

S. Vedantacharya And Anr. vs Highways Department Of South Arcot And ... on 14 November, 1986

Equivalent citations: [1972]1COMPCAS168(SC), (1987)3SCC400, AIR ONLINE 1986 SC 125

Bench: G.L. Oza, O. Chinnappa Reddy

ORDER

Chinnappa Reddy and Oza, JJ.

1. On November 14, 1960 at about 5.30 a.m. a public transport vehicle plunged into a stream as the culvert over which it was passing gave way. As a result of the accident one V. Santhangopalan died. The appellants, his parents, filed the suit out of which the appeal arises to recover a sum of Rs. 25,000/- by way of damages. The suit was filed against the owner of the vehicle, the insurance company and the Highways Department of the State of Tamil Nadu. The trial court absolved the owner of the vehicle and insurance company on the ground that the accident was not due to any fault of the driver of the vehicle or any defect of the vehicle. The trial court held that the very collapse of the culvert raised a presumption of negligence on the part of the Highways Department of the Government and on that footing awarded a sum of Rs. 9,100/- by way of damages. The Government of Tamil Nadu, who, in our opinion, should not have contested a claim of this nature and who ought not to have, in any case, preferred an appeal, did choose to file an appeal to the High Court. The plaintiffs preferred a memorandum of cross-objection claiming a further sum of Rs. 5,000/-. Unfortunately, the appeal of the Government of Tamil Nadu was accepted and the cross-objection of the plaintiffs was dismissed by the High Court. The High Court took the view that the culvert gave way because of the downpour of rain during the preceding week and the breach of a small tank upstream. The conclusion of the High Court was based primarily on the report of the Assistant Engineer (Highways), Vridhachalam to the Divisional Engineer (Highways), Cuddalore. This report explained the causes for the collapse of the culvert but gave no indication of any action that was taken to prevent such occurrences. Surely, heavy rain and flood are not beyond the contemplation and anticipation of the Highways Department and when bridges and culverts are constructed we expect the department to make suitable provision for strengthening the culverts and bridges against heavy rain and flood. The report gives no indication of any anticipatory action taken by the Highways Department to prevent such happenings. We think that merely because the cause of the accident was heavy rain and flood, Highways Department cannot on that account alone claim to be absolved unless there is something further to indicate that necessary preventive measures had been taken anticipating such rain and flood. There is nothing to indicate that any such anticipatory action was taken in the present case. We, therefore, think that the High Court was not justified in dismissing the suit. We, therefore, set aside the judgments of the High Court and pass a decree in favour of the plaintiffs. The appellants will get Rs. 14,000/- with interest from the date of the decree of the High Court. They will be entitled to their costs throughout. It appears that a sum of Rs. 6,018/- was deposited by the Highways Department pursuant to the judgment of the trial court but

this amount was deposited back by the appellants during the pendency of the appeal in this Court.