

馬六甲亞齊街八打靈丹也
SS三/三十九, PJ二十一, 商業中心,
第三座, 二、三、四、五及六樓, 郵箱四七三〇〇

衛比拿登律師樓

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ADVOCATES & SOLICITORS
PENGUAMBELA DAN PENGUAMCARA
www.vpnathan-partners.com.my

DATO'SRI V.P. NATHAN SSAP, D.I.M.P. LL.B. (Hons.) (S'pore)
SHU LEE KING LL.B. (Hons.) (S'pore), Mediator (BC)
DATO' DEVENDRANATHAN DATO' SRI V.P. NATHAN
D.I.M.P., LL.B. (Aus.), B.Com. (Aus.), GDLP (Aus.), Q.LTS. (UK).

ROSMANIZA BTE ABD RAHMAN LL.B. (Hons.) Leeds, C.L.P.
T. KANIAMUTHAN B.K.M. LL.B. (Hons.) Bar-at-law
PARMAJIT KAUR LL.B. (Hons.) Cardiff, Wales, C.L.P.
AMALINA BT. ABDUL GHANI LL.B. (Hons.) LL.U.

Assistants:

OMAR BAKHI AHMAD LL.B. (Hons.) Malaysia
NOOR HALIZA BT. ISHAK LL.B. (Hons.) LL.U.
WAN KUZAINI AZLI BIN WAN ABU BAKAR LL.B. (Hons.) Bar-at-Law
CHRISTOPHER A/L FRANCIS LL.B. (Hons.) LL.M., CLP
ROZIANA IBRAHIM LL.B. (Hons.) Malaysia
KAMINI DEVI A/P SUBRAMANIAM LL.B. (Hons.) London, C.L.P.
ROHANI MUHAMMAD LL.B. (Hons.) U.K.M.
YUKASLIZA BT. CHE KAR LL.B. (Hons.) U.I.T.M.

NOOR ASIKIN IDERIS LL.B. (Hons.) LL.U.
NURUL AZNIE BT. IBRAHIM LL.B. (Hons.) LL.U., LL.M.
FAZILAH BINTI SUDIN LL.B. (Hons.) LL.U.M.
NOR AZIRA BT. MUHKETER LL.B. (Hons.) LL.U.
MUHAMAD AZMI BIN ARIFFIN LL.B. (Hons.) U.U.M.
PRAMANANTI A/P MUNIANDY LL.B. (Hons.) U.K.M.
HASNIDA BT ISMAIL @ NAWANG LL.B. (Hons.) LL.U.
YOUNG TECK KANG LL.B. (Hons.) UniSZA

WAN NORUL SUHADAH BINTI WAN MOHAMAD LL.B. (Hons.) LL.U.
GRACE ANNE A/P DAVID LL.B. (Hons.) Malaysia
ERRA FARAHEEN OMAR LL.B. (Hons.) U.U.M., LL.M. U.I.T.M.
IZANI NASHTASYA ISA LL.B. (Hons.) U.K.M. DLSA U.I.T.M.
CHIN E-LING LL.B. (Hons.) Liverpool, C.L.P.
SOFIA AIZURA BT. ABOL MUNAFI LL.B. (Hons.) U.I.T.M.
KAJENDRA BALAN A/L R SANDRIAN LL.B. (Hons.) M.M.U.

YOUR REFERENCE

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

TPBI/K9697779-C3
VPN/LZ/BL/nor/12521-ET

29th June, 2021

☒ by email ☐ by hand ☐ by fax ☐ by courier

M/s ETIQA GENERAL TAKAFUL BERHAD
KUALA LUMPUR

Liability: 80% to 100% against your insured.
Quantum (on 100%): RM 51,295.00
Case Management: 16/07/2021

Dear Sirs,

**RE: ACCIDENT ON 11/06/2020 INVOLVING VEHICLE NO. WA 3767 V
TEMERLOH MCCA NO. CB-A73KJ-61-03/2021**

We refer to the above matter and to our preliminary advice dated 12/05/2021. We have received the relevant documents and shall advise you on the same.

This accident involves a collision between your insured's m/cycle No. WA 3767 V and the third party's m/cycle No. WYU 3038 on 11/06/2020 whereby the third-party rider of the m/cycle No. WYU 3038 suffered bodily injuries.

