APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Abdur Rahman.

1938, October 5.

THE PALGHAT COIMBATORE TRANSPORT COMPANY, LIMITED, BY ITS LIQUIDATOR, N. KRISHNASWAMI NAIDU (FIRST DEFENDANT), APPELLANT,

v.

NARAYANAN AND SEVEN OTHERS (PLAINTIFFS AND SECOND DEFENDANT), RESPONDENTS. *

Damages—Composite negligence—Injury caused by—Non-existence of duty to analyse the proximate cause of injury to find out who could be sued.

In a suit for damages for injury arising from "composite negligence" the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.

The question whether, in India, Courts will, in the absence of a statutory provision, have the power to fix contribution as between tort-feasors left open.

APPEAL against the decree of the Court of the Principal Subordinate Judge of Coimbatore in Original Suit No. 97 of 1931.

K. Rajah Ayyar for appellant.

K. V. Ramaseshan for respondents 1 to 7.

Eighth respondent was not represented.

* Appeal No. 151 of 1934.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This appeal arises out of a suit instituted under the Fatal Accidents Act by the representatives of one Venkatarama Ayyar who died in February 1930 as the result of a collision between two motor buses in one of which the deceased was travelling. The owners of the two buses have been impleaded as defendants 1 and 2 and they may be referred to as the U.M.S. Motor Service and the I.M.S. Motor Service respectively. It was in one of the buses run by U.M.S. Service that the deceased was travelling at the time of the accident. The I.M.S. Service bus was coming in the opposite direction, and at a point where the road is found to have measured 26 feet in breadth, there was a collision between the two buses almost in the middle of the road. The lower Court gave the plaintiffs a joint decree against both the defendants for sums aggregating Rs. 10,000. Against that decree the first defendant has preferred this appeal.

The first point urged in support of the appeal is that the driver of the U.M.S. bus was not negligent or reckless and that the appellant should not therefore be held liable. There has been some controversy as to the exact part of the road where the collision took place. The witnesses examined on behalf of the first defendant, U.M.S. Service, suggest that at the time of the accident the U.M.S. bus was very near the extreme left edge of the road which will be its proper side and was within one or two feet of a ditch which adjoined the road on that side. The evidence of some of the lay witnesses does not appear to us quite reliable; assuming they were in the bus, it is doubtful if they took note of such matters. It is the driver of the bus who puts the distance between the bus and the

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ditch at 2 feet, while the lay witnesses would swear that it was one foot. The police officer who was on the spot very soon after the incident expressed his opinion that the collision must have taken place in the middle of the road. He was no doubt not present at the spot at the time when the accident occurred; but we think that the lower Court was right in accepting his inference as correct because he stated that the brain matter of one of the passengers who was killed in the accident was found right in the middle of the road when he went to the spot and it was hardly likely that this matter could have changed its position from the spot where it actually fell at the time of the accident. It appears from the evidence that only 12 feet of the road width about the middle is metalled and there is a margin of 8 feet on the one side and 6 feet on the other unmetalled. We see no reason to differ from the conclusion of the learned trial Judge that the unfortunate accident must have happened as a result of the drivers of the two buses persisting in driving on the metalled portion, each declining to make room for the other to pass by. In this view both the defendants must be held liable; *Mills* v. *Armstrong. The* '*Bernina*'(1).

As regards the quantum of damages, Mr. Rajah Ayyar, the learned Counsel for the appellant, first defendant, complained that the amount of Rs. 10,000 awarded by the lower Court was excessive and not warranted by the financial position of the deceased. It must be said in justification of this argument that the evidence bearing on the quantum of damages is somewhat vague and the plaintiffs could have produced more satisfactory evidence. But, such as it is, the evidence has been accepted by the learned Subordinate

(1) (1888) 13 App. Cas. 1.

