

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

In the matter of an Appeal after granting Leave under Section 5(c) of the High Court of the Provincial (Special Provisions) (Amendment) Act No. 54 of 2006 read with Article 127(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC. Appeal No. 67/2012**

SC/HCCA/LA.No. 360/2011

WP/HCCA/AV No. 565/2008

D.C.Avissawella No. 23240/M

Krishnan Nalinda Priyadarshana  
No. 55, Galabadawatta,  
Pitumpe, Padukka.

**Plaintiff**

**Vs.**

1. Kandana Arachchige Nilmini  
Dhammika Perera  
Ulagalle, Kosgashena,  
Padukka,
2. Koddula Arachchige Lalith Perera  
Ulagalle, Kosgashena,  
Padukka.
3. Illukkumburaga Ruwan Kapila  
Nawasinghe  
56B, Galabadawatta,  
Pitumpe, Padukka.

**Defendants**

**And Between**

1. Kandana Arachchige Nilmini  
Dhammika Perera  
Ulagalle, Kosgashena,  
Padukka.
2. Koddula Arachchige Lalith Perera  
Ulagalle, Kosgashena,  
Padukka.

3. Illukkumburaga Ruwan Kapila  
Nawasinghe  
56B, Galabadawatta,  
Pitumpe, Padukka.

**Defendant-Appellants**

**Vs.**

Krishnan Nalinda Priyadarshana  
No. 55, Galabadawatta,  
Pitumpe, Padukka.

**Plaintiff-Respondent**

**And Now Between**

Kandana Arachchige Nilmini Dhammika  
Perera  
Ulagalle, Kosgashena,  
Paddukka,

**1<sup>st</sup> Defendant-Appellant-  
Appellant**

**Vs.**

Krishnan Nalinda Priyadarshana  
No. 55, Galabadawatta,  
Pitumpe, Padukka.

**Plaintiff-Respondent-  
Respondent**

2. Koddula Arachchige Lalith Perera  
Ulagalle, Kosgashena,  
Padukka.
3. Illukkumburaga Ruwan Kapila  
Nawasinghe  
56B, Galabadawatta,  
Pitumpe, Padukka.

**2nd & 3rd Defendant-  
Appellant- Respondents.**

\* \* \* \* \*

**SC. Appeal No. 67/2012**

**BEFORE** : Tilakawardane, J.  
Ekanayake, J. &  
Wanasundera, PC., J.

**COUNSEL** : Maduranga Ratnayake for the 1st Defendant-Appellant-Appellant.

Thishya Weragoda with Nishan Premathiratne, Mahela Liyanage and Niluka Dissanayake for the Plaintiff-Respondent-Respondent.

**ARGUED ON** : 01.03.2013

**WRITTEN SUBMISSION OF THE APPELLANT FILED ON:** 14-03-2013

**WRITTEN SUBMISSION OF THE RESPONDENT FILED ON:** 14-03-2013

**DECIDED ON** : 14-06-2013

\* \* \* \* \*

Wanasundera, PC., J.

The two appeal cases bearing Nos. SC. 67/12 and SC. 68/12 have arisen out of one and the same Judgment of the Provincial High Court of the Western Province holden in Avissawella, and therefore are consolidated for convenience with the consent of all the Counsel who appeared at the hearing, agreeing that one judgment would bind all the parties in both cases.

In this appeal No. 67/12 the Supreme Court granted leave to appeal on 21.3.2012 on the questions of law set out in paragraphs 11(a), (b), (c), (d), (f) and (h) of the Petition dated 09.09.2011. Both parties agreed at the hearing that they would confine the arguments only to question 11(a) to read as "Did the Provincial High Court of the Western Province (holden at Avissawella) exercising its civil appellate jurisdiction, err in law when it held that the 1<sup>st</sup> Defendant was vicariously liable for the acts of the 3<sup>rd</sup> Defendant?"

