to get back together, although we were legally divorced. I would go over to the Plaintiff's flat to stay there frequently. I sold off the Yishun flat and in July 1998 moved in permanently at the Petitioner's flat in Woodlands. We are now reconciled as a family. We have plans to re-marry after the present matter is resolved."

87 In late 1996, Lim Chok Young helped the deceased to purchase the three-room Petir Road flat by making the cash payment for him. He had just sold the Hougang flat and therefore had available cash. They had agreed that the deceased would sublet one of the two bedrooms to get some income to help pay the instalments for that flat.

88 In early 1997, Lim Chok Young and the deceased started to take holiday trips to nearby countries such as Malaysia, Thailand and Indonesia as the deceased had won several thousand dollars in a lottery in late 1996 or early 1997. Each time they went on a trip, they would buy travel insurance. Lim Chok Young explained:

"I must explain that I have a very strong conviction about the benefits of insurance. This came about when I witnessed a colleague's sudden death around 1978 or 1979. When I was at the funeral wake, I learnt that the insurance company (NTUC) had paid out a sum of \$15,000 even before the body was cremated. This made a very deep impression on me that insurance could take care of family needs that arose unexpectedly, such as the sudden death of my colleague. My first insurance policy was with NTUC, a 15-year savings policy which has since matured."

In 1994, when Lim Chok Young went to China, he bought \$500,000 in travel insurance. He would buy travel insurance whenever he travelled but he has discarded the policies upon their expiry.

89 Coming back to the Cambodian trip, Lim Chok Young said that the initial plan was to visit Vietnam on a five-day tour costing \$888.00. Lim Chok Young and the deceased went to tour agencies to scout around for bargains and came across one at Golden Mile Tower offering a five-day tour to Phnom Penh for \$588.00. As that would result in savings of \$300.00 per person, they decided to change their destination. They booked the tour on 21 April 1997 and paid a deposit of \$400.00. The tour was to take

place from 30 May to 3 June 1997.

90 As the deceased had indicated earlier that he would like to purchase travel insurance for the trip, Lim Chok Young then went to the First Defendants and handed in an application form on the deceased's behalf. That form had been signed earlier on 8 April 1997 as it was originally intended for a trip to Malaysia and Indonesia. He paid the premium of \$79 and was repaid by the deceased later. He decided not to buy travel insurance for himself from the First Defendants as he felt the premium was a bit too expensive and he could get better deals elsewhere.

91 Between 21 April 1997 (when the tour was booked) and 30 May 1997 (the departure date), Lim Chok Young and the deceased bought the other travel insurance policies in question as they had learnt from speaking to others that Cambodia was not a safe place, with its unstable social and political situation and the landmines. They contemplated cancelling the tour but decided to proceed with it upon learning that their \$400.00 deposit would be forfeited. While the deceased bought five travel insurance policies, Lim Chok Young bought three as he was already covered under other policies. Lim Chok Young's policies were with the Second and the Fifth Defendants and Tai Ping Insurance Co.

92 Lim Chok Young went on to explain how the various policies came about. He bought from the First Defendants because both he and the deceased had bought policies from them in February 1997. The next policy (from the Fourth Defendants) was bought when both of them were shopping as they would walk into travel agencies to look at the colourful posters. They had also bought travel insurance from the Fourth Defendants previously in March 1997. The third policy was bought from the Fifth Defendants through the tour agency where they booked the Cambodian tour. They were persuaded to buy another policy despite having told the travel agent that they were already covered by insurance. The fourth policy (from the Third Defendants) was bought on another shopping trip as it was additional protection at relatively low cost. The fifth policy was bought from the Second Defendants. Lim Chok Young had policies with the Second Defendants which had a branch in Yishun Central which he went to frequently as he was living in the Yishun flat then. The staff there would encourage him to buy more travel insurance for additional cover.

93 The premiums for the various policies bought by the deceased were paid by Lim Chok Young first. He was reimbursed later in cash by the deceased, who was a very proud person who would always insist on paying for his trips and insurance premiums.

94 Both of them left Singapore on 30 May 1997 for Phnom Penh. The tour group had six persons. They shared room 505 at the Pailin Hotel there. They had dinner and returned to the hotel at about 9 pm.

95 Day 2 was spent visiting temples and museums with short rest periods back at the hotel. The day's programme ended at 9 pm.

96 On Day 3, the deceased said his legs were aching and he did not like the food and decided not to join the tour group on its outing. Lim Chok Young went with the group. The deceased joined them for lunch and for dinner at the hotel. He appeared normal.

97 Day 4 (2 June 1997) had no activity planned but it was to be the most eventful one. The other four members of the group decided to fly to Siem Reap to tour the Angkor Wat. Lim Chok Young decided to keep his uncle company as the latter did not wish to go for the optional day trip. Both of them had breakfast at the hotel and then chatted with the rest of the group in the lobby. A couple in the group asked Lim Chok Young to develop a roll of film for them at the photo studio opposite the hotel. He agreed to do so as he also had a roll to develop. He crossed the road to the said studio and left the rolls of film there. He then went back to room 505 with the deceased. It was past 9 am then.

98 Back in the room, they lazed around, watched television and chatted. At past 10 am, two chambermaids entered the room to clean it for about 15 minutes. At about 11 am, Lim Chok Young had his shower. He then took some coffee and tidied up his luggage. He suggested to the deceased to take a bath before they went for lunch as the deceased enjoyed bathing in the bath tub because he could not do so at home. The deceased then turned on the water.

99 At about 11.30 am, Lim Chok Young left the room to collect the negatives and the photographs from the studio across the

road. Before he left, he informed the deceased to meet him at the lobby at about 12 noon. The deceased was standing beside the bathroom and the bath tub was still being filled. Two chambermaids were in the corridor when he left the room.

100 After collecting the negatives and the photographs, Lim Chok Young returned to the lobby where he inserted the photographs into the albums while waiting for the deceased. When he did not turn up at about 12.15 pm, Lim Chok Young went up to the room. The two chambermaids he saw earlier were standing near the passageway to the room.

101 He unlocked the door and noticed that the bathroom door was shut and the television set was switched on. He put down the albums and knocked on the bathroom door. There was no response although there was the sound of running water. When he pushed the door open, he saw the naked deceased lying face down in the bathtub filled with water. That scared him and he immediately called for help.

102 The two chambermaids came running into the room and they helped Lim Chok Young to lift the body out of the bath tub and onto the floor. Immediately thereafter, many people went into the room to offer help. Some men helped to move the body onto the bed. Lim Chok Young put a t-shirt and a pair of shorts on for the deceased as the chambermaids were embarrassed by the naked body. The authorities then arrived.

103 Lim Chok Young was asked to go to another room where he was questioned by the police until the evening. The police also told him that there was no evidence of suicide or of murder.

104 Later that evening, Lim Chok Young telephoned the Plaintiff to tell her about the deceased's demise and discussed with her on what to do with the body. He had learnt that it would cost US\$6,000 to bring the body back to Singapore. There would also be the attendant documentation. They decided that it would be more convenient and would save them money to cremate the body and then bring the ashes home. Lim Chok Young also called the tour agency in Singapore. The tour leader in Cambodia helped him contact the Singapore Embassy for their assistance.

105 The next day (Day 5, 3 June 1997), a representative from the Singapore Embassy went to view the body which had been moved to a temple for cremation. The Cambodian authorities did not tell Lim Chok Young whether an autopsy would be done. If he had known that the absence of an autopsy would lead to such allegations as had been made against him, he would certainly have brought the body back to Singapore for an autopsy.

106 Lim Chok Young left Phnom Penh that day. The cremation took place on 4 June 1997 and he returned to Cambodia a few days thereafter to collect the ashes which were now kept at the Mandai Columbarium.

107 Lim Chok Young then explained why the deceased had bought so many travel insurance policies. The deceased had told him that if some accident should cause him to become handicapped, the insurance monies would help take care of his medical and nursing expenses as he had no children. He was looking to the Plaintiff to take care of him since she was his god-daughter. He was also afraid that he would not be able to pay off the HDB loan for the Petir Road flat if anything untoward should happen to him.

108 As the deceased also told Lim Chok Young that he wanted to make a will, he brought the deceased to a law firm (the Plaintiff's present solicitors). He was not present when the deceased signed the will. The deceased paid the legal fee himself.

109 Lim Chok Young asserted that he had nothing to do with his uncle's death and surmised that the Defendants were making the unfounded and malicious allegations against him and the Plaintiff to avoid paying on the policies. The deceased was not suffering from any disease or illness and appeared to be in good health on the day of departure for the tour. The only two occasions when Lim Chok Young brought the deceased to see a Chinese physician were for an ache at his wrist and a skin problem at his feet. He found a Medical Examination Form dated 16 June 1990 in respect of the deceased after his death. (That examination was apparently for the purpose of an application for a vocational licence by the deceased. The doctor who did the examination was not called by the Plaintiff to testify although he had affirmed an Affidavit of Evidence-in-Chief).

110 Lim Chok Young helped the Plaintiff to lodge the claims with the various insurance companies. He was questioned by loss adjusters representing the Defendants about the death and the circumstances leading to the purchase of so many policies. He told them that he was a "strong believer in insurance". Perhaps the deceased had been influenced when he saw Lim Chok Young buying insurance policies so frequently. Lim Chok Young concluded his first Affidavit of Evidence-in-Chief by reiterating his innocence in respect of the death.

111 His second Affidavit of Evidence-in-Chief was in response to the Defendants' first amendment to their Defence to allege that they had been induced to issue the policies by the deceased's failure to disclose or concealment of material facts. Lim Chok Young said that the deceased's eye problem was nothing more than poor eyesight for which he wore corrective lenses. The deceased had applied traditional Chinese ointment on his arms because of the skin irritation. He had not mentioned any infection or complained that it was painful. The deceased was almost 61 years at the time of the last trip. His slowness in movements were therefore nothing unusual.

