

Judgment Reserved on: 24.03.2017

Judgment Pronounced on :04.04.1017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Appeal Suit No. 313 of 2010
and
M.P.No.1 of 2010

The Executive Officer,
Hindu Religious and Charitable
Endowment Department,
Sivan Koil inside, Villupuram. ...Appellant/2nd defendant

Versus

1. Elumalai
2. Saraswati
3. Santhosh Kumar
4. Sarath Kumar ..Respondents 1 to4/
Plaintiffs 1 to 4
5. The Inspector,
Hindu Religious and Charitable
Endowment Department, Tindivanam. ...5th Respondent/
Ist defendant
6. The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department, Villupuram.
7. The District Collector,
Villupuram District, Villupuram.
8. The Superintendent of Police,
Villupuram District, Villupuram. ...Respondents 6 to 8/
Defendants 3 to 5

(R2 to 4 declared as major and R1
discharged from guardianship vide
court order dated 24/3/17 made in
CMP.5583 & 5584/17

Appeal Suit filed under Order 41 Rule (1) read with Section
96 of Civil Procedure Code against the Judgment and decree dated
22.12.2009 passed in O.S.No.27 of 2008 by the learned Principal

District Judge,Villupuram.

For Appellant .. Mr.T.S.Baskaran
For Respondents .. Mr.N.Suresh for R1 to R4
Mr.R.P.Prathap Singh
Government Advocate for R5 & R6
No Appearance for R7 & R8.

JUDGMENT

Aggrieved over the judgment and decree of the learned trial Judge, decreeing the suit for compensation for a sum of Rs.4,13,000/- with 7.5% interest from the date of plaint till the date of decree and thereafter, 6% interest till realization, as against the defendants 1 to 3, the present appeal came to be filed by the second defendant. The parties are arrayed as per their own ranking before the trial Court.

2. The brief facts of the plaintiffs are as follows:- The plaintiffs are husband and children of the late Mannammal, wife of first plaintiff. At the time of Car festival at Thiruvamathur "Arulmigu Abirameswarar Temple on 31.3.2007 at 7.15 A.M., Mannammal was about to touch the Car to worship the deity and she caught under the wheel of the Car and sustained grievous injuries and thereafter, succumbed to the injuries on the same day. The defendants 1 to 5 are responsible for the death of the deceased. There was no proper protection to the public at the time of Car festival. The deceased was earning Rs.3,000/- per month and she was contributing the income to the family and she was the only breadwinner of the family. Hence, prayed for compensation of Rs.10,80,000/-.

3. The defendants 1 to 5 in the written statement, while admitting the death of the Mannammal during the Car Festival on 31.03.2007, denying the allegation that there was negligent on the part of the defendants. It is the contention of the defendants that the Car Festival was fixed to be performed on 31.03.2007 by the authorities and necessary permission was also obtained from the Public Works Department. There was enough police protection to regularize and protect the public and the crowd was kept at 5 feet distance from the sides of the Car. There was no fault on the part of the authorities concerned. The personnel to apply wooden brakes were also readily available there to stop the Car as and when required. The accident was due to the carelessness of the deceased who was said to be fasting, suddenly swooned and fell in frontwards and was caught in the back wheel of the Temple Car. Since the incident was occurred suddenly and nobody could anticipate the same, the Temple Car could not be stopped. The defendants also paid Rs.10,000/- to

the first plaintiff on humanitarian ground for medical and funeral expenses. The deceased was only house wife and she was not employed. Hence, the defendants prayed for dismissal of the suit.

4. On the basis of the above pleadings, the following issues were framed by the learned trial Judge :-

1. Whether the death of Mannammal was due to the negligence on the part of the defendants 1 to 3 as alleged by the plaintiffs?

2. Whether the plaintiffs are entitled to recover compensation of Rs.7,20,000/- with interest at 12% per annum from the defendants 1 to 3?

3. To what relief?

5. On the side of the plaintiffs the first plaintiff examined himself as P.W.1 and one more witness was also examined as P.W.2 and Exhibits A1 to A5 were marked. On the side of the defendants D.W.1 was examined and Exhibits B1 to B3 were marked.

6. On the basis of the oral and documentary evidence and materials, the learned trial Judge has awarded compensation of Rs.4,13,000/- with 7.5% interest from the date of suit till the date of decree and thereafter 6% interest from the date of decree till realization. Aggrieved over the same, the appeal has been filed by the second defendant, the Executive Officer, Hindu Religious and Charitable Endowment Department.

