



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10 .2009

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

A.S.NO. 385 OF 1998

1. Tamil Nadu State rep.
by the District Collector
Erode.

2. The Commissioner
H.R. & C.E. Administration Department
Nungambakkam High Road
Chennai-34.

..Appellants/Defendants
1 and 2

-Vs.-

1. T. Prakash
2. S.Sathyamoorthy

.. Respondents/Plaintiff
3rd Defendant

Appeal against the judgment and decree dated 17.4.1997 in O.S.No.563 of 1992 on the file of the learned Additional Subordinate Judge, Erode.

For Appellants : Mr.M.R.Murugesan
Spl.G.P. HR & CE

For Respondent : Mr.N.Manokaran
for R`1

R2 - Served - No appearance

J U D G M E N T

The unsuccessful defendants 1 and 2 in O.S.No.563 of 1992 on the file of the learned Subordinate Judge, Erode are the appellants in the first appeal.

2. The parties to this appeal are referred to as "plaintiff" and "defendants" in accordance with their status before the trial Court.

THE FACTS IN NUTSHELL:-

3. The suit in O.S.No.563 of 1992 was preferred by the plaintiff against the defendants claiming a sum of Rs.3.25 lakhs as damages.



4. In the plaint in O.S.No.563 of 1992, the plaintiff inter alia contended thus:-

(i) The plaintiff is a repatriate from Srilanka and settled in the Village of Sivagiri in Periyar District in the State of Tamil Nadu. The plaintiff was a student of an Elementary School and he was studying in fourth standard. He was a very brilliant and studious boy. Apart from his studies, he also used to help his father in his weaving and he was also involved in making handicrafts in association with his family which includes weaving baskets and other articles from palmyra leaves.

(ii) There is a local temple by name Sri Velayutha Swamy Temple, in Sivagiri Village. The car festival of the said temple used to be conducted every year. As usual the car festival was conducted in the year 1988 on 3rd May. The plaintiff went to see the Car Festival Celebrations and he was standing along the side of the road near Meenakshi Rice Mill. During the time of festival and especially while taking the car, the devotees used to throw eatables, fruits and money over the deity and the Car. People in the gathering would eagerly collect those articles as it would be considered as prasadam from the deity.

(iii) While the plaintiff was observing the car festival there was a commotion and people in the crowd began to run to save their lives in all directions. The temple car was running so swiftly without any control towards the place where the plaintiff was standing. In the said melee the plaintiff fell on the ground and in no time the temple car ran over his left leg and he was injured very seriously. The plaintiff was taken to the Government Hospital at Erode and he was admitted there. In the course of his treatment his left knee was amputated and as such he was disabled for ever. Subsequently he was taken to the Government Institute of Rehabilitation and Artificial Limb Centre, K.K.Nagar, Madras and an artificial limb was provided.

(iv) The incident was purely on account of the negligence of the temple authorities as well as police. Due to amputation of his left leg, his future life was spoiled and he was disabled to do any kind of work as a normal person. The incident could have been avoided in case the temple authorities and the police were diligent in controlling the crowd. Therefore the incident was solely on account of their negligence and as such they are liable to pay damages which was quantified at Rs.3.25 lakhs.

5. The second defendant has filed written statement, which was adopted by the first defendant. In the written statement it was contended thus:-



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(i) The car festival on 3.5.1988 was taken with security. The vehicle involved in the incident was the car carrying Lord Vinayaga. It was a small car and not a big Car as contended by the plaintiff. The small car used to be taken by the children. The devotees used to throw various articles and food grains at the car. The local public and the devotees rather chase the car for the purpose of collecting those articles. The plaintiff was also following the car and in his eagerness to collect the food grains and other articles he got injured. Therefore it was only on account of the negligence of the plaintiff, the whole incident happened for which the defendants are no way responsible. Accordingly the second defendant prayed for dismissal of the suit.

THE ISSUES:-

6. The trial Court on the basis of pleadings framed the following issues for consideration.

(a) Whether the plaintiff is entitled to maintain the suit claim against the defendants?

