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

SC Appeal No.62/2013
SC/HCCA/LA Application No. 464/2012
SP/HCCA/GA/50/2004 (F)
D.C. Balapitiya Case No.1303/M

In the matter of an Appeal after obtaining Leave to Appeal.

BHADRA DE SILVA RAJAKARUNA
Uduvaragoda, Kahawa.

PLAINTIFF

VS.

1. **GENERAL MANAGER OF RAILWAYS**
   Sri Lanka Railway Department, Colombo.

2. **JAGAMUNI PIYASENA DE SILVA**
   No.263, Duwa Road, Akurala, Kahawa.

3. **HANDUNETTI LALITH WIJESUNDERA**
   Duwa Road, Akurala, Kahawa.

4. **HON. ATTORNEY GENERAL**
   Attorney General's Department, Colombo 12.

DEFENDANTS

AND BETWEEN

1. **GENERAL MANAGER OF RAILWAYS**
   Sri Lanka Railways Department, Colombo.

4. **HON. ATTORNEY GENERAL**
   Attorney General's Department, Colombo 12.

1st AND 4th DEFFENDANTS-APPELLANTS

VS.

BHADRA DE SILVA RAJAKARUNA
Uduvaragoda, Kahawa.
PLAINTIFF- RESPONDENT

2. JAGAMUNI PIYASENA DE SILVA
No.263, Duwa Road,
Akurala, Kahawa.

3. HANDUNETTI LALITH WIJESUNDERA
Duwa Road, Akurala, Kahawa.
DEFENDANTS-RESPONDENTS

2A. HENDADURA KANTHILATHA
No. 263, Samurdhi Mawatha,
Duwa Road, Akurala, Kahawa.

3A. KANAKKAHEWA JAYANTHI
No.260,Duwa Road,
Akurala, Kahawa.
SUBSTITUTED DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

1. GENERAL MANAGER OF RAILWAYS
Sri Lanka Railways
Department, Colombo.

4. HON. ATTORNEY GENERAL
Attorney General's Department,
Colombo 12.
1st AND 4th DEFFENDANTS-APPELLANTS-PETITIONERS/APPELLANTS

VS.

BHADRA DE SILVA RAJAKARUNA
Uduvaragoda, Kahawa.

PLAINTIFF- RESPONDENT-RESPONDENT

2A. HENDADURA KANTHILATHA
No. 263, Samurdhi Mawatha,
Duwa Road, Akurala, Kahawa.

3A. KANAKKAHEWA JAYANTHI
No.260,Duwa Road,
Akurala, Kahawa.

SUBSTITUTED DEFENDANTS-RESPONDENTS-REPONDENTS

BEFORE:	Upaly Abeyrathne J. Anil Gooneratne J. Prasanna Jayawardena, PC. J
COUNSEL:	Viraj Dayaratne, Senior DSG with Ms. Sureka Ahmed, SC for the 1st and 4th Defendants-Appellants-Petitioners/Appellants. Hemasiri Withanachchi for the Plaintiff-Respondent-Respondent.
WRITTEN SUBMISSIONS FILED:	By the 1st and 4th Defendants-Appellants-Petitioner/Appellants on 13th May 2013. By the Plaintiff-Respondent-Respondent on 19th July 2013 and 10th March 2017.
ARGUED ON:	06th February 2017.
DECIDED ON:	01st August 2017.

Prasanna Jayawardena, PC, J.

Akurala is a village by the sea in the Galle District, lying between Ambalangoda to the North and Hikkaduwa to the South. Akurala has a small but idyllic beach. The Galle Road runs by this beach. Akurala village sprawls on the landside of Galle Road

in that area. At one end of the beach, there is a road which leads from Galle Road to the interior of the village. That road is named “Duwa Road”. A short distance along Duwa Road, about 200 meters from Galle Road, the Southern railway line crosses Duwa Road. Sri Lanka Railways identify that level crossing as ‘Level Crossing No. CL 78’. There are trees and lush undergrowth lining the road and the railway line in that area. There are also some houses. It is a verdant rural scene, typical of the coastal region of southern Sri Lanka.

