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OPINION

Our ref (PS)	VPN/LZ/YTK/nor/124421-MPI	Court & Case No.	KUALA KUBU BAHRU SCCA NO: BF-A53KJ-36-04/2021
Your ref (MPI)	TPBI/V8170602	Case Management	23/06/2021
Date of opinion	18/06/2021		
TP Solicitor	M/S MOHD IRWAN MOHD MUBARAK		
Panel Solicitor	M/S V.P NATHAN & PARTNERS		
Adjuster's Investigation	Advised		
Specialist Re-examination	No.		

We refer to the above and to our preliminary advice dated 30/04/2021. We are now in receipt of relevant documents and shall proceed to advise you on the same.

This accident involves a collision between your insured's m/car No. MBA 3499 and third party m/cycle No. WWH 4569 on 15/03/2019, whereby the rider of the m/cycle sustained injuries.

LIABILITY (SUMMARIZE BASED ON POLICE REPORT)

Your insured's driver, **NUR ROHANI BINTI ABD RAHMAN** in her police report lodged on 16/03/2019 (i.e. one day after the accident) stated that on 15/03/2019, at about 11:51 p.m., she was driving m/car No. MBA 3499 from MK Taman Bunga Raya Beruntung to Bukit Beruntung Tol. Upon reaching the traffic lights to Bukit Beruntung Tol, the traffic light was green in her favor, she then made a turn, suddenly m/cycle no. WWH 4569 which was ridden by a Malay male and approaching from the opposite direction violated the red traffic light and collided into front portion of her m/car. As a result of the accident, her m/car was damaged at the windscreen, body, left side door, front bumper, front bumper, roof, front lights and front left tyre. She and her family members were not injured.

We have contacted your insured's driver on 11/06/2021 and note that she had stated facts similar to her police report. She elaborated that at the time of the accident, the traffic lights were functioning and the third party violated the red traffic light and collided into front portion of her m/car.

The third party rider, **MUHAMMAD ZULKARNAIN BIN MAKTAR** in his police report lodged on 30/04/2019 (i.e. one month and 15 days after the accident) stated that on 15/03/2019, at about 11:50 p.m., he was riding m/cycle No. WMH 4569 from Jalan Adenium Bukit Beruntung to his house at Taman Bunga Raya Bukit Beruntung via Jalan Besar Sungai Choh-Bukit Beruntung. Upon reaching the traffic lights nearby Bukit Beruntung Toll Plaza, the traffic lights were not functioning, suddenly m/car No. MBA 3499 which was approaching from the direction of Taman Bunga Raya made a right turn towards the direction of the Toll Plaza and collided into his m/cycle. As a result of the accident, he sustained bodily injuries and brought to Hospital Sungai Buloh. His m/cycle was damaged at the front portion.

We note that the third party rider lodged his police report one month and 15 days after the accident. The delay in lodging police report may due to him recuperating from injuries.

POLICE SKETCH PLAN

The police sketch plan shows the material part of the road to be a T-junction controlled by traffic lights.. There are three lanes on the left half of the main road and marked as "A-A1", "A1-A2" and "A2-A3", measuring 3.5 meter in width each The extreme right lane is meant for traffic to turn right towards the Bukit Beruntung toll plaza. There are two lanes on the right half of the main road and marked as "A4-A5" and "A5-A6", measuring 3.5 meter in width eac. Sungai Choh is depicted at the top of the sketch plan whilst Bukit Beruntung is depicted at the bottom of the sketch plan.

POLICE PHOTOGRAPHS

There are eighteen (18) photocopies of police photographs available for comment. The first four (4) photographs show the third party's m/cycle. We are not able to comment on the extent of damage of the m/cycle due to the poor quality of the photographs the next four (4) photographs are that of your insured m/car. We note that the damage is concentrated on the frontal left portion. The last ten (10) photographs depict the scene of the accident which is a bidirectional straight stretch.

POLICE FINDINGS

There is a letter dated 23/04/2021 from IPD Hulu Selangor stating that police have classified the case as "Refer To Magistrate (RTM)" and that no action will be taken against either party.

