

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

In the matter of an Application for Leave to Appeal from the Judgment dated 13-12-2011 in Appeal No. NCP/HCCA/ARP/753/10 (F) in terms of Sec. 5C (1) of the Act No.54 of 2006.

**SC Appeal 1/2014**

**S.C.H.C. (C.A.) L.A.**  
**Application No.41/2012**

**Appeal No.**  
**NCP/HCCA/ARP/753/2010 (F)**

**D.C. Polonnaruwa Case**  
**No.11665/Damages/07**

Samarasinghe Gamage Janaka Manjula  
No.180A, Yaya 08,  
Ambagaswewa,  
Medirigiriya.

Appearing by his Next Friend.

**Disabled Plaintiff-Respondent-Petitioner**

Jamburegoda Gamage Thakshala  
No.180A, Yaya 08,  
Ambagaswewa,  
Medirigiriya.

(Duly appointed Next Friend in D.C.  
Polonnaruwa Case No.N.L.F. 11/06)

**Plaintiff-Respondent-Petitioner-Appellant**

**Vs.**

1. Meegaskumbure Gedera Susantha  
Piyatissa  
No. 154, Yaya 09,  
Maha Ambagaswewa,  
Medirigiriya.

2. Wasalathanthrige Don Chandana  
No.156, Yaya 09,  
Maha Ambagaswewa,  
Medirigiriya.
3. Meegaskumbure Gedera Samantha  
Piyatissa  
No.159, Yaya 09,  
Maha Ambagaswewa,  
Medirigiriya.
4. Werallagolle Gedera Wasantha  
Sarath Kumara,  
No. 154, Yaya 09,  
Maha Ambagaswewa,  
Medirigiriya.
5. Hewa Manage Chaminda Ruwan  
Kumara  
No. 154, Yaya 09,  
Maha Ambagaswewa,  
Medirigiriya.

**Defendant-Appellant-Respondent-  
Respondents**

BEFORE : Sisira J de Abrew J  
Prasanna Jayawardena PC J and  
L.T.B. Dehideniya J

COUNSEL : S.N. Vijithsingh with Shantha Karunadhara for the  
Plaintiff-Respondent-Petitioner-Appellant.

Ranil Samarasooriya with Madhawa Wijayasiriwardena  
for the 1<sup>st</sup> – 5<sup>th</sup> Defendant-AppellantRespondent-  
Respondents.

ARGUED ON : 12.07.2018

WRITTEN SUBMISSIONS

TENDERED ON : 18.03.2014 (By the Plaintiff-Respondent-Petitioner-Appellant)

DECIDED ON : 12.09.2018

Sisira J de Abrew J.

This is an appeal against the judgment of the learned Civil Appellate High Court Judges wherein they have set aside the judgment of the learned District Judge who held in favour of the plaintiff. Being aggrieved by the said judgment of the Civil Appellate High Court Judges the plaintiff-respondent-petitioner-appellant (hereinafter referred to as the plaintiff-appellant) has appealed to this Court.

This Court by its order dated 19.12.2013 granted leave to appeal on questions of law stated in paragraphs 20 (i) and 20 (viii) of the petition of appeal dated 20.01.2012 which are set out below.

- i) Did the High Court err in law in its failure to apply properly the rule “balance of probabilities” in the circumstances of this case whereas the learned District Judge had come to a finding that the plaintiff proved his case on balance of probabilities?
  
- viii) Did the learned High Court Judges err by holding that the plaintiff has not established the fact that the injuries caused to him were the result of the attack

carried out by the defendants while accepting the fact that there was a dispute between two groups resulting in a fight and not relying upon the evidence of Yasaratne Bandara, who in his evidence referred to the names of the defendants by their fictitious names and the said item of evidence was not impugned by the defence?

The plaintiff-appellant filed action against the 5 defendant-appellant-respondents (hereinafter referred to as the defendant-respondents) for damages on the basis that they have caused injuries to the plaintiff-appellant. Plaintiff-appellant heavily relied on the evidence of Anuruddha Kumara who claims to be an eye witness to the incident. Anuruddha Kumara in his evidence, has stated that the 1<sup>st</sup> defendant assaulted the plaintiff Janaka Manjula with an iron rod. He also stated that the 2<sup>nd</sup> respondent who was armed with a club was also present at the scene. He has also stated in his evidence that the 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> defendant-respondents were also present at the scene of offence. The most important question that must be decided in this case is whether the evidence of said Anuruddha Kumara can be relied upon or not. In short whether the said Anuruddha Kumara is a trustworthy witness or not. Although he has stated in his evidence that the 1<sup>st</sup> defendant assaulted the injured person (Janaka Manjula), in his statement made to the police he has not stated the fact that the 1<sup>st</sup> defendant-respondent assaulted the said injured person Janaka Manjula. In his statement made to the police he has stated that when he arrived at the scene of offence the said Janaka Manjula had fallen on the ground with bleeding injuries and

the people who gathered at the scene were carrying the said injured person for the purpose of taking him to the hospital. According to his police statement, it is only after the said moment (the incident described above), the 1<sup>st</sup> defendant-respondent arrived at the scene carrying an iron rod.

When the statement made to the police by Anuruddha Kumara is examined it is very clear that he has not stated the fact that the 1<sup>st</sup> defendant assaulted the injured person. Further, he has made the statement to the police only after 7 months of the incident (26.02.2016). According to this witness, the alleged incident had taken place only on 21.07.2005. It is therefore seen that the statement made by said Anuruddha Kumara is a belated statement. When I consider all the the above matters, it is difficult to place reliance on the evidence of the said Anuruddha Kumara. In my view his evidence cannot be believed on balance of probability.

Learned District Judge has concluded that the evidence of Anuruddha Kumara has been corroborated by the evidence of Yasaratne Bandara who claims that he was present at the scene of offence. But in his cross examination at page 84 he (said Yasaratna Bandara) has admitted that he did not see the assault on Janaka Manjula. Therefore, when the learned District Judge concluded that Yasaratne Bandara had corroborated the evidence of Anuruddha Kumara it is, in my view, a wrong conclusion. Learned Judges of the Civil Appellate High Court have observed that the said conclusion reached by the learned District Judge was wrong. In my view, the said observation made by the learned Judges of the Civil Appellant High

Court is correct. I have observed earlier that the evidence of Anuruddha Kumara cannot be believed on balance of probability. Therefore, in my view the plaintiff-appellant has failed to prove his case. The learned Judges of the Civil Appellate High Court after considering the evidence have set aside the judgment of the learned District Judge. After considering all the above material, I am of the opinion that the conclusion reached by the Judges of the Civil Appellate High Court is correct. Therefore, I do not intend to interfere with the said judgment. I affirm the judgment of the Civil Appellate High Court dated 13.12.2011. Appeal of the plaintiff-appellant is dismissed. Considering the facts of this case, I do not make an order for costs.

*Appeal dismissed.*

Judge of the Supreme Court

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court

L.T.B. Dehideniya J

I agree.

Judge of the Supreme Court