A few minutes after 11pm on 19th August 1993, a tragedy shattered the silence and tranquility of the night at Level Crossing No. CL 78. An unscheduled train, travelling from Colombo towards Galle, crashed into a Mitsubishi Pajero driven by Mr.Senarath Rajakaruna. Mr. Rajakaruna had been at a house in Akurala, helping to organize a `homecoming’ ceremony to be held there on the next day. He had left that house a little before 11pm and was driving along Duwa Road heading towards Galle Road. He wanted to get to his `Mahagedera’, which was in the neighbouring village of Kahawa. Mr. Rajakaruna drove across Level Crossing No. CL 78. At that exact moment, the train reached the level crossing and crashed into the Mitsubishi Pajero. The vehicle was flung to a side and ended up resting against the disused railway platform at Akurala. Mr.Rajakaruna was badly injured. A crowd soon gathered, drawn by the loud crash of the train hitting the vehicle. Mr. Rajakaruna was taken to the Balapitiya Hospital. But, he had died by then.

At the time of his death, Mr.Rajakaruna was 40 years old and was an Attorney-at-Law. He had been an elected member of the Southern Provincial Council from 1988 till the term of the Council ended a few months prior to his death. He married his wife, Bhadra, in 1980 and they had a daughter of 9 years and a son of 7 years. The family lived in a rented house at Battaramulla. Since much of his practice as a lawyer was in the District Court of Balapitiya and the Courts in Galle and also due to his political activities in the Galle District, Mr.Rajakaruna was often in the Akurala area. In fact, that was his area of origin. He was well known in Akurala and his brother lived in the family’s `Mahagedera’ in Kahawa. The facts I have related up to now, are not in dispute.

On 11th August 1995, Ms. Bhadra Rajakaruna, the widow of Mr.Rajakaruna, filed this action in the District Court of Balapitiya against the 1st to 4th defendants claiming damages from them, jointly and severally, in a sum of Rs.5,000,000/- and legal interest thereon. The 1st defendant was the General Manager, Railways. Section 2 of the Railways Ordinance, which applies to Sri Lanka Railways, has statutorily created the office of ‘General Manager’, who is the principal officer of Sri Lanka Railways. Sections 32 to 34 of the Railways Ordinance require the General Manager, Railways to perform several duties and functions and exercise several powers with regard to level crossings. The 2nd and 3rd defendants [Jagamuni Piyasena De Silva and Handuneththi Lalith Wijesundera] performed the function of gatekeepers at Level Crossing No. CL 78. Since Sri Lanka Railways is a Government Department, the 4th defendant is the Hon. Attorney General, representing the State.

As set out in the plaint, the plaintiff's case, in brief, is that: the plaintiff is the widow of Mr. Rajakaruna and the mother of their two children; Sri Lanka Railways is a Government Department of which the 1st defendant was the principal officer; the 2nd and 3rd defendants were employees and/or agents of Sri Lanka Railways; in the performance of the duties as employees and/or agents of Sri Lanka Railways, the 2nd and 3rd defendants were required, at any time when a train was approaching Level Crossing No. 78, to close the gates installed across Duwa Road; however, the 2nd and 3rd defendant had negligently failed to close these gates at the time when the train crashed into the Mr. Rajakaruna's vehicle on 19th August 1993 and caused his death; further, the 1st defendant and the State had failed to fix any warning signs on Duwa Road to warn passersby of the level crossing; the 1st, 2nd, 3rd defendants and the State had negligently failed to perform their duty of ensuring that the gates were closed at any time when a train was approaching Level Crossing No. 78; thus, Mr. Rajakaruna's death was due to the negligence of the 1st, 2nd, 3rd defendants and the State; and, therefore, they are, jointly and severally, liable to pay a sum of Rs.5,000,000/- to the plaintiff, which is the loss she suffered as result of Mr. Rajakaruna's death.

The 1st defendant filed answer, *inter alia*, denying that the 2nd and 3rd defendants were employees of Sri Lanka Railways and claiming that the accident was caused by the negligence of the plaintiff's husband and not due to any negligence of the defendants. In their answer, the 2nd and 3rd defendants firmly asserted that they were employees of Sri Lanka Railways and denied that they had been negligent.

When the trial commenced, the occurrence of the collision between the train and Mr.Rajakaruna's vehicle and the fact that, Mr.Rajakaruna died as a result of the injuries he sustained, were admitted by all the parties. It was also admitted by all the parties that, gates had been installed at Level Crossing No. CL 78 for the purpose of preventing collisions by closing those gates when a train was approaching. The plaintiff raised twelve issues on the lines of the averments in the plaint. One of the issues raised by the plaintiff was specifically whether the State was vicariously liable for the negligent acts and omissions of the 2nd and 3rd defendants. The 1st and 4th defendant raised eight issues and the 2nd and 3rd defendants raised two issues.

The plaintiff gave evidence and produced the documents marked "පැ1" to "පැ28". In addition to the evidence related at the outset, the plaintiff said that Mr.Rajakaruna was a devoted and caring husband and father and that they had a happy home. She said Mr. Rajakaruna had a substantial monthly income and that he gave her a sum of Rs.20,000/- each month to meet expenses. She estimated the pecuniary loss caused to her as a result of his death, at Rs.5,000,000/-.

