

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

SC. Appeal No. 105/2018

SC Case: SC/HCCA/LA 254/17

HCCA Case No: SP/HCCA/TA/23/2015(F)

DC Case No: M/10351/2009

In the matter of an application for Special Leave to Appeal to the Supreme Court under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka from the Judgment dated 25th of August 2015 made by SP/HCCA/TA/23/2015(F).

1. Godawela Gamage Dulani Kamal
Renuka

2. Kaushika Sandasara

3. Chamod Sandamal

All are at No. 10B, Kurunduwatta,
Isadeen Town, Matara.

2nd and 3rd Plaintiffs are appearing by
their next friend the 4th Plaintiff

4. Walpita Mudiyansele Mahinda
Kithsiri Walpita

No. 1/179, Borella Road, Godagama,
Homagama.

Plaintiffs-Appellants-Petitioners

Vs.

1. Amarakoon Dissanayake Wasantha
No. 277, Kuttikala, Padalangala.
2. Amarakoon Dissanayake Chandana
No. 769, Viharagala, Sooriyawewa.

Defendants-Respondents-Respondents

BEFORE : SISIRA J. DE ABREW, J.
PRIYANTHA JAYAWARDENA, PC. J. &
P. PADMAN SURASENA, J.

COUNSEL : Kumar Dunusinghe for the Plaintiff-Appellant-
Petitioners.

Shehan Gunawardane with Dulanjana Gamage
instructed by S.A.G. Dharshana for the Defendant-
Respondent-Respondents.

ARGUED &
DECIDED ON : 06.02.2019

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases.

This is an appeal against the judgment of the learned Judges of the Civil Appellate High Court of Tangalle. The learned Judges of the Civil Appellate High Court by their judgment dated 30.03.2017 affirmed the judgment of the learned District Judge dated 25.08.2015. Learned District Judge by the said judgment decided that the Plaintiff had not established the negligence of the 2nd Defendant who drove the vehicle No. SP HT 6182.

Being aggrieved by the said judgments of the learned Judges of the Civil Appellate High Court, the Plaintiff-Appellants have appealed to this Court. This Court by its order dated 12.06.2018 granted Leave to Appeal on questions of law set out in paragraph 8 (i) to (x) of the Petition dated 08.05.2017, which are as follows;

- i. Have their Lordships in the High Court of Civil Appeal erred in law and in fact to observe that the 2nd Defendant was the driver of the vehicle bearing No. SP JT 8161 which was the Tipper halted on the road with the lorry actually driven by the 2nd Defendant.
- ii. Have their Lordships in High Court of Civil Appeal erred in observing that Dilip Wedarachchi who is an eye witness has not made a contemporaneous police statement to corroborate the facts stated by him in his evidence, whereas the said witness is listed in the list of witnesses in the Magistrates Court proceedings marked as P5 which is invariably after a statement is made to Police.
- iii. Have their Lordships in the High Court of Civil Appeal erred in law and fact by holding that the evidence of the said eye witness has failed the test of spontaneity and contemporaneity as his evidence has been recorded

after 3 years, whereas the said eye witness has stated in the evidence in chief that in addition to making a police statement and being listed as a witness in the Magistrates Court he had given evidence at the Inquest which has not been contradicted in the cross examination.

- iv. Have their Lordships in the High Court of Civil Appeal erred in law and in fact by misinterpreting P6, the police statement of the 2nd Defendant.
- v. Have their Lordships in the High Court of Civil Appeal failed to evaluate the consistency of the eye witness and the inconsistency of the evidence of the 2nd Defendant in comparison to his answer and to his police statement.
- vi. Have their Lordships in the High Court of Civil Appeal erred in law to evaluate the ingredients of Section 149(1) of the Motor Traffic Act which include the component of negligence to which the 2nd Defendant has voluntarily pleaded guilty.
- vii. Have their Lordships in the High Court of Civil Appeal erred in law in the failure of considering the requirements of section 187 of the Civil Procedure Code.
- viii. Have their Lordships in the High Court of Civil Appeal erred in finding that issues No. 5 and 6 have been answered in the negative on wrong findings.
- ix. Have their Lordships in the High Court of Civil Appeal arrived at a wrong assumption that the deceased was under the influence of alcohol and was attempting to board the lorry driven by the 2nd Defendant whereas no such evidence was elicited in the evidence of the entire case.

- x. Have their Lordships in the High Court of Civil Appeal come to unwarranted assertion that all the individuals assembled at the wedding at the time of the accident were under the influence of alcohol and as such people of Tangalle are proved to be a violent and a murderous mob which some times even is capable of drawing international wroth and attention and interventions.

Learned Counsel appearing for the Plaintiff-Appellants in the course of his submissions submitted to this Court that he is only canvassing questions of law set out in paragraph 8(vi) of the Petition of Appeal.

According to the facts of this case, Vehicle No. SP HT 6182 driven by the 2nd Defendant was stopped at Tangalle facing Kataragama. At the same time, another Vehicle bearing No. SP JT 8161 was also stopped facing Colombo due to traffic congestion. At this time the deceased person who was walking towards Kataragama decided to creep through the space between 02 Vehicles. When the deceased person was creeping through the space between 02 Vehicles, the 2nd Defendant started moving his Vehicle towards Kataragama. It has to be noted here that at this time the deceased person was in the middle of the road and between 02 Vehicles. According to the evidence led at the trial, the space between 02 Vehicles was 1 ½ - 2 feet. When the 2nd Defendant was moving his Vehicle towards Kataragama, the deceased person who was between 02 Vehicles got crushed and as a result he died.

The Attorney General has decided not to charge the 2nd Defendant under Section 298 of the Penal Code. The 2nd Defendant was not charged even under Section 151(3) of the Motor Traffic Act which reads as follows;

“ No person shall drive a Motor Vehicle on a High Way negligently or without reasonable consideration for other persons using the High Way”

Thus, the 2nd Defendant has not been charged for negligent driving under Section 151(3). On the instructions of the Attorney General, the 2nd Defendant was charged under Section 149(1) of the Motor Traffic Act which reads as follows;

“notwithstanding anything contained in Section 148, it shall be the duty of the driver of every Motor Vehicle on a high way to take such action as may be necessary to avoid any accident.”

From the above facts it can be concluded that the 2nd Defendant who drove the Vehicle No. SP HT 6182 was charged only for failure to avoid an accident for which he pleaded guilty in the Magistrate's Court. The learned District Judge after trial concluded that the said accident has not taken place due to the negligence of the 2nd Defendant. Learned Judges of the Civil Appellate High Court too affirmed the said judgment. According to the Post Mortem Report of the deceased person, stomach contents of the deceased person were having the smell of liquor. This shows that at the time of the accident, the deceased person had consumed liquor. As I pointed out earlier, at the time of the accident, the deceased person was in the middle of the road and was trying to walk through the space between the two Vehicles. (1 ½ - 2 feet)

When we consider all the above facts, we feel that the accident has taken place due to the complete negligence of the deceased person. Therefore, we agree with the conclusion reached by the learned District Judge and the learned High Court Judges.

Learned Counsel appearing for the Plaintiff-Appellants tried to advance an argument that when a person is found guilty under Section 149 (1) of the Motor Traffic Act, the said conviction would lead to the conclusion that the driver who drove the Vehicle was negligent in driving the Vehicle.

I now advert to this said question. Although the learned Counsel for the Plaintiff-Appellants tried to advance an argument, we are mindful of the fact that the 2nd Defendant was not charged under Section 298 of the Penal Code and/or under Section 151(3) [negligent driving] of the Motor Traffic Act. When we consider all the above facts, we are unable to agree with the contention advanced by the learned Counsel for the Plaintiff-Appellants. We hold that when a person is found guilty under Section 149(1) of the Motor Traffic Act, no conclusion can be drawn from such conviction that he had driven the Vehicle negligently. The fact that he was not charged for negligent driving under Section 151(3) of the Motor Traffic Act operates against such a conclusion.

For the aforementioned reasons, we answer the above question of law set out in paragraph 8(vi) of the Petition of Appeal in the negative.

Learned Counsel for the Plaintiff-Appellants did not make submissions with regard to the other questions of law and he submitted that he would confine to question of law set out in 8(vi) of the Petition of Appeal.

For the above reasons, we affirm the judgment of the learned Judges of the Civil Appellate High Court and dismiss this appeal.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC. J.

I agree

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree

JUDGE OF THE SUPREME COURT

NT/-