FACTS OF THE CASE

Your insured's rider, **RUSMANIZAM BIN SULAIMAN**, in his police report lodged on 05/07/2020 (24 days after the accident) has stated that on 11/06/2020, at about 5.30 p.m., he was riding his m/cycle No. WA 3767 V from his place of work at Kilang Maran Road Sawmill Sdn Bhd and was heading towards his house at Kampung Paya Luas. While riding along Jalan Kampung Paya Luas Temerloh, he stopped his vehicle to turn to the right to enter the main road. After ensuring the traffic was clear and engaging his right indicator, he proceeded to turn right. Suddenly, a m/cycle No. WYU 3038 which was approaching from the left, collided into the front left portion of his m/cycle. As a result of the collision, he was uninjured. His m/cycle sustained damages to the front portion.

Your insured's rider, **RUSMANIZAM BIN SULAIMAN**, made a correction to his report on 05/07/2020 on the same day. His correction report states that the third-party rider's m/cycle No.

WYU 3038 approached from the right and not the left. He further stated that the damage to his m/cycle was on the right portion and not the left portion.

We were unable to reach your insured's rider via the number provided in his police report. Upon calling the same, the person on the other end of the line informed us that we have contacted the number. We have written to your insured's rider to provide his written statement at our office and will revert to you upon receipt of the same.

There is an adjuster's report from Malayan Adjustment Company Sdn Bhd dated 10/09/2020 available for comment. Your insured rider's statement to your adjusters narrates facts similar to his police report. He stated that he was riding his m/cycle via Lorong Gembira service road in the vicinity of Kampung Paya Luas. He was travelling alone at the time and the weather was clear. Upon arriving at the T junction of Lorong Gembira, he slowed down his m/cycle and observed the vehicles on the main road. After ensuring there were no vehicles on the main road he proceeded to execute the right turn. While turning to the right, the third-party rider of m/cycle No. WYU 3038 approached from the right and due to the close proximity, grazed the front right section of his m/cycle. Due to the collision, the third-party rider fell onto the road. Your insured's driver did not fall off his m/cycle. After stopping his m/cycle to check on the third-party rider, he attempted to settle the matter amicably. However, the third-party rider informed him she will discuss the same with her family and upon seeking treatment as to whether she will be making a police report. After providing her with his contact information, another m/cycle rider conveyed her to the hospital.

Your insured's rider did not make a police report immediately as he wanted to attempt to settle the matter without involving the police. However, three (3) weeks after the accident, the third-party rider called informing him that she is not keen on settling the matter and intended to make an insurance claim. Your insured's rider then proceeded to lodge his police report at Traffic Temerloh.

The third-party rider, **MAZNAH BINTI ISMAIL**, in her police report lodged on 08/07/2020 (27 days after the accident) has stated that on 11/06/2020, at about 5.30 p.m., he was riding his m/cycle No. WYU 3038 from his place of work at Paya Luas and was heading towards his house at Taman Setia Jasa. She was traveling alone. Upon arriving at the T- junction at Paya Luas, suddenly a m/cycle No. WA 3767 V emerged from the left junction and collided into her m/cycle. As a result of the collision, she suffered bodily injuries and was conveyed to Hospital Temerloh. Her m/cycle sustained damages to the gear pedal, cover set, foot rest and there were other damages that were yet to be assessed.

The third-party rider lodged his police report twenty-seven (27) days after the accident occurred. We believe the delay in making the report was due to her recuperating from her injuries.

The third-party rider's statement to your adjusters narrates facts similar to her police report.

POLICE SKETCH PLAN AND KEY

The police sketch plan shows the material part of the road to be a bi-directional carriageway centrally demarcated by an intermittent white line marked as "A2" with a junction towards the left. The road is flanked by a road shoulder on both sides of the road. The police sketch plan is otherwise neutral for all intents and purposes.

Your adjuster's have provided a rough sketch plan that shows the material part of the road to be a bi-directional carriageway centrally demarcated by intermittent white lines with a junction to the left leading towards Lorong Gembira. The upwards arrow indicates the direction towards Temerloh whereas the downwards arrow indicates the direction towards KG Paya Luas. Your insured's m/cycle is depicted as the blue vehicle emerging from the left junction whereas the third-party rider's m/cycle is depicted as the red vehicle riding straight along the main road of Jalan Kg Paya Emas. The point of impact is shown to be on the left lane of the main road i.e. on the third party's lawful path.

