

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.01.2020
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
A.S.No.323 of 2018
and
C.M.P.No.8179 of 2018

United India Insurance Co. Ltd.,
Oriental Theatre Complex,
77-A, Arunachala Asari Street,
Salem - 1.

...Appellant/2nd Defendant

Vs.

1.Janarthanan

...1st Respondent/Plaintiff

2.M/s.Paravasa Ulagam,
National Highways Road, NH-7,
Trichy Main Road, Keeranur,
Rasipuram Taluk,
Namakkal District.

...2nd respondent/1st defendant

3.The State of Tamil Nadu,
Rep. by its District Collector,
Collectorate, Salem - 1.

...3rd Respondents/3rd defendant

Prayer: Appeal Suit filed under Section 96 of CPC r/w Order 41,
Rule 1 of CPC to allow the above appeal and setting aside the
Judgement and Decree dated 10.04.2017 made in O.S.No.119 of 2015
on the file of II Additional District Judge, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.L.Chandra Kumar for R1
Mr.S.Vinod for R2
No Appearance for R3

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JUDGEMENT

The Appeal Suit is directed against the Judgement and
Decree dated 10.04.2017 passed in O.S.No.119 of 2015 on the file
of the learned II Additional District Judge, Salem.

2.The suit was instituted by the first respondent Mr.Janarthanan claiming damages for the accident took place in the second respondent's theme park, which is an entertainment amusement park. The first respondent/plaintiff has stated in the plaint that he was studying M.B.A. 1st year in A.V.S. College, Karipatty, Valappady Taluk. The plaintiff Janarthanan along with his friends Gopalakrishnan, Saranraj, Nirmal, Anbalagan and Tamilmani went to the second respondent/first defendant theme park on 12.12.2014 at about 1.30 P.M. They played the games available in the said theme park and the plaintiff played slide game and sustained fracture of his spinal cord, since there was no sufficient water in the tank. The first defendant did not maintain the slide sports game. Had it was maintained with full of water, the accident would not have occurred. Thus, the accident occurred due to the negligence and poor supervision on the part of the first defendant and due to the accident, the plaintiff's C6 body got fracture with cord contusion at same level. Posterior ligamentous injury. C6 Burst fracture with Asia A neurology. Loss of power in both hands and lower limbs, C6 corpectomy, C5-C7 Fusion with Auto iliac bone craft and posterior cervical locking plate fixed C6-C6-CJ discectomy done and corpectomy was done. Now, the plaintiff is unable to walk and he was admitted on 13.02.2014 at Ganga Hospital, Coimbatore and discharged on 22.04.2014. He spent nearly Rs.2 lakhs towards treatment. The plaintiff suffered permanent disability and thus, the plaintiff caused a legal notice to the defendants on 25.07.2014 claiming compensation. The defendants received the notice, but failed to pay the amount. Thus, the plaintiff was constrained to issue the suit for damages.

3.The first defendant theme Park M/s.Paravasa Ulagam filed a written statement denying the allegations set out in the plaint. It is contended by the first defendant that the theme park was being maintained properly and the alleged injuries sustained by the plaintiff are also denied. They have disputed the very accident occurred in the theme park. The second defendant United India Insurance Company, who is the appellant in the present suit, also filed a written statement stating that the management of the theme park had closed the U slide and body slide games on the eastern side of the Paravasa Ulagam. It is also stated that it was banned to play in that places and no water was filled in the tank. Suitable boards were also placed thereby intimating the same. When the plaintiff and his friends went to play there, one Ponnammal, who was in-charge of the theme park, stopped them and informed about the ban to play U slide and body slide water sports and no water was filled. It is stated by the Insurance Company that the plaintiff committed

negligence in playing the banned games and therefore, the Insurance Company need not pay the policy amount.

4.The Trial Court framed issues whether the plaintiff is entitled for the said claim from the defendants.

5.On the side of the plaintiff P.W.1 to P.W.3 were examined and Ex.A.1 to A.13 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 and Ex.X.1 and Ex.X.2 were marked.