The plaintiff stated that, a few days after her husband's death, she had gone to the place where the collision occurred. She said the level crossing on Duwa Road was about 200 meters from Galle Road. There were metal gates on either side of Duwa Road at the level crossing and a gatekeeper's hut and, usually, a gatekeeper on duty there. There were no sign posts placed on Duwa Road to warn passersby of the

level crossing. She said the railway line in this area had two bends which prevented anyone from seeing the railway line beyond the two bends and described these two bends as dangerous bends - *"භයානක වංගු"* - . She also said there were houses and trees which obscured the view of the railway line in this area. She stated that, her husband's security officer, A.S.K. De Silva had been riding his motor cycle and following Mr. Rajakaruna's vehicle that night and that De Silva had seen the collision.

A.S.K. De Silva testified that, he had served as Mr. Rajakaruna's security officer when Mr. Rajakaruna was a member of the Southern Provincial Council and he had continued to serve as a security officer up to the time of Mr.Rajakaruna's death. De Silva said that, in the morning of 19th August 1993, Mr. Rajakaruna had attended the wedding of another security officer held at a house in Akurala and in the evening they had gone to the bridegroom's home, which was also in Akurala, to help organize the `homecoming' ceremony to be held the next day. Mr.Rajakaruna had left the bridegroom's home a little before 11pm as he wished to get back to his brother's house in Kahawa. Mr.Rajakaruna was driving his Mitsubishi Pajero. He had to drive along Duwa Road and reach Galle Road to get to Kahawa. The witness had his motor cycle with him and was, therefore, following Mr.Rajakaruna's vehicle. The gate at the level crossing on Duwa Road was *open* and Mr.Rajakaruna continued to drive his vehicle across the railway line. Just at the moment the vehicle was on the railway line, there was a loud noise and the witness saw a train hit the Mitsubishi Pajero, which was then flung off the railway line and on to the gate keeper's hut and then finally came to rest on the platform of the disused Akurala station. De Silva had left his motor cycle and run up to the vehicle. Mr.Rajakaruna had been unconscious. A large crowd had gathered. The witness and some others had taken Mr.Rajakaruna to the Balapitiya Hospital. But, by that time, Mr.Rajakaruna had died.

De Silva stated that, there were metal gates at Level Crossing No. CL 78 and that he knew that the 2nd and 3rd defendants, who also lived in Akurala, performed the duty of gatekeepers at this level crossing. The witness stated that, the 2nd and 3rd defendants had been on duty at the level crossing when Mr. Rajakaruna and the witness passed it on their way to the wedding on 19th August 1993 but that the 2nd and 3rd defendants were not at the level crossing when the collision occurred that same night. This witness also stated that, there were no sign posts placed on Duwa Road to warn passersby of the level crossing. He said that the bends in the railway line on either side of the level crossing obstructed the view of the railway line beyond the bends. Describing the bends in the railway line, he said, *"අම්බලන්ගොඩ පැත්තෙන් බැලුවොත් සිල්පර කොටන් උපරිම වශයෙන් 150ක් ගියහම වංගුවක් තිබෙනවා. එවැනිම වංගුවක් තිබෙනවා ගාල්ල පැත්තට"*. De Silva said these two bends were dangerous - *"දරුණු වංගු දෙකක්"* and also that, the view of the railway line was obscured by trees and vegetation.

The 1st and 4th defendants commenced their case by leading the evidence of the engine driver of the train which crashed into Mr.Rajakaruna's vehicle. This witness stated that he had been assigned the task of driving an unscheduled train from Colombo to Galle. The train was pulled by a power set, which he was driving. The

train reached Level Crossing No. CL 78 at about 11pm. He said that part of the railway line is known as the “Akurala Bend” [*“අකුරල වංගුව”*] and that there were gates across the road at this level crossing. The witness had applied the brakes and reduced the speed of the train before the bend and sounded the horn. The train was travelling at a speed of about 25 miles per hour [40 kilometers per hour]. As the train came around the bend, he saw a vehicle on the railway line, about 25-30 feet in front of the train. The vehicle had stopped for a moment on the railway line and then again proceeded across railway line. The train struck the vehicle a glancing blow. The train came to a stop about 125 feet from the level crossing. The witness applied the vacuum brakes and hand brakes and went to the level crossing. A crowd had gathered there and the driver of the vehicle had been taken to hospital.