112 Except for the First Defendants, where an application form had been signed earlier for an intended trip to Malaysia and Indonesia, the deceased went personally to purchase the policies from the other four Defendants. When Lim Chok Young went to the First Defendants to purchase insurance for the deceased, no questions were asked on whether the deceased had other insurance policies or on the deceased's state of health. However, Lim Chok Young was told that he could call the First Defendants anytime for emergency help during the trip. As for the two earlier policies bought from the Second Defendants, it was the agent who filled in the application form for the deceased who could not understand English. Where the travel insurance policy bought from the Second Defendants on 27 May 1997 was concerned, similarly no questions other than those on the destination and the flight details were asked. That was the same for the Third, Fourth and the Fifth Defendants.

113 Lim Chok Young said he did not know that the deceased had applied for insurance with AIA in 1996 or that he had gone for a medical examination in connection therewith until informed by the Defendants' solicitors. He was aware of the applications for personal accident insurance from AIA in May 1997 as he had helped the deceased to forward the application forms to AIA. However, he was not told that the applications had been turned down.

114 In cross-examination, Lim Chok Young confirmed that he had been interviewed by Chan Hwee Seng, the loss adjuster representing the Defendants, and had made the statements shown in AB 197 to 209.

115 He agreed that the Plaintiff and he were currently living together as husband and wife although divorced in the eyes of the law. He helped to pay for the utilities bills of the Woodlands flat. He also confirmed that they had a joint account which both of them were using.

116 Although Lim Chok Young agreed that one of the reasons for buying travel insurance was to provide for repatriation from abroad to receive treatment back home, he did not pay attention to such a provision in the policies in question.

117 The Petir Road flat of the deceased cost \$133,000. Lim Chok Young paid the whole of the initial down payment of 20% of the price to the HDB. The monthly instalments came up to about \$500. The rental received for renting out one of the two bedrooms was \$900 per month. The difference of \$400 was used by the deceased for his daily expenses. The flat had since been sold for about \$130,000.

118 Lim Chok Young disagreed with the suggestion that he had made use of the deceased to purchase the Petir Road flat as an investment for himself. He felt that as he had paid for the flat on the deceased's behalf, should the deceased die, he should be entitled to the flat. However, he did not cause any document to be signed by the deceased to ensure that. He disagreed that he protected his interest by causing the deceased to make the will in February 1997. The will was part of an arrangement between Lim Chok Young and the deceased who wanted him to manage his estate. The deceased had asked him to go with him to see a lawyer and he did so. They went to the present solicitors through the recommendation of a security guard at the commercial complex.

119 He was then asked about the \$100,000 paid out by GE Life to the Plaintiff in 1998. Lim Chok Young said he went with the

Plaintiff to place the amount in a fixed deposit in their joint names with the Standard Chartered Bank. The money was withdrawn prematurely from time to time to pay various expenses, with about \$20,000 remaining.

120 When the cross-examination resumed the next day, Lim Chok Young corrected his earlier evidence and stated that the \$100,000 cheque from GE Life was deposited in a branch of the OCBC Bank near the Woodlands flat. The fixed deposit account there was also in the joint names of Lim Chok Young and the Plaintiff. From there, \$20,000 was withdrawn for Lim Chok Young to buy a second hand car and \$10,000 was used for their legal fees and other expenses. The balance of \$70,000 was then placed in a fixed deposit in their joint names with the Standard Chartered Bank's branch at Tiong Bahru. From that fixed deposit, sums of money were withdrawn to pay their legal fees, leaving about \$17,000 still in that account. Lim Chok Young then produced an advice slip dated 23 September 1999 from the Standard Chartered Bank (PB 107) which showed that the 18-month fixed deposit of \$70,000 was withdrawn prematurely.

121 Lim Chok Young confirmed that they would also deposit the \$800,000 claimed in these proceedings into their joint accounts should the Plaintiff succeed in her claim.

122 Asked by the Court to clarify about the car bought by him since the Plaintiff had told the Court earlier that neither of them had a car, Lim Chok Young said he bought the car at the close of 1998 and sold it two or three months later in February 1999. He sold it because he had no need for a car and had bought it only because the previous owner needed some money. He did not know that person very well.

123 Going back to the issue of the will, Lim Chok Young testified that he and the deceased had discussed the question of who the beneficiary should be but the deceased did not tell him his decision on that matter. He did not ask the deceased about it but was quite sure that he would be named as the sole beneficiary. He knew what the intended contents of the will would be but did not know how the deceased obtained the Plaintiff's particulars.

124 He accompanied the deceased on the first visit to the law firm but the deceased met and discussed with the lawyer alone. The deceased went by himself on another occasion to collect the will from the law firm.

125 A few days later, Lim Chok Young went to the deceased's Petir Road flat and enquired about the will. The deceased then showed it to him. He was surprised that he was not named the beneficiary. After that, the deceased kept the will somewhere in the bedroom.

126 With regard to the exact nature of the relationship between Lim Chok Young and the deceased, he had thought all along that the deceased was his late father's brother until the incident on the second day of the trial (mentioned earlier). He then checked with his mother and found out that the deceased and his late father were actually sworn brothers. Lim Chok Young's father passed away 34 years ago aged slightly older than 40.

127 Lim Chok Young agreed that it looked strange for the deceased not to cancel the Cambodian trip and lose \$200 each but eventually pay \$275 in premiums for all the travel insurance. If the premiums for the three unsuccessful applications to AIA were included, the premiums would exceed \$1,000. The policies got cheaper and cheaper as Lim Chok Young bought more insurance. The more he bought, the better the protection, he explained.

128 For the first policy (from the First Defendants), the deceased was not with him when he went to buy the insurance. Therefore, even though he thought the premium of \$79 was rather expensive, he bought anyway as requested to save himself the inconvenience of a second trip. After all, the deceased had handed him the First Defendants' application form with his thumbprint on it and would be reimbursing him anyway. He did this although it was their habit to go around looking at tour agencies and he was going to buy insurance for himself from other insurance companies.

129 When the policy was purchased from the First Defendants, a card listing the services provided together with a 24-hour emergency service telephone number in Singapore was given by the insurance company. However, Lim Chok Young said he did not read this information which was on the reverse side of the card.

130 Asked why the Fourth Defendants' policy apparently issued on 15 May 1997 (AB 54) should bear the date stamp 6 March 1997, Lim Chok Young said he was not able to explain. He also did not know why two policies (AB 39 and 40) issued for earlier trips in March and April 1997 also bore the date stamp 6 March 1997.

131 Lim Chok Young's hobby was to visit tour agencies with the deceased tagging along. They would make enquiries with the staff who would recommend their policies. That explained why the five travel insurance policies were bought through different tour agencies. As for the policy from GE Life for \$100,000, Lim Chok Young had opened a joint account with the deceased at OCBC Bank which had a savings scheme insurance for account holders. He read the terms and conditions of that scheme and, seeing that the premium was only about \$10 per month, bought a policy. The deceased also bought one. The joint account was opened because the deceased told him that he had applied for a job for which the salary would be paid by cheque. They opened the joint account in case the deceased was successful so that he could bank in his cheques and Lim Chok Young could withdraw money for him.

132 The three unsuccessful applications to AIA came about this way. Two agents from AIA telephoned the Woodlands flat to look for the deceased who was not in the flat then. They told Lim Chok Young that they had an appointment with the deceased. They also knew Lim Chok Young as they had obtained his particulars from the Standard Chartered Bank. They asked whether they could go over to the Woodlands flat to discuss insurance matters. Lim Chok Young told them he had no intention of buying more as he already had several insurance policies. They said they would recommend something to Lim Chok Young anyway.

133 When they arrived, they said that the deceased could buy only accident policies because of his age. They asked Lim Chok Young to buy insurance for the deceased. Lim Chok Young telephoned the deceased who was at the Petir Road flat and told him about this. The deceased did not want to buy any. However, the two agents from AIA were persistent. Lim Chok Young therefore told the deceased that he was the one who had invited the agents to the Woodlands flat and that they were refusing to leave. The deceased then relented and told Lim Chok Young to oblige them and buy \$100,000 worth of insurance. However, the agents persuaded Lim Chok Young to purchase half a million dollars worth instead. He told them the deceased was not working and they responded by suggesting something in between the two figures – i.e. \$300,000 – and told Lim Chok Young that the deceased could buy only up to the time he attained 65 years of age. The premium was \$600 for every half year. They then filled up the application form and told Lim Chok Young to bring it to the deceased for his signature.

134 Lim Chok Young said that he had indicated his wish to join the optional tour of the Angkor Wat at the time of booking but was not required to make any payment for the optional tour at that time. He disagreed with the suggestion that he had no intention of visiting the Angkor Wat and had planned to use that day to carry his plan to cause the deceased's death. He did not go because the deceased was weak, he had seen that the Cambodian aeroplane was not very safe, the airport facilities were poor and there were many soldiers on the road. Besides, it would cost US\$100 per person. They could not leave for Singapore on the fourth day because the five-day tour was a special promotion.

135 Lim Chok Young confirmed that the Pailin Hotel was airconditioned.

136 Asked why he did not at least lift the deceased out of the water in the bath tub when he discovered him lying in there, Lim Chok Young said he thought the deceased wanted to splash water on him. When he had looked carefully, he then shouted at the top of his voice. He could not have lifted the body out of the water by himself. In any event, he was in shock. He did not mention his thought that the deceased wanted to splash water on him in his Affidavits of Evidence-in-Chief because he just recalled that the deceased used to joke with him.

137 When he made the telephone call to the Plaintiff later that evening, he told her to inform the tour agency about the death and to send someone over to help. On 3 June 1997, he sought the assistance of the Singapore Embassy. Since he had heard that it would cost US\$6,000 to send the body back, he wanted to borrow money from the Embassy. The Embassy could not lend him the money unless someone in Singapore deposited money in Singapore. The Plaintiff was not able to get this amount of money. The representative from the Embassy told him that it would be more convenient and less costly to cremate the body in Cambodia. He required two signatures before approving the cremation and Lim Chok Young therefore telephoned the Plaintiff to

prepare the document and fax it over. During all this time, it did not occur to him that he had five insurance policies in the deceased's name as he was pulled from one place to another.

