

1969 Present : Alles, J., and Pandita-Gunawardene, J.

A. D. J. GOONERATNE, Appellant, and J. A. WIMALAWATHIE
Respondent

S.C. 494/65 (F)—D. C. Panadura, 8409/LD

Delict—Damage caused by dangerous tree—Liability of the owner of the tree.

A tree which stood on the defendant's land fell across the roof of the plaintiff's house and caused damage to it. Although the tree did not overhang the plaintiff's land or the house, the defendant was aware of the dangerous condition of the tree.

Held, that the defendant was guilty of negligence and liable to pay damages.

APPEAL from a judgment of the District Court, Panadura.

H. W. Jayewardene, Q.C., with *L. W. Athulathmudali* and *G. S. Samaraweera*, for the defendant-appellant.

G. P. J. Kurukulasuriya, for the plaintiff-respondent.

Cur. adv. vult.

June 1, 1969. ALLES, J.—

The plaintiff instituted this action against his neighbouring landowner to recover damages sustained in consequence of an arecanut tree which admittedly stood on the defendant's land falling across the concrete roof of the plaintiff's house resulting in some cracks being caused to the roof.

The house was built in 1957 but was not in occupation and the colour washing and plastering had not been completed when the tree fell on the roof on 6th August, 1962. On 26th November, 1959, the plaintiff by P2 wrote to the Government Agent that there were three very old arecanut trees and two coconut trees which seriously endangered the safety of her house and seeking the intervention of the authorities to have them cut. It was however not possible to arrive at an amicable arrangement with the defendant to have these trees cut. In spite of some confusion in regard to the identity of the tree which fell on the plaintiff's house, the learned District Judge has accepted the evidence of the plaintiff that the tree that crashed on the house was one of the arecanut trees referred to in P2. The defendant was therefore aware of the dangerous condition of the tree from 1959. The evidence of the plaintiff was that the tree was standing 14 feet away from the house and slanting towards the house. It was however not overhanging the plaintiff's land or the house.

Although the tree did not overhang the plaintiff's house, I think the principles laid down in *Jinasena v. Engeltina*¹ are applicable to the case of a tree which causes damage to the property of a neighbouring landowner, provided the owner of the tree is aware of the dangerous condition of the tree. Thus in *Darlis Appu v. David Singho*² the defendant who took no steps to prevent a coconut tree, which to his knowledge, was a potential source of danger, from falling on his neighbour's house was held to be guilty of negligence. In similar circumstances in *Podihamy v. Jayaratne*³ Soeretsz A.C.J. held that in respect of a dangerous tree (it was not clear on the evidence that the tree was overhanging the plaintiff's land or house) "apart for the principle involved in the maxim *sic utere tuo ut alienum non laedas* there devolved on the defendant a duty to take care at least from the time his attention was drawn to the dangerous nature of the tree".

We are therefore satisfied in the circumstances of this case that the defendant was liable for the damage caused to the concrete roof of the plaintiff's house.

There only remains the question of the quantum of damages to which the plaintiff would be entitled. The plaintiff originally claimed Rs. 3,000 as damages, then asked for Rs. 1,577.77 in her letter of demand and

¹ (1919) 21 N. L. R. 445.

² (1948) 50 N. L. R. 241.

³ (1946) 47 N. L. R. 484.

finally was awarded Rs. 1,000 which was the sum she claimed in her plaint. Her expert Philipiah, a Chartered Civil Engineer, described the cracks on the roof as lines with no appreciable width. The width he said was only a pinpoint. Of the three cracks only one had gone through the entire width. The learned District Judge has remarked that "Philipiah has not given evidence which we expect from an expert though there is no reason to doubt his bona fides". The defendant's expert Ahangama was a licensed Surveyor and estimated the damage at only Rs. 50 because in his view it was unnecessary to remove the entire roof. The only reason which the Judge gives for not accepting Ahangama's estimate is because he was not an expert on buildings. We think however having regard to the damage caused a reasonable estimate would be Rs. 250. We therefore enter judgment and decree in favour of the plaintiff in a sum of Rs. 250. It was plaintiff's exaggerated claim that necessitated this action being instituted in the District Court and in the circumstances we direct that each party should bear their own costs. We do not propose to interfere with that part of the Judge's order in which he had directed that the defendant should cut down an arocanut tree and two coconut trees which overhang the plaintiff's house as the defendant has agreed to have these trees cut.

PANDITA-GUNAWARDANE, J.—I agree.

Decree varied.
