

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

Sawalappulige Richard Fernando,
No. 49 / 1, New Market,
Katunayake.

Plaintiff

C.A. No. 947 / 2000 F

Vs.

D.C. Negombo No. 7852 / M

1. S. Pushpakanthi Bodhinarayana,
No. 18 / 12, Park Lane,
Rajagiriya.

2. B. A. Rohana Kumara,
No. 18 / 12, Park Lane,
Rajagiriya.

Defendants

AND NOW BETWEEN

1. S. Pushpakanthi Bodhinarayana,
No. 18 / 12, Park Lane,
Rajagiriya.

2. B. A. Rohana Kumara,
No. 18 / 12, Park Lane,
Rajagiriya.

Defendant Appellants

Vs

Sawalappulige Richard Fernando,
No. 49 / 1, New Market,
Katunayake.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Sajeewi Siriwardana for the Defendant
Appellants
Sudarshani Cooray for the Plaintiff Respondent

ARGUED ON : 27.03.2012

DECIDED ON : 16.01.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st and 2nd Defendant Appellants (hereinafter referred to as the Appellants) in the District Court of Nogombo seeking to recover a sum of Rs. 200.000/- as damages resulting from an accident in which son of the Respondent succumbed to his injuries. The Respondent alleged that the 1st Defendant Appellant was the registered owner of the vehicle bearing No 14 Sri 9133 and on or about 07th December 1991 the said vehicle which was driven along Airport Road from Airport to Katunayake by the 2nd Defendant Appellant has collided with a push cycle which was ridden by the Respondent's son.

The Appellants had filed answer denying the averments in the plaint and had pleaded a dismissal of the Respondent's action.

The case proceeded to trial on 05 issues. The Appellants did not frame any issue. After trial the learned District Judge delivered judgement in favour the

Respondent. Being aggrieved by the said judgment dated 20.10.2000 the Appellants have appealed to this court.

At the trial the Appellants have admitted that;

- The 1st Appellant was the owner of the vehicle bearing No. 14 Sri 9133,
- The 2nd Appellant was an employee of the 1st Appellant and the alleged accident occurred within the scope of his duties,
- The 2nd Defendant Appellant pleaded guilty to the charge of negligent driving of the vehicle bearing No 14 Sri 9133 in Negombo Magistrate's Court Case No F 14840,

At the hearing of this appeal the learned Counsel for the Appellants submitted that the only matter to be dealt with by this Court is the quantum of damages.

At the trial the Respondent had closed his case leading the evidence of the Respondent and another witness. But the Appellants had closed their case without leading any evidence. It had transpired from the evidence that the deceased who was an employee attached to "Shanthi Stores" was drawing a sum of Rs.1000/- per month. It was also in evidence that the deceased was financially helping the Respondent who was depending on the deceased. This evidence has not been contradicted by the Appellants.

I have carefully considered the impugned judgment of the learned District Judge. It seems to me that the learned trial judge has come to a right

conclusion after going through the evidence led before court. Hence I am of the view that the learned District Judge has rightly concluded that the Respondent was entitled for a judgment.

In the said circumstances I see no reason to interfere with the judgement of the learned District Judge dated 20.10.2000. Therefore I dismiss the appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal