

Anthony Vs. Benny

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Court : Kerala

Decided On : Jul-12-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Anthony

Respondent : Benny

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN FRIDAY, THE 12TH DAY OF JULY 2013 21ST ASHADHA, 1935 RSA.No. 772 of 2013 () ----- AS 121/2009 of PRINCIPAL SUB COURT,IRINJALAKUDA OS 212/2007 of MUNSIF COURT, CHALAKUDY ----- APPELLANT/APPELLANT/PLAINTIFF :-
----- ANTHONY AGED 8 YEARS S/O.PAYYAPPILLY PAULOSE, PAYYAPILLY HOUSE MANGALASSERY DESOM, KORATTY, KIZHAKKUMMURI VILLAGE MUKUNDAPURAM TALUK, PIN 68.308 BY ADVS.SRI.TONY PETTAH SRI.THAMBI JACOB
RESPONDENT/RESPONDENT/DEFENDANT :- -----
BENNY, AGED 4 YEARS S/O.MANJALY ANTONY, MANJALY HOUSE, MANGALASSERRY DESOM KORATTY, KIZHAKKUMMURI VILLAGE, MUKUNDAPURAM TALUK PIN

308. THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12-07-2013, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: jvt N.K.BALAKRISHNAN, J.

----- R.S.A. No.772 of 2013 ----- Dated
this the 12th day of July 2013

JUDGMENT

The plaintiff is the appellant. His suit was for compensation for the injury allegedly sustained on his head at about 7 PM on 12.5.2006. It was contended that it was the defendant who caused the said injury. For the treatment expenses and on other counts, the plaintiff claimed that he is entitled to get the amount as shown in the plaint.

2. The suit was resisted by the defendant contending that he did not cause injury to the plaintiff as alleged. It was contended that the plaintiff sustained injury as he fell down when he was drunk and that he is not responsible for the injury the plaintiff had sustained.

3. Before the trial court, the plaintiff and three witnesses were examined and Exts.A1 to A5 were marked. The defendant and one witness were examined as DW1 and R.S.A. No.772 of 2013 -:

2. :- DW2 and Exts.B1 and B2 were marked. Exts.X1 to X3 were also marked.

4. The trial court found that though PW1 had sustained injury, the evidence given by him regarding the alleged incident is inconsistent and that the plaintiff could not prove that he sustained injury as he was attacked by the defendant. It was further found that it is more reasonable and probable to hold that the plaintiff sustained injury as he fell down due to the influence of alcohol, thus the suit was dismissed. The lower appellate court re-considered the entire evidence and concurred with the view taken by the trial court.

5. Learned counsel for the appellant submits that the courts below did not appreciate the evidence correctly. The evidence given by PWs.3 and 4, the doctors would clearly show that the plaintiff (PW1) had sustained injuries. It is also contended that the possibility of the injury being sustained due to fall is to be ruled out and that the evidence would support the case of the plaintiff that he sustained

injury as he was attacked by the defendant. It is also R.S.A. No.772 of 2013 -:

3. :- contended that the courts below went wrong in holding that there is inconsistency with regard to the place of incident as it was stated in the plaint that the incident took place in front of Vayanasala whereas in evidence it was stated that the incident took place on the pathway. It cannot be said that there was material contradiction so as to disbelieve PW1 and his witness, it is argued. According to the appellant, when it is not possible to hold that PW1 due to drunkenness fell down and sustained injury, the case pleaded by the plaintiff that he was attacked by the defendant and thus he sustained injury should have been accepted by the courts below.

6. I have gone through the judgments of the courts below and heard the learned counsel for the appellant at length. There is evidence to show that PW1 sustained injury on his head. There is also evidence to show that PW1 used to consume liquor and pick up quarrel with the defendant. From the evidence given by PW2, the doctor based on Ext.X2 case records, it could be found that PW1 fell down as he was under the influence of alcohol. It is in R.S.A. No.772 of 2013 -:

4. :- that context, the courts below said that the place of incident alleged by the plaintiff which is different from the version given by PW1 in the box assumes relevance. True that the contradiction may be a minor one. But the fact remains that those inconsistencies persuaded the courts below to hold that the case advanced by the plaintiff/appellant does not inspire confidence.

7. There is evidence to show that he was treated at PAT Hospital, Mambra and thereafter he was referred to St.James Hospital, Chalakudy and he had to spend money for medical and other expenses. But, unless the plaintiff is able to prove that the injury he sustained on his head was as a result of the attack made by the defendant he cannot succeed in his suit. Learned Munsiff had the opportunity to assess the evidence given by PW1 properly. It was found by the courts below that the place of occurrence shown in Ext.A1, copy of the charge sheet filed by the police and the place of occurrence stated by the plaintiff does not tally with each other. PW3 was the doctor who treated the plaintiff at St.James Hospital, Chalakudy who deposed R.S.A. No.772 of 2013 -:

5. :- before court that PW1 was admitted in the hospital when he was referred from PAT Hospital, Mambra. It was further stated by him that cause of incident as stated in the outpatient ticket was that PW1 fell down at about 6.20pm near his house under the influence of alcohol. No other information was given. No independent evidence was adduced by the plaintiff in support of the plea raised by him that he sustained injury because the defendant attacked him. Therefore, the courts below found that it is more reasonable and probable that PW1 sustained injury when he fell down in a state of inebriation. I find no infirmity in the finding so entered by the courts below. No substantial question of law raises for consideration in this RSA. Hence, this RSA is dismissed. Sd/- N.K.BALAKRISHNAN, JUDGE. //True Copy// P.A. to Judge Jvt

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