

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0048/2024

DC Mount Lavinia

Case No: M/8441/2021

Sedari Mudiyanseelage Akash Pruthuvi Nirman
Abeyrathne Bandara,
No. 253/3, Suriyamal Mawatha,
Divulapitiya, Boralessgamuwa

Plaintiff

Vs.

1. Sinhara Suranga Mahin Silva,
No. 182, Kaldamulla Road,
Rathmalana.
2. Central Finance Company PLC,
No. 270, Vauxhall Place,
Colombo 02.
3. Ceylinco General Insurance Limited
No. 69, Janadhipathi Mawatha,
Colombo 01.

Defendants

And Now Between

Sedari Mudiyanseelage Akash Pruthuvi Nirman
Abeyrathne Bandara,
No. 253/3, Suriyamal Mawatha,
Divulapitiya, Borelessgamuwa.

Plaintiff – Petitioner

Vs.

1. Sinhara Suranga Mahin Silva,
No. 182, Kaldamulla Road,
Rathmalana.
2. Central Finance Company PLC,
No. 270, Vauxhall Place,
Colombo 02.
3. Ceylinco General Insurance Limited,
No. 69 Janadhipathi Mawatha
Colombo 01.

Defendant-Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Varuna Nanayakkara
for the Plaintiff-Petitioner

Rajindra Jayasinghe with Harith Gunasekara
Instructed by Sanjay Fonseka
for the 2nd and 3rd Defendants

Argued on : 02-10-2024

Decided on: 05-12-2024

R. Gurusinghe

The petitioner is the plaintiff of District Court of Mount Lavinia case no. M/8441/202. The plaintiff filed that action against the 1st, 2nd and 3rd defendants to recover damages allegedly caused by an accident due to negligent driving of the 1st defendant-respondent. The petitioner states that as a result of the accident, his left leg was removed from the thigh area, and he became permanently disabled. The 2nd defendant was the owner of that vehicle, and the 3rd defendant was the insurer.

After trial, the Learned District Judge of Mount Lavinia, by judgment dated 08-02-2024, dismissed the petitioner's action stating that the petitioner had failed to prove negligence of the 1st defendant. The petitioner filed this *Restitutio-in-Integrum/Revision* application seeking to set aside the said judgment dated 08-02-2024 and a direction to the District Judge Mount Lavinia to write a fresh judgment on the same evidence.

The respondents have filed objections to the petitioner's application and took up the position that the impugned judgment was correct. Furthermore, they have taken up that, in any event, the petitioner is not entitled to file this application because he has the right of appeal against the judgment of the District Court of Mount Lavinia.

The plaintiff has led evidence in support of his claim. The defendants have not produced any evidence. Case records show that on 26-06-2020, the 1st defendant was produced before the Magistrate along with the breathalyzer, which was turned green. The Magistrate has recorded that the suspect has admitted that fact. Furthermore, there is evidence that the plaintiff and his friend were going on a motorcycle on the correct side of the road, while the 1st defendant negligently overtook a vehicle crossing the white line in the middle of the road and crashed into the motorcycle on which the petitioner was travelling.

However, we note that the petitioner has the right of appeal against the judgment of the District Court. When the petitioner has an effective alternative remedy prescribed by law, he should seek that remedy. *Restitutio-in-Integrum* is an extraordinary remedy granted to a petitioner by this court where the petitioner has no other effective remedy. When inquired by the Court, it was revealed that the petitioner had made an appeal against the judgment to the Civil Appeal High Court which is pending before that Court. It is, therefore, clear that Court will look into the grievance of the petitioner.

In the case of *Sri Lanka Insurance Corporation Ltd v Shanmugam and Another (1995) 1 Sri L.R* it was held that restitution is granted only if no other remedy is available to the party aggrieved. The petitioner has filed an application in revision and also a final appeal.

As the petitioner has the right of appeal against the impugned judgment, we are not inclined to grant relief to the petitioner in this application. However, we note that the petitioner's application is dismissed for that reason and not because there is no merit in the petitioner's application. We make no order for costs.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.