Judge as substantially reliable. Assessment of damages in a case of this kind must necessarily be only rough and approximate and we are not prepared to say that the amount awarded by the lower Court is so excessive that it can be described as arbitrary or whimsical. Nor are we in a position to say that a lower figure will necessarily be the correct figure. The evidence shows that the deceased was aged only 40 at the time of his death, that he had a family of seven members to support and that he was managing to maintain that family in a certain decent standard of living. It is true that in a case of this kind the assessment of damages should not be made merely with reference to the plaintiffs' requirements, but as the evidence establishes that the plaintiffs' requirements were being fairly met by the deceased, the learned Judge was in our opinion justified in proceeding to assess damages on that basis.

The third contention urged by Mr. Rajah Ayyar relates to the propriety of awarding a joint decree against both the defendants. He urged that the present case is not one of "joint tort" and that it was open to the Court to assess separately the damages payable by each of the two defendants, *Ramratan Kapali* v. *Aswini Kumar Dutt*(1). We are prepared to assume that the present is not an instance of a joint tort; see *The Koursk*(2). But it will not necessarily follow therefrom that the damages should or could be assessed separately as against each of the defendants. The case will fall in the category of what is described by Sir Frederick Pollock as injury arising from "composite negligence"; *see* Pollock on Torts, 13th Edition, page 485. After referring to

(1) (1910) LL.R. 37 Cal. 559.

(2) [1924] P. 140.

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the authorities bearing upon instances of this kind, the learned author observes that, in such a case, the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, the plaintiff is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between these persons, though in any case he cannot recover on the whole more than his whole damage. This principle was applied by the majority of the Court of Appeal in Ireland in *M'Kenna* v. *Stephens and Hull*(1). *See* also Beven on Negligence, page 79. The case of *Piper* v. *Winnifrith and Leppard*(2), to which Mr. Rajah Ayyar drew our attention in this connection, is clearly distinguishable. What happened in that case was that two dogs belonging to two different owners who did not act in concert had injured the plaintiff's animal and he sued the owners of the dogs for damages. This was certainly not a case either of joint tort or of a composite act in the sense that the act or omission of the one without the act or omission of the other would not have caused the injury. *Croston* v. *Vaughan*(3) does not help the appellant either. The Court in that case no doubt fixed the amount respectively payable by the two wrongdoers, but that was done in exercise of the power expressly conferred on the Court by the recent statute of 1925. It must also be noted that that was a decision only between the defendants *inter se* and did not affect the right of the plaintiff to recover the full amount from either of the defendants. It was pointed out that the plaintiff was not even a party

(1) [1923] 2 Ir. Rep. 112. (2) [1917] 34 T.L.Rep. 108,
(3) [1938] 1 K.B. 540.

to the appeal and his rights accordingly remained unaffected. Whether, in this country, Courts will in the absence of a corresponding statutory provision have the power to fix contribution as between tort-feasors is not necessary for the purpose of this case to consider. We are not prepared to do anything which will affect the plaintiffs' right to recover the full amount of damages from either of the defendants. The appeal fails and is dismissed with costs of the plaintiffs-respondents. The liquidator-appellant will not be personally liable for the costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

KAMADANA SESHAYYA AND TWO OTHERS (DEFENDANTS), APPELLANTS,

v.

KOTAMARTHI ARUNDHATAMMA (PLAINTIFF), RESPONDENT.*

1938, September 30.

Madras Estates Land Act (I of 1908), sec. 26 (3)—Compromise decree approved by Court—Rate of rent fixed in—Applicability of sec. 26 (3) to case of—Sec. 199 of the Act—Applicability and effect of.

Section 26 (3) of the Madras Estates Land Act is intended to deal with cases of voluntary remissions given by a landholder so as to reduce the value of the estate which is to be taken by his successor and has no application to rates of rent fixed in a compromise decree approved by the Court.

Section 199 of the Act provides for the settlement of disputes regarding the rate of rent by means of compromises

* Second Appeal No. 741 of 1934.