

(1996) 11 KL CK 0031
In the High Court Of Kerala
Case No : A.S. No. 563 of 1994

Pullur Periya Panchayat

APPELLANT

Vs

Karthiyayini and Others

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1998) ACJ 623 : (1997) 1 CivCC 178 : (1997) 1 ILR (Ker) 833 : (1997) 2 RCR(Civil) 75

Hon'ble Judges : K.G. Balakrishnan, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : V.R. Venkata Krishnan, N.C. Joseph and S. Anantha Krishnan, for the Appellant; L.G. Poti, Dinesh Rao and P. Jayasankar, G.P., for the Respondent

Judgement

K. Narayana Kurup, J.—The fourth defendant Panchayat in O.S. No. 141 of 1992 on the file of the court of Subordinate Judge of Hosdrug is the appellant. The plaintiffs filed the suit as indigents claiming damages against the defendants on account of the death of the husband of the first plaintiff and the father of plaintiff Nos. 2 to 4 as a result of the collapse of Kumbala Bridge. The appeal is directed against the judgment and decree of the court below mulcting the appellant-fourth defendant Panchayat with liability to pay to the plaintiffs a sum of Rs. 2,00,000/- as damages.

2. Facts: One Darkas Kottan (38 years of age at the time of his death) was the husband of the first plaintiff and father of the three minor plaintiffs. On 4.6.1991 at about 2.15 p.m. the first plaintiff's husband was on his way to his mother's house which is situated on the southern side of the Kumbala Bridge constructed on the Parappally-Kallot P.W.D. Road. The first plaintiff's husband was crossing the bridge from its northern side on 4.6.1991 along with three others and while they were so crossing, the bridge collapsed and as a result of the collapse, all the four persons including first plaintiff's husband fell into the deep canal below causing the death of the husband of the first plaintiff due to drowning. According

to the plaintiffs, the collapse took place due to defective construction of the bridge by defendant Nos. 1 to 3 and also due to lack of periodical inspection and proper maintenance by the fourth defendant. According to them, the deceased Darkas Kottan, 38 years of age at the time of his death, was a skilled mason earning more than Rs. 60/- per day and on account of his untimely death, the plaintiffs suffered a great financial loss entitling them to damages to the tune of Rs. 2,00,000/-. The plaintiffs had issued notice u/s 80, CPC and u/s 123 of the Kerala Panchayat Act to the defendants. However, the defendants caused reply notices to be sent to the plaintiffs repudiating their liability to pay any damages and hence the suit.

3. Defendant Nos. 1 to 3 filed a written statement contending, inter alia, that the collapse of the bridge was purely due to natural calamity, that is: heavy rain and unprecedented floods which is beyond the control of human beings and hence they are not liable/in any manner to compensate the plaintiffs. It was also contended that the collapse occurred due to lack of timely care and maintenance of the bridge and as such either the 4th defendant Panchayat (appellant) or the authorities of KADA (Kasaragod Area Development Authority) who are responsible for such care and maintenance are liable for damages, if any, and defendant Nos. 1 to 3 are unnecessary parties to the suit and the suit is liable to be dismissed with costs.

4. The fourth defendant filed a written statement contending that the suit is frivolous and vexatious and not maintainable in law and there is no cause of action against the 4th defendant Panchayat appellant. It was also contended that the collapsed bridge at Kumbala within the Panchayat was neither constructed nor supervised by the Panchayat and as a matter of fact, the Panchayat had no knowledge at all about the construction of the bridge apart from the fact that the Panchayat might have moved the authorities by its resolution of the necessity of such a bridge in the locality. Therefore, the Panchayat, fourth defendant, prayed that the suit may be dismissed.

5. The evidence in this case consists of Exhs. A1 to A7, B1, X-1 to X-3 and the oral evidence of PWs 1 and 2 and DWs 1 and 2.

6. On a consideration of the rival contentions and the evidence on record, the court below decreed the suit against the fourth defendant Panchayat, appellant alone for a sum of Rs. 2,00,000/- as damages after finding that the bridge could not have collapsed due to the defect in construction and as such defendant Nos. 1 to 3, respondent Nos. 5 to 7 in this appeal are not liable to pay any amount towards damages to the plaintiffs. The appeal is directed against the judgment and decree of the court below making the defendant Panchayat, appellant exclusively liable as already noted.