6.With reference to Issue No.1 and 2, the Trial Court made a finding that it is an admitted fact that the plaintiff and his friends went to the first defendant's amusement park and played water games and when the plaintiff played body slide game, he sustained injury in his spinal cord and for the disability, he has come forward with the suit claiming compensation of Rs.15 lakhs. P.W.1 Janarthanan plaintiff and P.W.3 Gopalakrishnan, a friend of P.W.1 have deposed that they went to the amusement park and played U slide and body slide games and there was no sufficient water in the tank and therefore, the plaintiff had sustained injury in his spinal cord and the first defendant's employees alone were responsible for the said incident.

7.The plaintiff had marked the First Information Report registered by Vennanthur Police as Ex.A.1 and a criminal case was registered on the complaint given by the plaintiff's father Mr.Pathmanaban. To prove the injuries as well as the treatment and the disability, the plaintiff had produced Ex.A.2 wound certificate, Ex.A.3 and Ex.A.4 discharge summary and Ex.A.5 disability certificate. Based on the above documents marked, the Trial Court found that the plaintiff was admitted in Ganga Hospital, Coimbatore on 13.02.2014 and discharged on 24.02.2014. Again he was admitted on 02.05.2014 and discharged on 22.05.2014. Ex.A.5 disability certificate shows that the percentage of disability suffered by the plaintiff comes to 75%. Injury sustained by the plaintiff has not been disputed seriously by the other parties to the suit. To prove the disability, the plaintiff has examined P.W.2 Dr.Sivaprasadh. The said Doctor deposed that after examination of the plaintiff, he assessed the disability as 89.90%. The said disability certificate and X-ray have been marked as Ex.A.12 and A.13.

8.Mr.K.R.R.Sundaram owner of the first defendant theme park had been examined as D.W.1 and he reiterated that only due to the negligence on the part of the plaintiff and his friends, the incident occurred. In order to prove the negligence on the part of the plaintiff, the second defendant summoned and examined one Mr.Srinivasan, Sup-Inspector of Police as D.W.2. The police,

after investigation, have closed the case as further action dropped. There is a mention in the written statement filed by the second defendant as well as in Ex.X.2 final report that one Ponnammal, who is in-charge of the first defendant theme park, had warned the plaintiff and his friends not to play U slide and body slide water games, but despite her warning, they entered and the plaintiff sustained injuries.

9.This Court is of the considered opinion, if certain games in the theme parks are banned, it must be properly closed and sealed by the management. Once such games are left open without any lock, then normally the young people will be tempted to play the games. Therefore, though the instructions given by one Ponnammal had been violated by the plaintiff, the same cannot be taken as against the plaintiff, in view of the fact that the said Ponnammal also been not examined as witness before the Trial Court. Even in the presence of such evidence, it is to be established by the theme park that the game was properly closed or dismantled. Once the game is kept open, then they cannot prevent the persons to utilise the same and under these circumstances, these aspects were not established by the management and therefore, the Trial Court is right in coming to the conclusion that the negligence, if any, caused on the action of the plaintiff's act, the compensation cannot be denied at all. This apart, the management of theme park also has not established that the banned game was closed and not made available for the customers. Therefore, the Trial Court has not committed any error in appreciating these facts, as well as the documents.

10.The Trial Court further found that the first defendant, as the owner of the amusement park, must maintain all aspects of the park in a safe condition for a person who is admitted to the park as a paying customer. If the first defendant knows or should know the dangerous condition, he or she is under duty to warn that person. Failing to live up to these duties will make the first defendant liable to the injured person. This being the findings, this Court is of the considered opinion that the plaintiff could establish that the accident took place on account of the improper maintenance of the theme park by the first defendant. The Trial Court ultimately found that the plaintiff is entitled for just compensation.

11.The Trial Court had further gone into the quantum of compensation to be granted to the plaintiff. In this regard, the Trial Court found that the age of the injured plaintiff at the time of accident was 21 years and he was studying M.B.A and his identity card was produced and marked as Ex.A.10. Fees paid

receipt is produced and marked as Ex.A.11. Age and education of the plaintiff has not been denied by the defendants also. Therefore, the Trial Court followed the guidelines issued by the Hon'ble Apex Court as well as the High Court, considering the age status as well as the educational qualification, etc. Multiplier for the age group between 21 and 25 as per Sarala Verma's Case is 18. Accordingly, the amount of compensation was calculated as Rs.5,000/- x 12 x 18 x 89/100 = Rs.9,61,200/- The said sum is awarded as compensation under the head 'loss of permanent disability'. While the petitioner was in hospital, he would have suffered unhappiness, agony and frustration in life. Therefore, the Trial Court granted Rs.50,000/- towards 'pain and sufferings'. For nutritious food during the period of treatment, the Trial Court awarded Rs.25,000/- towards 'extra nourishment'. The medical bills are for Rs.2,87,796.16/- (Ex.A.6). In the bill dated 18.12.2014 which is for Rs.5,300/-, after considering all these aspects, the Trial Court finally awarded total compensation of Rs.13,18,200/-, which is to be paid with interest at 7.5% per annum from the date of suit till the date of realization and costs.

12.The learned counsel appearing on behalf of the appellant mainly contended, even as per the legal notice issued by the plaintiff, the insurance claimed was Rs.10,00,000/-. The perusal of the legal notice (Ex.A.7) dated 25.07.2014 also reveals that the Insurance Company is liable to pay compensation amount of Rs.10,00,000/-. The learned counsel is also of the opinion that the appellant is not liable to pay more than the policy amount. It is brought to the notice of this Court that the policy amount of Rs.10,00,000/- had already been deposited before the Trial Court, pursuant to the interim order passed by this Court. Therefore, the compensation is to be restricted as far as the appellant is concerned.

13.There is a force in the contention, in view of the fact that the Trial Court has committed an error in not dividing the compensation and ultimately directed the defendants to pay the compensation. In fact, the amount of compensation calculated is to be paid jointly and severally both by the first and second defendants. The second defendant Insurance Company, who is the appellant herein, is liable to pay the policy amount and the balance amount of consideration is to be paid by the first defendant theme park.

14.This Court do not find any infirmity or perversity in the total compensation arrived by the Trial Court. The only error is that the amount of compensation is directed to be paid by the appellant, which is in violation of the earlier

conditions and to that extent, the Judgement and Decree of the Trial Court is to be modified.

15. Accordingly, the Judgment and Decree dated 10.04.2017, passed in O.S.No.119 of 2015 is modified to the extent that the appellant United India Insurance Company is liable to pay the policy amount of Rs.10,00,000/- along with interest at the rate of 7.5% per annum as fixed by the Trial Court and the balance amount of Rs.3,18,200/- is directed to be paid by the second respondent M/s.Paravasa Ulagam to the first respondent Mr.Janarthanan, within a period of 3 months from the date of receipt of a copy of this Judgement along with interest at the rate of 7.5% per annum from the date of filing of the suit till the date of realization of the amount.

16. Accordingly, the Appeal Suit in A.S.No.323 of 2018 stands allowed partly. No costs. Consequently, connected miscellaneous petition is closed.

17. At this juncture, the learned counsel for the appellant made a submission that the liability of the appellant Insurance Company had already been deposited, i.e., Rs.10,00,000/-, together with 7.5% interest per annum. The first respondent Mr.Janarthanan is permitted to withdraw the said amount of compensation by filing an appropriate application before the Trial Court and in the event of filing any such application, the Trial Court is directed to disburse the said amount, within a period of 4 weeks from the date of receipt of a copy of the application.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

hvk

To

1.The II Additional District Judge,
Salem.

6/7

Copy to

The Section Officer
VR Section
High Court
Madras

+2 ccs to Mr.S.Vinod Advocate sr2557
+1 cc to Mr.L.Chandrakumar Advocate sr2697
+1 cc to Mr.S.Arunkumar Advocate sr2669

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