(b) Whether the second defendant is responsible for the incident?

(c) Whether the damages claimed is excessive?

(d) Whether the suit is bad for mis-joinder or non-joinder of necessary parties?

(e) To what other reliefs the plaintiff is entitled to ?

THE EVIDENCE:-

7. Before the trial Court P.Ws.1 to 3 were examined on the side of the plaintiff and Exs.A.1 to A.9 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B.1 to B.5 were marked.

8. The injured by name T.Prakash was examined as P.W.1. In his evidence he has stated that the incident was about 4.00 p.m. and he was standing on the side of the road near Meenakshi Rice Mill. The car festival was conducted on that day. While the car was in transit the public threw grains at the car and the devotees were attempting to take it as prasadam. When the car reached near the place where he was standing there was a commotion and in that commotion the car ran over his left foot. He was immediately taken to the Government Hospital, Erode where he was admitted and the treatment continued from 3.5.1988 to 10.5.1988. His left leg below the knee was amputated. He was later taken to the hospital at Madras. P.W.1 further deposed that no security arrangements were made by the temple authorities or the police. The temple car was taken in a rash manner, which was the sole reason for the incident in question. P.W.1 has also marked the hospital records as Exs.A.6 to A.9.



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9. P.W.2 - Ganesan was examined to prove the incident. P.W.2 is a resident of Sivagiri and he was an eye witness to the incident. According to P.W.2 the injured was standing on the side of the road near Meenakshi Rice Mill. Cereals and other grains were thrown at the car by the devotees. People who assembled there attempted to collect the articles. In the meantime he heard the hue and cry and it was found that P.W.1 was injured. The incident was within 150 meters away from his house. According to P.W.2 there was no police force to control the mob.

10. The father of the injured was examined as P.W.3. However he was not an eye witness. His evidence was with respect to the injury sustained by the plaintiff as well as the treatment given.

11. The Assistant Commissioner of Hindu Religious and Charitable Endowments Department was examined as D.W.1. He was not an eye witness. It was only after the receipt of summons he enquired about the matter. He was informed that the car was driven by the workers engaged by the temple.

12. The Executive Officer of the temple was examined as D.W.2. His term as Executive Officer was for the period from 1993 to 1996. He was also not an eye witness to the incident. According to D.W.2 it was not possible for the car to proceed at such a high speed as spoken to by P.Ws.1 and 2. D.W.2 also spoke about the offerings made by the public and the attempt of the devotees to collect those articles. D.W.2 further deposed that there used to be police for the purpose of controlling the mob. It was also elicited from him that the temple was a scheme temple and the expenses of the temple has to be approved by the Hindu Religious and Charitable Endowment Department.

13. The learned trial Judge opined that the plaintiff has proved the negligence of the defendants. According to the trial court there was no evidence on the side of the defendants to prove that P.W.1 was collecting grains and it was only in that attempt he sustained injuries. On the basis of the evidence of P.Ws.1 and 2, the trial court arrived at a factual finding that P.W.1 was standing near the road side and he was not engaged in collecting the articles from the temple car. According to the trial court, the left leg of the injured was amputated and as such it would be impossible for him to work like any other boy. Even for his day to day work he requires the assistance of third parties. The learned trial Judge determined the damages at Rs.2 lakhs and the defendants were directed to pay the said amount with interest at 9% per annum from the date of plaint. It is the said judgment and decree, which is impugned in the first appeal.



SUBMISSIONS:-

14. The learned Special Government Pleader appearing on behalf of the appellants/defendants contended that the incident in question was solely on account of the negligence of the plaintiff. According to the learned Special Government Pleader, the temple car was a very small one and it was impossible for the driver of the car to drive it at such a high speed in the midst of a large crowd. The learned Special Government Pleader contended that the plaintiff along with another boy chased the car and it was only on account of his negligence his leg came into contact with the car which resulted in causing injuries. The learned Government Pleader further contended that the State was not liable to pay compensation in such cases.

