

In the Court of Appeal of the Democratic  
Socialist Republic of Sri Lanka

CA APPEAL No: 1315/96F

DC Gampaha: 38086/M

Attorney General,  
Colombo

**Plaintiff-Appellant**

Vs

R A P Herath,  
H M Amarasiri Bandara

**Defendant Respondents**

Before: A W A Salam J

Counsel: Janak De Silva SSC for the Plaintiff-Appellant.

Defendant-Respondents absent and unrepresented.

Argued: 10.01.2011

Written submissions tendered on : 24.02.2011

Decided on: 11.03.2011.

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A W Abdus Salam, J

This appeal arises from the judgment dated 16 September 1996. By the said impugned judgment, the learned district judge dismissed the plaintiff's action inter alia for failure to produce a certified copy of a document and in any event being influenced by for the erroneous approach that the conviction of the driver in a negligent driving case in the Magistrate's Court is irrelevant to the civil claim.

The impugned judgment in this case had been delivered at the conclusion of an *ex parte* trial against the defendant-respondents. It is trite law that even in an *ex parte* trial, the judge must act according to law and ensure that the relief claimed is due in fact and the law, and must dismiss the plaintiff's action if he is not entitled to it and an *ex parte* judgment cannot be entered without a hearing and adjudication<sup>1</sup>.

The Senior State Counsel contends that the learned trial judge had erred in law when he rejected the document marked as P1 on the basis that it is only a photocopy. As a matter of fact P1 was allowed to be marked in evidence by the trial judge at the *ex parte* trial without any objection. The plaintiff-appellant had not been asked to tender certified copy either. As was held in the case of *Sri Lanka Ports Authority and another vs Jugolinija - Boal East* (1981) 1 SLR 18, when at the close of the case documents are read in evidence, if no objection is taken to the documents produced, they are

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<sup>1</sup> Vide *Sirimvo Bandaranayaka Vs Times of Ceylon Ltd* 1 SLR 1995 22

evidence for all purposes of the law and therefore the learned district judge has clearly erred in rejecting P1.

Further in the light of the decision in Sinniah Nadaraja Vs Ceylon Transport Board 79 2 NLR 481 the plea of guilt or the conviction of the driver in the corresponding Magistrate's Court case is very much relevant, and the learned district judge has misdirected himself when he refused to consider the evidence relating to the outcome of the Magistrate's Court case stemming from the same incident.

In the instant matter, the plaint clearly disclosed that the 2<sup>nd</sup> defendant was found guilty in the Magistrate's Court proceedings in respect of the same accident and the reference to that matter has been made in the oral evidence adduced before the learned district judge.

In the circumstances, I am of the opinion that the learned district judge has erred himself with regard to important matters of law. This warrants the judgment being set aside and I accordingly, set aside the judgment and direct that the exparte trial be taken up afresh and judgment delivered according to law and steps taken to cause the copy of the decree be served on the defendants.

There are shall be no costs.

Judge of the Court of Appeal