POLICE PHOTOGRAPHS

There are six (6) police photographs available for comment. There are two (2) photographs that show the material part of the road where the collision occurred with no visible marks on the surface of the road. The next four (4) photographs show your insured's mycle No. WA3767 V with no clearly visible damage.

Your Adjusters had provided two (2) photographs that depict the scene of accident from different angles with the travel direction of both parties and the approximate place of collision indicated therein.

POLICE INVESTIGATION RESULT

There is a letter from the police dated 31/12/2020 stating that your insured's rider was issued summons under Rule 3(2)(B) LN 166/59. We were unable to reach your insured's rider via the number provided in his police report. We have written to him to provide confirmation on whether he has paid the summons and will revert to you upon receipt of the same.

Your adjusters were able to gather from the Investigating officer that the matter was being investigated under Rule 3(2)(B) LN 166/59.

NATURE OF THE CLAIM

This present claim is filed by the third-party rider of m/cycle No. WYU 3038 against your insured's rider (1st Defendant) and your insured (2nd Defendant) for general and special damages. In the Statement of claim, the Plaintiff has pleaded fact similar to her police report.

LIABILITY

Based on the evidence available, it appears that the collision occurred when your insured's rider emerged from the junction towards the main road and collided into the third-party rider travelling on the main road. This version is consistent with both the police reports and is consistent with the damages to both vehicles. As your insured's rider was summoned, the Court would be inclined to attach more liability against him. We are of the view that it is incumbent on your insured's rider;s part to watch out for traffic on the main road before coming out and for him not to obstruct the flow of traffic. As such, for purposes of settlement and subject to any other evidence that may be available, we suggest that you negotiate liability at 80% to 100% against your insured's rider, in order to avoid the risk of litigation.

CASE AUTHORITY

Tan Kheng Kuan [1961] 1 MLJ 116

The Court held that it is a grave fault to turn a vehicle across the general route of traffic without first ensuring there is clear passage available.

Mohamad Khirul Mizan [2002] 6 MLJ 471

The driver of the bus which made a sudden turn to its right thereby cutting into path of on-coming motorcycle causing motorcycle to unsuccessfully avoid collision was held liable in negligence

QUANTUM

General damages based on the Plaintiff's medical reports from Hospital Temerloh (Orthopaedic Department) dated 28/07/2021 and specialist medical report from Kuantan Medical Centre dated 25/01/2021 are assessed to be in the region of **RM 42,000.00 to RM 49,000.00** consisting of the following:

1. Open fracture distal 3rd left ulna RM14,000.00 - RM16,000.00
 - Wound debridement;
 - Intramedullary kirshner wiring of left ulna;

Diagnosis by the Plaintiff's specialist.

- Limited ROM of left wrist (severe);
- All small joints are stiff;
- Unable to make full handgrip;
(only able to make about 30% of normal range)
- Malunited (mild) distal 3rd of ulna;

2. Closed fracture dislocation of left elbow with RM20,000.00 - RM22,000.00
radial neck fracture
 - Cross left elbow external fixator;

Diagnosis by the Plaintiff's specialist.

- Reduced ROM of left shoulder;
- Tenderness along the joint line;
- ROM: fixed flexion deformity 65 degrees to 125 degrees
- Limited ROM of left elbow joint (severe);
- Malunited fracture neck of radius;
- Reduced position of humeroulnar (elbow) joint;
- Moderate irregularity of articular surfaces;

Findings by the Plaintiff's specialist.

3. Scars RM5,000.00 - RM7,000.00
 - Flat pigmented scar over anterior aspect, 2 cm by 2 cm;
 - Two (2), flat pigmented scars over lateral aspect, 2 cm by 2 cm and 2 cm by 2 cm;
 - Flat pigmented scar over radial aspect, 2 cm by 2 cm;
 - Flat pigmented scar over extensor aspect; 2 cm by 2 cm;
 - Two (2), flat pigmented scars over ulna aspect, 2 cm by 2 cm and 2 cm by 2 cm;

Findings by the Plaintiff's specialist.

4. Muscle wasting RM3,000.00 - RM4,000.00
 - 1 cm muscle wasting of the upper arm;
 - 1 cm muscle wasting of the left mid forearm;

RM 42,000.00 - RM 49,000.00
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****Quantum is within the Compendium of Personal Injuries 2018***

We note that the Plaintiff sustained multiple injuries on the left upper limb. If the matter proceeds for trial, we will submit that about 10% deduction be made for overlapping. However, the Court still has the final discretion whether or not to allow the same.