138 Lim Chok Young forgot to bring the emergency service cards issued by his three insurers to Cambodia. It did not occur to him to contact one of the insurance companies anyway. On 2 June 1997 evening, he told the hotel's staff to inform the tour agency in Singapore about the incident and to send somebody over to Cambodia immediately. The next day, the tour agency called him and told him to seek the assistance of the Singapore Embassy. He also told the tour agency to contact the insurance companies but was told to contact the Singapore Embassy instead.

139 The deceased had also forgotten to bring the cards containing the emergency telephone numbers of the insurance companies along on the trip. Both of them intended to bring the cards with them but in the course of packing forgot to do it. It never crossed Lim Chok Young's mind while he was in Cambodia that the deceased had bought five travel insurance policies. Similarly, he did not think about his own policies.

140 The deceased had also applied to AIA for a whole life policy of \$30,000 on 1 October 1996. He borrowed money from Lim Chok Young to pay the \$770.90 premium. After some time, the deceased told him it was troublesome to buy insurance and he did not want to do so anymore. Lim Chok Young then asked for the return of the money he had borrowed for the premium. The deceased paid him with a cheque issued by AIA. Lim Chok Young did not know that the application was not successful. The doctor who examined the deceased for the purpose of the application had commented in the examination form then that the deceased was of low mentality and behaved older than his 60 years. Lim Chok Young did not agree with such an assessment.

141 Lim Chok Young claimed that he and the Plaintiff had gone together to the various insurance companies to submit the claim forms. When he was asked by the insurance companies to sign on the forms, he did so. That was why his signature appeared on every claim form while the Plaintiff signed only one claim form.

142 Asked whether he agreed that he only started travelling with the deceased after the making of the will in February 1997, Lim Chok Young claimed that the trips had nothing to do with the will. The deceased was out of job during that period and kept asking him to go on overseas trips with him as he (the deceased) was free.

143 The sale proceeds of the Petir Road flat were paid by cheque to the Plaintiff who deposited it into their joint account. She also repaid Lim Chok Young the 20% down payment he had made on the deceased's behalf. No profit was made from the sale. The deceased had lived in that flat for less than the minimum two and a half years and they had to apply to the HDB for permission to sell the flat in the open market before the minimum period expired as prices of resale flats were falling. By the time it was sold in 1998, after deducting the mortgage payments, the agent's commission and other expenses, there was a net loss. Defence Counsel then pointed out to Lim Chok Young that the prospective buyer lodged the caveat against the flat only on 3 March 1999 and completed the sale on 18 June 1999 at the price of \$133,000. Lim Chok Young could not remember the dates but agreed that the sale price was \$133,000, the same as the price paid by the deceased for the flat.

144 Lim Chok Young had asked the deceased why he did not name him as the beneficiary in the will but the deceased smiled and replied that naming his wife as the beneficiary amounted to the same thing as they were all one family. He had also questioned the deceased about why he named the Plaintiff as the beneficiary in some of the insurance policies. The deceased replied it was because the Plaintiff was his god-daughter and had taken care of him. Further, Lim Chok Young was travelling with him.

145 Asked to comment on the Plaintiff's testimony that he expressed surprise when they found the will and the policies after the death of the deceased, Lim Chok Young said he merely remarked casually, "Wah, you would be in trouble" and surmised that the Plaintiff must have drawn her own conclusion from that remark. Lim Chok Young said he meant that it was not going to be easy to attend to so many matters in administering the estate, including the Petir Road flat.

146 In re-examination, Lim Chok Young explained that he helped the deceased to buy the \$400,000 or so worth of personal accident insurance as he (Lim Chok Young) had read that the accident rate for elderly persons was very high and had been shown statistics of accidents happening to the elderly and the very high medical and living expenses. He would not want to

send the deceased to an old folks' home if an accident should happen to the latter as he did social work by visiting such homes and saw how difficult life was there.

147 The deceased, although unemployed for about six months in 1997, had some savings. He had also won the 4-D lottery at the end of 1996. Even if he could not afford to pay for the policies, Lim Chok Young would help him pay. After his death, Lim Chok Young found about \$5,000 to \$6,000 in the Petir Road flat together with some \$1,000 in coins.

148 He suggested to the deceased to buy the Petir Road flat as prices were rising and he might not be able to afford one later. It was more convenient for him to own a flat himself. Besides that, he could rent out one bedroom and earn some income. If prices rose further, they could sell and share the profits.

149 He suggested the will to the deceased as the HDB could repossess the Petir Road flat if the deceased passed away. After all, they were only uncle and nephew.

150 The deceased spoke in Hokkien to Lim Chok Young, a Teochew. Lim Chok Young found it strange initially as the deceased was supposed to be the youngest brother of his late father. He questioned the deceased about this but he did not seem happy about it and so the matter was not pursued. That was over a decade ago. He had never asked his mother about the deceased. Lim Chok Young had seen the deceased at his late father's funeral when he was four or five years old. He remembered that the deceased loved him very much. They met again a few years later at a dinner during the seventh lunar month. Lim Chok Young's family was also at that dinner. They met again in town a few years later when the deceased chided him for not addressing him and mentioned Lim Chok Young's father's name. Ever since that time, Lim Chok Young addressed the deceased as uncle. Lim Chok Young had never met the other three of his father's brothers. He did not know the Defendants' two additional witnesses who were claiming to be the relatives of the deceased.

151 The Fourth Defendants' insurance forms (AB 39 and 40) could not be obtained unless one paid the premium for the policy.

152 Lim Chok Young went on to explain why he had thought the deceased was going to splash water on him when he opened the bathroom door in the hotel in Cambodia that fateful day. He gave two previous instances where the deceased played practical jokes on him during their trips.

153 Lim Chok Young ended by expressing his outrage at the malicious allegations of criminal conduct hurled at him in order to "eat up" the insurance monies. The deceased and he were like father and son, he had looked after the deceased for more than 10 years, helped him pay for the flat, brought him on trips because "he wanted a taste of taking aeroplanes". "Why should I want to murder him?" Lim Chok Young asked rhetorically. Further, GE Life had investigated the claim and paid the full amount insured.

154 In reply to my questions, Lim Chok Young said that his relationship with the Plaintiff had deteriorated in the past because he kept late nights and she wondered where he had gone to with the deceased. He tried explaining to her but she did not listen. After the divorce petition was served on him, he tried to make up but the Plaintiff avoided him and refused to talk to him. He then agreed to the divorce with much regret thereafter. Not long after the divorce, their daughter fell ill and they had to look after her and therefore began to communicate again. Their relationship then improved.

155 For about a year or so after the divorce, Lim Chok Young and the Plaintiff continued to share the bedroom in the Hougang flat. The Woodlands flat was not ready and their daughter was schooling in Hougang. The deceased would sleep in the other bedroom or in the living room of the Hougang flat.

156 Towards the end of 1995, Lim Chok Young bought the Yishun flat for \$128,000 in the open market. The HDB permitted single persons older than 35 to buy a three-room flat in the suburban areas. He sold it about two and a half years later in July 1998 for \$153,000. These HDB rules had been around for 10 years or so but he came to know about them only after the divorce when he was making enquiries with the HDB during the transfer of the Hougang flat. He rented out one of the two bedrooms of the Yishun flat for only three to five months at \$450 per month. He had decided to move out of the Hougang flat because it was not

nice to meet the neighbours after the divorce.

157 Lim Chok Young said he shuttled between the Yishun and the Woodlands flats. If the daughter was not attending school, he would stay in the Woodlands flat. If she went to the Yishun flat after school, he would stay in the Yishun flat. The daughter would stay in whichever flat an adult was present. If Lim Chok Young went to fetch her from school, he would bring her to the Yishun flat where she would stay overnight. When the Plaintiff, whose work ended late in the evening, called and found that the daughter was at the Yishun flat, she would go there to sleep the night.

158 Despite the divorce, the two of them were practically living together as husband and wife. They had slept in different bedrooms soon after the divorce but resumed sleeping in the same room again thereafter. In fact, by early 1995, they had resumed their sexual relationship.

159 When the Plaintiff obtained possession of the Woodlands flat, there were not many people in that area. Lim Chok Young was therefore worried for her and for their daughter. After listening to his reasoning, the Plaintiff gave him the keys to the Woodlands flat.

160 Lim Chok Young was able to spend time travelling with the jobless deceased although he was still working as he had accumulated his "time offs" and had medical and annual leave entitlements. They paid for their own trips but most of the time, Lim Chok Young would treat the deceased.

161 For the Cambodian trip, they originally intended to buy only one travel insurance policy worth \$200,000. When they realized that the country was not a safe place, they went to other tour agencies to buy one or two more policies. \$400,000 or thereabouts would have been sufficient cover for them. They could not buy everything at one place because there was a fixed coverage for this sort of insurance. Further, some agencies would sell only one policy per trip and they therefore could not upgrade their cover from \$200,000 to \$400,000. Eventually, they bought \$800,000 worth because "the more we bought, the cheaper it became".

162 Lim Chok Young and his family did not travel with the deceased because it was more convenient and cost-effective to book only one hotel room for the family.

163 It was very hot in Cambodia. Lim Chok Young would take a shower in the morning and bathe in the tub in the evening. The deceased took one bath a day. He enjoyed bathing in the bath tub, making a lot of sounds in the water and would take some time. On 2 June 1997, the deceased was tired and not feeling well as he had no appetite for food for the past two or three days. He was, however, not ill. Lim Chok Young suggested that he take his bath as he thought the deceased would feel better after that. After the deceased turned the water on, he continued to talk to Lim Chok Young as he wanted to finish smoking his cigarette before taking his bath. While his movements were not fast, he had never fainted before. Lim Chok Young could not remember whether the deceased also bathed in the tub on the other trips.

164 I asked Lim Chok Young whether he had ever moved out of the bedroom he shared with the Plaintiff while they were living in the Hougang flat. This was because of what was alleged by the Plaintiff in her divorce petition that he had since early 1993 moved into another room without her consent and refused cohabitation. Lim Chok Young's initial reply was "No". He then said that occasionally, he would sleep in the other bedroom as he would switch on the lights and take a shower when he came home and did not wish to disturb the Plaintiff and their daughter who were sleeping in the room. He then added that he liked to sleep in a room by himself while living in the Hougang flat as he did not like people to touch him. They were sleeping in separate rooms for a few months before the divorce. In his next breath, the few months became a few years before the divorce.

165 After the divorce proceedings, which took about half a year to conclude, Lim Chok Young realized that it was a serious matter and decided to treat the Plaintiff better. Their relationship then got better.

166 The next three witnesses for the Plaintiff were the family members of Lim Chok Young, called to testify about the relationship between the deceased and Lim Chok Young's late father. Lim Chok Young's wheelchair bound mother, Chng Sok Choo, a housewife aged 74, testified that she has four sons and an adopted daughter. She referred to some photographs of the deceased

and said that she recognized him as the sworn brother of her husband who passed away more than 30 years ago. The first time she saw the deceased was when he came to visit her husband at their home. Her husband told her the deceased was his sworn younger brother. She learned that he was a casual labourer. The second time she saw the deceased was when he attended the funeral wake of her husband. He also visited her a few years later. Lim Chok Young had mentioned to her previously that the deceased was staying with him. As she had difficulty walking, she never visited Lim Chok Young at his home.

167 Lim Chok Young's mother did not know anything about her late husband's brothers except that they were in China. She could not recall how many there were or what their names were. Lim Chok Young told her some time ago about the demise of the deceased. She could not recall whether she had told Lim Chok Young that the deceased was his father's sworn brother. She addressed the deceased as "Bak Chang Chek" or "Uncle Dumpling" in Teochew as instructed by her late husband.

168 Lim Ah Choek, the elder brother of Lim Chok Young, a businessman, testified that he had seen the deceased at their father's funeral wake about 34 years ago. Lim Ah Choek was 16 years old then. The deceased told him that he was their father's sworn brother. After that, he did not see the deceased for many years. In 1991, he went to Lim Chok Young's Hougang flat to deliver a used television set to him. He was surprised to see the deceased alone in the flat. The deceased told him that Lim Chok Young had gone out and that he was staying with him. Lim Ah Choek placed the television set in the flat and then left.

169 Sometime later, he asked Lim Chok Young about the deceased staying with them as he was concerned about the Plaintiff's feelings. Lim Chok Young told him that the Plaintiff had no objections and was helping the deceased with his laundry and his meals, that the deceased was kind-hearted and would not cheat or take advantage of him. Having been thus reassured, Lim Ah Choek did not raise the matter again. He has also not seen the deceased since then, even when he visited the Hougang flat which was no more than once a year as he was a busy man.

170 In cross-examination, Lim Chok Young's brother said he only knew the deceased was his uncle. He did not know the deceased's name and had never told Lim Chok Young that the deceased was the sworn brother of their late father. Lim Chok Young told him over the telephone a few years ago that their "sworn uncle" had passed away abroad. Asked whether Lim Chok Young already knew at the time of the telephone conversation that the deceased was the sworn brother of their late father, Lim Ah Choek said, "yes".

171 The final witness for the Plaintiff was Ng Guak Chuan, the adopted elder sister of Lim Chok Young, working as a cook in a food court. Her surname was not Lim as she was adopted. About 12 years ago, on the first day of Chinese New Year, she visited Lim Chok Young at the Hougang flat after visiting their mother who also lived in Hougang Avenue 3. She remembered the year clearly because her eldest daughter was 12 then and is now 22 years old. That was the one and only time she visited Lim Chok Young at his Hougang flat. On that occasion, she saw a thin, old man eating rice at the table. Lim Chok Young introduced him as their uncle, "Bak Chang Chek". She has not met the deceased since then and neither did she visit Lim Chok Young again.

172 The adopted sister testified that she would not be able to recognize the deceased now. When she was asked to be a witness, Lim Chok Young and their mother mentioned the deceased's name and Lim Chok Young reminded her that she had met the deceased at his Hougang flat about 12 years ago. Although she did not speak to the deceased then, she maintained that she did see him at the Hougang flat. She attended the funeral wake of Lim Chok Young's father but did not see the deceased there then.

-

THE DEFENDANTS' CASE

173 Dr Gilbert Lau is the Director of Forensic Pathology at the Department of Forensic Medicine, Institute of Science and Forensic Medicine, Singapore. He has been practising forensic pathology since 1987. He was asked to render an expert medical opinion on the cause(s) of death of the deceased and on the conclusions of Dr Lek Se based on the documents issued by the Cambodian authorities and on the preliminary report dated 29 July 1997 by the Defendants' loss adjusters.

174 In his opinion contained in a letter dated 5 April 1999 to the Defendants' solicitors, Dr Gilbert Lau stated that the conclusion that the deceased had drowned in the bath tub, as a consequence of a fainting spell, appeared to have been based almost entirely on circumstantial evidence, the strength of which he was unable to ascertain. He noted that the mere presence of water in the stomach was not strictly diagnostic of drowning. In his view, such a case would warrant a full autopsy, supplemented by a review of the deceased's medical history (particularly of previous fainting spells, heart disease and strokes), in order to exclude the possibility that the deceased:

- (1) died from natural causes such as a heart attack or a stroke prior to immersion in water. This was particularly important since the deceased was known to have been a heavy cigarette smoker;
- (2) died from a combination of drowning and some underlying disease or abnormality;
- (3) drowned accidentally, irrespective of any putative, pre-existing, natural disease; or
- (4) was a victim of homicide.

Dr Gilbert Lau concluded his opinion by stating that he would not be able to gain access to the deceased's past medical history as the death did not occur in Singapore and was therefore not reported to the Coroner. Further, he doubted that a trip by him to Cambodia would serve any useful purpose.

175 In his Affidavit of Evidence-in-Chief, Dr Gilbert Lau elaborated on his opinion that it was not possible to diagnose drowning as the definitive cause or sole cause of death from only an external examination of the body. He referred to various medical literature to support his view that it was not possible to conclude that drowning, either as a result of syncope or fainting or otherwise, was the cause of death merely from an observation that there was water in the deceased's stomach. He elaborated that homicide included poisoning or drugging the deceased prior to immersion in water and also holding him underwater.

176 An autopsy would involve a comprehensive external and internal post-mortem examination of the body, thus avoiding conjecture. In a case of suspected drowning, particular emphasis would be placed on establishing the presence of froth or water in the airways and the lungs. A detailed and careful autopsy would also be indispensable in excluding the presence of fatal or serious internal injuries, particularly of the head, neck and abdomen, which may not be visible externally. Only then can the possibility of foul play or homicide be ruled out.

177 If no gross pathology (i.e. any abnormality visible to the naked eye) was found, ancillary investigations such as the histological (microscopic) examination of relevant tissue specimens, especially of the heart and the lungs, would be necessary to exclude the possibility that the deceased died from natural causes or disease or a combination of drowning and some underlying disease. Further, toxicological analyses of the deceased's blood sample and other body fluid and tissue specimens such as urine, bile, gastric contents, vitreous humour and liver tissue, were necessary to exclude the possibility of poisoning, intoxication or drug overdose.

178 Having heard the evidence of the three witnesses from Cambodia, Dr Gilbert Lau maintained his opinions, based on his training and experience in Singapore and in the United Kingdom.

179 In cross-examination, Dr Gilbert Lau testified that he would also study the surroundings at a scene of death particularly if the death was a suspicious one. He was rarely shown statements made by witnesses to the police and, if shown such statements, would ignore them anyway so that his professional opinion would not be affected. He referred to the report of the loss adjusters for the relevant aspects pertaining to the circumstances of death and not for the quantum of the claim. In fact, he did not accord much weight to it as it contained very little forensic or medical information.

180 In Singapore, all unnatural death cases, which would include drowning, were subject to autopsy. That was also the practice in Britain. In other countries, an autopsy would not necessarily be done for unnatural death cases. It would not be unreasonable to conclude that the deceased might have drowned in this case but one could not ascertain this without an autopsy. If autopsy

facilities were unavailable, then the cause of death should have been left as unascertained. In his opinion, a forensic practitioner must, in all circumstances, arrive at his conclusion independently of any committee.

181 Dr Gilbert Lau was unable to say that it would not be wrong for Dr Lek Se to make the assessment of drowning in the circumstances. If Dr Lek Se had said there was copious foam coming out from the nose and the mouth of the deceased, he would have given more credence to the diagnosis of drowning based purely on an external examination, provided that the possibility of mechanical asphyxia had been excluded and that, in turn, would require an autopsy.

182 There was a difference of medical opinion as to the significance of the presence of water in the stomach. Some believed little weight could be attached to that fact, others held that as a sign that the person was alive when he entered the water. Entry of water into the airways and subsequently the lungs could occur passively but it would not result in a thick formation of foam as in a classical case of drowning.

183 Most poisons and drugs would not produce external diagnostic changes. Hence the importance of a toxicological analysis. If the deceased had been poisoned and died before being put into the water, whether or not any froth was found at the mouth would depend on whether or not there was water in the lungs.

184 Bruises might occur in the deeper tissues of the body that would not be visible to the naked eye initially. Severe internal bruising occurring without external signs was possible. That is why forensic pathologists here would examine the body again after the autopsy was done and the organs removed. What Dr Lek Se had done was to do a second external examination of a body which would have begun to decompose in the hot weather and that would not be of much value. Dr Lek Se's opinion was inconclusive based on very tenuous evidence.

185 The Defendants' second witness was Chan Hwee Seng, the Managing Director of Crawford and Co. International Pte Ltd, the loss adjusters appointed by the Defendants on or about 13 June 1997 to investigate the claims lodged by the Plaintiff. He interviewed Lim Chok Young on 30 June 1997, 14 July 1997 and 19 July 1997. Lim Chok Young's statements made at the interviews were taken down in writing and signed by him (Lim Chok Young).

186 Chan went to Cambodia on 3 July 1997 to look at room 505 of the Pailin Hotel. He interviewed the two chambermaids who were at the scene when the incident occurred on 2 June 1997, the General Manager of the hotel and the salesgirl at the photo studio across the road. The results of his investigations were set out in a Preliminary Report dated 29 July 1997, in which he concluded that the Plaintiff's claim was suspicious and stated that his enquiries were by no means complete. A summary from Lim Chok Young's passport showed that he had made numerous short trips of one to two days duration to Malaysia and Indonesia between 1988 and 1997, with many of the trips occurring between January and May 1997 (both months included).

187 The following were some of the salient points made by Lim Chok Young in his statements:

(1) "We moved into our present address at Blk 891B Woodland Drive #04-183 which I bought for \$130,000. I was residing at Blk 252 Hougang Ave 3 #09-340."

(2) "In 1996, we moved to the new house at (the Woodlands flat)."

(3) "It was my idea to sublet the unit at (the Petir Road flat). The master bedroom was leased to a couple at \$600 per month. In fact, initially, we leased the whole unit to the couple. However, after protest from HDB, we decided to lease the unit partially."

(4) "The monthly instalment of (the Petir Road flat) is \$540 per month for 25 years. My uncle, Lim Mah Chan, stopped work about half year ago. He was a heavy smoker and occasionally he requested allowance from us. We gave him about \$100.00 or less. ...

... He strike lottery when he initially moved into the new unit at Petir Road."

(5) "After some thought, I think my uncle, Mr Lim Mah Chan, had purchased too many travel insurances. Without my suggestion and influence, he will not have bought four travel insurances."

(6) "My uncle, Mr Lim Mah Chan, led a care-free life style."

188 In cross-examination, Chan Hwee Seng explained that when he travelled to Cambodia on 3 July 1997 Wednesday, he had meant to stay until Saturday but decided to leave the country on Friday because of the unstable political situation. Although he tried to get in touch with the members of the Cambodian Investigation Committee, he was not able to meet them. He took notes of his interviews with the two chambermaids whom he met separately, with the hotel's general manager acting as interpreter. He did not arrange to have them brought to Singapore for the trial although he had their particulars.

189 Chan agreed that the smooth floor tiles in the toilet of the hotel room in question would be slippery when wet. The hotel had central airconditioning.

190 He did not check whether a full autopsy could be performed in Phnom Penh and neither did he enquire about the cost and the procedure of bringing the body back to Singapore.

191 He has since done some follow-up work by checking with the clinics in the neighbourhood where the deceased lived to see if the deceased had been there because of any illness. No positive results were obtained. He has also gone to Woodlands to check with the neighbours on the relationship between Lim Chok Young and the Plaintiff but no one was prepared to come forward to say anything.

192 At the interviews with Lim Chok Young, Chan found him cooperative and very forthright in answering his questions. He spoke to Lim Chok Young in Mandarin.

193 The loss adjusters wrote to the CID on 12 August 1997 attaching a copy of the said Preliminary Report to see if the matter should be referred to the police for further investigation. On 29 August 1997, the CID met the representative of the loss adjusters and then replied that they had carefully studied the Report and found that there was insufficient evidence to substantiate any criminal offence being committed and that the CID would not be taking any further action in the matter. However, should the loss adjusters have any further information or evidence indicating any offence having been committed, they were invited to forward them to the CID for consideration.

194 Dr Lum Foong Poon, a medical practitioner having his own clinic, testified that he was an accredited medical examiner for various insurance companies in Singapore, among them AIA. The medical records and the Application for Life Insurance – Statement to the Medical Examiner Form filled up by him on 1 October 1996 showed that he examined the deceased for an insurance application. The doctor made the following findings in respect of the deceased after the examination:

- (1) he was suffering or had suffered from syphilis;
- (2) he suffered from bilateral cataracts, with visual acuity at 6/60 uncorrected for both eyes, indicating very poor eyesight;
- (3) he suffered from skin infection on the right forearm probably due to poor hygiene and to scratching;
- (4) he tested positive for blood in his urine, suggesting bleeding from the genito-urinary system, and also had traces of glucose in his urine;
- (5) he was found to have a dropped beat in every three to five beats, indicating irregular heartbeats in the sense that there was a pause in every three to five beats. Such pause was due to the occurrence of an abnormal premature heart beat followed by a compensatory pause. It could occur in a normal

person and its incidence increased with age. It could be related to over-indulgence in tobacco, coffee or alcohol. It could also occur in a person suffering from heart disease.

195 Dr Lum went on to say that he would normally inform his patients of the positive findings he made. The results of blood tests would be ready only after a few days. If there were positive results or unfavourable findings from such tests, he would telephone his patients to inform them and to ask them to return for further evaluation or follow up treatment. He was sure he called the deceased but whether the latter made an appointment or not, he was not certain. There were no subsequent records indicating that the deceased returned to the clinic. He had the deceased's telephone number stated as 7593981 and his address as the Woodlands flat. He noted in the form that the deceased was slow in responding to questions, probably due to his low mentality. He also noted that the deceased behaved older than his age of 60 years.

196 Dr Lum could not remember the language he spoke to the deceased in. Physically, the deceased did not look like he was in poor health. There were no signs indicating active syphilis. Nowadays, the third or tertiary stage, i.e. the worst stage for syphilis, was very rare. That would be when the syphilis became life-threatening. In his opinion, the deceased was probably at the stage between the second/secondary and third/tertiary stages during which there would be no symptoms or signs at all. It was also possible that he had already been treated. His heart was normal. No further test was conducted to determine the cause of the blood in the urine because the insurance company did not so instruct and neither did the deceased return for follow-up action.

197 The medical report was not sent to the deceased as there was a confidentiality clause protecting against such disclosure. As such insurance check-up cases were one-off patients, Dr Lum did not keep a case note like he would for other patients.

198 Florence Lim Tuan Lien, the Chief Underwriting Manager of AIA, testified that the application for insurance form dated 1 October 1996 of the deceased showed that he was a self-employed trishaw rider while the Application for Life Insurance – Statement to the Medical Examiner Form of the same date stated that he was retired. Both had the thumbprint of the deceased. Based on the medical findings and Dr Lum's comment, the insurance company decided to reject the deceased's application for insurance on 17 October 1996. His deposit of \$782.40 for the payment of premiums was refunded to him by a cheque dated 21 October 1996. The deceased was notified by a letter dated 21 October 1996 addressed to the Woodlands flat indicating that his application was not accepted on account of "Physical History".

199 Florence Lim clarified under cross-examination that the letter and the cheque both dated 21 October 1996 were sent to the agent for her to forward to the applicant. She was not able to confirm whether the said cheque was presented for payment. She never met the deceased and had no knowledge of the circumstances in which the application for insurance was filled up.

200 Sim Chye Huat, aged 55, was one of the two witnesses who approached the Defendants' solicitors during the trial. He testified that he had known the deceased since he (Sim) was a little boy. The deceased used to live at No. 1, Farquhar Street while Sim lived next door at No. 2. Sim's sister (now deceased) married Lim Boon Chok who was the deceased's elder brother. Sim and the deceased, while they were neighbours in Farquhar Street, used to meet very regularly. Sim also produced photographs which showed the deceased was at Sim's wedding on 26 December 1987.

201 The deceased did not have a brother named Lim Ah Khoon (Lim Chok Young's late father) and neither did he have a nephew called Lim Chok Young. The deceased also never had a sworn brother or a god-daughter.

202 After the buildings along Farquhar Street were demolished sometime at the end of 1995, the deceased went to stay at the business premises (Lian Yick Tables and Chairs) of one of the Lim clan members in Defu Lane for a few months. Sim had not heard from or seen the deceased since that time.

203 The next time he heard about the deceased was in early 1997 when the Chinese newspapers reported that an old man had gone to Haadyai, lost his passport and was found wondering in the streets there without any money. Sim was told that the deceased was allowed to stay in the Oriental Hotel there for a few days and, because he was carrying a name card of Lian Yick Tables and Chairs, the manager of the hotel managed to call the said Singapore business and arrange the deceased's

transportation home.

204 The next occasion Sim heard about the deceased was when he read the report about his death and the present trial in the Chinese newspapers of 17 July 2000.

205 The deceased was a man of low mentality, very trusting and gullible. He remained single and had never held a steady job. He had worked previously as a trishaw rider. He would be short of money frequently and would even go hungry for a few days. He would then approach Sim for some money. Sim concluded by saying that, as a relative of the deceased, he was unhappy and angry that someone was passing himself off as the deceased's nephew.

206 In cross-examination, Sim explained that after his marriage on 26 December 1987, he moved out of No. 2 Farquhar Street. He stayed in his brother's flat in Serangoon and since 1997, has been living in Jurong West St. 81. Even after moving out of Farquhar Street, he kept in frequent contact with the deceased. The deceased was then a trishaw rider ferrying tourists to Serangoon Road. He would also help out at the funeral wakes of relatives as he would be given "ang pows". Sim would give him \$10 for food each time they met. Most of the deceased's clansmen had already moved out of No. 1 Farquhar Street by then. The deceased was occupying the second level of that location which was essentially a coolies' hostel.

207 At the end of 1995 to early 1996, the premises at Farquhar Street were acquired for re-development and were demolished. As the deceased had nowhere to stay after the demolition, Sim sent him to his relatives at Lian Yick Tables and Chairs. When they moved there, the deceased had only two packets of belongings to bring along. The deceased did not inform Sim before 1995 that he was living in Hougang, Yishun or Woodlands.

208 Sim reiterated that the deceased was not a smart person. People nicknamed him "Suku Bak Chang" or "Stupid Meat Dumpling" (apparently a word play on the deceased's name). The deceased would not scold or beat up people and would not steal. He was basically an honest man although a little greedy because he would buy food for others if given the excess small change.

209 Although Sim seldom talked to the deceased, he was certain that he did not have a sworn brother or a god-daughter as the deceased had never mentioned such to Sim. The deceased also had no close friends. After Sim's marriage, he would visit the deceased every Saturday afternoon after his work and on Sundays at Farquhar Street. Sim was sure the deceased was residing there until end-1995 or early 1996.

210 After sending the deceased to his new home in the Defu Lane premises at the end of 1995 or early 1996, Sim did not meet the deceased again as he was very busy with his work. He gave the deceased \$100 for his living expenses.

211 About a month later, the deceased's relative who owned the Defu Lane premises telephoned Sim to inform him that the deceased had a friend living in Yishun who wanted him to stay with him and who would help the deceased to find some work. That relative did not know the address or contact number of the said friend of the deceased.

212 Sim thought that the said friend must be up to no good since the deceased was old, jobless and penniless and had skin problems and poor eyesight. However, he was very busy and was very grateful to that person as it would save Sim a lot of money. When Sim met the deceased's said relative again, Sim asked him about the deceased but he did not have any information. Even after the deceased was brought back to Singapore from Thailand on the occasion where he lost his passport, neither Sim nor that relative knew where the deceased was staying.

213 Sim added in re-examination that the deceased was not one who knew how to plan or save money for his future. So long as he had tens of dollars, he would not want to work. He never had any savings account during the time Sim was in contact with him. The deceased never spoke about marriage or starting a family as he could not even support himself.

214 Lim Kim Poh, a retiree aged 62, was the final witness for the Defendants. She testified that the deceased, who was older than her by about two years, was adopted by her parents when he was a baby. She had only one other brother called Lim Boon Chok.

Both her parents died decades ago.

215 When her only other brother, Lim Boon Chok, died in 1998, no obituary was published. However, when Lim Boon Chok's wife died in January 1992, there was an obituary in the Chinese newspapers. Lim Kim Poh produced a copy of the obituary which showed the deceased listed as the subject's brother-in-law.

216 Lim Kim Poh went on to state that she and the deceased grew up together and were close to each other. He would tell her things and confide in her. However, he had never mentioned any sworn brother or any god-daughter, something he would certainly have told his sister.

217 In her assessment, the deceased was someone of low mentality who could not even count money properly and did not know how to use a telephone. He was a very trusting person. He remained single and never had a steady job although he used to work as a trishaw rider. He was always short of money. At times, he would go hungry for days, drinking only tap water. He would go to see Lim Kim Poh who would give him a few dollars and also some milk to drink. He loved Guinness Stout and smoking.

218 The last time she saw the deceased was at the funeral wake of her sister-in-law in January 1992. A few years ago, she received a call from a lady telling her that the deceased wished to speak to her. The telephone was then passed to the deceased who told his sister that he was staying in Yishun and that someone was providing him with food. When she asked him why he was not working, he replied that he was not able to because of his cataracts. Like Sim Chye Huat, she concluded her Affidavit of Evidence-in-Chief by stating that she was unhappy and angry that someone was passing himself off as the deceased's nephew.

219 In cross-examination, Lim Kim Poh said she married in 1955 and moved out of the family home at No. 1 Farquhar Street. After she moved into a HDB flat in 1977, the deceased visited her a few times a year but she did not visit him. His last visit should be before the aforesaid funeral wake in January 1992. Like everyone else, she called the deceased "Suku Bak Chang". Prior to that last meeting in 1992, the deceased was living in Farquhar Street. She knew that as a fact because she had many relatives who lived there. She could not invite the deceased to live with her as her flat was a small one. She did not know whether the deceased was staying in Hougang in late 1992.

220 When the deceased telephoned her a few years back to tell her he was living in Yishun and that a couple was housing and looking after him, she thought that there were many kind people nowadays who would take care of the elderly. When she asked for his address in Yishun, he was not able to tell her and so she did not go to look for him. The deceased must have obtained her telephone number from her husband from whom she was separated.

-

THE DECISION OF THE COURT

221 The burden of proof is on the Plaintiff here to establish that the insured peril occurred and that the deceased died from accidental drowning.

222 As indicated earlier, there were three policies taken out in the name of the deceased with the Second Defendants. The Personal Accident Insurance Policy issued on 22 January 1996 for one year and renewed until 21 January 1998 insured the deceased for \$20,000 in the event of death. The scope of cover included "... bodily injury caused by violent accidental external and visible means which is the sole cause of death ...". The Life Assurance Policy issued on 25 January 1996 insured the deceased for 25 years for \$7,000 in the event of death. The Travel Insurance for \$200,000 covered "... bodily injury caused by violent, accidental, external and visible means which is the sole cause of death ...".

223 The First Defendants' travel insurance policy covered death "caused by an accident, solely and independently of any other cause". The Third Defendants' policy covered death caused solely and directly by accidental means excluding any sickness, disease or medical disorder. The insured peril in the Fourth Defendants' policy was death "caused by violent, accidental,

external and visible means". The Fifth Defendants' policy covered death caused by the sustaining of accidental bodily injury by the deceased.

224 With the greatest of respect for the Cambodian Investigation Committee, although the course of action taken by them was probably justifiable and acceptable according to their prevailing practice and in the light of the circumstances then known to them, their finding that the deceased "was really dead of fainting spell and drowning in the bath tub" could not be one that was conclusive on the cause of death. Although they did conduct an external examination of the body and studied the surroundings, they probably placed rather too much faith in the statements made by Lim Chok Young. I accept Dr Gilbert Lau's expert evidence that, in the absence of an autopsy, the cause of death could not really be ascertained.

225 Even if the cause of death was drowning, it would not be possible to conclude with any reasonable degree of confidence that the deceased had somehow fainted while getting into the bath tub that was being filled with water. The deceased was facing downwards in the bath tub with his right arm at his back. Even if we ignore the recent minor injuries at the right wrist, the position of the right arm would be quite unnatural for someone stepping into a bath tub, fainting and then falling forwards into the water. Even if the deceased had regained some consciousness and was struggling to get back on his feet, it would still be highly improbable that he was trying to do so by moving his right arm to his back.

226 The absence of signs of forced entry and of struggle in the hotel room could indicate that there was no forced intrusion into and no struggle in the room. It could not however eliminate the real possibility that an assailant had access to the room (whether by possessing a key to the room door or by entering through the possibly unlocked room door). It could not also eliminate the real possibility that an assailant had surprised the deceased or was known to the deceased so that there would be minimal struggle. Considering the size and the reported weak state that the deceased was in prior to his death, there would be little cause for violent struggle anyway. Even if a struggle did take place, it would not have been too difficult to clean up the scene thereafter.

227 It was also evident that the use of drugs or poison on the deceased could not be ruled out simply by an external examination of the body at the scene followed by another at the temple a couple of hours later. The absence of drugs or poison in the hotel room or its surroundings could at best indicate that the deceased did not possess and use such. It could not rule out the possibility that some drug or poison was administered to the deceased and the implements subsequently disposed of. One could not tell whether the deceased was rendered unconscious or had died from such and was then placed in the bath tub or was rendered so weak that holding his head below the water level became easier than trying to keep a plastic ball below water.

228 The Investigation Committee's finding that the deceased had fainted, then drowned was also fraught with difficulty. The deceased did not appear to have been in poor health before he left for the Cambodian holiday. The flight to Cambodia could not have been a long one. He arrived on 30 May 1997, joined the group in the tour of the city on 31 May 1997 and rested on 1 June 1997. Even if he was tired, he was apparently well enough to take baths in the bath tub on 31 May 1997 and 1 June 1997, making happy noises in the water at the same time. On 2 June 1997, he was also resting in the fully airconditioned hotel after having had his breakfast, light though it might have been. Even if his appetite was poor and the incident happened at close to lunch time, this was a man accustomed to hunger. He did not leave the hotel at all on 2 June 1997 and therefore could not have been affected by any heat wave outside. He was chatting and watching television in the room with Lim Chok Young for about three hours. He must have been well for Lim Chok Young to suggest that he take a bath in the bath tub and then go for lunch three and a half hours after breakfast. He was even smoking a cigarette while waiting for the tub to be filled with water. In those circumstances, it seems to me highly speculative to conclude that the deceased had a fainting spell. In fairness to the Investigation Committee, they did not have the advantage of the fuller picture that emerged in the course of the trial.

229 It was therefore not possible to rely on the Investigation Committee's findings to conclude that death was by drowning and that it was accidental.

230 I now come to the testimony of the Plaintiff and Lim Chok Young. It is clear to me that their divorce in 1994 was nothing more than a sham. They never ceased to live together as husband and wife even if the official records such as their Identity Cards showed them to have different addresses. The only reason the Plaintiff was confused in her testimony about where she

was living after her divorce was because her evidence was concocted and utterly false.

231 Earlier on in this judgment (at paragraph 84.), I set out the particulars given by her in her divorce petition. Lim Chok Young was said to have "neglected the family and never showed any love and concern" for the Plaintiff and their daughter "throughout the marriage". They married on 6 February 1979. The Petition was filed on 23 May 1994, more than 15 years later. Their daughter was born on 16 November 1986, about seven and a half years before the filing of the Petition. Lim Chok Young was also said to have behaved very coldly towards the Plaintiff since early 1993 and had in fact moved into the other bedroom and refused cohabitation. Throughout the seven months between the filing of the Petition and the Decree Absolute, Lim Chok Young said in Court, he was trying to reconcile with the Plaintiff but to no avail. However, the Plaintiff, who affirmed in her Petition that she "cannot reasonably be expected to live with" Lim Chok Young nevertheless continued to live with him even after the Decree Absolute and barely a few months later, resumed a sexual relationship with him. Immediately after the divorce, Lim Chok Young suddenly transformed into a loving father towards the daughter for whom he "never showed any love and concern" for some seven to eight years. Why should a man like that be so shaken by the divorce that he became a changed man almost immediately?

232 The charade was made even clearer by the Consent Order relating to the division of the matrimonial home. If the family and household expenses were borne by the Plaintiff, who was not earning a substantial salary and who would be buying the five-room Woodlands flat on her own, it was indeed surprising that the Plaintiff was quite contented to have only her CPF contributions and accrued interest back, leaving the erstwhile irresponsible husband and father to benefit from the enhanced value of the Hougang flat (which left him with enough excess cash to make the downpayment for the deceased's Petir Road flat – but more about that later). Further, why then was there a joint account with the POSB which, according to the Plaintiff, was used by Lim Chok Young all those years to pay the utility bills for the Hougang flat?