The Provincial Civil Appellate High Court judgment which has been challenged is dated 01.08.2011. It is in favour of the Plaintiff awarding Rupees Two Million and costs and affirming the judgment of the District Court dated 17.01.2007. The appeal from the District Court was dismissed by the Civil Appellate High Court.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent), was 20 yrs of age at the time of the incident where he alleged that the 1<sup>st</sup> Defendant-Appellant-Appellant (hereinafter referred to as the Appellant), the owner of the lorry No. WPGJ 2267 had deliberately knocked down (hereinafter referred to as the incident) the Respondent. The lorry driver was the nephew of the lorry owner and her husband. It was undisputed that shortly prior to the incident the Respondent had been at the Police Station with regard to a complaint made by the Appellant's husband against the Respondent after an altercation between them on the same day. The driver accompanied by the husband of the Appellant had in the incident, knocked down the Respondent from behind, and after stopping the lorry, had thereafter got off the lorry and further assaulted him. Then they have taken him first to the Police Station and then to the hospital. The Respondent was badly injured. At the time he gave evidence in the District Court, he was a paraplegic with his lower body paralyzed, on a wheel chair, due to the injuries he had sustained. The record bears that there was a nonsummary inquiry in the Magistrate's Court and thereafter that the Appellant's husband and the driver were indicted for attempted murder in the High Court. The Counsel stated in Court that they are serving a sentence in prison at the moment.

This appeal arises out of “vicarious liability” in delict/tort placed by law on the employer ( the owner of the lorry), for negligent acts of the employee ( the driver of the lorry ). The record bears that the Respondent instituted action for damages in the District Court through the Legal Aid Commission by a plaint dated 06.1.2004. Over 9 years have lapsed on litigation and more than 10 yrs have lapsed since the date of the incident.

The Learned Civil Appellate High Court Judges has evaluated the evidence on record and has considered the questions of law carefully before arriving at the conclusions in the judgment. The admitted facts at the District Court trial are that the Appellant owned the lorry at the time of the incident, and that the legal husband of the owner of the lorry accompanied the driver of the lorry at the time the incident took place.

The Respondent had shortly prior to the incident been walking on the same side of the road as the lorry was being driven. When he, on hearing the sound of an approaching lorry, looked back, and had seen the lorry veering into him. He had been knocked down and after he fell, he was beaten with iron rods by the 2nd and 3rd Defendants of the District Court case, ie. the lorry owner's husband and the driver. They have taken him in the lorry to the Police Station first and thereafter to the hospital. Neither the driver nor the owner of the lorry had given evidence at the trial. Even the owner's husband who was in the lorry at the time of the incident had not given evidence.

In any civil action, the District Judge makes the judgment on a balance of probabilities; in this case, there is no evidence on record for the defence. The Appellant had opted only to rely on the infirmities of the evidence of the Respondent and three witnesses who gave evidence on his behalf.

The argument of the Appellant, who is the owner of the lorry, was that, as the employer, she is not vicariously liable for the 'intentional acts' of the employee, the driver. It is admitted that the Appellant was the owner of the lorry and the lorry had been driven in a manner to deliberately run over the Respondent. The lorry driver was not on a 'frolic of

his own'. It was admitted that the lorry owner's husband was with the driver inside the lorry. In this instance, I hold that in law the incident speaks for itself - "res ipsa loquitor". 'Vicarious liability', is a strict liability principle in civil law holding the owner of the vehicle liable in damages on the driver's acts of negligence. The owner did not give evidence to say that the driver has deliberately driven the lorry to harm the Respondent, therefore when he is injured; the owner is not liable for damages. Therefore the defence cannot now take up the position at the appeal stage to say that the action of the driver was deliberately done by him only and therefore the owner was not liable in delictual damages. There is a criminal action for attempted murder pending before the criminal High Court or may be, it is concluded against the lorry owner's husband and the lorry driver. But the outcome of the criminal action, whether the driver is convicted or not, holds no bar to the action for damages before a civil trial court. When a person gets injured due to a vehicle deliberately running into a person, it is prima-facie proof of the negligence of the driver. Only if the driver could prove contributory negligence on the part of the Respondent, the damages could be reduced or vitiated. In this case the defense has failed to prove contributory negligence of the Respondent. The owner of the lorry has not even tried to show that the driver's action of knocking down the Respondent was an 'independent act' of the driver with a purpose of his own. She could not have done so as her husband was in the lorry with the driver. The defence has taken up all these untenable arguments at the appeal stage and not at the trial stage. The suggestion that it was an 'intentional act' of the driver alone was not brought up at the trial in the District Court.