7. Having heard learned Counsel on both sides, we are not satisfied that the reasoning adopted by the court below in regard to the exclusive liability of the appellant Panchayat, is sound and it requires modification.

8. It is an admitted fact that the husband of the first plaintiff met with a watery grave on account of the collapse of the bridge. It is also an admitted fact that the bridge in question was constructed by the Government some time in 1983 under the KADA Scheme and that the Panchayat had no role at all either in the construction or the supervision thereof. The fact that the construction work of the bridge was executed by the Public Works Department is admitted by DW 1 who is none other than the Asstt. Engineer, Public Works Department (Roads), Kanhangad. His case in the box based on Exh. B1 the report submitted by the District Collector to the Revenue Department is that collapse of the bridge attributable to the heavy onslaught of monsoon which lashed the District in the year. DW 1 further deposes that on either side of the bridge there was granite abutment to support the concrete slab constructed over the bridge. In this connection, the evidence of PWs 1 and 2 assumes importance. According to PW 1 who is the first plaintiff, the reason for the collapse of the bridge is due to withering away of the stones from the abutment constructed on either side of the bridge which is expected to give structural support to the bridge. The version of PW 1 is supported by PW 2 who is an ex-military officer and who is a local resident involved in the development activities of the locality as the secretary of a committee formed for constructing a road in that area. According to PW 2, within 2 years of the construction of the bridge the stones started withering away and that no steel rods were used for the construction. He further deposes that when he noticed the withering away of the stones, the said act was brought to the notice of the authorities concerned by letters and otherwise. However, in spite of the fact that the defect was brought to the notice of the authorities including the Executive Engineer of the Public Works Department, no action was taken by them to rectify the defect in time. It is the definite case of PW 2 that ever since the construction of the bridge, no maintenance work of any kind was carried out by the Panchayat.

9. In the aforesaid view of the evidence, we are not in a position to persuade ourselves to subscribe to the view that the Panchayat alone can be made liable for damages to the plaintiffs. A bridge which is constructed in 1983 is expected to last for several decades. It is also expected to withstand the vagaries and vicissitude of weather including monsoon. Eight years is too short a period in the life span of a bridge which is intended to last for several decades without being damaged or washed away at the whiff of a wind or the surging waters of rain. And yet, that is what exactly took place in the instant case. Going by the evidence on record, it is established that the stones on the abutment started withering away within two years of construction which by itself is proof positive that proper care and caution was not exercised by defendant Nos. 1 to 3 during the construction of the bridge. The trial court on appreciation of the evidence on record found that withering away of the stones from the abutment was the direct cause of the collapse of the bridge. The monsoon might have played havoc, but the lapses on the part of defendant Nos. 1 to 3 in not taking proper care in the construction is the proximate and immediate cause for the collapse of the bridge.

As already noted, the bridge constructed has to withstand onslaught of weather conditions. Defendant Nos. 1 to 3 cannot get away without being held liable for damages by simply saying that the collapse of the bridge was purely due to natural calamities which is beyond the control of human beings. Defendant Nos. 1 to 3 are presumed to intend and know the natural and probable consequences of their acts and they should be held liable for such consequences whether they in fact contemplated them or not. On facts established, it must be held that defendant Nos. 1 to 3 in executing the construction of the bridge in a slipshod way acted negligently and failed to act honestly and in good faith and are not protected by the application of the doctrine of act of God. Public money which is expected to be spent for productive purposes cannot be allowed to be frittered away in this fashion by negligent execution of roads, bridges, etc. in which event, the erring officers concerned have to be taken to task at the behest of the Government to make good the loss sustained by it. In the aforesaid view, we hold that defendant Nos. 1 to 3 are also equally at blame for the collapse of the bridge on account of the defective construction. To that extent, we modify the decree of the trial court and hold that defendant Nos. 1 to 3 are liable in damages to the plaintiffs in equal proportion, i.e., in the ratio of 1:1.