NATURE OF CLAIM

The present claim is filed by the third party rider (the Plaintiff) against your insured's driver (the First Defendant) and your insured (the Second Defendant) for general and special damages. In the Statement of Claim, the Plaintiff has pleaded facts similar to his police report.

LIABILITY (SUMMARIZE BASED ON ADJUSTER'S REPORT)

There is an Adjuster's report dated 30/6/2019 from Associated Adjusters Sdn. Bhd. made available for comment and we gathered that your Adjusters have interviewed your insured driver who had given similar version of the accident as per her police report. She added that at the material time, she was accompanied by her sister and brother-in-law. Upon reaching the traffic light junction of Jalan Bukit Beruntung-Sungai Choh, she stopped at the junction as the traffic lights were red. When the traffic lights turned green, she proceeded to make a right turn, suddenly m/cycle No. WWH 4568 which was approaching from the opposite direction collided into the front left portion of her m/car. The impact caused the third party rider to fall on the road.

We note that your Adjusters were unable to meet and interview the third party rider.

Based on the sketch plan provided in your Adjusters report, your insured's m/car was driving on the left half of the main road before making a right turn whilst the third party rider is shown riding on the right half of the main road.

Your Adjusters are unable to comment on the liability aspects as the scene of accident is not monitored by CCTVs and there are no independent witnesses came forward to lodge a police report.

GENERAL DAMAGES

The Plaintiff, Muhammad Zulkarnain Bin Maktar (third party rider)

INJURIES	Medical report dated 28/8/2019 from Hospital Sungai Buloh	Specialist report dated 26/2/2020 from Putra Medical Centre	QUANTUM
Closed fracture right proximal humerus	YES -Swelling over shoulder during admission; -ILN of right femur done on 20/3/2019; -Complicated with pulmonary embolism-on anto coagulant;	YES - Reduced 60 degree in flexion, 60 degree in abduction and limited internal rotation in abduction of right shoulder; -Pain over right shoulder; -The fracture has united with some malunion;	RM 16,000 – RM 18,000
Closed fracture right midshaft femur	YES -Deformity and swelling over midthigh during admission; -Humerus fracture treated with U Slab;	YES -Reduced 20 degree in flexion-extension of right knee; -The fracture has united;	RM 25,000 – RM 27,000
2cm muscle wasting of right thigh muscle	NO	YES	RM 3,000 – RM 5,000
Posterior cruciate ligament (PCL) laxity/injury	NO	YES -Presence of mild sagging and positive posterior drawer test;	RM 18,000 – RM 20,000
Multiple scars	NO	YES -7cm healed surgical scar over lateral side of right thigh; -0.5cm healed surgical scar over lateral side of right thigh;	RM 3,000 – RM 4,000
TOTAL			RM 65,000.00 RM 74,000.00

We note that the Plaintiff sustained multiple injuries. 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.

Posterior cruciate ligament (PCL) laxity/injury

The Plaintiff's specialist has stated that the Plaintiff had also suffered posterior cruciate ligament injury. As the injury was not stated in the initial medical report, we are writing to the Plaintiff's solicitors for clarification and will revert to you upon receipt of the same. As there is evidence to show the Plaintiff sustained right lower limb injury and subject to the clarification report, we suggest you to provide between RM 18,000 and RM 20,000 for this item.

Removal of implant

The specialist has stated in the specialist report that the fracture has united and the patient will require an implant removal. Removal of implants is estimated in the report to cost RM 8,000.00. We suggest that you provide 1/3 to 50% of the same amounting to between **RM 2,666.66 and RM 4,000.00** as the cost of the same is minimal in a Government hospital.

We also suggest between **RM 4,000.00 to RM 5,000.00** for pain and suffering for the future operation which will be allowed if claimed.

Physiotherapy

The specialist has stated that the Plaintiff needs 8-12 sessions of physiotherapy at RM 80.00 per session to improve the muscle wasting and limited range of movement of right shoulder/right knee. This will cost between RM 640.00 and RM 960.00 if done at private hospital centre. At this stage, we suggest that you reserve 1/3 to 50% of the total cost which is **RM 213.33 to RM 480.00**, as the cost of the same is minimal in a Government hospital.