In *Priyani Soyza Vs. Arsekularatne*, 2001 2 SLR 293 it was held that in an acquilian action, actual pecuniary loss must be established, the exception being 'damages for physical injury'. This instant case is one where physical injuries are so grave that the amount cannot be assessed by any Judge arithmetically, but grant the least by awarding what is asked for, by the Plaintiff. The learned Civil Appellate High Court Judge has analysed the documentary evidence and the facts proved by the Plaintiff and mentioned that the Defense was unable to either contradict the position in cross

examination or by leading contradictory evidence. The said analysis of facts are as follows:-

- (a) that even after the incident, the Plaintiff was assaulted while being dragged along the road near the lorry
- (b) that the Plaintiff sustained grievous injuries from the incident and is incapable of walking due to the injuries
- (c) that he is unable to control passing urine and excreta
- (d) that all the organs below the waist are lifeless and paralyzed
- (e) that he has no ability to do anything without the help of others and
- (f) that he has to spend the rest of his life on a wheel chair.

The Learned High Court Judge concurring with the District Judge awarded two million rupees as damages to the Respondent payable by the Appellant and this court affirms these findings.

The Counsel for the Appellant further argued that the damages on vicarious liability should have been apportioned between the employer and the employee. This argument is untenable as the vicarious liability is placed upon the owner of the vehicle (the employer) and not upon anybody else. As such the owner of the lorry is held liable in law to pay the full amount of damages, since she is jointly and severally liable to pay damages with the driver. The Plaintiff is entitled to claim and recover the money either from the owner of the lorry or from the driver of the lorry in cases such as this in the District Court. Only the amount is adjudged by the trial Judge. The law does not provide for any apportionment of damages.

The general principle of vicarious liability in respect of master-servant relationship which is accepted as part of our law in Sri Lanka, is based on the principle initially laid down by Salmond in "The Law of Torts"[1907] which states thus:

“An employer will be liable not only for a wrongful act of an employee that he has authorized but also for a wrongful and unauthorised mode of doing some act authorised by the master. But a master (as opposed to an employer of an independant contractor) is liable even for acts which he has not authorised, provided they are so closely connected with the acts which he has authorised that they rightly may be regarded as modes,(although improper modes) of doing them”

English Law principles of vicarious liability being similar to the Roman Dutch Law principles of vicarious liability in Sri Lanka, the English Law principles have got invariably accepted and adopted into the Sri Lankan Law, which has been developed over the years. In *Lister vs. Hesley Hall Ltd. (2002) 1 AC 215* and in *Dubai Aluminium Co. Ltd. Vs. Salaam (2003) AC 366*, it was held that if an employer carries out a wrongful act which is unauthorised and/or intentional and/or fraudulent, the employer may be held liable depending upon the closeness of the connection between the employee's wrongdoing and the class of acts of which he was employed to perform.

In the instant case, the driver who drove was the employee of the owner of the lorry. The driver's wrongful act was done within the act of driving which he was employed to perform by the owner of the lorry. Even if the wrongful act was unauthorized by the employer and criminal in nature, the employer is vicariously liable for the employee's action, thus making the employer bound to pay damages caused by the employee.

In the circumstances of this case, I answer the question of law mentioned above in the negative and hold that the Provincial Civil Appellate High Court was quite correct in dismissing the appeal of the Appellants and affirming the judgment of the Learned District Judge. I hold that the 1st Defendant-Appellant-Appellant and the 3rd Defendant-Appellant- Respondent are jointly and severally liable to pay damages to the Plaintiff-Respondent-Respondent. I dismiss this appeal with costs and affirm the judgment of the Learned High Court Judge of the Civil Appellate High Court as well as the judgment of the Learned District Judge subject to the variation that the Plaintiff Respondent is

entitled to claim legal interest on the said award of rupees two million( Rs. 2000000/-) from the date of the Judgment of the District Court to date, and this Court makes order granting such claim of legal interest to be paid by the Appellant to the Respondent.

The Registrar of this Court is directed to send this judgment forthwith, along with the original case record to the District Court of Avissawella for enforcement of the Judgment.

**JUDGE OF THE SUPREME COURT**

**Tilakawardane, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Ekanayake, J.**

I agree.

**JUDGE OF THE SUPREME COURT**