15. The learned counsel appearing on behalf of the plaintiff/first respondent contended that even according to the defendants the temple attracts several devotees every year during the car festival and as such sufficient precautions should have been taken by the temple authorities to control the crowd. The learned counsel further contended that the incident was solely on account of the negligence of the temple authorities and the police and as such they are liable to pay compensation to the plaintiff.

ISSUE IN THIS APPEAL:-

16. The following points arise for consideration in the present appeal.

(i) Whether the injury sustained by the plaintiff was on account of the negligence of the defendants?

(ii) Whether the plaintiff is entitled to claim damages from the defendants and if so the quantum?

DISCUSSION:-

17. The incident in question is not in dispute. It is only the nature of incident and the cause of the incident alone which are under dispute.

18. According to P.W.1, he was standing on the side of the road and very near to Meenakshi Rice Mill. P.W.1 was observing the car festival. It was only at that point of time, the car came in a highly negligent manner and hit him, which resulted in causing injuries to his leg. The evidence of P.W.1 was supported by P.W.2, who was also an eye witness. There was nothing elicited in the cross examination as to whether the evidence tendered was false and that the incident was solely due to the negligence of the plaintiff. There was no attempt made by the defendants to prove that the plaintiff alone was negligent and he was practically chasing the car. The



evidence of P.Ws.1 and 2 seems to be trustworthy and consistent. Nothing was suggested to P.W.2 that he was deposing falsely so as to help the plaintiff to claim damages.

19. According to P.W.2, the temple car was driven by the workers engaged by the temple. However the said fact was denied by D.W.2. When P.W.2, who is residing about 150 meters away from the temple, deposed before Court that the incident was only on account of the negligence of those who were on the wheels at the material time and those drivers were all engaged by the temple, the defendants should have examined the then Executive Officer or the other trustees, who were in-charge of the temple during the material time. However very strangely the witnesses examined on the side of the defendants were not aware of the incident and they were not in the picture. Therefore their evidence can only be hearsay.

20. There was also no attempt on the side of the defendants to prove that such an injury was possible only in case the plaintiff chased the vehicle in his eagerness to collect the materials. The nature of injury sustained by the plaintiff clearly shows that the temple car came so negligently and hit against him. The averments as contained in the plaint was amply supported by the evidence adduced on the side of the plaintiff. There was nothing on record to disbelieve the evidence of P.Ws.1 and 2. The fact that the plaintiff sustained grievous injury also shows the magnitude of the incident.

21. Therefore it can be safely concluded that the incident was only on account of the negligence of the defendants. Accordingly, the first point is decided against the defendants and in favour of the plaintiff.

22. It is found from the pleadings and evidence that the temple car festival used to be held every year. It was also the evidence of the witnesses that there used to be heavy crowd during the time of car festival. Devotees, who assemble there used to throw various kinds of articles to the temple car with a view to please the god. Similarly, the devotees would run at the car for the purpose of collecting the articles thrown from the temple car as it was considered as gift from god. Therefore the defendants being the officials in charge of the temple should have taken reasonable care in controlling the mob. They cannot plead helplessness in such situations.

23. It was in the evidence of P.W.2 that there was absolutely no police force in the scene. When there was such a big crowd assembled to watch the temple festival which fact was well known to the defendants themselves they should have taken the assistance of police to control the mob. The defendants should have erected a protective umbrella between the car and the devotees so as to avoid any kind of untoward incident. However no such reasonable care was



taken by the defendants. Therefore the defendants alone were negligent and there was no contributory negligence on the part of the plaintiff.

24. The temple is controlled by the Hindu Religious and Charitable Endowments Department. In the written statement, it was contended that it is a scheme temple. The temple was also having trustees. As per Section 35 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the trustees of the religious institution was entitled to incur expenditure for securing the health, safety or convenience of disciples, pilgrims or worshippers visiting the institution. The Hindu Religious and Charitable Endowments Department was constituted not only for the administration of the temples and to collect the income but also for the orderly maintenance of the temples which includes the safety and security of the worshippers. When the Act itself makes provision for safeguarding the health and safety of the devotees, the defendants should have taken the assistance of the police to ensure safety to the pilgrims, who visit the temple during the time of car festival. Therefore there was total negligence and carelessness on the part of the defendants, which alone contributed to the incident in question. The first point is accordingly answered against the defendants.

25. The next point relates to the claim of compensation as well as the amount of compensation.

26. The plaintiff was aged about 13 years at the time of incident. He was studying in fourth standard during the material time. The evidence adduced clearly shows that his left leg was amputated just below the knee and an artificial limb was provided by the Government Hospital. In fact the injury and the treatment taken by the plaintiff was not denied by the defendants. The plaintiff was in the Government Hospital from 3.5.1988 to 10.5.1988. Subsequently he continued his treatment at Madras and from the evidence of P.W.3 it was confirmed that P.W.1 took treatment for about four months. The plaintiff lost his future on account of the incident. He sustained permanent disablement and it would be impossible to run a normal life as a youth on account of loss of his left leg. Since the plaintiff sustained permanent disability and as no disability certificate was produced to show the extent of disability the provisions of the Workmen's Compensation Act has to be invoked to determine the actual extent of disability.

27. As per Schedule I of the Workmen's Compensation Act, 1923 amputation below knee with stump exceeding 8.89 cms. but not exceeding 12.70 cms. was estimated to be having disability of 50%. Therefore the disability of the plaintiff has to be determined at 50%.



28. The next question is about the quantum of compensation payable to the plaintiff.

29. The Honourable Supreme Court in R.K.MALIK v. KIRAN PAL (2009 (8) SCALE 451) considered the general principles governing payment of compensation in accident cases and observed thus:-

"10.Undoubtedly, the compensation in law is paid to restore the person, who has suffered damage or loss in the same position, if the tortuous act or the breach of contract had not been committed. The law requires that the party suffering should be put in the same position, if the contract had been performed or the wrong had not been committed. The law in all such matters requires payment of adequate, reasonable and just monetary compensation.

11. In cases of motor accidents the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.

12.However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely. To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life etc. The Act provides for payment of "just



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compensation" vide section 166 and 168. It is left to the courts to decide what would be "just compensation" in facts of a case.

13. For calculating pecuniary loss or loss of dependency, this Court has repeatedly held that it is the multiplier method which should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependents, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependents. Needless to say, uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases."

30. It is true that there is no straight jacket formula with respect to payment of compensation in a case like this. However there are provisions in the sister Enactment like the Motor Vehicles Act for the purpose of assessing the compensation. Section 163-A of the Motor Vehicles Act contains the guidelines for determining compensation. Therefore the structured formula as per Section 163-A of the Motor Vehicles Act could be taken as the basis for determining the compensation in a case like this.

31. As per II Schedule to the Motor Vehicles Act read with Section 163-A of the Act the notional income for those who had no income prior to the accident has to be taken at Rs.15,000/- per annum. The injury sustained by the plaintiff is permanent in nature and the same has to be taken as 50% as per Schedule I of the Workmen's Compensation Act.

32. The notional income is taken as Rs.15,000/- per annum. The plaintiff was below 15 years and as such multiplier of 15 can be taken to arrive at the compensation. Therefore the compensation would be a sum of Rs.2,25,000/-. However the learned trial Judge has granted only a sum of Rs.2 lakhs. The said amount appears to be very



reasonable in the facts and circumstances of the case. Accordingly the second point is answered.

DISPOSAL:-

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33. In the result, the judgment dated 17.4.1997 in O.S.No.563 of 1992 is confirmed and the appeal is dismissed. No costs.

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

Tr/

To

1. The Additional Subordinate Judge,
Erode.
2. The Section Officer
VR Section, High Court
Madras-104.

A.S.No. 385 of 1998

RS (CO)
EM/4.11.09