



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.11.2017

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THE HONOURABLE MR.JUSTICE S.BASKARAN

S.A. (MD) .No.452 of 2017

and

C.M.P. (MD) .No.9549 of 2017

The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

... Appellant/Appellant/1st Defendant

Vs.

1.S.K.Mohamed Haneefa
2.Laila Begum

... Respondents/Respondents/Plaintiffs

3.The State of Tamilnadu,
rep. by the District Collector,
Madurai District,
Madurai.

... Respondent/Appellant/2nd defendant

Prayer: This Second Appeal is filed under 100 of Civil Procedure Code, against the Judgment and Decree dated 28.01.2014 passed in A.S.No.24/2013 by the VI Additional District Court, Madurai, by confirming the judgment and decree dated 30.01.2013, passed in O.S.No.84 of 2004 on the file of the Sub Judge, Camp, Thirumangalam.

For Appellant	: Mr.G.Muruggan
For Respondents	: Mr.I.Suthakaran
	for R-1 and R-2

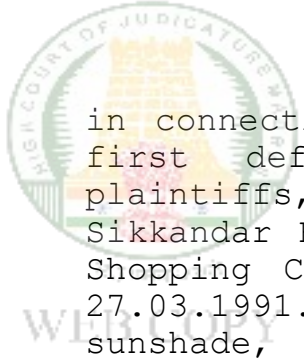
JUDGMENT

Challenging the judgment and decree dated 28.01.2014 passed in A.S.No.24/2013 by the VI Additional District Court, Madurai, by confirming the judgment and decree dated 30.01.2013, passed in O.S.No.84 of 2004 on the file of the Sub Judge, Camp, Thirumangalam, the present second appeal has been preferred. The first defendant, who lost before both the courts below is the appellant herein.

2.For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the trial court.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The plaintiffs/respondents 1&2 herein preferred O.S.No.84 of 2004, seeking a sum of Rs.1,50,000/- compensation with interest



in connection with the death of their son, due to collapse of the first defendant's/appellant's building on 27.03.1991. The plaintiffs, who are the husband and wife state that their son late Sikkandar Badhusa along with others was playing near the Municipal Shopping Complex building at Moulana Azad Road, Thirumangalam on 27.03.1991. While they were playing under the newly constructed sunshade, the same collapsed and fell on the plaintiffs' son Sikkandar Badhusa and another boy playing with him namely Kamarudeen. In the said accident, the plaintiffs' son died on the spot and the other boy subsequently demised in the hospital. According to the plaintiffs, the collapse of the building and subsequent death of their child were only due to negligence on the part of the first defendant's engineer and also lapses on their part in not taking proper care to prevent the people from coming under the said building. The plaintiffs further contended that the defendants are liable to pay compensation, as they are vicariously liable. The plaintiffs also produced the F.I.R relating to the said occurrence as Ex.A.1 and the copy the Tamily Daily Thinamani, dated 29.03.1991, narrating the details of the said occurrence as Ex.A.3 and that of another Tamily daily Thinathanti as Ex.A.4. The plaintiffs also produced Death Certificate of their son as Ex.A.2 and produced his School Record sheet as Ex.A.5 to contend that the deceased was a brilliant boy and also had a very good future prospect. Subsequently, the plaintiffs also caused a complaint to be given to the District Collector and produced the receipt of the same as Ex.A.6. Pursuant to the representation made in the Public Grievance Cell, the Collector addressed a letter to the Tahsildar to take appropriate action and copy of the same is produced as Ex.A.7. Since the plaintiffs were not paid any compensation as sought for by them, they filed a suit seeking a sum of Rs.1,50,000/- as compensation for the death of their child, after issuing notice under Section 80 of C.P.C to the defendants. The defendants produced copy of the said notice as Ex.A.8 and acknowledgment card, signed by the Officer of the defendants as Ex.A.9. The plaintiffs contend that the defendants were having control over the building and the first defendant entrusted the work of construction and maintenance to the contractor under the supervision and control of Municipal Engineer, Thirumangalam, but, no proper care was taken over the construction of the building. Thus, due to negligence on the part of the contractor and staff members of the first defendant, the sunshade projecting over the wall collapsed and caused the death of the plaintiffs' son, who was studying in 4th standard in a school at Thirumangalam, at the time of accident. The plaintiffs incurred expenses for funeral and religious ceremonies and hence, seeks compensation of Rs.1,50,000/- with interest from the occurrence date till realization of the same.

4. On the other hand, opposing the claim of the plaintiffs, the defendants entered their appearance and filed written statement, disputing the claim of the plaintiffs. According to the defendants, construction of the building was entrusted to a contractor under the supervision of Municipal Engineer, Thirumangalam, but, it is not

proper for the plaintiffs to allege that only due to negligence in constructing the building, the accident had occurred. As the construction was going on, the contractor put up wooden sticks in support of the roof construction and the deceased and his friends were playing carelessly in and around such wooden sticks and only due to their activities, the wooden sticks supporting the roof was pulled down and the building under construction fell down resulting in the accident. The defendants contend that the occurrence was not due to any omission or negligence on the part of the defendants or the contractor, who was putting up the construction. Hence, the defendants prayed for dismissal of the suit.

5.The trial court, on perusal of the pleadings, framed the following issues:

- 1.வாதிகள் கோரியுள்ள இழப்பீட்டுத்தொகை பரிகாரம் கிடைக்கக்கூடுமா?
2. சேலவு மற்றும் இதர பரிகாரங்கள் குறித்த உத்தரவு என்ன?

6.During the course of trial, the first plaintiff examined himself as P.W.1 and another witness as P.W.2 and produced Exs.A.1 to A.9. On behalf of the defendants, D.W.1 was examined, but no document was produced.

7.The trial court, on consideration of the materials placed before it, found that even though the complaint given on behalf of the plaintiffs was forwarded by the second defendant to the Tahsildar for appropriate action, the plaintiffs did not get the relief sought for by them. The trial court also held that in spite of receiving Ex.A.8 notice from the plaintiffs, no reply was sent by the defendants. The trial court also held that no proper steps was taken by the defendants like putting up fence in respect of the newly constructed sunshade to prevent anyone coming near the supporting sticks or the centering sticks. The trial court categorically held that only because the engineers and other supervisors failed to provide proper fencing, the deceased was allowed to play under the newly constructed building, resulting in the occurrence and further held that the plaintiffs' son died only due to negligent conduct of the engineer of the first defendant. The trial court also considered the evidence of D.W.1, who admitted that no proper protection was given on the road side, while, construction was going on. The trial court, pointing it out, held that there was clear negligence on the part of the employees of the first defendant and awarded a compensation of Rs.1,50,000/- to the plaintiffs as sought for in the suit.

8.The 1st defendant/appellant herein, aggrieved by the judgment and decree of the trial court in the said suit in O.S.No.84 of 2004 filed an appeal in No.A.S.No.24 of 2013 on the file of the Sixth Additional District Judge, Madurai. The lower appellate court, after going through the grounds of appeal, framed the following points for consideration:

1. 1 மற்றும் 2 பிரதிவாதிகளின் கவனக்குறைவால் விபத்து ஏற்பட்டதா?
2. வாதிகள்/ஏதிர்மேல்முறையிட்டாளருக்கு இழப்பீடு தொகை கிடைக்கக்கூடியதா?



