

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.11.2016

Date of Verdict : 08.11.2016

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 227 of 2008

Rev. Fr. Correspondent,
St. Francis Middle School,
Cuddalore O.T.Appellant/1st Appellant/ 1st
Defendant

Vs.

1. Ramesh ...Respondent/Respondents/1st Plaintiff
2. The Headmaster,
St. Francis Xavier Middle School,
Cuddalore O.T.
3. The Class Teacher,
VIIth Standard,
St. Francis Xavier Middle School,
Cuddalore O.T. ...Respondents 2&3/Appellants 2&3/
Defendants 2 & 3
4. Deivanayagam
5. Anthonydoss
(Respondents 3 to 5 exparte and hence given up)
...Respondents 4&5/ Respondents 2 & 3 /
Defendants 4 & 5

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree of the learned Principal District Judge, Cuddalore District, Cuddalore in A.S. No.74/2006 dated 05.09.2007 confirming the judgment and decree of the learned Principal Sub Judge, Cuddalore made in O.S.No.87/2004 dated 31.08.2006.

For Appellant : Mr.A.K.Kumarasamy

For Respondents: Mr.T.S.Baskaran for R1
No Appearance for R2
RR3 to R5 given up.

JUDGMENT

Brief facts leading to the appeal : On 03.04.2000, while two young boys namely Ramesh and Giridharan of seventh standard playing in the school using broom sticks as bow and sharp edge of the stick hit the retina of the right

eye of Ramesh and caused loss of vision. Alleging that the school management, class teacher and the father of Giridharan, the boy who caused the injury were all responsible for this incident, the mother of said Ramesh after causing legal notice, has filed suit for damages for a sum of Rs.2,00,000/- (Rupees two lakhs only).

2. The school management contested the case on the ground that the incident took place during the recess period and there was no negligence on the part of the management. Immediately, after the incident, the boy was taken to his house and further he was given first aiding and handed over to his mother. As the incident had occurred during the recess period, and it was unexpected and unpredictable, the management cannot hold the responsibility.

3. The trial Court, based on the pleadings, framed the following issues :-

"(1) whether the plaintiff is entitled to damages as claimed in plaint?

(2) to what other reliefs the plaintiff is entitled to?"

4. On these issues the plaintiff who attained majority by that time mounted the witness box and got examined himself as P.W.1. He had narrated as to how the incident occurred and why the school management is liable to compensate him. Seventeen exhibits were marked on his side. His classmate one Mr.Srinivasan was examined as P.W.2. On behalf of the defendants two witnesses were examined and the attendance registers for classes 7-A and 7-B of the first defendant school were marked as exhibits B1 and B2.

5. The trial Court, after considering the evidence let in by the parties, has concluded that the incident had taken place during the school hours and no medical aid was given to the minor plaintiff immediately after the incident, and decreed the suit as prayed for. Aggrieved by the Trial Court judgment and decree, defendants 1 to 3 preferred an appeal before the Principal District Court, Cuddalore.

6. The first appellate Court found that the appellants have not taken timely action, by rushing the boy immediately to the hospital for proper medical treatment, and that the school management instead of taking the victim boy to the nearest Doctor or hospital, has sent the boy to his home for further follow up action, which would show the willful negligence on the part of the school authorities and hence, they are liable to compensate the plaintiff. Further the appellate Court has concluded that the quantum of damage awarded by the trial Court is not excessive and thereby confirmed the judgment and decree of the trial Court. Aggrieved by the concurrent findings of the Courts below, the appellants are before this Court by way of second appeal.

7. This Court, at the time of admission, has formulated the following substantial question of law for consideration:

"(1) Whether the Courts below are right in holding that the appellant will have to bear the absolute liability when the occurrence took place admittedly outside the class room."

8. The incident took place outside the school premises. It is the contention of the appellants that the incident occurred during the recess period near the toilet, while all the students let out for break. Whether the incident took place during the class hours or during the recess period, it makes no difference, since it happened inside the school premises and during the school hours. The only point for consideration is as to whether there is willful negligence on the part of the school management? The point canvassed by the learned counsel for the appellants is that since the incident had taken place outside the class room there is no negligence on the part of the management, and hence, they cannot be held responsible for the act of 4th respondent's son. Further more, there is no basis to ascertain the damages. The Courts below have awarded two lakhs as compensation, which requires re-consideration by this Court.

9. Per contra the learned counsel for the first respondent submitted that for the loss of vision in right eye, there is evidence to show that the timely treatment could have avoided this loss. The school management having failed to take the victim boy for treatment immediately, is liable to pay the compensation and the compensation awarded by the Courts below does not warrant interference by this Court.

10. The learned counsel for the first respondent contented that there is no direct evidence to support the claim of Rs. 2,00,000/-, towards compensation.

11. Per contra the learned Counsel for the respondents submits that the Courts below have taken note of the fact that the young boy lost his vision of right eye and would have struggle to cope-up with the life and also taking note of the medical bills and duration of the treatment, has awarded a sum of Rs. 2,00,000/- as compensation, which is moderate and is not on the higher side.

12. On a perusal of the evidence, this Court finds that the appellant management has not provided any medical aid to the victim boy after the incident. The victim boy, in the cross examination, has deposed that Dr. Baskaran, who treated him on the day of the incident, has told him that if he had come for treatment one hour before, he could have saved his vision. There is no reason to doubt this part of evidence.

Further Ex.A.4 is the prescription of Dr. Baskaran, given to the victim boy, on 03.04.2000, which is the date of the incident. On the backside of Ex.A.4, this Court finds that Dr. Baskaran has referred the victim boy to JIPMER hospital and the victim boy had taken treatment in the JIPMER hospital as in-patient for four days and thereafter, for the follow up action, he has gone to Aravind eye hospital, Madurai. Exs.A-10 to A-14 are medical bills, which run to the tune of around Rs.25,000/-. The telephone receipts and bus tickets were also marked as Exs.A-16 and A-17, to substantiate the case that the victim boy was taken to Madurai and Pondicherry for treatment. No doubt, the Courts below have taken sympathetic view, to array at a sum of Rs.2,00,000/- as compensation. Though the plaintiff has not provided any calculation as to how a sum of Rs.2,00,000/- was claimed as compensation, it will be too technical at the second appeal stage to consider this point. Since, the quantum is neither excessive compare to loss of vision not totally baseless.

13. Both the Courts below have held that the plaintiff has lost his vital organ due to the negligence of the management, who failed to provide immediate medical assistant to the victim. This Court has no reason to interfere the said finding of the Courts below. Insofar as the compensation amount is concerned, the course of treatment taken by the victim, which is proved through Exs.A-4 to A-15, would go to show that the sum of rupees two lakhs awarded as compensation with interest at the rate of 6% p.a., is neither illegal nor excessive. Hence the appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Principal Sub Judge, Cuddalore.

2.The Principal District Judge, Cuddalore.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.A.K.Kumarasamy,advocate,sr.63780

+1 cc to M/s.T.S.baskaran,advocate,sr.64021.

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