**IN THE SUPREME COURT OF THE REPUBLIC OF Casablanca**

HC/S 9 of 2021

**The estate of Ah Kee**

… Plaintiff

Vs

**Tolsa Limited**

**(UEN: 3048293)**

… Defendant

**Grounds for Decision**

1. This is an application for leave to refer a question of law to the Court of Appeal. I granted leave for a legal question to be determined by the Court of Appeal and set out the facts and the question of law below.
2. The Defendant, Tolsa Limited, is a company incorporated in Casablanca. It has become a unicorn of the tech world, thanks to its development of one of the world’s first few autonomous self-driving vehicles: the Carrero X1.

1. Much of the Plaintiff’s claim rests on the evidence of their witness, Meng Suan. Meng Suan is a self-made millionaire, and self-professed Transformers aficionado. When the Carrero X1 was first available for pre-order in Casablanca, Meng Suan testified that he stayed online for 48 hours straight in order to place an order the moment it was available.
2. On or about 19 June 2020, when Casablanca’s lock down measures were relaxed, Meng Suan rushed to take his favorite car, his Carrero XI nicknamed “***Sparrow the Carrero***”, out for a spin.
3. Meng Suan is a driver with an impeccable traffic record over the past 22 years. Confident in the Carrero X1’s abilities, Meng Suan had cruised down Dempsey Drive listening to “Rollin’” at maximum volume, reclining in his 180 degree seat, with his windows rolled down and the Carrero X1 on auto-drive mode.
4. Regrettably, five young boys suddenly ran across the road chasing after a football. It must have been too long since they had seen the sun, having been schooled at home via online home-based learning for the past two months, and it appeared that they did not pause to check the traffic condition.
5. Meng Suan testified, and I do find, that the car Sparrow the Carrero detected and beeped “Warning” ten seconds before the fatal moment. Meng Suan shot up from his reclined position, or at least as fast as his abdominal muscles could allow, which was not too fast, taking approximately four seconds as demonstrated in Court. He saw the group of children freeze like deer in headlights. On his left, he saw the grinning visage of Yew Can Sing, a local election candidate on a larger-than-life elections poster on a portable display stand.
6. Meng Suan tried to take control of the car manually and swerve the car to the left to avoid the group of children, by desperately turning the steering wheel. However, Meng Suan testified that the steering was locked, and Sparrow the Carrero simpy droned “I’m afraid I can’t let you do that, Meng,”.
7. Sparrow the Carrero continued on its trajectory despite Meng Suan’s frantic efforts to override the system, and eventually ploughed through the unfortunate children. Ah Kee, ring-leader of the children, died on the spot. The other four children suffered light to moderate physical injuries.
8. In the following days, public uproar ensued. Tolsa Limited was subject to investigations in relation to the incident. In the course of these proceedings, an investigation report was tendered revealed that (and is not disputed that):
9. Sparrow the Carrero had detected the group of children crossing the road.
10. Sparrow the Carrero had calculated accurate avoidance trajectories to avoid hitting the group of children. However, the only option available was to swerve away into the poster of Yew Can Sing.
11. Based on its machine learning algorithms (and it is not in dispute that the algorithms are world-class), Sparrow the Carrero believed that elections posters were hung on lamp posts in Casablanca, and therefore there would be a lamp-post behind the visage of Yew Can Sing. To swerve that way would result in crashing into the lamp-post, with an 89% chance that Meng Suan would suffer severe injuries with a 43% risk of fatality on Meng Suan’s part.
12. Sparrow the Carrero had been specifically programmed that in the event of a choice between two human lives, it must always prefer the life of its driver. This had been done on the basis of an internal legal memo that Tolsa Limited is more likely to owe a duty of care to its customer (i.e. the likely driver), than an unknown third party. Tolsa Limited’s insurance coverage was also primarily focused on its customer, with a nominal coverage for third party liability.
13. As such, Sparrow the Carrero locked the steering wheel, blocked Meng Suan’s attempts at a manual override, and proceeded to run Ah Kee and the other four children over.
14. Shortly after, the Estate of Ah Kee brought proceedings against Tolsa Limited for compensation based on the tort of negligence.
15. Given the novelty of the issues, I granted leave for the following questions to be put before the Court:
	1. Whether Tolsa Limited owed a duty of care to Ah Kee.
	2. Whether on the facts set out above, Tolsa Limited had breached that duty of care by programming its AI to prefer the life of its driver and preventing Meng Suan from steering away.

*\*Note: All names are fictional. You may assume all decisions of the Singapore Court are taken as binding precedent in Casablanca. The format of this moot problem does not reflect usual civil procedure. The format is used to set out the scenario for the purposes of the Moot problem.*

1. **INSTRUCTIONS**
2. The Court will hear oral arguments from Counsel for Tolsa Limited and Counsel for the Estate of Ah Kee **for 15 minutes each** on the above questions on **5 February 2021, at 6pm**.
3. Counsels will not be submitting written memoranda.

II. **CLOSED UNIVERSE**

1. Please refer only to the following case authorities for the purpose of citation and argumentation.
	1. *Spandeck Engineeering v DSTA* [2007] 4 SLR(R) 100
	2. *Ngiam Kong Seng v Lim Chiew Hock* [2008] 3 SLR(R) 674
	3. *Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944
	4. *BNJ v SMRT Trains* [2014] 2 SLR 7