We note that the Plaintiff's orthopaedic specialist has diagnosed the Plaintiff with ***Post-traumatic adhesive capsulitis left shoulder joint with severe limitation of ROM***. The initial medical report from Hospital Temerloh does not mention any shoulder related injuries that could be attributed to the same. We have written to Plaintiff's solicitor to clarify the same with Hospital Temerloh.

Special damages claimed as per the Statement of Claim consists of the following: -

a. Kos dokumen	Akan dibuktikan
b. Kos perjalanan ke hospital dan kos makanan untuk diri sendiri dan keluarga sepanjang tinggal di hospital	Akan dibuktikan
c. Kerosakan pakaian dan barang peribadi	RM 300.00
d. Kos bil hospital	Akan dibuktikan
e. Kos rawatan berulang-alik ke hospital untuk rawatan susulan	Akan dibuktikan
f. Kos pembedahan memasukkan implant di kaki	Akan dibuktikan
g. Kos membeli tongkat	Akan dibuktikan
h. Kos membeli fibre glass	Akan dibuktikan
i. Kos laporan perubatan	RM 80.00
j. Kos laporan pakar dari KMC	Akan dibuktikan
k. Kos membaiki motosikal	RM 871.00
l. Carian JPJ	RM 10.00

Cost of Documents

For items (a), (i), (j) and (l), we suggest RM 42.00 for the cost of police documents, RM 10.00 for the cost of JPJ search as fair and reasonable, RM 243.00 for the cost of medical report from Hospital Temerloh [substantiated by a receipt dated 19/06/2020], and RM 1,000.00 for the cost of specialist medical report from Kuantan Medical Centre [substantiated by a receipt dated 19/04/2021] amounting to **RM 1,295.00**.

Traveling Expenses

For item (b), the Plaintiff was admitted to Hospital Temerloh on 11/06/2020 and was discharged on 19/06/2020. We do not know the number of outpatient visits made by him. He also attended a specialist appointment on 25/01/2021. We suggest **RM 450.00 to RM 500.00** for travelling expenses.

Cost of medical treatment

For item (d), we suggest to allow **RM 500.00** for the cost of external fixator from Hospital Temerloh [substantiated by a receipt dated 19/06/2020].

Loss of earnings

The Plaintiff has not pleaded for loss of earning in the Statement of Claim. Payslips for the months of April 2020, May 2020 and June 2020 have been provided by the Plaintiff. We will advise you on the same, subject to the Plaintiff's Amendment of the Statement of Claim for loss of earnings.

The Plaintiff's daily salary is RM 50.00, amounting to a monthly salary of roughly RM 1,100.00. The Plaintiff average monthly earnings based on the payslips are RM 550.00 to RM 700.00. (after deducting reasonable living expenses).

We are writing for the medical certificates, letter of employment from the Plaintiff's employer and confirmation from the Plaintiff's employer that she was not paid during her period of recovery.

Items subject to strict proof

Items (c) , (e), (f), (g), (h), and (k) are subject to strict proof.

SUMMARY AND RECOMMENDATIONi. **Liability: 80% to 100% against your insured's driver**ii. **Quantum (on 100%): -**

- | | | |
|--------------------|---|---------------------------|
| a) General Damages | : | RM42,000.00 – RM49,000.00 |
| b) Special Damages | : | RM 2,245.00 - RM 2,295.00 |

RM 44,245.00 - RM 51,295.00
 =====

- | | | |
|--------------------|---|---|
| c) Loss of Earning | : | <i>Subject to Amended of Statement of Claim</i> |
|--------------------|---|---|

SETTLEMENT FIGURE

We suggest that for an early settlement, you let us have your mandate at between **RM 35,400.00 to RM 51,300.00** plus reasonable cost.

In addition, there will also be the usual claim for interests and costs.

We enclose herewith copies of the following for your perusal:

1. Police reports No. 001504/20, 001469/20 & 001472/20;
2. Police sketch plan and key;
3. Police photographs;
4. Police outcome;
5. Medical report from Hospital Temerloh dated 28/07/2021;
6. Specialist medical report from Kuantan Medical Centre dated 25/01/2021;
7. Payslips for the months of April 2020 , May 2020 & June 2020;
8. NRIC and Driving License of the Plaintiff;
9. JPJ search.

Kindly acknowledge receipt and please let us have your instruction/mandate as advised above as the matter is now fixed for **Case Management on 16/07/2021**.

Yours faithfully,

