

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

C.A. Case No. 920/2000 (F)

D.C. Kuliyaipitiya Case No.
10941 / M

Handun Pathiraja Mudiyanseelage Gayathri
Niroshani Pathiraja,

Pahala Dematawa,

Moragane.

By Guardian *-ad-litem*,

Handun Pathiraja Mudiyanseelage Siripala,

Pahala Dematawa,

Moragane.

PLAINTIFF-APPELLANT

-Vs-

1. Aluth Muhandiramlage Siripala,

Wendesiwatta,

Hettipola.

2. A.D. Sirisena (Deceased),

Dahanek Gedara,

Munamaldeniya.

DEFENDANT-RESPONDENTS

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

COUNSEL : M.C. Jayarathne with M.D.J. Bandara for the
Plaintiff-Appellant.

Chathura Galhena with Manoja Gunawardena
for the Substituted-Defendant-Respondents.

Argued on : 06.07.2015
Written Submissions : 02.11.2015 (For the Defendant-Respondents)
12.11.2015 (For the Plaintiff-Appellant)
Decided on : 05.08.2016

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

The Plaintiff-Appellant (hereinafter sometimes referred to as “the Plaintiff”), being a minor, instituted this action on 05.05.1994, through her next friend, her father, against the 1st and 2nd Defendants-Respondents (hereinafter sometimes referred to as “the Defendants”) in the District Court of Kuliypittiya, claiming a sum of Rs.500,000/- being damages caused to her person and for the loss of care of her mother, due to an accident that occurred on or about 21.08.1992 by the negligent act of the 1st Defendant, who was employed as driver of the lorry belonging to the 2nd Defendant.

The Defendants filed answer on 20.06.1995 denying the claim of the Plaintiff and stating that the rider of the motor cycle bearing No.91-5340 on which the Plaintiff and her mother were riding the pillion was negligent and the accident occurred due to the contributory negligence of the said rider of the motor cycle and that, in any event the damages claimed by the Plaintiff is excessive. The Plaintiff’s mother died in consequence of the accident.

When the case was taken up for trial on 30.06.2000, jurisdiction of the Court and the fact that the 2nd Defendant was the owner of the lorry bearing No.41 Sri 3176 of which the 1st Defendant was the driver on the date of the accident, i.e., 21.08.1992 was admitted. Thereafter, the Plaintiff raised 1-11 issues and the Defendant raised 11-14, and two additional issues 15 and 16 were also raised by the Defendants. The Plaintiff, her father and two other persons gave evidence on behalf of the Plaintiff and on

behalf of the Defendants, the 1st and 2nd Defendants testified. Thereafter the parties closed their cases. The learned Additional District Judge delivered his Judgment on 23.11.2000 in favour of the Plaintiff, granting damages in a sum of Rs.75,000/- for her personal injuries and for the disruption caused to her educational activities, but rejected the claim for loss of care and support of her mother. Issue No.8 is in respect of the loss of care and support of the mother which has been answered in the negative. Being aggrieved by this judgment, the Plaintiff has preferred this appeal to this Court.

When the accident occurred on 21.08.1992, the Plaintiff was about 8 years old and a minor child, who and another daughter were looked after by their deceased mother, and she was employed as a clerk in the Open University at Nawala, drawing a monthly salary of Rs.3,000/-. According to the evidence, the deceased mother of the Plaintiff, with this meager salary had been looking after the two children.

As a result of the accident, the Plaintiff was hospitalized for about three months and thereafter she was unable to go to school and do other work. During this period of six months she had lost her education by not attending the school. The Plaintiff has claimed a sum of Rs.100,000/- as damages for her personal injuries and another sum of Rs.400,000/- for loss of maternal care and support of her mother due to her mother's death, altogether the Plaintiff has prayed for Rs.500,000/- as damages from the Defendants.

Contributory Negligence

In cross-examination of the Plaintiff, the defence tried to put the blame on the Plaintiff for travelling as a pillion rider with her mother and she was to share contributory negligence. Considering the age of the Plaintiff at the time of the accident, she cannot be considered a party to contributory negligence. If at all contributory negligence could be alleged, it must be alleged against the rider of the motor cycle, Kumaradasa, but the defence tried to put the blame on the Plaintiff and her deceased mother. Furthermore, no issue on contributory negligence was raised at the trial by the defence.