233 If the Plaintiff and Lim Chok Young had practically reconciled by early 1995 (after their divorce in 1994), why was there a need for Lim Chok Young to purchase another three-room flat in Yishun? He could have easily moved to the Woodlands flat with his family – after all, the new flat had three bedrooms. There could also be no question of Lim Chok Young having to shift out of the Hougang flat because he felt bashful about meeting the Hougang neighbours after the divorce since Lim Chok Young and the Plaintiff continued to live as husband and wife in the Hougang flat.

234 Lim Chok Young's failure to maintain his family since the marriage did not sit well at all with the couple's otherwise touching story of how they took pity on an elderly relative whom Lim Chok Young had not seen for years and provided him with food, lodging and living expenses. It was also a glaring omission that no mention of the deceased was made at all in the Petition when he was allegedly one of the main reasons why Lim Chok Young did not spend time with the Plaintiff and began to ignore her altogether. Further, despite their professed new religious belief and their reconciliation, Lim Chok Young appeared to be carrying on the very same "like father and son" relationship with the deceased that had contributed to the marital break up, spending a lot of time with him and leaving together for trips abroad in 1997 without even informing the Plaintiff!

235 When the Plaintiff took possession of the Woodlands flat in late 1995 or so, one of her first acts was to give a duplicate key to the flat to Lim Chok Young for the purpose of enabling him to visit their daughter. If their daughter was in the Woodlands flat, why was there a need for Lim Chok Young to have the door key? If she was at school, why was Lim Chok Young given such free access to the Woodlands flat? If the purpose was to enable Lim Chok Young to buy food and to take care of their daughter, as the Plaintiff always appeared to be very busy at work while Lim Chok Young seemed to have so much time on his hands, it was bizarre that Lim Chok Young reverted to his old, irresponsible ways in 1997 by going abroad for days without even telling the Plaintiff so that she could make alternative arrangements for their beloved daughter.

236 If further evidence of the sham divorce is required, it is found in the statements made by Lim Chok Young to the loss adjusters (see paragraph 187 of this judgment). I repeat them here emphasizing the very telling evidence in italics:

"We moved into our present address at (the Woodlands flat) which I bought for \$130,000. I was residing at (the Hougang flat)."

"In 1996, we moved to the new house at (the Woodlands flat)."

Do the above statements not support the clear position that the family never ceased to live together and that they treated the Woodlands flat as their new home? The couple was never put asunder and there is therefore no question of their religious belief putting them back together.

237 The next question to ask must be, why did they go through the charade of a divorce? The answer is simple – money. Under HDB regulations, the Plaintiff, with the daughter in her custody, was eligible to buy a flat. Lim Chok Young, single after the divorce, was above 35 years in age and could purchase a three-room flat on his own account. He knew that these regulations were in existence for years and yet pretended to have learned about them only after the divorce. Obviously, one of the rooms in the Yishun flat was rented out to earn income for Lim Chok Young with the other room probably used to house the deceased at some point in time. After two and a half years of possession, Lim Chok Young would be able to sell the Yishun flat, hopefully for the same huge profits that he made from the capital gain on his Hougang flat. I take judicial notice of the fact that prices for all sorts of real property were in an upswing in 1993 and 1994. That was why they decided to "divorce" in 1994. Unfortunately for Lim Chok Young, property prices did not continue their upward swing after 1996 and he was lucky to be able to sell the Yishun flat (after the requisite two and a half years of possession) with some profit.

238 The Petir Road flat was acquired by Lim Chok Young in the name of the deceased for the same motives – to earn rental income for two and a half years and then sell at a profit. The deceased, like Lim Chok Young, met the same eligibility criteria. I accept as a fact that the deceased would never have thought of purchasing a flat on his own. He did not have any savings, was unemployed and was not one given to planning for his future. He could never have afforded the luxury of owning a flat. The Petir Road flat was, for all intents and purposes, the property of Lim Chok Young who was astute enough to protect his investment by causing the deceased to make the will in February 1997, leaving all his earthly possessions to the Plaintiff. Again, the deceased was not someone who would have known what a will was, much less thought about it and then decided to go to town to see a lawyer. The fact that Lim Chok Young was willing to have the will name the Plaintiff as the sole beneficiary underlined once again the obvious truth – they were never truly divorced. I revert again to paragraph 187 of this judgment where I set out the statements made by Lim Chok Young to the loss adjusters concerning the Petir Road flat. They showed clearly that he was the brains behind the acquisition of the Petir Road flat and its use. Due to circumstances beyond his control, this flat did not turn out to be a money-spinning venture for him. Property prices had dipped or were at best stabilising in 1998 and 1999.

239 What sort of persons therefore are the Plaintiff and her principal witness, Lim Chok Young? They are a couple who were willing to go to Court with patently false particulars in the Divorce Petition in order to obtain a sham divorce for financial gain. Lim Chok Young has demonstrated his acumen in money matters. It is in this light that I must now examine their testimony about the deceased and the insurance policies.

240 Firstly, I am willing to accept that the deceased could have been the sworn brother of Lim Chok Young's late father at some point in time and that he could have regarded the Plaintiff as his god-daughter. However, I could not accept the assertions that the deceased was with Lim Chok Young and the Plaintiff since the late 1980s or that Lim Chok Young had always believed that the deceased was related to him by blood.

241 As stated earlier, the deceased did not feature in the Divorce Petition filed in 1994 although it was said in Court that his close relationship with Lim Chok Young was one of the main reasons for the marital break up. I accept the testimony of Sim Chye Huat that the deceased was living in Farquhar Street until about end-1995 when he helped the deceased move to Lian Yick Tables and Chairs in Defu Lane. The Defu Lane industrial estate is practically next door to Lim Chok Young's Hougang flat in Block 252 Hougang Avenue 3. That must be about the time Lim Chok Young came into contact with the deceased. By 1996, Lim Chok Young had the Yishun flat and he could house the deceased in one of the rooms there. This would also be entirely consistent with Lim Kim Poh's evidence that the deceased had called her a few years ago to say that he was staying with someone in Yishun.

242 The evidence of Ng Guak Chuan (the adopted sister of Lim Chok Young) appeared to me to be contrived. The name of the

deceased and the date of her visit to Lim Chok Young's Hougang flat were obviously planted in her evidence for her. She could not even remember what the deceased looked like or what his name was without having been prompted by Lim Chok Young and his mother. Having paid little attention to "this uncle" and not having visited Lim Chok Young ever again, it was amazing that she could recall "a thin-looking old man eating rice at the table" twelve years later. She could not even explain the hopelessly inconsistent statements in her evidence where she recalled the incident as the first day of Chinese New Year 12 years ago and then claimed that she "remembered the year clearly" because her eldest daughter who was 12 years old then is now 22 years old, a difference of 10 and not 12 years.

243 Similarly, Lim Chok Young's brother's evidence centred on one single incident about nine years ago when he allegedly met the deceased alone in the Hougang flat. I have serious doubts that such an incident could have been ingrained so deeply in his memory when he did not talk to Lim Chok Young about it again all these years. It was strange that he never met the deceased again since that occasion even if he visited only once a year and it was incredible that he did not even ask about the uncle ever again. More fundamentally, Lim Chok Young's brother was 16 when he last saw the deceased 34 years ago at his father's funeral. The deceased would have been 30 years old then. By 1991, when he next saw the deceased, the deceased would have been about 55 years old. It was simply incredible that the brother could recognize the deceased immediately after all those years.

244 Lim Chok Young's mother's evidence did not really assist the Plaintiff or Lim Chok Young. Even if Lim Chok Young did mention to her that the deceased was staying with him, she could not remember when that was. It was unlikely to have been during the time Lim Chok Young was living in the Hougang flat as he would in all probability have brought the deceased to visit his wheelchair bound mother who was also living in Hougang Avenue 3 if the deceased had already been living in the Hougang flat for several years.

245 Therefore the most probable scenario was that Lim Chok Young met the deceased sometime in late 1995 or early 1996 and subsequently allowed him to stay in one of the two bedrooms in the Yishun flat (which Lim Chok Young did not require as he was living in the Woodlands flat with the Plaintiff and their daughter).

246 If the deceased did regard the Plaintiff as his god-daughter at some point in time, that was surely something suggested to him by Lim Chok Young for his sinister plans later. The Plaintiff could not have been close to the deceased at all. She was apparently too busy to take care of her daughter's meals, much less the deceased's while he was alive. The deceased was allegedly coming and going, even travelling out of the country, without so much as a whimper to the Plaintiff about his plans. The two men did not even seem to bother to ask the Plaintiff and her daughter whether they wished to go on some of the trips. The deceased allegedly wanted the Plaintiff to take care of him for the remaining years of his life but did not even tell the Plaintiff about his insurance policies and his will or where he had kept them. When Lim Chok Young returned from Cambodia a few days after the tragic incident with the remains of the deceased, the Plaintiff was too busy with her work to even accompany Lim Chok Young to lay the remains to rest!

247 Lim Chok Young could not have believed that the deceased, who was Hokkien, was the blood brother of his father, a Teochew. His explanation that the deceased did not seem happy to discuss this matter was nothing more than a lame excuse to gloss over the obvious.

248 I find that the five travel insurance policies in question in this trial were all applied for by Lim Chok Young, with or without the presence of the deceased. The deceased was obviously an uneducated and happy-go-lucky man whose furthest thoughts about the future were probably his next meal and his next cigarette. He simply had no savings to splash on insurance-shopping or on tours. Insurance was already something so foreign to him, what more \$1.2 million worth just before a five-day trip to Cambodia! I have no hesitation in rejecting Lim Chok Young's assertions that the deceased was converted to his deep abiding faith in insurance and that the deceased fortuitously came into lottery money just before he became unemployed. The truth of the matter was that the deceased was never gainfully employed for any appreciable period of time due to his poor eyesight, low intellect and generally carefree approach to life. Getting the deceased's thumbprint or his handwritten name on application forms for insurance would have been as easy as getting the deceased to light up a cigarette. As was evident from Lim Chok Young's own testimony, the insured did not even need to be present at the agencies. All the premiums were paid by Lim Chok Young who needed no reimbursement as the policies were his idea anyway and they were small change compared to what he hoped to

reap in the subsequent insurance claims.

