
(2022) 12 GUJ CK 0030
In the Gujarat High Court
Case No : R/Second Appeal No. 40 Of 2001

Vadodara Municipal Corporation

APPELLANT

Vs

Thakorebhai Chandulal Shah

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Citation : (2022) 12 GUJ CK 0030

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : Pranav G Desai, RD Raval

Final Decision : Disposed Of

Judgement

Aniruddha P. Mayee, J

1. The present Second Appeal arises out of the impugned judgment and order dated 13.4.2000 in Regular Civil Appeal No.69 of 1992 passed by the learned District Judge, Vadodara.

2. It is the case of the respondent plaintiff that the suit came to be filed by the respondent-plaintiff herein against appellants in damages caused to him due to negligent act on behalf of the appellant's employee. The respondent was the owner of Water Trolley selling cold water to the public within the limits of Raopura Ward of Vadodara. It is alleged that the Ward Officer of the appellants illegally and unauthorisedly confiscated his Water Trolley. The respondent-plaintiff approached the superior authorities. However, he could not get back his Water Trolley.

3. It is further the case of the respondent plaintiff that the Water Trolley was not returned to the plaintiff deliberately, and therefore, economic crime was committed by the appellant herein. The respondent-plaintiff thereafter, served notice on the appellants herein calling upon them to take immediate action for the payment of damages. It was claimed by him @ Rs.50/- per day and to

arrange the immediate release of the Water Trolley. Despite, the service of legal notice, the appellant herein neither denied nor replied to the said notice. The respondent-plaintiff filed the present suit and claimed Rs.5,250/- towards damages along with Rs.50/- per day towards loss of income from the date of filing of the suit till the realization of the decretal amount. It was further prayed in the suit to direct the appellant herein to return back the Water Trolley and award interest on the quantum of damages @ 12% annually. Summons came to be served to all the defendants. The appellants herein contested the suit. Evidence came to be lead by the parties. By judgment and order dated 31.07.1986, the Joint District Judge (SD) and JMFC, Vadodara partly allowed the suit of the respondent-plaintiff. The appellants-defendants herein were directed to return the Water Trolley seized by the Ward Officer to the respondent-plaintiff within one month. It is further directed that the appellants to pay Rs.500/- to the respondent-plaintiff towards compensation.

4. It is the case of the respondent-plaintiff that aggrieved the respondent-plaintiff filed Regular Civil Appeal No.69 of 1992 before the District Judge, Baroda. By the impugned judgment and order dated 13.04.2000, the Lower Appellate Court partly allowed the appeal and held that the respondent plaintiff is entitled to recover Rs.500/- towards damages of water Trolley and Rs.4,200/- towards loss of income from the Water Trolley. Accordingly, the respondent plaintiff was held to be entitled for a total amount of Rs.4,700/- with running interest @ 9% annually from the appellants herein.

5. Aggrieved by the impugned judgment and order, the appellant herein has preferred the present Second Appeal.

6. Vide order dated 26.12.2001, this Court was pleased to admit the Second Appeal on the following questions of law:

"1. Whether the judgment and decree dated 13th April 2000 in Regular Civil Appeal No. 69 of 1992 passed by the learned District Judge is legal and valid ?

2. Whether the learned District Judge is right in awarding the loss of income not only from the date of seizure of the trolley till the date of the suit, but also from the date of the suit till the return of the trolley even though the suit was filed in the year 1976 and further directing pay interest at the rate of 9.00 percent per annum with running interest ?

3. Whether the learned District Judge is within his jurisdiction to grant the loss of income for the period after the filing of the suit and interest even prior to the date for which the loss of income has been assessed?"

7. Mr.Pranav Desai, learned advocate for the appellants submits that the Courts below erred in deciding that the respondent-plaintiff is entitled to recover Rs.600/- per year from the date of seized the Water Trolley. He is further submits that Courts below also erred in coming into conclusion that the Water Trolley was not in a working condition when it was returned. It is further submitted that

there was no evidence on record to establish that the damage was caused to the Water Trolley. It is further submitted that the respondent-plaintiff has failed to prove his loss on income and therefore, the Lower Appellate Court erred in awarding damages and learned trial Court had rightly awarded Rs.500/- towards damages by way of cost.

He submits that since the respondent-plaintiff had failed to prove his loss of income, the damages have been awarded only on presumption and surmises. He, therefore, submits that the Second Appeal be allowed.

8. Heard learned advocate for the appellants.

9. Both the Courts below have concurrently held that the plaintiff is entitled for damages in view of the action taken by the appellants herein. The respondent was selling cold water to the general public by operating his Cold Water Trolley. No substantial question of law is raised in the present Second Appeal. The judgment of the Courts below are the concurrent and based on the evidence on record. No interference is called for. Accordingly Second Appeal stands dismissed.

10. It is submitted by the learned advocate for the appellants that the appellants have already deposited decretal amount of Rs.20,000/- in this Court. Further this Court vide order dated 26.12.2001 was pleased to direct to release the said amount to the respondent-plaintiff after giving an undertaking. Accordingly the respondent-plaintiff has withdrawn the decretal amount.

Disposed of accordingly.