10. The Panchayat also cannot absolve itself from its liability. No doubt, the Panchayat had no role in the supervision or construction of the bridge and according to them, the collapse occurred due to the defective construction of the bridge. DW 2 who is the Executive Officer of the Panchayat admitted in the box that the bridge belongs to the Panchayat and that in the case of this bridge, no periodic repairs or maintenance were effected. Going by the evidence, the construction of the bridge was over in 1983 and the collapse occurred in 1991. Immediately after construction, the bridge was handed over by defendant Nos. 1 to 3 to the Panchayat and thereafter the bridge stands vested in the Panchayat. The Panchayat has no case that the bridge does not belong to the Panchayat or that they were doing timely maintenance for the proper up-keep of the said bridge. u/s 57 of the Panchayat Act, 1960 it is the mandatory duty of the Panchayat to make repairs and carry out necessary maintenance of all public roads in the Panchayat area other than the National Highways, State Highways, or district roads and of all bridges, culverts, causeways, etc. So there is a statutory duty imposed on the Panchayat to effect repairs and maintenance to the bridges. It is brought out in evidence as admitted by DW 2 the Executive Officer of the Panchayat that ever since the construction of the bridge and its handing over to the Panchayat, no repair or maintenance of any kind was done by them and the result, therefore, was that the bridge was in a state of utter disrepair. The Panchayat is therefore guilty of abdication of the statutory duty to effect necessary repairs and maintenance to the bridge for its proper up-keep. In such a situation, the Panchayat cannot take refuge under the principle of act of God and escape from legal liability. It has also to be noted that mere ravages of weather or monsoon may not by itself amount to "act of God" unless the fury is of such a degree or dimension that no human foresight could provide against and

of which human prudence is not bound to recognise the possibility. [See General Traders Ltd. and Another Vs. Pierce Leslie (India) Ltd. and Others, That is not the case here. Apart from heavy rains that lashed the district there is nothing to indicate that a tornado or cyclone developed in the area causing extensive damage leaving a trail of destruction on a large scale. In the State like Kerala fury of monsoon is a common phenomenon and defence of act of God based on such a phenomenon, if permitted to be raised causally will lead to catastrophic consequences. No road or bridge in the State will be safe for public use as the perpetrators of negligence can get away pleading act of God as a valid excuse.

11. That apart, the collapse of the bridge within 8 years of its construction invites the automatic application of the doctrine of *res ipsa loquitur*, making all defendants equally liable in damages to the plaintiffs. In *Municipal Corporation of Delhi v. Subhagwanti* 1966 ACJ 57 a clock tower collapsed and fell down to the ground and a person died. The legal representatives filed a suit for damages alleging negligence and non-maintenance of the clock tower by the authorities. The burden of proof was in dispute and the Supreme Court held that the doctrine of *res ipsa loquitur* applied in that case. It held that the clock tower was exclusively under the ownership and control of the Municipality (appellant) or its servants. The clock tower was 80 years old. Therefore, the mere fact of fall of the clock tower told its own story in raising inference of negligence so as to establish a *prima facie* case against the appellant.

12. In the light of the above discussion, we have no hesitation in holding that the defendants are liable for damages to the plaintiffs in equal proportion.

13. As regards the quantum of damages, it has to be noted that the deceased met with the accident at the age of 38. In the normal course, he would have lived up to 70 years. It has come out in the evidence that he was healthy and a skilled mason earning Rs. 60/- per day. The trial court, taking an average of 20 days per month at the rate of Rs. 60/- per day, calculated the annual income at Rs. 14,400/-. For 32 years it will come to Rs. 4,60,800/-. Even if half the amount is deducted towards the deceased's personal expenses, the balance will come to Rs. 2,30,400/-. The plaintiffs have claimed only Rs. 2,00,000/- as damages. In that view, the trial court was right in awarding Rs. 2,00,000/- as damages as claimed by the plaintiffs. We do not find any infirmity in the finding of trial court as regards the quantum of compensation.

In the result, we modify the judgment and decree of the trial court and give a decree in favour of the plaintiffs against all the defendants. The liability of defendant Nos. 1 to 3 and defendant No. 4 (appellant herein) shall be at the rate of 50:50. The decree of the trial court will stand confirmed in all other respects, subject to the aforesaid modification. The parties shall suffer their respective costs.

Appeal partly allowed as above.