9. The lower appellate court, after considering the materials available before it, held that the deceased was playing under the newly constructed building and died only because of the collapse of the building and the same is established by the plaintiffs by producing sufficient evidence. The first appellate court also held that it is visible from Exs.A.3 and A.4 that there are no supporting sticks and only because the sunshade fell down, the children playing under them got killed. The first appellate court also considered the evidence of D.W.1 and held that D.W.1 himself has admitted the poor quality of construction. Further, the first appellate court also pointed out the admission of D.W.1 that no proper protection was provided in the road side, when the building construction was made on the road side. Thus, the first appellate court also concluded that the occurrence took place only due to negligence and lapses on the part of the engineer of the first defendant and the contractor and confirmed the judgment and decree of the trial court and dismissed the first appeal, by its judgment, dated 28.01.2014. Aggrieved over the same, the unsuccessful first defendant has filed the present second appeal.

10. In the memorandum of second appeal, the following substantial questions of law have been raised by the appellant/defendant:

"1. Is the approach of the lower appellate court is correct in confirming the findings of the trial court on the facts and circumstances of case?

2. The findings of the lower courts below is vitiated due to the non-joinder of necessary parties.

3. Is it right on the courts below to fix the liability on appellant whereas the finding says that the negligent is on the part of the engineer, who is not the party?"

11. The learned counsel for the appellant/defendant contended that the building which collapsed was constructed by the first defendant Municipality only, but the claim of negligence on the part of its staff is not substantiated. Further, the plaintiffs have not impleaded the contractor, who was putting up the construction and as such, the finding of the courts below is not proper and the suit is bad for non-joinder of necessary parties and on that ground alone, the suit is liable to be dismissed.

12. Per contra, the learned counsel for the respondents/plaintiffs contended that the fact of newly constructed building was put up by the first defendant is admitted and also D.W.1 clearly admitted about the poor quality of construction and as the children were allowed to play below the sunshade, due to no proper fencing or warning put by by the defendants, they are vicariously liable to pay the compensation, as sought for by the



plaintiffs. The learned counsel for the respondents/plaintiffs further contended that as the findings of the courts below are concurrent in nature, interference may not be warranted at the hands of this Court, which is exercising jurisdiction under Section 100 of Civil Procedure Code and prayed for dismissal of the second appeal.

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13. This Court considered the materials available on record and also perused the impugned judgments passed by the courts below.

14. The courts below have recorded the finding that accident took place, due to poor quality of construction and also due to the fact that proper care was not taken by putting up fence to prevent entry of unauthorised persons near the said building. Both the courts below have relied upon the admission of D.W.1 and also the material placed before them on the side of the plaintiffs. The said fact of building being put up by the first defendant under the supervision and management of the staff of 1st defendant is not disputed. The fact of collapse of the building resulting in the death of the plaintiffs' son is clear from the case registered under Ex.A.1/F.I.R. The said fact is not disputed or denied by the defendants. In such circumstances, the finding of the courts below on factual aspect of collapse of the building and there was negligence on the part of the defendants in taking steps to prevent unauthorised entry near the building has to be accepted and the same needs no interference.

15. The substantial questions of law raised by the appellant/judgment debtor have already been answered by the courts below. In such circumstances, in the considered opinion of this Court, there are no substantial questions of law arising for consideration in the second appeal and the concurrent findings recorded by the courts below are based upon proper appreciation of oral and documentary evidence. Therefore, the impugned judgments of the courts below warrant no interference.

16. In the result, the second appeal is dismissed at the admission stage itself, confirming the judgments of courts below. It is already open to the appellant/first defendant to take necessary action including recovery of any amount from the contractor, if any negligence is on his part, if law permits. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The VI Additional District Judge, Madurai.

2. The Subordinate Judge, (Camp)
Thirumangalam.

3. The District Collector,
Madurai District,
Madurai.

Copy To:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.SARAVANAN, ADVOCATE IN SR No. 85228
+ 1 CC TO Mr.I.SUTHAKARAN, ADVOCATE IN SR No. 85285

VS

TE/MR-KKR/SAR-4 : 13/12/2017 : 6P/7C

Judgment made in
S.A.(MD).No.452 of 2017 and
C.M.P.(MD).No.9549 of 2017
03.11.2017