

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

Alliance Finance Company Ltd.
No. 34, Ward Place,
Colombo 07.

Plaintiff

Vs.

C.A. No. 714 / 96 F
D.C. Colombo No. 8010 / MHP

1. Nuwarapassa Padiduralage Gunendra,
No. 30, De Mel Road,
Lakshapathiya, Moratuwa.
2. Kottarachchige Matinas Samsan
Perera,
No.14, Hospital Road, Kadana.
3. Muthumuni Karunawathie,
No. 30, De Mel Road,
Lakshapathiya, Moratuwa.

Defendants

AND NOW BETWEEN

1. Nuwarapassa Padiduralage Gunendra,
No. 30, De Mel Road,
Lakshapathiya, Moratuwa.

3. Muthumuni Karunawathie,
No. 30, De Mel Road,
Lakshapathiya, Moratuwa.

1st 3rd Defendant Appellant

Vs

Alliance Finance Company Ltd.
No. 34, Ward Place,
Colombo 07.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Daya Guruge for the 1st and 3rd Defendant
Appellants
Nadvi Babandeen for the Plaintiff
Respondent

ARGUED ON : 18.10.2011

DECIDED ON : 04.11.2011

UPALY ABEYRATHNE, J.

This is an appeal preferred by the 1st and 3rd Defendants Appellants (hereinafter referred to as the Appellants) from the judgement of the learned Additional District Judge of Colombo dated 01.11.1996. The facts of the case are briefly as follows;

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st, 2nd and 3rd Defendant in the District Court of Colombo to recover the sums of money as prayed for in prayer (a), (b), (c) and (d) of the plaint which was due on a hire purchase agreement. The Appellants in their answer took up the position that the vehicle which was the subject matter of the said hire purchase agreement was robbed by the terrorists and due to the negligent and careless manner in which the alleged vehicle had been insured the value of the vehicle could not be recovered from the insurer.

The Appellants contended that the vehicle was robbed at Valachchenai and since the Respondent had failed to insure the vehicle against robbery there had been no liability cast upon the Appellants for the payment of instalments.

The Respondent contended that the Appellants had failed to prove the fact that the vehicle was robbed at Valachchenai. The Appellants in their evidence said that they made a complaint to Valachchenai Police. But they did not produce a copy of the said complaint at the trial. Apart from that there had been no any other documentation to prove that the Appellant had informed the robbery to the Respondent Company. Hence I am of the view that the learned Additional District Judge has correctly answered to issues No. 09, 10 and 11.

On the other hand in view of the fact that the Appellants have failed to prove the alleged robbery the question of insurance does not arise.

Accordingly I find no reason to interfere with the said judgement of the learned Additional District Judge dated 01.11.1996. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal