

CENTRAL COUNCIL OF DISABLED PERSONS**v****OVITAGE**

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA) AND
WIJEYARATNE, J.
C.A. 410/2000 (F)
D.C. BANDARAWELA 1115/M
OCTOBER 13, 2003

Motor Traffic Act, sections 2, 99 (1) and 100 (1) (b) – Who is liable in respect of death/injury caused to a third party? – Registered owner – Juristic person – Can it be sued? – Who is a person? – Civil Procedure Code, section 16.

The plaintiff-respondent-respondent sued the 1st defendant-respondent – the rider of the motor cycle who caused the collision with the deceased resulting in his death – and the 2nd defendant-appellant who is the registered owner of the motor cycle and the employer of the 1st defendant-respondent.

The 2nd defendant-appellant, by its Chairman, defended the action against the 2nd defendant. It was contended that the action cannot be maintained against the 2nd defendant-appellant who is not a juristic person.

The trial court entered decree in favour of the plaintiff-respondent.

ON APPEAL –

Held:

Per Wijeyaratne, J.,

“The person liable in respect of death or bodily injury to a third party is the registered owner. Accordingly the 2nd defendant-appellant is the person according to the Motor Traffic Act that should be sued in the event of death of a third party caused by the use of the motor vehicle concerned whether it is a juristic person or otherwise.”

It is trite law that an organisation which is not a juristic person should be represented by a principal officer such as Chairman/ President/ Secretary. In the instant case, the Chairman of the 2nd defendant organisation has not only filed proxy but answered fully the case against the 2nd defendant. This is in total accord with section 16 of the Civil Procedure Code. It is in order and lawful to enter judgment on the 2nd defendant-appellant as well.

APPEAL from the judgment of the District Court of Bandarawela.

S. Igalahewa, with *Iranganie Abeysinghe* for 2nd defendant-appellant.

Athula Perera for plaintiff-respondent.

Cur.adv.vult.

October 28, 2003

WIJEYARATNE, J.

This appeal is preferred by the 2nd defendant-appellant from the judgment of the learned District Judge of Bandarawela dated 24.07.2000 given in favour of the plaintiff-respondent awarding damages in a sum of Rs. 354,000/- and costs of the suit.

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The plaintiff-respondent sued the first defendant who was the rider of the Motor bicycle who caused the collision with the deceased

on 06.12.1989 at Bandarawela resulting in his death and the second defendant who is the registered owner of the motor bicycle ridden by the first defendant-appellant. The plaintiff-appellant who claimed to have been supported and maintained by her son the deceased sought to recover a sum of Rs. 200,000/- by way of damages which she sustained due to shock, mental agony or pain of mind and the distress she suffered by reason of the sudden death of her son and a further sum of Rs. 600,000/- for loss of support she got from her deceased son. The first defendant as the person involved in the accident and the second defendant who was the registered owner of the motor cycle and the employer of the defendant, on the basis of vicarious liability were sued jointly and separately.

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The first defendant though served with summons did not appear and defend the action against him and accordingly *ex parte* trial was held against him. The second defendant, by its Chairman Raja Senadheera Marasinghe defended the action against second defendant. The second defendant-appellant in his answer took up the position that action cannot be maintained against the second defendant who is not a juristic person and that the first defendant used the motor-bicycle in question contrary to the strict instructions not to use the same and the defendant was not using the said motor bicycle not as employee/representative of the second defendant institution. The answer further pleaded that collision took place as a result of the negligence on the part of the deceased Podimahattaya Wijesundera and that in any event the second defendant is not liable to pay any damages and the damages claimed were excessive. Whilst denying the rest of the averments, the second defendant-appellant sought the dismissal of the plaintiff's action.

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After trial where several issues raised by the respective parties were tried on evidence adduced by the plaintiff and the second defendant, the court answered several issues in favour of the plaintiff but awarded compensation in a sum of Rs. 354,000/- without interest and the costs of the action, and entered decree in favour of the plaintiff.

The second defendant-appellant appealed from the judgment and decree so entered, on several grounds that the learned Trial Judge erred in law in maintaining the action against the 2nd defendant who is not a juristic person, that court acted on testimony of the sole witness Ratnapala who claimed to be the sole eye witness who did

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not even make a statement to the Police, did not sufficiently consider the proceedings before the Magistrate and the negligence on the part of the 1st defendant was not established. The second defendant further urged that the fact that the 1st defendant used the vehicle contrary to strict instruction not to use the motorcycle should absolve the 2nd defendant from any liability to pay damages. 50

At the hearing of the appeal the 2nd defendant-appellant urged that the 2nd defendant who is neither a natural person nor a juristic person cannot be sued and action could not have been maintained against it. The second defendant-appellant however did not lead any evidence at the trial to prove the nature of its existence. Yet the principal officer of the 2nd defendant institution, describing himself as the Chairman of the council filed proxy and defended the action against the 2nd defendant. The learned trial Judge having considered all the material before him including P1 the extract of the registration of the ownership determined that the 2nd defendant is a "person" who had the registration in its favour and in terms of the provisions of section 2 of the Motor Traffic Act which permit the registration of a motor vehicle only in the name of a person, the 2nd defendant was considered a person and therefore can be sued. In terms of the provisions of section 99(1) the person using the motor vehicle is required to insure the same in respect of third party risks and provisions of section 100(1)(b) requires such policy of insurance to be in respect of "any liability which may be incurred by him or them in respect of death of or bodily injury to any person caused by or arising out of the use of the motor vehicle on a highway." 60 70

Accordingly the person liable in respect of death or bodily injury caused to a third party is the person who is the registered owner of the motor vehicle concerned. Accordingly the 2nd defendant is the person according to the Motor Traffic Act that should be sued in the event of death of a third party caused by the use of the motor vehicle concerned as the defendant whether it is a juristic person or otherwise.

The only question that may arise for determination is whether the 2nd defendant who is not a juristic or natural person is properly brought before the court to answer the case against it. It is trite law that an organization which is not a juristic person should be represented by its principal officer such as Chairman/President and Secretary etc. In the instant case the Chairman of the 2nd defendant 80

organisation has not only filed proxy but answered fully the case against the 2nd defendant and joined issue with plaintiff in defending the action. This is in total accord with the spirit of section 16 of the Civil Procedure Code. Accordingly the 2nd defendant is fully and adequately represented in court by the Chairman the principal officer of the organization / institution and without any prejudice to its interests, and it is in order and lawful to enter judgment on the 2nd defendant as well.

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The 2nd defendant-appellant also urged that the sole eye witness to the collision Ratnapala had not made a statement, contemporaneous or otherwise, to the Police, and therefore his evidence cannot be relied on possibly on the basis that this evidence may have been fabricated. His evidence has stood the test of probity through lengthy cross-examination. The defence has not elicited any fact that should affect the credibility of him as a witness. On the contrary the possibility of his being present at the scene of the collision is established through other independent evidence of his being the person who admitted the deceased to hospital and his having informed the plaintiff of her son's accident the same evening are factors that would corroborate his claim to have seen the collision. The witness who has acted quite naturally was more concerned about the welfare of the victim rather than litigation and has not given much concern to the making of the statement to police. It should also be borne in mind that December 1989 was in the height of insurrection, when no body dared to walk into a Police Station. Above all these, the witness who stood the test of veracity, had been believed by the learned Trial Judge who has seen him, heard him and been in a position to observe his demeanour had believed him. In the absence of any material evidence on record, this Court sitting in appeal has no reason to rule that the Learned Trial Judge should not have believed him or relied upon his evidence.

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On the contrary the facts the witness spoke of the deceased being knocked down by the motor cycle concerned his having suffered bleeding injury and having admitted to the hospital are all matters that are not in dispute but admitted by the 1st defendant in his first information P3 to the Police. According to such information the first defendant had attributed contributory negligence on the part of the victim. But at the trial there is no evidence whatsoever adduced by the

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defendant to establish such contributory negligence or at least the collision took place in some other way than that described by the plaintiff witness. The first defendant pleaded guilty to counts 2 and 3 of the charge sheet before the Magistrate Court and thereby admitted the death of Podimahattaya Wijesundara was as a result of this collision which he failed to avoid. In view of all these facts the argument of the second defendant-appellant that the learned Trial Judge could not have relied on prosecution evidence, should fail.

The argument of the second defendant-appellant that the learned Trial Judge did not adequately consider the defence evidence that the first defendant had used the motorcycle contrary to strict instruction is not borne out by the evidence on record. Second defendant's failure to adduce any evidence with regard to such strict instruction, or to at least specify the field officer to whom the motorcycle was allocated and the designation of the first defendant with necessary documentary evidence has received due consideration of the learned Trial Judge who refused to act on mere statement of second defendant witness as a person who tried every possible means of evading liability of paying compensation. We see no reason to interfere with such findings of the learned trial Judge.

As regards the question of damages, the learned Trial Judge had not determined the amount of compensation on the basis of the earnings of the deceased, but on the basis of support the plaintiff received from the deceased only. Further no allowance was given to the shock and pain of mind the plaintiff is said to have suffered. Accordingly the computation is on legally accepted basis and on reasonable estimation only. There is no reason or basis to interfere with such estimation.

In the result the argument of the second defendant-appellant fails, and the findings and the judgment of the learned Trial Judge is affirmed.

The appeal of the second defendant-appellant is dismissed with costs fixed at Rs. 15,000/-.

TILAKAWARDENA, J. (P/CA) - I agree.

Appeal dismissed.

Editors Note - The Supreme Court on 18.5.2004 refused special leave to the Supreme Court in SCSPLA 332/03.