

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

C.A. Case No. 928/2000 (F)
D.C. Avissawella Case No.
20603/M

R.B. Leelawathie Ramachandra,
No. 539, Bodhimaluwa, Parakaduwa

PLAINTIFF

-Vs-

R.Rathnasekara
Bodhimaluwa, Parakaduwa

DEFENDANTS

AND NOW BETWEEN

R.Rathnasekara
Bodhimaluwa, Parakaduwa

DEFENDANT-APPELLANT

-Vs-

R.B. Leelawathie Ramachandra,
No. 539, Bodhimaluwa, Parakaduwa

PLAINTIFF RESPONDENT
(DECEASED)

1. Kabagamu Jayasinghe
Arachchilage Kamalawathie
No. 365/2, Mitipola, Eheliyagoda.
2. Kabagamu Jayasinghe
Arachchilage Somawathie
Ihalawatta, Bodhinimaluwa,
Parakaduwa.

3. Kabagamu Jayasinghe
Arachchilage Podimanika
Ihalawatta, Bodhinamaluwa,
Parakaduwa.

4. Kabagamu Jayasinghe
Arachchilage Premadasa
Ihalawatta, Bodhinamaluwa,
Parakaduwa.

5. Kabagamu Jayasinghe
Arachchilage Wimalawathie
Ihalawatta, Bodhinamaluwa,
Parakaduwa.

SUBSTITUTED-PLAINTIFF-
RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J
COUNSEL : Rohan Sahabandu P.C with Hasitha Amerasinghe
for the Defendant-Appellant
Respondent absent and unrepresented

Decided on : 03.09.2018

A.H.M.D. Nawaz, J.

The Plaintiff Respondent instituted this action in November 1997 claiming a sum of Rs 200,000 as damages payable to him out of an accident which involved the Defendant Appellant. The plaint averred that on or about 22.12.1995, around 5 AM, when the Plaintiff was crossing the road, the Defendant Appellant riding a bicycle negligently without lights and recklessly collided with him causing damage. The defendant in his answer, whilst controverting the matters raised,

specifically stated that on this particular day and at that particular time, he was not involved in any accident with the Plaintiff.

The trial began with seven issues and it has to be noted that the Defendant Appellant raised no issues. One Dr Alwis gave evidence on behalf of the Plaintiff and produced medical reports pertaining to the Plaintiff. However the fact remains that he was not the doctor who treated the Plaintiff. The Plaintiff did not give evidence but led evidence of his daughter in law and a police officer and thereafter the Plaintiff closed her case leading in evidence documents P1-P6. The defendant did not give evidence.

The learned District Judge of *Avissawella* pronounced judgement on 20.10.2000 and held in favour of the Plaintiff granting her damages in a sum of Rs 100, 000.

The learned President's Counsel for the Defendant-Appellant submitted that the witness for the plaintiff stated that her mother in law was not crossing the road at that time, but was standing on the edge of the road. The learned counsel pointed out that the plaintiff stated that whilst she was crossing the road, the defendant's push bicycle struck her. He argued therefore that what the witness stated in court was false. This material contradiction has not been taken into consideration by the learned District Judge-so argued the learned President's Counsel. The witness had not given a statement to the police and according to her evidence, she had not seen the accident, but had only seen the cyclist and the cycle on top of her mother in law.

As far as the police testimony was concerned, he was not the man who recorded the statement. There was no evidence recorded whether in fact the push cycle had lights on it.

The learned President's Counsel further submitted that there was no evidence of negligence or having ridden the bicycle recklessly. In such circumstances, he

argued the learned District Judge could not have given judgement in favour of the plaintiff.

As for compensation, the learned President's Counsel submitted that the compensation awarded namely Rs 100, was excessive. The learned President's Counsel further submitted that the learned District Judge has not given any reasons as to why he was awarding such an excessive compensation. There is a lack of computation of the quantum and therefore he argued that the decision of the learned District Judge must be set aside.

The Plaintiff was 80 years of age when this accident occurred. Even though the Plaintiff did not give evidence, there was an eyewitness account narrated to court and the witness was giving direct evidence of what she saw, heard and observed. The absence of the Plaintiff from the witness stand does not detract from the burden of proof which is the civil standard of a preponderance of evidence. The evidence need not emanate from the Plaintiff. Section 134 of the Evidence Ordinance clearly lays down that no particular number of witnesses is needed to prove a fact in issue. In the case of *Malluwa v State of Madhya Pradesh* AIR 1976 S.C 989 it was held that evidence has to be weighed, but not counted. The question before Court was whether there was a breach of duty of care owed to the users of the road. Whether one walks on the crossing or stands as a mute bystander, a duty of care is owed to them by riders of vehicles and when there is a breach of duty of care, negligence ensues.

Though the Plaintiff did not give evidence, the eye witness clearly stated that she saw the cycle and the cyclist on top of her mother in law. The cyclist was identified as the Defendant Appellant. If a cyclist veers off the road and strikes a bystander who was mutely standing on the age of the road, this is a case of *res ipsa loquitur* and the defendant owed an explanation to Court. This was not forthcoming and therefore this raises a *prima facie* case of negligence. The item of

evidence, though presumptive, turns conclusive when there is no explanation to rebut the *prima facie* case of negligence. So I would not fault the learned District Judge of Avissawella for finding negligence against the defendant.

The doctor gave evidence as to the injuries sustained and the treatment given to the plaintiff and even though there was no computation of the quantum, the trier of facts is not precluded from awarding a victim of a road accident damages which he thinks is reasonable. The absence of a mathematical computation of quantum does not vitiate the judgement and in my view an award of Rs 100,000 was fair and reasonable having regard to injuries and pain of mind caused to an 80 year old lady.

So I would affirm the judgment dated 20.10.2000 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL