

AMG INSURANCE BERHAD

*MOTOR- Third Party Bodily Injury Unit
General Insurance Division*

**PRIVATE & CONFIDENTIAL
BY EMAIL**

Dear **Ms Aisyah,**

3rd July 2023

AMG Reference	A-3-21-VKF82875
Vin Partnership Reference	RS/PI/ 006/2023 /K
Summons No.	BF-A73KJ-1-01/2023
Court	Kuala Kubu Bharu Magistrate Court
Plaintiff's Solicitors	Messrs R. M. Hari
Plaintiff	Anand A/L T Baloo (Motorcycle no. VGB3045)
Insured Driver	Mohd Safuan Bin Mat Isa
Insured	Chipseng Heng Enterprise Sdn Bhd
Insured Vehicle	Motorcar no. KEQ1110
Date and Time of Collision	25.11.2021 (4.00 a.m.)
Status of Claim	Trial (30.11.2023)
Estimate	RM 47,565.66
Liability	100%
Quantum on (100%)	RM 47,565.66

We refer to the above matter.

We are pleased to append our **Legal Opinion** in this matter for your kind consideration.

A. STATUS

Please note that the abovementioned matter has been fixed for **Trial on 30.11.2023.**

B. BACKGROUND FACTS

There are **3** police reports lodged in this matter.

REPORTS IN ORDER OF DATE/TIME

FIRST REPORT – Mohd Safuan Bin Mat Isa (Insured Driver) – 25.11.2021 @ 8.56 a.m. (5 hours after the accident)

In his police report, he stated that on 25.11.2021 around 4.00 a.m., he was driving his motorlorry no. **AGB8226** from Ipoh to Meru through North – South Highway. He was driving on the left lane and as he was approaching KM 423.5, suddenly his motorlorry broke down of which he halted the vehicle at the emergency lane around 1km from the accident scene and noticed that his motorlorry’s longshaft had come off on the highway.

SECOND REPORT – Anand A/L T Baloo (Plaintiff) – 27.11.2021 @ 11.53 a.m. (3 days after the accident)

In his police report, he stated that on 25.11.2021 around 6.10 a.m., he was riding motorcycle no. **VGB3045** from Bukit Tagar towards Rawang through North – South Highway. He was riding on the left lane and as he was approaching KM 423.5, suddenly he collides into a motorlorry’s longshaft on his travelling path, causing his motorcycle to lose control and fell. He sustained injuries over his face, both hands, his back, left shoulder and both legs. The damage on his motorcycle are both rims and tires, left side mirror and other damage yet to be ascertained.

He lodged additional police report after 23 minutes of the first report verifying that the longshaft was from motorlorry no. AGB8226 that was parked at the roadside.

SKETCH PLAN

The neutral police sketch plan depicts a bilateral road with 3 lanes on each side of the road. From bottom to top is Ipoh heading towards Kuala Lumpur. Both Insured Driver and the Plaintiff was from bottom to top.

POLICE PHOTOGRAPHS

We have been furnished with 8 police photographs showing:

1. The Insured vehicle where it is parked at the emergency lane.
2. The Plaintiff's motorcycle.

POLICE FINDINGS

As per police findings dated 7.2.2022, the Insured Driver was summoned by the PDRM under Rule 94 LN170/59 for *Kenderaan Yang Berada Di Atas Jalanraya Mestilah Di Dalam Keadaan Baik Dan Tidak Merbahaya Orang Lain* on 27.11.2021.

ADJUSTER'S REPORT

As per your adjuster's report dated 25.3.2022, your adjusters managed to interview the Insured Driver which he maintained his version as per police report and added that whilst he was waiting at the roadside after looking for the longshaft, police traffic arrived and told him that a motorcyclist had collide into his longshaft and fell. The police officer then took his statement. Around 2.30 p.m., his company's foreman arrived and repair the motorlorry.

Your adjusters had also interviewed the Plaintiff which he told your adjusters that he was riding on the emergency lane even though his report says that he was on the 3rd lane. Other than that, he maintained as per his police report.

The Insured (Insured Driver's employer) had confirmed that he was informed by the Insured Driver about the said accident. Even though the Insured vehicle had malfunction at around 4.00 a.m., the Insured Driver was only made known of the accident at 8.45 a.m., which is after the time of accident stated by the Plaintiff.

C. LIABILITY

Opinion on Liability

The accident occurred due to the longshaft being yanked off of the Insured vehicle and caused obstruction on the Plaintiff's travelling path.

Although there is no collusion between the Insured vehicle and the Plaintiff, it is evident that the Plaintiff was injured due to the longshaft from the Insured motorlorry being on the road.

The Insured had admitted that longshaft from his vehicle was gone after he checked the vehicle and then sometime later after he halted his vehicle in the emergency lane, police came to him and told him that his longshaft had caused an accident.

In view thereof, we are viewing liability 100% against the Insured Driver.

D. LIABILITY FRAUD

After perusing the entire set of documents made available to us, we are unable to detect any element of fraud in this matter.

E. QUANTUM

General Damages

We would assess the General Damages of the Plaintiff based on the following medical reports provided to us: -

- (i) Medical Report from Hospital Selayang by Dr. Fauzul Akram bin Juhari – **Orthopaedic Department** (Admitted on 25.11.2022)

- United fracture left clavicle.

- (ii) Plaintiff's specialist report from KPJ Sentosa KPJ by Dr. Gurjit Singh A/L Gurdial Singh – **Orthopaedic** (Examined on 16.3.2022) – **4 months post-accident.**

- Malunited fracture left clavicle with over-riding of bony ends with shortening of 1.5cm.
 - Left shoulder asymmetry
 - Strength reduced to 4/5
 - Grip strength over left hand reduced
 - Pain and stiffness over left shoulder
 - Unable to lift heavy objects and operate heavy equipment with left hand
 - Pain during cold weather
- Scars:
 - Multiple scars over hands from 0.25x0.25cm to 1.5x0.5cm
 - 1x0.5cm over left knee
 - 2x1cm and 1x1cm over right knee
 - 10x9cm and 2x1cm over lower back

- 2x1cm over abdominal wall
- 3x2cm over left shoulder
- 3x2cm and 2x2cm over right shoulder
- A prominent bulge over left clavicle

We hereby enclose the following authorities with regard to the Plaintiff's General Damages for your comparative study: -

Injuries		Quantum (RM)
1.	<p>Malunited fracture left clavicle with over-riding of bony ends with shortening of 1.5cm.</p> <ul style="list-style-type: none"> • Left shoulder asymmetry. • Strength reduced to 4/5 • Grip strength over left hand reduced • Pain and stiffness over left shoulder • Unable to lift heavy objects and operate heavy equipment with left hand • Pain during cold weather <p><u>Che Soh bin Mat Deris v Fatimah binti Ismail & Anor [2019] 1 PIR [58], mc</u></p> <p>Closed fracture of the right clavicle (Note: The plaintiff as a result suffers from 2 cm shortening and reduced range of movement)</p> <p><u>Award:</u> RM 20,000.00</p> <p><u>Compendium:</u> Clavicle (RM 13,000.00 - RM 28,000.00)</p>	<p>22,000.00</p> <p>(Considering the inflation rate)</p>

2.	<p>Scars:</p> <ul style="list-style-type: none"> • Multiple scars over hands from 0.25x0.25cm to 1.5x0.5cm • 1x0.5cm over left knee • 2x1cm and 1x1cm over right knee • 10x9cm and 2x1cm over lower back • 2x1cm over abdominal wall • 3x2cm over left shoulder • 3x2cm and 2x2cm over right shoulder • A prominent bulge over left clavicle <p><u>Che Mat bin Awang v Issa Ramadan Al Abiad [2018] 1 PIR [15], mc</u></p> <p>18 cm scar</p> <p>Award: RM 8,000.00.</p> <p><u>Compendium:</u></p> <ol style="list-style-type: none"> Minor scarring to leg (RM 1,300.00 - RM 3,300.00) Minor scarring to arm (RM 2,200.00 - RM 3,850.00) 	<p>10,000.00</p> <p>(Considering the number of scars)</p>
	<u>TOTAL</u>	32,000.00

Therefore, on 100% basis, the Plaintiff's General Damages will total up to a sum of **RM 32,000.00**.

Cost of Future Treatments

1. Physiotherapy.

- Plaintiff's specialist: RM 300.00 per week for 3 months amounting to RM 3,600.00 i.e., RM 300.00 x 12 visits.
- Your specialist: We will readvise once we receive our report.

2. Anatomic reduction and restoration of the length of the clavicle.

- Plaintiff's specialist: RM 20,000.00 in a private medical centre.
- Your specialist: We will readvise once we receive our report.

3. Occasional pain killers

- Plaintiff's specialist: Did not commented on the price.
- Your specialist: We will readvise once we receive our report.

However, to amicably resolve the matter out of court, we advise your good selves to reserve 1/3 of the total sum suggested by the Plaintiff's specialist at **RM 7,866.66** i.e., (RM 3,600.00 + RM 20,000.00) / 1/3. We further advise your goodselves to reserve **RM 5,000.00** for pain and suffering during surgeries.

Special Damages

We would for ease and convenience assess and summarise the Plaintiff's Special Damages based on the documents provided as follows: -

1. Cost of travelling for the Plaintiff to get outpatient treatment.

As per outpatient card, the Plaintiff only went for treatment once, hence we advise your good selves to reserve RM 50.00 as nominal sum.

2. Cost of medical report

We advise you to reserve RM 40.00 as per receipt no. 202242062601R300033 from Hospital Selayang.

3. Cost of specialist report

We advise you to reserve RM 709.00 as per receipt no. ACCT6-00002570 and ACCT6-00002571 from KPJ Sentosa KL.

Therefore, on 100% basis, the Plaintiff's Special Damages will total up to a sum of **RM 799.00**.

Loss of Earnings

The Plaintiff was 21 years old at the time of accident (25.11.2021). Your adjusters stated that the period of disablement is about 1 month.

Your adjuster had also stated and verified that the Plaintiff was working for Ng Chemical Trading as lorry assistant and general worker earning RM 1,900.00 monthly. The same is confirmed with the employer's letter furnished by your adjusters where the said letter confirmed that the Plaintiff start working at the company on 18.11.2021 which is before the accident and his salary was RM 1,700.00.

We believe that the figure stated by the employer in their letter is the basic salary without the allowances. Therefore, we advise your good selves to reserve **RM 1,900.00** for this item.

F. STRATEGY

We are of the view that your Insured Driver is wholly liable for this accident. It will be prudent that we attempt to settle this matter out of court.

G. CONCLUSION

Damages (on 100% basis) will therefore total: -

i. General Damages	RM 32,000.00
ii. Cost of Future Treatments	RM 7,866.66
iii. Pain and Suffering for Surgeries	RM 5,000.00
iv. Special Damages	RM 799.00
v. Loss of Earnings	RM 1,900.00
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TOTAL	RM 47,565.66
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Yours faithfully,

VIN PARTNERSHIP