1943 *Present* : **Soertsz S.P.J. and Keuneman J.**

ABEYEPALA, Appellant, *and* RAJAPAKSE, Respondent.

137—D. C. Colombo, 12,381.

Action for damages—Collision between bus at a standstill and motor car—Presumption of negligence.

In an action founded upon a collision between plaintiff's omnibus which was at a standstill and defendant's motor car which ran into it from behind there is a presumption of negligence and it is for the defendant to offer an explanation in negativing negligence.

THIS was an action for damages incurred by the plaintiff as a result of defendant's motor car colliding against plaintiff's motor bus. The plaintiff pleaded that the collision occurred through the negligence of the defendant. The District Judge held that the burden of proof of negligence lay on the plaintiff and that he had failed to discharge it. He dismissed plaintiff's action.

N. Nadarajah, K.C. (with him *Dodwell Gunawardana*), for the plaintiff, appellant. The onus of proof has been wrongly placed on the plaintiff.

The plaintiff is entitled to sue for the loss of services of his servant If one road vehicle collides with another while the latter is stationary or, to use a nautical term, "at anchor", such an act is *prima facie* proof of negligence on the part of the driver of the moving car. The ruling in *The Arnot Lyle*[1], a case founded upon a collision between a vessel at anchor and one in motion, is applicable. See also *Terrel on Law of Running Down Cases (1936 ed.), p. 22, paragraph (c) ; Gibb on Collisions on Land (1938 ed.) p. 17 ; Safenaumma v. Siddick et al.*[2].

The plaintiff is entitled to sue for the loss of services of his servant (the conductor) if the latter is injured, although he cannot sue if the servant had died. We have proved the medical expenses incurred by us on behalf of the conductor and can claim damages—*Attorney-General v. Valle-Jones*[3]; *Admiralty Commissioners v. ss. Amerika*[4].

E. B. Wickremanayake (with him *H. W. Jayewardene*), for the defendant, respondent.—The plaintiff cannot recover damages for the medical expenses incurred by him on behalf of the conductor. In *Attorney-General v. Valle-Jones* (*supra*) the Crown was under a legal duty to incur the expense in question by reason of certain regulations. Unless there is a legal obligation on a person to spend on another, he cannot recover the expenses. There is no such obligation in the present case between the plaintiff and the conductor.

On the question of negligence the burden of proof was on the plaintiff. The defendant gave a reasonable explanation, and the onus was on the plaintiff to show that the explanation was false—*The Kite*[5] ; *Rex v. Simon et al.*[6].

N. Nadarajah, K.C., in reply.—The Roman-Dutch law allows the master an action for loss of services consequent on injury to a servant

[1] *L. R. (1886) 11 P. D. 114.*
[2] *(1934) 37 N. L. R. 25.*
[3] *L. R. (1935) 2 K. B. D. 209 at 215 et seq.*
[4] *L. R. (1917) A. C. 38.*
[5] *L. R. (1933) P. D. 154 at 169–170.*
[6] *S. A. L. R. (1936) T. P. D. 2117.*

The case of *Attorney-General v. Valle-Jones* (*supra*) is considered in *Macintosh and Scoble on Negligence in Delict* (*2nd ed.*), *p. 205*. See also *Mackerron on the Law of Delict* (*2nd ed.*), *p. 150*.

Cur. adv. vult.

April 16, 1943. KEUNEMAN J.—

This was an action for damages incurred by the plaintiff as a result of the defendant's motor car No. Z—1651 colliding against the motor bus No. Z—5069 belonging to the plaintiff and also injuring the conductor of the bus. The plaintiff pleaded that the collision occurred through the negligence of the defendant.

The evidence showed that the plaintiff's motor bus was coming towards Colombo along Reid avenue, and halted at a bus halting place near the wicket gate on the side of the Royal College, and opposite the grand stand of the Ceylon Turf Club. Certain passengers alighted and others entered the bus, which was at a standstill, when the defendant's motor car ran into it from behind.

The District Judge held that the burden of proof of negligence lay upon the plaintiff, and remarked that the two chief witnesses were unable to say what happened. This was due to the fact that they were facing forward, and could not see behind them. The District Judge also drew an inference adverse to the plaintiff, because of his failure to call the Motor Examiner, but in view of the fact that the defendant also failed to call the Motor Examiner, I do not think the inference was justified. The District Judge added that the plaintiff had failed to discharge the burden of proof, and that his claim failed.

I may add that the defendant tendered an explanation for the collision. According to him, his car which had been functioning efficiently, suddenly at the psychological moment refused to function in regard to the foot brake, with the result that the car went forward without stopping. On this point the District Judge added the negative comment that he was not prepared on the evidence to hold that the defendant was speaking what is not true.

As regards the speed of the defendant's car, the District Judge was not prepared to accept the statement of the defendant that he was going very slowly, in view of the damage caused to the bus and of the injuries to the conductor. The District Judge thought that there was some considerable momentum in the defendant's car at the time of the impact.

There is one aspect of this case which the District Judge has failed to emphasise, and this has led to his misdirecting himself. That is that the plaintiff's bus was at a standstill at, and had been halted for some time before, the collision. In *The Arnot Lyle*[1] it was held that in an action founded upon a collision between a vessel at anchor and one in motion, the burden of proof is on the owners of the latter to prove that the collision was not occasioned by any negligence on their part. In *Davies v. Union Government*[2] it was held that if a cyclist in broad daylight overtakes and collides with a pedestrian walking in the same direction as the cyclist in a public street devoid of all other traffic, there is a presumption of negligence, and the pedestrian is entitled to judgment

[1] *L. R. (1886) 11 P. D. 114.*
[2] *S. A. L. R. (1936) Transvaal Prov. and Local Div., p. 197*

if the cyclist gives an explanation not accepted by the Court or if he gives no explanation. Where he gives an explanation which is accepted by the Court, or which may reasonably be true, negativing negligence, he will escape liability. In the present case the presumption of negligence is strengthened in view of the fact that the plaintiff's bus was halted at the side of the road.

I can see no reason why the rule laid down in *The Arnot Lyle* case should not be extended to the case of a land collision. In the present case, I think there is a *prima facie* proof of negligence, and it is for the defendant to offer an explanation which the Court may or may not accept, or regard as reasonably true, in negativing negligence.

I am of opinion that the District Judge has failed to appreciate this matter of the burden of proof, and the shifting of the burden, and in view of his misdirection, his judgment cannot be sustained. I set aside the judgment of the District Judge, and order that a new trial be held before another District Judge in which all relevant matters will be fully considered including any explanation tendered by the defendant. I think it is desirable that the Motor Examiner should be called by one or other of the parties, but make no order on that point. I add that as regards the question of damages claimed by the plaintiff, the District Judge who conducts the retrial should take into consideration the case of *Attorney-General v. Valle-Jones*[1] and any other relevant authorities that may be cited to him.

The plaintiff-appellant is entitled to the costs of this appeal. The costs of the trial already held will be in the discretion of the District Judge.

SOERTSZ S.P.J.—I agree.

Set aside ; case remitted.