

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.Nos.883,884 & 885 of 2002

- 1.The District Collector,
Villupuram District.
- 2.The Divisional Development Officer,
(Panchayat) Thirukoilur.
- 3.The Block Development Officer,
Chinnasalem Panchayat Union. ...Appellants/Defendants 1 to 3
(in all S.A.Nos.)
- /Vs/
- 1.Latha ...1st Respondent/Plaintiff
(in S.A.Nos.883 & 885/2002)
- 1.Anthony Ammal ...1st Respondent/Plaintiff
(in S.A.No.884/2002)
- 2.The Special Officer,
Royapanur Panchayat,
Chinnasalem Panchayat Union.
- 3.Palanimuthu Udayar ...2nd & 3rd Respondents/
Defendants 4 & 5
(in all S.A.Nos)

COMMON PRAYER: Second Appeals filed under Section 100 Civil Procedure Code against the Common Judgement and Decrees dated 26.02.1999 made in A.S.Nos.37, 38, & 39 of 1998 on the file of the Principal District Court, Villupuram, in so far as confirming the Common Judgement and Decrees dated 21.04.1997 made in O.S.Nos.11, 12 & 13 of 1996 respectively on the file of the Subordinate Court, Kallakurichi and praying to set aside the same.

For Appellants/
Defendants 1 to 3 : Mr.M.VenuGopal
(in all S.A's) Special Govt. Pleader (C.S)

For 1st Respondent/
Plaintiff : Mr.S.Mohamed Yousuf
(in all S.A's)

COMMON JUDGEMENT

The first defendant/first appellant, who is the Head of the District administration, along with Divisional Development Officer and the Block Development Officer have filed these Second Appeals as they lost their cases before the Courts below.

2.The case of the Plaintiffs is as follows.

All the suits were filed by the victims who sustained injuries due to the collapse of water tank, thereby, a minor child of four years old died and other two persons were injured and they filed a suit claiming compensation of Rs.75,000/- (Rupees Seventy five thousand only) each who sustained injuries and Rs.1,00,000/- (Rupees One lakh only) for four year old child, who lost the life.

3. The written statement filed by the third defendant which was adopted by the first and second defendants are as follows:

The defendant did not deny the collapse of water tank. However, the said water tank collapsed not at the instance of these defendants. The said water tank was constructed by the fourth defendant and the other defendants sanctioned an amount based on the resolution passed by the fourth defendant. Due to the negligence of the fourth and fifth defendants, the Officials one and two are not responsible for payment of compensation. However, the resolution was passed by the fifth defendant, based on the proceedings in the particular Village. Based on the resolution the water tank was constructed with the Panchayat fund. However, the said resolution was ratified by the third defendant/Block Development Officer. Since the water tank was constructed through the Village Panchayat, the same was approved by the third defendant. However, the first defendant and the other defendants are not liable to pay any compensation. The water tank was constructed by the fifth defendant/Contractor. The said water tank collapsed within six months from the date of construction. Accordingly, this defendant is not liable to pay compensation, if at all the fifth defendant is responsible for the said occurrence.

4. The fourth and fifth defendants filed written statement which are as follows:

The fourth and fifth defendants admitted the construction of water tank and the water tank was constructed with quality materials like cement, sand etc., and the said water tank was constructed with in proper manner. On 29.09.1987, i.e., four or five days before the Vanniyar Community conducting a protest in a particular place within 100 kms, one bomb blasted. Due to the

bomb blast the said water tank was damaged on the particular day. When these victims were fetching water from the water tank, the water tank collapsed. The water tank collapsed not due to the improper maintenance, but for the above said reasons. Accordingly they denied the payment of compensation.

5. After trial, the Lower Court awarded a compensation as claimed by the plaintiffs therein as it is in the suits. Aggrieved by the same, the defendants/appellants filed the appeals before the Lower Appellate Court, the Lower Appellate Court also confirmed the decree passed by the Lower Court, against which, the present Second Appeals are filed.

6. When the case came up for admission before this Court on 27.06.2002, this Court framed substantial questions of law as follows:

"1) Is not the suit bad for mis-joinder of unnecessary parties?

2) Are the Courts below right in accepting the evidence of the parties with respect to the procedure contemplated in awarding contracts by the Panchayat, particularly in the absence of evidence from appropriate authorities?"

7. The learned Special Government Pleader for the appellants would submit that the particular Village Panchayat is in-charge of the second and third respondents who have control over the Panchayat. The second respondent, appointed a contractor for construction of water tank in the Royappanur Village.

