SHILA WATI PRASAD v SHAN MUGAM VELLU and Anor (CBV0004 of 2005S)

SUPREME COURT — CIVIL JURISDICTION

FATIAKI CJ, FRENCH and HANDLEY JJ

12, 19 October 2006

Damages — contribution and apportionment — Court of Appeal reversed High Court decision holding Respondents negligent and 50% liable for collision — Compensation to Relatives Act — Law Reform (Contributory Negligence and Tortfeasors) Act s 6(1)(c) — Supreme Court Act s 7(3).

The Petitioner sought special leave to appeal from the judgment of the Court of Appeal which reversed the decision of the High Court in a motor vehicle collision case. The High Court held that the Respondents were negligent and 50% liable for the collision which caused the death of the Petitioner's husband (deceased). The collision occurred between a truck owned by the second Respondent (R2) and driven by the first Respondent (R1), and a taxi in which the deceased was a passenger being driven in the opposite direction. The judge in the High Court entered judgment for the Petitioner for 50% of her damages under the Compensation to Relatives Act to be assessed at a further hearing. The Court of Appeal reversed the judgment because they found that the truck was on the correct side of the road at the time of the collision and negligence had not been established. The Chief Justice fixed the petition for hearing. The written submissions on the Petitioner's behalf were not filed and served despite extensions of time. When the petition was called for hearing, the Petitioner sought an adjournment. She conceded that the petition did not disclose a case for special leave and was not able to suggest any other basis on which a grant of special leave could be supported. The issue was whether the High Court judgment was correct.

Held — The High Court was wrong when it found that both the drivers were negligent, and having apportioned responsibility equally, and entered judgment for the Petitioner against R1 and R2 for 50% of the damages. The Respondents were liable as concurrent tortfeasors. They were liable for the whole of the Petitioner's damages even though they shared responsibility with others who were equally to blame. At common law, a plaintiff was entitled to judgment for the full amount of his damages against each and every concurrent tortfeasor which he could enforce against any one or more of them, provided there was no double satisfaction.

Appeal dismissed.

Cases referred to

George Wimpey & Co Ltd v British Overseas Airways Corporation [1955] AC 169; [1954] 3 All ER 661; *Penioni Bulu v Housing Authority* [2005] FJSC 1; *Speirs v Caledonian Collierses Ltd* (1956) 57 SR (NSW) 483, cited.

R. S. S. Devan for the Petitioner

H. Nagin for the Respondents

[1] Fatiaki CJ, French and Handley JJ. This petition sought special leave to appeal from the judgment of the Court of Appeal (Ward P, Tompkins, Smellie JJA) of 18 March 2005 which reversed the decision of the High Court (Pathik J) of 30 March 2004 in a motor vehicle collision case. The High Court held that the present Respondents, the third and fourth Defendants (D3 and D4), were negligent and 50% to blame for the collision which caused the death of the Petitioner's husband. The collision occurred between a truck owned by the D4

and driven by the D3 and a taxi in which the deceased was a passenger being driven in the opposite direction. The judge entered judgment for the present Petitioner for 50% of her damages under the Compensation to Relatives Act to be assessed at a further hearing.

[2] The Court of Appeal reversed this judgment because they found that the truck was on its correct side of the road the time of the collision and negligence had not been established.

[3] The decision of the Court of Appeal was based on the facts of the case, and did not raise any question which could possibly warrant the grant of special leave by this court under s 7(3) of the Supreme Court Act: *Penioni Bulu v Housing Authority* [2005] FJSC 1.

[4] The Chief Justice fixed the petition for hearing during this session, at the request of counsel for the Petitioner, at the call-over last August. Directions were given for the filing of written submissions on behalf of the Petitioner but despite extensions of time the submissions were not filed and served.

[5] When the petition was called on for hearing on 12 October, the date originally fixed, counsel for the Petitioner, Mrs Devan, sought an adjournment. She conceded that the petition did not disclose a case for special leave, and was not able to suggest any other basis on which a grant of special leave could be supported. In these circumstances the court concluded that no good purpose would be served by an adjournment and we dismissed the petition with costs assessed at $200. We also directed that the costs payable to the Respondents of their appeal to the Court of Appeal assessed by it at $300, together with the costs assessed by this court, be paid out to the solicitors for the Respondents from the security in court, and that the balance be paid out to the solicitors for the Petitioner.

[6] Before parting with the case we should comment on the form of the judgment of the High Court. Pathik J found that both drivers were negligent, and, having apportioned responsibility equally, entered judgment for the plaintiff against the D3 and D4 for 50% of her damages. This was wrong. Those Defendants, having being found liable as concurrent tortfeasors, were liable for the whole of the plaintiff's damages, even though they shared responsibility with others who were equally to blame. At common law a plaintiff was entitled to judgment for the full amount of his damages against each and every concurrent tortfeasor which he could enforce against any one or more of them, provided there was no double satisfaction.

[7] The Law Reform (Contributory Negligence and Tortfeasors) Act s 6(1)(c) by giving joint and concurrent tortfeasors the right to contribution from each other, did not alter the rights of the plaintiff who remains entitled to judgment for the full amount of his or her damages against every concurrent tortfeasor although that tortfeasor may only be partly to blame: *George Wimpey & Co Ltd v British Overseas Airways Corporation* [1955] AC 169 at 177, 189 and 195; [1954] 3 All ER 661 at 663; *Speirs v Caledonian Collierses Ltd* (1957) 57 SR (NSW) 483 at 503 and 511–12; Salmond & Heuston "*The Law of Torts*", 20th ed, 1992, p 435; Clerk and Lindsell on *Torts* 19th ed, 2006, p 235.

Appeal dismissed.