249 It was absurd that such a staunch believer in insurance as Lim Chok Young was able to go around town leisurely amassing insured sums for the deceased, right up to three days before departure on the tour, but would forget the contact cards of the insurance companies when packing. He seemed to have so much free time buzzing in and out of tour agencies in town. One wonders how long he needed to pack for that short trip anyway.

250 According to the Plaintiff and Lim Chok Young, by early 1997, they were a couple experiencing a second spring of love. Lim Chok Young's former cold front must have melted in the warmth of their renewed love. Yet the Plaintiff would have everyone believe that Lim Chok Young and the deceased were carrying on as before, surreptitiously planning trips abroad and disappearing for days without so much as a little note on the refrigerator door to inform the Plaintiff of their whereabouts. I find her evidence on this utterly unbelievable.

251 The evidence of Lim Chok Young relating to the three AIA applications which were subsequently rejected was so patently and pathetically false. As said earlier, the deceased was not someone who would be planning for his future financial needs in this way in the first place. If the deceased was not at the Woodlands flat but at the Petir Road flat, why could not Lim Chok Young simply re-direct the insurance agents there? Was he someone who was likely to be cowed by two insurance agents who refused to leave the flat unless some business was transacted? Clearly not. The deceased was portrayed as someone with ample cash to spare, who was willing to "oblige" two agents not at his flat by buying \$300,000 in insurance without even knowing what sort of policy it was. Clearly, Lim Chok Young was again lying in this matter. He had arranged the insurance himself.

252 I now come to the fateful day of 2 June 1997 in room 505, Pailin Hotel, Phnom Penh. If the deceased had lost his appetite for a couple of days, it was indeed strange that Lim Chok Young should arrange lunch to be at 12 noon when they had finished breakfast at 8.30 am, only three and a half hours earlier. Further, since the deceased did not leave the fully airconditioned hotel on 1 June 1997 and 2 June 1997 and was not feeling well, why would he be taking a bath just before lunch? It could not be because he was feeling hot. If Lim Chok Young merely wanted him to freshen up and feel better, knowing that it would take time to fill the bath tub and aware of the slow movements of the deceased, why suggest taking a bath – not a shower – when it was already 11.30 am and they were to meet at the lobby at 12 noon?

253 The way the deceased was found lying in the flooded bath tub certainly did not suggest that he had fallen into the water, whether because of a fainting spell or otherwise. The unnatural position of his right arm suggested strongly that it had been held at his back by someone. As stated earlier, the deceased was a man accustomed to hunger and it was highly unlikely that his poor appetite – if he ever had a good one – had affected him to such an extent. Further, Lim Chok Young's ridiculous additional evidence in the witness box about the possibility of the deceased wanting to splash water on him did not help the Plaintiff's case at all.

254 Once the entire chain of events and all the surrounding circumstances were considered together, rather than as isolated, unrelated parts, I could only arrive at the irresistible conclusion that Lim Chok Young and his wife, the Plaintiff, driven by their determination to become rich, conspired to cause the death of the deceased intentionally in order to benefit from the insurance monies. Lim Chok Young was the prime mover of the whole scheme. Even if the Plaintiff was not aware of the exact details of the plot to extinguish the life of the deceased, she obviously knew that an "accident" of some sort had been planned for the poor simpleton abroad.

255 The trips by Lim Chok Young and the deceased to neighbouring countries between February and May 1997 were nothing more than a ploy by Lim Chok Young to create the impression that they were constant, merry travelling companions. The trips were not made in order that a kind and altruistic "nephew" could fulfil his aging uncle's wish to travel by aeroplane – they were flights in the final journey leading to the eventual designated place of execution. Lim Chok Young also did not want an autopsy to be conducted here for it might reveal the actual cause of death of the deceased. For this reason, he chose to forget all about the precious insurance policies taken out to cover both of them in such an "emergency" and neglected to inform the insurance companies, thereby depriving them of the opportunity to decide on repatriation of the body.

256 Insofar as the deceased's death was not accidental, it was not covered by the policies concerning accidental death. In respect of the policies covering death from any cause, violent or otherwise, public policy must surely prevent the Plaintiff from claiming any money thereunder. As a fellow conspirator, the Plaintiff's hands were as stained with blood as Lim Chok Young's. No one should be permitted to benefit directly or indirectly from his/her own wrong. Certainly no killer should be allowed to come to Court to collect blood money. This is so even if I am wrong in finding that the Plaintiff was involved in the said conspiracy. If the Plaintiff was innocent, it would still be wrong to allow her to benefit from her husband's criminal conduct as that would condone the criminal act done for the sake of benefiting his family. That assumes that Lim Chok Young would not be benefiting from the insurance monies. However, public policy applies with even greater force here as Lim Chok Young would obviously have a share of the insurance monies if they were paid out to the Plaintiff. He has agreed that would be so and the pay out of \$100,000 by GE Life put it beyond all doubt that both husband and wife would benefit jointly.

257 I now deal with the secondary issues in this case. The first is whether there was material non-disclosure by the deceased insured in respect of his health problems as revealed in the medical examination in October 1996 by Dr Lum Foong Poon and the subsequent rejection of his application for insurance by AIA.

258 It is trite law that a contract of insurance is one of utmost good faith and that an applicant for insurance is under a duty to disclose all information which a prudent insurer would consider material. Such a duty exists regardless of whether the insured has been asked to complete a proposal form or whether he has been asked any other questions by the insurer (*The Asia Insurance Co Ltd v Tat Hong Plant Leasing Pte Ltd* [1992] 1 CLJ 330 at page 335).

259 The insurance policies that came into being after October 1996 were the five travel insurance policies in issue in this case. These policies insured generally against death or injury from violent or accidental means. They excluded causes such as sickness, disease or medical disorder. It could not therefore be said that the deceased's state of health would have mattered to the insurers here and, consequently, the rejection of the October 1996 application on this ground. Insurers issuing travel insurance policies would only be interested in the personal particulars of the proposed insured, the proposed destination(s), the total period of travel and perhaps the purpose of travel. This was borne out in practice in the instances mentioned in this case. One could easily buy travel insurance without being physically present at the agencies. It is also axiomatic that violent acts and accidents could happen to anyone whether in the pink of health or weak and sickly. What may be material is how careful or careless a person is, not how healthy or diseased he is.

260 The second issue concerns the First Defendants' policy, Clause 7 of which provided that the insured person could only be covered under one such policy for the same trip whereas the deceased was covered by four other such policies. Further, Clause 1 of the said policy provided that the insured must be fit to travel and not be aware of any circumstances which could lead to the cancellation or disruption of the trip. It was provided in the General Conditions that compliance with the terms was a condition precedent to any liability of the insurers.

261 The Defendants submitted that the Cambodian Investigation Committee's reports indicated that the deceased's health was not good since his arrival in Phnom Penh. In addition, the deceased had missed the tour on 1 June 1997. The Defendants therefore argued that the deceased had breached Clauses 1 and 7.

262 With respect, I disagree. The deceased might have been tired or lost his appetite after travelling to Cambodia but these facts did not imply that he was therefore not fit to travel. Anybody could become tired or feel queasy while on tour without being unfit to travel. Where Clause 7 is concerned, there is no reason to read it broadly as preventing insured persons from buying further insurance from others if they so wish. "One such policy for the same trip" could be read meaningfully as only one travel insurance policy from the First Defendants.

263 The Defendants further contended that the First, Third, Fourth and Fifth Defendants were deprived of their contractual right to conduct a post mortem examination or autopsy of the body by the failure to inform them of the death and by the cremation on 4 June 1997. The Plaintiff argued that the term in the policies relating to this (expressed in various terminology) did not go so far as to state that unless the Defendants had an opportunity to do a post mortem examination, they would not be liable. The Plaintiff contended the relevant term merely reserved the right of the insurers to do a post mortem examination if they so wished.

264 A reservation of a right necessarily implies a duty to inform coupled with the giving of a reasonable opportunity to examine. There would be nothing left of the right if the insurers were not informed of the death at all before cremation took place. Similarly the right would be a wholly illusory one if notice of the death was given minutes before the body was turned into ashes. Where the policy provides for a period within which notice must be given of any bodily injury or of death, that period can only begin to run from the time an opportunity arises for the giving of notice. Say, for instance, an insured were trekking in jungles and got injured in some remote, deserted area without a cellular telephone. It would be absurd to require notice, especially a written one, to be given immediately or even within one week if the rescue team could only reach the injured and return him to civilization after that period. This must apply with even greater logical force to a case where death has unfortunately occurred because the party informing the insurers about the death would obviously not be the insured! In the same example given, death could have occurred without anyone discovering it for some period of time. Further, if the body was cremated by some third party or was somehow lost or destroyed, there could be no question of breach of any term pertaining to the insurers' right to repatriate and to perform an autopsy because that would be compelling the impossible to be done.

265 Coming back to the facts of this case, Lim Chok Young could not plead that he was unaware of the policies in the deceased's name. He had access to telecommunication facilities and to assistance from the Singapore Embassy in Phnom Penh. He even spoke twice to the Plaintiff who was in Singapore. He and the Plaintiff had every opportunity of informing any of the five insurers to seek their advice or instructions on the repatriation of the body or its disposal but they did not do so. It was not a situation where the Cambodian authorities had ordered a cremation to be done immediately or at all. The cremation was Lim Chok Young's and the Plaintiff's considered decision. In such circumstances, they have deprived the insurers of their contractual right to examine the body or to bring it to Singapore or elsewhere for an autopsy to be conducted. The insurers were therefore entitled to deny liability on this ground as there was a breach of a condition precedent.

–

THE CONCLUSION

266 The Plaintiff's claim against all five Defendants must therefore fail. As I ruled against the Defendants' contentions in respect of two of the secondary issues, I ordered the Plaintiff to pay 90% of the costs of this action, to be taxed or agreed.

Tay Yong Kwang

Judicial Commissioner

Copyright © Government of Singapore.