8. After construction, on 29.09.1987 at about 11.00 a.m. when the victims were fetching the water from the water tank, at that time the water tank collapsed and fell down on the victims and a minor, i.e., four year old boy, namely Sankar died. Thereby, one of the victim sustained fracture on right leg and right foot and her child also died in the above said accident. Hence, they filed suits for compensation in the Lower Court, the Lower Court without appreciating the evidence and erroneously awarded the compensation in favour of the plaintiff/ 1st respondent herein. The whole responsibility of the construction of water tank as well as maintaining the water tank vested with the local Panchayat and the person who constructed the water tank is not impleaded as a party, and without arraying him as a party, the suit was filed. Without considering the defendants' evidence, the Courts below, concurrently awarded the amount in favour of victims, against which the present Second appeals are filed.

9. The learned counsel appearing for the first respondent would submit that the suit was filed after impleading all necessary parties. The first appellant/defendant is the District Collector, who is the administrator of entire District and the third appellant/defendant is the Block Development Officer. The Village President as well as the Contractor are arrayed in the suit as Respondents 2 and 3. The said Contractor constructed the water tank which is substantial for it. It is the duty of the District Collector to appoint the Block Development Officer as well as the Village President to periodically conduct inspection to find out as to whether the water tank is constructed properly or not and also as to whether the materials used by the contractor are perfect or not. Without conducting any periodical inspection, the water tank should not be opened for the general public.

10. Thereafter, the District Collector sanctioned the amount and settled the amount in favour of contractor and after handing over the water tank to the Panchayat, it was maintained by the local Panchayat. Only thereafter, the accident happened and hence the plaintiffs prayed for payment of compensation. The Trial Court after considering the elaborate materials and other facts awarded compensation of sum of Rs.75,000/- each for the injured persons and Rs.1,00,000/- for the child who lost the life. The same was confirmed by the Lower Appellate Court. In the Second Appeals, the substantial questions of law were framed and all the necessary parties were arrayed in the respective suits.

11. On a perusal of entire materials the 1st respondent/plaintiff impleaded all necessary parties including the District Collector as well as the Block Development Officer, Panchayat President and the Contractor. All the defendants are necessary parties, since all the defendants are involved for construction of water tank. The District Collector is the Inspector of Panchayat and the other authorities granted permission in respect of construction of water tank and no one is unnecessary parties in the suit, and all of them filed a written statement before the Lower Court. After considering the matter elaborately, the trial Court arrived at a conclusion and granted the compensation in favour of the first respondent.

12. However, in the present case, it is established as the other wing of Government and it is the duty to cast upon the Panchayat as well as the Block Development Officer, to monitor the day to day function of maintaining the public utility services like maintaining water tank, street lights and other facilities. The fourth defendant /the Village Panchayat constructed a water tank with approval of authorities. Thereafter, it collapsed and fell down. The general public, who

were fetching the water at the point of time sustained injuries and lost her son life. It is purely the dereliction of duty of the Village Panchayat and other officers and the District Collector, who are liable to pay the compensation to the Victims. Accordingly, the Courts below granted the compensation, in favour of the victims.

13. Both the Courts below, after elaborate consideration and by taking into account the issues involved, awarded compensation after appreciating the factual position. This Court is of the view that both the Courts below have concurrently held in favour of the plaintiffs. Accordingly, substantial question of law answered against the appellant.

14. On a perusal of the Lower Court as well as the Lower Appellate Court Judgements, I do not find any error in the Judgement and Decree passed by the Courts below.

15. Accordingly, the Second Appeals fail and the same are dismissed. The Common Judgement and Decrees dated 26.02.1999 made in A.S.Nos.37, 38, and 39 of 1998 on the file of the Principal District Court, Villupuram, confirming the Common Judgement and Decrees dated 21.04.1997 made in O.S.Nos.11, 12 and 13 of 1996 respectively on the file of the Subordinate Court, Kallakurichi are confirmed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ah/klt

To

- 1.The Principal District Judge, Villupuram.
- 2.The Subordinate Judge, Kallakurichi.
- 3.The Section Officer, V.R.Section, High Court, Madras.

- + 1 cc to Mr. A.G. Rajan, Advocate Sr.637
- + 1 cc to M/s. Sarvabhauman, Advocate Sr.1051
- + 1 cc to Special Government Pleader Sr.629

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MR(CO)

EU(27/03/2018)