7. The main contention of the appellant is that the learned trial Court has passed a decree against the defendants 1 to 3 alone. The learned trial Court has not passed any decree as against the District Collector who is the representative of the State. The defendants 1 to 3 are also organs of the State. They cannot be individually liable to pay the compensation amount. When the liability is fixed for negligence on the part of the defendants, the State is also liable. Admittedly, negligence was not on the part of any of the officer of the State. Whereas the deceased herself fainted due to fasting during the Car Festival. Despite the precautionary measures were taken and proper protection was given by the authorities, the deceased herself contributed for the accident. Hence, it is the contention of the learned counsel for the appellant that the judgment of the learned trial Court fixing liability on the defendants 1 to 3 is not at all sustainable. The second defendant being the Executive Officer has filed the present appeal. Hence he prayed for modification of the decree of the learned trial Court.

8. Countering the arguments of the learned counsel for the appellant, it is the contention of the learned counsel for the respondents that the defendants were not taken any precautionary measures to perform the Temple Car Festival. Though a specific direction was given by the P.W.D. Authorities not to allow the crowd near 20 feet around the Temple Car, the authorities have not taken any care in preventing the crowd. The deceased was fell down in crowd due to stampede, as a result she was fell on the ground as a result the rear wheel of the Temple Car run over the deceased. The deceased is the only breadwinner of the family. She died due to negligence on the part of the State organs. Therefore, it is the contention of the learned counsel that liability fixed on the defendants cannot be interfered. However, it is the contention of the learned counsel for the respondents that though the prayer was also made as against the State, making the District Collector as a party to the suit, the learned trial Court has relieved the District Collector and Superintendent of Police. In fact it is the contention of the learned counsel that the decree should have been passed as against all the officers of the State organ. Hence, submitted that in the event of modifying the decree making the State organs as liable for compensation, he has no objection for such modification.

9. In the light of the above submissions, now the points that arise for consideration are:-

1. Whether the death of Mannammal was due to negligence on the part of the defendants?
2. Whether the decree passed by the learned trial Court as against the defendants 1 to 3 is correct in law?
3. To what relief?

10. The points:- The first plaintiff is the husband of the deceased Mannammal, aged about 30 years at the time of death. The plaintiffs 2 to 4 are the minor children of the deceased and the first plaintiff. It is also not disputed by both sides that there was a Temple Car Festival at "Arulmigu Abirameswarar Temple, Thiruvamathur, Villupuram District, on 31.3.2007 at 7.15 A.M., and during the Temple Car Festival the deceased met with an unfortunate accident. She fell down on the ground as a result the rear wheel of the Temple Car run over on her neck, as a result she succumbed to injuries. It is the case of the plaintiff that the defendants have not taken any proper care and only due to negligence on the part of the defendants, the accident has occurred. Whereas the defendants disputed the negligence on their part and contended that the deceased was fainted herself and fell down. The accident was unexpected one and therefore, they are not liable to pay compensation.

11. On the side of the plaintiffs the husband of the deceased was examined as P.W.1 and in his evidence he has stated that the death of his wife was due to negligence on the part of the defendants. At the time of accident, his wife was aged about 30 years and she was earning Rs.3,000/- per month. P.W.2 in his evidence has stated that while the deceased was about to touch the Temple Car, due to crowd and stampede she fell on the ground as a result the rear wheel of the Temple Car run over the deceased. The evidence of P.W.2 , who is the eyewitness of the occurrence is not even denied. He has also clearly stated that at the relevant time there was no precautionary and safety measures made by the defendants.

12. The second defendant was examined as D.W.1 and in his cross-examination he has also admitted that the defendants have obtained permission for conducting the festival and the permission was granted by P.W.D. Authorities stipulating a condition that the people should not be allowed around 20 feet from the Temple Cart. His evidence also clearly shows that they also allowed the people to worship the Temple Car. When there was a specific stipulation by the authorities not to allow the people around 20 feet from the Temple Car, allowing the people to nearby the Temple Car to worship and touch the same is nothing but carelessness attitude of the authorities concerned. It is to be noted that the Temple Car is normally built in with huge seize carrying heavy weight, is not allowed to operate mechanically and it is manually pulled by the people and its motion and stopping is always depending upon the power of the people who were pulling the Temple Car. Normally the Temple Car being pulled by using the ropes and it will be stopped then and there by using some wooden logs as brakes. When there being the position that Temple Car is not mechanically operated, it is very difficulty to stop the Temple Car then and there.

13. Knowing the fact that the Temple Car is made up of full of wood and allowing the people to go near the Temple Car by the authorities concerned is nothing but carelessness on their part, pulling of the huge Temple Car itself is risk inherent, the persons who were in the management of such activities should have taken a special care and safety measures, particularly by making security wing in and around the Temple Car to prevent the people from touching the Car. Though the people may come near by the Car, for worshipping and touching the Car, it cannot be said that the crowd cannot be controlled. Merely because the people have right to worship, in the name of worship the Car the authorities concerned cannot be a mute spectators allowing the untoward incidents. The authorities ought to have provided security arrangements to manage the crowd. Some times even it lead to a stampede, as a result, lead to several casualties. These are all common knowledge of everyone. Therefore, the

contention of the defendants that though they made security arrangements they could not control the crowd when touching the Car, cannot be countenanced at all. In such situations, they should have implemented the security measures strictly.

14. Therefore, having failed to enforce the security measures strictly, the State organs namely the defendants, while performing such Car Festival in which risk is inherent in nature, cannot take a defence that there was no negligence on the part of the authorities. For claiming damages for a civil liability strict proof of negligence is not at all required. Even slightest carelessness in performing the duty itself is sufficient for civil liabilities for claiming damages. Ex.B1 when carefully perused, the order dated 31.3.2007 passed by the P.W.D. Authorities granting permission for performing the Temple Car festival shows that one of the conditions at condition No.6 is specific to the effect that while the Temple Car festival being performed, the people should not be allowed around 20 feet from the Car and it is also stipulated that more than 5 people should not be allowed to sit on the Car at the relevant time. The various conditions stipulated in Ex.B1 shows that only taking into consideration of the risk involved in the Temple Car festival being performed, certain strict conditions have been imposed by the authorities concerned. One of the conditions stipulated in the order in fact is a mandatory one not to allow the people around 20 feet from the Car. Whereas in this case the evidence clearly establish the fact that people were in fact allowed very well even to touch the Car. The above act of the authorities is nothing but carelessness on the part of the authorities concerned. It is to be noted that Hindu Religious and Charitable Endowments which is also comes under the organs of the State and they are ultimately controlled by the State Government. In such circumstances, any act of the officers which lead to the civil liabilities, the concerned State Government also vicariously liable for the act done by its servants. Therefore, merely because the defendants 1 to 3 are officers of the one of the wing of the State, they alone cannot be made liable.

15. In fact, the Collector of the District is also made as one of the defendants. Though the State Government was not made as a party represented by the Collector, the Collector being the head of the District representing the State was made as one of the defendants. Though the cause title does not confirm the procedure set down under Section 79 and Order 27 of the C.P.C., the pleadings in the plaint clearly shows that they were made as a parties in the suit only as the head of the State Government Department. Therefore, this Court is of the view that merely because the State Government was not made as a party and represented by the Collector while filing the suit, this Court

is of the view that such technicalities should yield to the substantial cause of justice. Admittedly, the suit itself is filed against the head of the departments and in fact heads of department were made parties for the purpose of claiming compensation from the State and not from the individual officers. Therefore, merely because the liability on some of the defendants not fixed by the trial Court the same will not be a ground to deny the relief to the plaintiff. In entire pleadings of the plaint it is pleaded that the defendants 1 to 5 are negligent in their acts. In the prayer also the relief claimed against the State i.e. The Collector of Villupuram District. Whereas the trial Court has framed issues only with regard to the defendants 1 to 3 despite the relief is claimed against all the defendants. The approach of the trial Court in framing issues in the above aspect is not proper. But it is to be noted that all the defendants have filed similar written statement including the Collector of Villupuram District. Merely because there was no issue framed by the trial Court fixing the liability of the District Collector, this Court is of the view that it will not prejudice the District Collector.

16. Admittedly, one of the officers of the State organ was examined as D.W.1. In fact he is representing the State. Therefore, mere non framing of issues with regard to the liability of defendants 4 and 5 in the considered opinion of this Court will not prejudice the State in any manner since one of the officers of the State has already examined and all of them have filed common written statement. Therefore, this Court is of the view that the decree ought to have been passed against the District Collector also for effective implementation of the same for recovery of compensation for the loss caused to the plaintiffs. Admittedly, the deceased is the wife of the first plaintiff. Even assuming that she was house wife she would have contributed to the family by doing household works, that cannot be disputed at all. Therefore, the trial Court has rightly calculated her income at Rs.3,000/- per month after deducting the 1/3 for her personal expenses taken her contribution to the family at Rs.2,400/- per month and also applied 17 multiplier as per the second schedule of the Motor Vehicles Act, after deducting Rs.10,000/- already paid by the defendants and totally awarded Rs.4,13,000/- as compensation. The approach of the trial Court in awarding compensation does not require any interference as the trial Court has rightly taken into consideration of the income and deduction etc. Now, the only point arises for consideration is that since the decree was granted only as against the defendants 1 to 3, whether the decree can be passed by this Court as against the District Collector who is the head of the District, represents the State.

17. In this regard, this Court being the appellate Court for advance and substantial cause of justice can invoke Order 41 Rule 33 of C.P.C. In this regard this Court in a judgment reported in Dr.Balamugunthan vs. Ssuganthi - 2017 (1) CTC 287 in para 32 has held as follows:-

"32. In the case on hand, of course, the prayer in the plaint is only against the 2nd defendant. The facts are not in dispute. The findings of the Trial Court regarding the negligence on the part of the 2nd defendant have been upheld by me. I have also concluded that the 1st defendant is vicariously liable for the action of the 2nd defendant. Therefore, only question is as to whether the decree could be granted against the 1st defendant also in the absence of prayer. The only impediment for the exercise of power under Order 41 Rule 33 to pass a decree that should have been passed so as to do complete justice between the parties is a legal interdict. I do not find any legal interdict which prevents the exercise of power under Order 41 Rule 33 in the case on hand. The 1st defendant cannot take shelter under a technicality of the absence of a prayer. After all the 1st defendant is a Welfare State and is bound to protect its employee and a citizen like plaintiff. It has been made a party to the suit and the Government Pleader Pondicherry has in fact appeared for both the defendants 1 and 2. The 1st defendant cannot claim that it will be taken by surprise. The observation of the Hon'ble Supreme Court in Pralhad's case referred to above are to the effect that Appellate Court's powers are of the widest amplitude and the object is to do complete justice between the parties and therefore, I have no hesitation in exercising the power under Order 41 Rule 33 to modify the decree of the Trial Court and make the 1st defendant vicariously liable for the negligence on the part of its employee namely, the 2nd defendant. From the records, I am unable to find that the District Court was of alive to the fact that the prayer in the suit was only against the 2nd defendant. I find that the Trial Court had in fact stated that the 1st defendant is exonerated from the liability. It leads me to believe that even during trial the parties were under the belief that the prayer has been made against the defendants 1 and 2 as otherwise there would have been no occasion for the learned District Judge

to observe that the 1st defendant is exonerated from the liability."

18. In this case also, this Court having found that the officers of all the departments are organs of the State are responsible to take care of the safety measures when the Temple Car festival was performed and the Collector of the District who is the head of the State Government Departments also have a similar responsibility to avoid any untoward incident and accident during the said Temple Car festivals. It is the duty of the State to protect the life and liberty of the persons. That any act of the Government agencies which involving risk to the life of any citizen of the State is to take all the safety measures at the first instance to prevent such loss of life due to the carelessness or poor arrangements made at the time of Temple Car festival. It is common knowledge that whenever Temple Car festivals being performed particularly Temple Car is pulled there will be a huge crowd of devotees from various walks of life without even knowing the consequences of the said crowd. When that is the scenario it is the duty of the Collector or head of the department to take care of such security arrangements to prevent the loss of life of the public.

19. Therefore, in this case, the evidence clearly shows that there was total negligence on the part of the defendants. Even though there was a prayer as against the District Collector for compensation, the learned trial Judge has passed the decree only against the defendants 1 to 3. If the decree is allowed to go without modification, it will be very difficult for implementation of the same. In fact the State being the guardian of the citizens has to protect the life and liberty of the citizen and the State is vicariously liable for all the acts done by the servants which lead to the loss of life. Accordingly, this Court in exercise of its power under Order 41 Rule 33, hold that the decree and judgment of the trial Court is to be modified to the effect that the decree granted by the trial Court is also binding on the fourth defendant-District Collector, Villupruam and ultimately, the State Government is also responsible for paying compensation. Accordingly, the judgment and decree of the learned trial Court is modified and it is the duty of the State Government to pay the compensation to the legal heirs of the deceased.

20. With the above modification, the appeal is partly allowed. With respect to all other findings regarding fixation of compensation amount and other aspects, the judgment and decree of the trial Court is confirmed. Consequently, M.P.No.1 of 2010 is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge,
Villupuram

+1 cc to Mr.N.Suresh Advocate sr 20117
+1 cc to Mr.T.S.Baskaran Advocate sr 19772
+1 cc to the Government Pleader sr 20473

A.S.No.313 of 2010

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