Since the Plaintiff and her mother were pillion passengers on the motor cycle, the lorry driver who came behind them should have been cautious and watchful. He had knocked the cycle by his careless and negligent driving and caused the death and injury respectively to the plaintiff's mother and the Plaintiff. The 1st Defendant who drove the lorry behind the motor cycle is guilty of negligence. According to the evidence the lorry had gone without stopping.

Conviction is Relevant

A case had been filed by the police in the Kuliyaipitiya Magistrate's Court in case No.98954 against the 1st Defendant and in that case the 1st Defendant had pleaded guilty to 1st, 2nd and 3rd charges and was fined Rs.1,000/- by the Magistrate.

It is laid down that a conviction in a Magistrate's Court case is relevant to a civil action instituted against the same driver in respect of the same accident. In the case of *Sinniah Nadaraja v. The Ceylon Transport Board* 1979(II) N.L.R. 48, the Supreme Court held that where the driver of a vehicle (2nd Defendant) is sued along with his employer (1st Defendant) for the recovery of damages resulting from an accident in which the Plaintiff suffered injuries by being knocked down, a plea of guilt tendered by the driver, when charged in the Magistrate's Court in respect of the same accident, is relevant as an admission made by him and ought to be taken into consideration by the trial judge in the civil suit.

The above judgment was followed by this Court in the case *Rosairo v. Basnayake* 2001(1) Sri L.R. 34, where Abdus Salam J. observed, "A plea of guilt is most relevant and ought to be taken into consideration in assessing the plaintiff's case and further a plea of guilt on a charge of failing to avoid an accident by the driver cannot be lightly ignored in considering as to whose negligence it was which caused the accident." See Section 41(A) (2) of the Evidence ordinance.

Having pleaded guilty to the three charges in the Magistrate's Court Case No.98954 by the 1st Defendant, the defence has no right to suggest contributory negligence on the part of the rider of the motor cycle or on the pillion passengers. On the admission

of guilt by the 1st Defendant, it is admissible evidence that the accident occurred due to the sole negligence of the 1st Defendant.

The Plaintiffs father has also filed another civil action claiming damages from the Defendant in D.C. Kuliapitiya Case No.10816 in which he was awarded a sum of Rs.350,000/- as damages for loss of his wife and for funeral and other expenses. The Plaintiff's father admitted in his evidence that he asked for damages in the case No.10816 including loss of care of the wife towards the children. But the Plaintiff in the present case is claiming Rs.400,000/- purely for her own care and support of the mother. Though in her evidence she has not given clear evidence on the question of maternal care and support for herself separately, the evidence of her father can be considered in this respect. The plaintiff's father has given sufficient evidence with regard to the role played by his deceased wife in looking after the children, the Plaintiff and her sister.

The death of the mother will give rise to an action against a person who negligently caused his/her mother's death. If it is proved that before the death of the mother, she had been supporting the claimant, the claimant is entitled to claim damages from the Defendant. In this case it is established that before the death of the Plaintiff's mother, she had been looking after the children in their want of necessities.

In *Lokuge and Another v. Siriwardene and Another* 1995(2) Sri L.R. 150, the 1st Plaintiff, an unmarried daughter and the 2nd Plaintiff, a minor son, claiming to be dependents of the deceased mother, and arising out of loss of support, instituted this action claiming Rs.150,000/- as damages on the ground that their mother died when a bus in which she was travelling met with an accident. The District Court granted the said damages to the 1st and 2nd Plaintiffs. On appeal the Court of Appeal varied the award by disallowing the claim of the minor son for the reason that he was 18 years of age at the time of the accident and entitled to an orphan's allowance until the age of 21 years; and thereafter obliged to support himself, and awarded Rs.50,400 to the Plaintiff.

In the instance case, the Plaintiff was 8 years old at the time of the accident (21.08.1992) and when she filed the action on 05.05.1994 she was 10 years old. Taking into consideration of the age of the Plaintiff and other related matters with regard to the loss of her mother's care and support, I am of the view that the Plaintiff has actually lost that care and support of her mother at her tender age and therefore she is entitled to reasonable damages which I assess at Rs.100,000/-. I do not want to disturb the finding of the learned District Judge as to the amount of Rs.75,000/- awarded for the Plaintiff's personal injuries and educational disturbances caused to her as a result of the accident in this case.

For the reasons stated above I hold that the Plaintiff is entitled to Rs.100,000/- being damages for loss of support of her deceased mother and Rs.75,000/- being damages for her personal injuries, totaling in all a sum of Rs.175,000/-. Subject to this variation I affirm the judgment of the District Court and allow this appeal.

JUDGE OF THE COURT OF APPEAL