As the findings in the specialist report appears to be reasonable, we do not suggest any further referral at this stage. Kindly let us have your instructions if you think otherwise.

SPECIAL DAMAGES**The Plaintiff, Mohd Supian Bin Awang (third party driver)**

Item claimed	Amount claimed (RM)	Amount advised (RM)
<u>Travelling expenses for hospital visits (Items b & c)</u> With regard to items (a) and (b), we do not number of days of Plaintiff's admission in Hospital Sungai Buloh but he made at least three outpatient visits to the said hospital. There are also various receipts from TouchnGo and Shell Petrol Station in the sum of RM 150.00 to substantiate the claim. We suggest <u>RM 300.00 to RM 500.00</u> for these items.	RM	RM 300.00 – RM 500.00
<u>Hospital bills (items d and e)</u> With regard to items (d) and (j), there are three official receipts dated 26/03/2019, 03/04/2019, 08/04/2019 and 14/04/2019 for the sum of RM 629.00 from Hospital Sungai Buloh. We are of the view that the said costs might be incurred during the Plaintiff's admission in the hospital. As such, we suggest you to provide <u>RM 629.00</u> for this claim as the Court is likely to allow the same.	RM	RM 629.00

<p><u>Claim for extra nourishing food (item h)</u> With regard to item (h), it should not be allowed by the Court unless there is medical evidence to show that such special food was required.</p>	RM	Subject to strict proof
<p><u>Loss of earnings (Item i)</u> With regard to item (i), the Plaintiff was on medical leave for 58 days, i.e. from 16/03/2019 to 13/05/2019. We are writing for the Plaintiff's proof of earnings for a period of 6 months prior and after to the date of the accident and confirmation from the Plaintiff's employer on the period of medical leave and whether the Plaintiff was paid during the said period before advising you on the same.</p>	RM	Subject to strict proof
<p><u>Cost of wheelchair (item (k))</u> With regard to item (k), there is an invoice dated 22/03/2019 from Caring Pharmacy for the sum of RM 500.00. We gathered that receipt is issued for the sale of "Soma Wheelchair", and we suggest that you reserve <u>RM 500.00</u> for the same as the Court is likely to allow the same.</p>	RM	RM 500.00
<p><u>Cost of implants (items l and m)</u> With regard to cost of implants, there is a quotation dated 18/3/2019 from Medi+Ours Sdn. Bhd. for the sum of RM 2,300.00 and a quotation dated 19/3/2019 from Mimimed Sdn. Bhd.. We note that the quotations are issued to Muhammad Zulkarnain, i.e. the third party rider being quotation of the implants.</p> <p>We do not know which implants used in the treatment. As the quotation from Mimimed Sdn. Bhd was dated later and cheaper than the quotation from Medi+Ours Sdn. Bhd., we suggest you to provide <u>RM 1,300</u> for the cost of implants as the Court is likely to allow the same.</p>	RM 3,500	RM 1,300
<p><u>Medical expenses (items n, o and p)</u> With regard to items (l), (m), (n), (o) and (p), there are various receipts from Raudhah Medik Sdn. Bhd., Multicare Pharmacy, Big Pharmacy and Old Town Healthcare Sdn. Bhd in the sum of RM 925.65. For purposes of settlement, we suggest that you provide 50% of the same totaling to <u>RM 462.80</u>, as the purchases appear to be reasonable but some purchases are not related.</p>	RM	RM 462.80
<p>Cost of documents We also suggest that you provide RM 66.00 for the police documents provided, RM 10.00 for JPJ Search, RM 40.00 for medical report from Hospital Sungai Buloh and RM 900.00 for specialist report from Putra Medical Centre, totaling to <u>RM 1,016.00</u>.</p>	RM	RM 1,016.00

Items (c), (f), (h), (i), (j), (k) and (n) are subject to strict proof.	RM	Subject to strict proof
TOTAL	RM	RM 4,207.80 – RM 4,407.80

SOLICITORS ADVISE

Based on the evidence available, it appears that the collision occurred when your insured turned right at a T-junction controlled by traffic lights and was collided into by the third party rider going straight. We note that your insured's driver claimed that the traffic light was green on her path of travel whilst the third party rider claimed the traffic lights were not functioning at the material time. The police have classified the case as "Refer To Magistrate (RTM)". Considering the fact that both versions are conflicting, no independent witness and that the police have classified the case as "RTM", Subject to any other evidence that may be forthcoming, the court is likely to find both parties to be equally liable for the collision. For purposes of settlement, we suggest that you negotiate at 50% liability against your insured and 50% against the third party rider.

No driving license

Your adjusters believed that the third party rider has no proper driving license at the time of the accident. We shall raise this at the trial of this matter. But the Plaintiff may persuade the Court that even though he did not have a license, he was able and competent to ride a m/cycle and the Court may not hold this against him.

REMARKS (CASE LAW/AUTHORITY)

Ng Aik Kian & Anor –v- Sia Loh Sia [1997] 2 CLJ Supp 218

"When frontal collision between two vehicles travelling from the opposite directions occurred at a junction controlled by traffic lights and court unable to determine parties' respective degree of blameworthiness, both parties held equally liable."

Ramoo –v- Ong Ah Ho & Anor [1968] 2 MLJ 66 (HC)

"defective lights at cross junction, both drivers involved in collision held liable."

SUMMARY

Liability: 50% against insured driver.

Quantum (on 100%): -

The Plaintiff, Muhammad Zulkarnain Bin Maktar (third party driver)

i.	General Damages	:	RM 65,000.00 – RM 74,000.00
ii.	Special Damages	:	RM 4,207.80 – RM 4,407.80
iii.	Cost of Physiotherapy	:	RM 213.33 – RM 480.00
iv.	Future Surgery	:	RM 2,666.66 – RM 4,000.00

			TOTAL	RM 72,087.79 – RM 82,887.80
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			v.	Pain and suffering (if claimed) :	RM 4,000.00 – RM 5,000.00
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SETTLEMENT FIGURE

We suggest that for an early settlement, you let us have your mandate at between RM 36,000 and RM 41,400 plus reasonable costs.

We enclose herewith a copy of the following documents for your perusal: -

1. NRIC of Muhammad Zulkarnain Bin Maktar;
2. Medical report dated 28/08/2019 and Receipt from Hospital Sungai Buloh;
3. Official receipt dated 18/6/2019 from Hospital Sungai Buloh;
4. Specialist report dated 26/2/2020 from Putra Medical Centre;
5. Official receipt dated 11/1/2020 from Putra Medical Centre;
6. Police reports No. 2688/19 and 1629/19;
7. Police sketch plan and key;
8. Police photographs;
9. Police investigation result;
10. Quotation dated 19/3/2019 from Minimed Healthcare Sdn. Bhd;
11. Quotation dated 18/3/2019 from Meditours Sdn. Bhd.;
12. Appointment card of Muhammad Zulkarnain Bin Maktar;
13. Medical certificates of Muhammad Zulkarnain Bin Maktar;
14. Hospital bill dated 8/4/2019;
15. Official receipts in the sum of RM 624.00 from Hospital Sungai Buloh;
16. Official receipt in the sum of RM 20.00 from Hospital Sungai Buloh;
17. Official receipt in the sum of RM 5.00 from Hospital Sungai Buloh;
18. Receipts in the sum of RM 175.00 from Raudhah Medik Sdn Bhd;
19. Receipts in the sum of RM 531.70 from Multicare Pharmacy;
20. Receipt in the sum of RM 500.00 from Caring Pharmacy;
21. Receipt in the sum of RM 212.95 from Big Pharmacy;
22. Receipt in the sum of RM 6.00 from Old Town Healthcare Sdn. Bhd.; and
23. Various receipts from TouchnGo and Shell Petrol Station;

Kindly acknowledge receipt of this letter.

Yours faithfully,

A handwritten signature in black ink, consisting of stylized, flowing letters that appear to be 'Z. Maktar'.