When the engine driver was cross examined by learned Counsel appearing for the 3rd defendant, the witness stated that, the 3rd defendant was employed as a gatekeeper by Sri Lanka Railways – *vide:* the following evidence:

ප්‍ර: තමන්ට කියන්න පුළුවන්ද මේ විත්තිකාරයා රේල්වේ දෙපාර්තමේන්තුව යටතේ සේවය කරපු ආරක්ෂකයෙක් ?
උ: ඒ කාලේ බම්බු සේවා මුර සඳහා නොවේ ගේට්ටුවට මුර කාරයෝ පත් කරේ .
ප්‍ර: මේ විත්තිකාරයා රේල්වේ දෙපාර්තමේන්තුවෙන් පත් කරපු මුර කාරයෙක් ?
උ: ඔව්.

When the engine driver was cross examined by learned President’s Counsel appearing for the plaintiff, the witness stated that, he considered Level Crossing No. CL 78 to be a “protected crossing” [“ආරක්ෂිත හරස් පාරක් ”] as it had two metal gates installed by Sri Lanka Railways, gatekeepers and a gatekeeper’s hut. The witness stated that, when he reached the level crossing after the collision, the gates were open and that the gatekeepers could not be found. In fact, the Police Statement marked “**පැ**25” made by this witness a few days after the collision, also states that the gates were open and the gatekeepers could not be found. The witness stated that, the bends in the railway line were dangerous - *vide:* the following evidence:

ප්‍ර: තමන් කියන හැටියට ඔය ස්ථානය ගැන කල්පනා කර බැලුවාම ඔතැන බොහොම තද වංගුවක් තිබුණු ස්ථානය ?
උ: ඔව්.
and
ප්‍ර: මේක බොහොම භයානක වංගුවක් ?
උ: ඔව්.
ප්‍ර: පාර දෙපසේම විශාල වශයෙන් ගස් කොළන් වැවී තිබෙනවා ?
උ: ඔව්.

The Assistant Accountant of Sri Lanka Railways was called to testify on behalf of the 1st and 4th defendants in an attempt to establish that the 2nd and 3rd defendants were not employees of Sri Lanka Railways. However, the evidence of this witness, both in his evidence-in-chief and in cross examination, establishes that, Sri Lanka Railways had installed the gates and gatekeepers’ hut at Level Crossing No. CL 78 and

assigned the duties of gatekeepers to the 2nd and 3rd defendants and that, Sri Lanka Railways paid each of them a monthly payment of Rs.1,000/- for performing those duties, which were supervised by Sri Lanka Railways. It should also be mentioned here that, when the Assistant Accountant of Sri Lanka Railways was cross examined by learned counsel for the 2nd and 3rd defendants, letters issued to these defendants by a Foreman of Sri Lanka Railways stating that the 2nd and 3rd defendants had been assigned the duty of gatekeepers at this level crossing, have been marked "2වි1" and "3වි1". The fact that these documents were produced is recorded in the Proceedings of 03rd February 2003 and, further, these documents have been referred to in the written submissions filed by 1st and 4th defendants in the District Court. However, these documents are not in the appeal brief.

The 1st and 4th defendants also led the evidence of the District Inspector of Signals, Galle District of Sri Lanka Railways and the evidence of a police officer. The evidence of these two witnesses is not significant to this appeal.

The 2nd defendant gave evidence and stated that, in 1989, Sri Lanka Railways had appointed him to function as a gatekeeper at Level Crossing No. CL 78 and that he had carried out those duties from then onwards. He said a total of 6 gatekeepers had been appointed to carry out these duties at Level Crossing No. CL 78 and that they, usually, worked in 8 hour shifts. Sri Lanka Railways paid their wages and supervised their functions. The 2nd defendant described Level Crossing No. CL 78 as a dangerous place - "ගේට්ටුව දරුණුයි". He said that there were no sign boards to warn passersby of the level crossing. The 2nd defendant stated that, on 19th August 1993, he and the 3rd defendant had been on duty for 16 hours from 6am onwards until past 10pm since the other gatekeepers had not reported for duty. He said that, Sri Lanka Railways had equipped the gatekeepers' hut with a lamp, a clock and a green flag but that a telephone had not been installed in the gatekeepers' hut. The witness said the last scheduled train passed the level crossing at 10.20 pm that night when they were at the level crossing and that he did not expect any trains to arrive at night after that time. He said a short while later, he heard loud cries from his house which was close by and that he closed the gates across the road and tied them up with a rope and ran to his house. He said the 3rd defendant accompanied him. The 2nd defendant said his daughter had cut her foot and that he carried her to a relative's house to have the wound dressed and the 3rd defendant came with him. While they were there, they heard a loud crash and realised a train had hit a vehicle on the railway line. He said that a crowd had gathered there and that they were looking for the gatekeepers and threatening to kill them. The 2nd defendant said that he and the 3rd defendant feared for their lives and ran away and hid. He said that, Sri Lanka Railways had stopped their employment after the collision.

Finally, the 3rd defendant gave evidence. His evidence was much on the same lines as the evidence of the 2nd defendant. He also described the bends on the railway line at the area as being dangerous bends - "භයානක වංගු".

In his judgment, the learned trial judge first set out the cases of the parties and then considered the evidence of each witness, in some detail. Having done so, the learned judge applied the evidence to the issues and determined that, both the 2nd and 3rd defendants had negligently left their post at Level Crossing No. CL 78, leaving the gates across Duwa Road *open*. Thereafter, the learned judge took the view that, since Mr. Rajakaruna had seen the gates *open* when he drove up to the level crossing, he expected he could cross it safely and, therefore, had continued to drive on to the level crossing, when the train hit his vehicle, fatally injuring him. On this basis, the trial judge held that, Mr. Rajakaruna's death was caused solely due to the negligence of the 2nd and 3rd defendants. The District Court went on to hold that, the 2nd and 3rd defendants were employees of Sri Lanka Railways, which was a Government Department and that, therefore, the State and Sri Lanka Railways are vicariously liable for the damage caused by the negligence of the 2nd and 3rd defendants. The District Court quantified the pecuniary damage caused to the plaintiff as a result of the death of her husband, at a sum of Rs.3,500,000/- and entered judgment against the defendants in that sum, with legal interest thereon and costs.

The 1st and 4th defendants appealed to the Court of Appeal. In their petition of appeal, the 1st and 4th defendants claimed five grounds of appeal. These five grounds of appeal are all based on submissions that, the learned trial judge failed to correctly analyse the evidence and that the District Court has reached erroneous findings of fact. The appeal was later transferred to the Provincial High Court of Civil Appeal holden in Galle. During the pendency of the appeal, the 2nd and 3rd defendants died and their legal representatives were substituted in their place. In appeal, the High Court also examined the cases of the parties and analysed the evidence. Having done so, the learned High Court Judges agreed with the assessment of the evidence, the reasoning and conclusions reached by the trial judge and affirmed the judgment of the District Court.

The 1st and 4th defendants filed an application in this Court seeking leave to appeal from the judgment of the High Court. This Court has seen fit to grant the 1st and 4th defendants leave to appeal on all nine questions of law set out in their petition.

These questions of law, reproduced *verbatim*, are:

(i) Is the Judgment of the Civil Appellate High Court wrong or contrary to law ?

(ii) Did the Civil Appellate High Court err in law by not considering any of the grounds of appeal that were adverted to in the Petition of Appeal and the written submissions of the Petitioners ?

(iii) Did the Civil Appellate High Court err in law in not considering the fact that the judgment of the District Court of Balapitiya had been entered contrary to section 187 of the Civil Procedure Code ?

(iv) Did the Civil Appellate High Court err in law in not considering the failure of the learned Additional District Judge to evaluate and analyse and give weightage to the evidence in the case before him ?

(v) Did the Civil Appellate High Court misdirect itself with regard to the obligations and duties of motorists at crossings of road ?

(vi) Did the Civil Appellate High Court err in law in applying section 32 of the railways ordinance in the absence of supporting evidence to classify the relevant level crossing into the category stated in the aforesaid section ?

(vii) Did the Civil Appellate High Court err in law by imposing vicarious liability on the Petitioners in the absence of any supporting material for the same ?

(viii) Has the Civil Appellate High Court err in law by failing to consider whether there are negligence and / or contributory negligence on the part of the deceased, as it had come to a wrongful conclusion that the level crossing in issue was not a standard and regular one ?

(ix) Did the Civil Appellate High Court err by failing to appreciate the duty of care in this case ?

Upon leave to appeal being granted, learned counsel for the plaintiff framed the following question of law:

(x) Can the petitioners take up as a defence contributory negligence in a case where the victim has died ?

Questions of law no.s (i),(ii),(iv),(vi),(vii) and (viii) can be considered together since they all arise from and relate to the learned trial judge's analysis of evidence and to the resulting findings of fact of the District Court and, thereafter, the determinations of the High Court on these matters.

When considering these questions of law, this Court should keep in mind that, while an appellate court has ample jurisdiction to reverse or vary findings of fact by a trial judge, it is the trial judge who has heard and seen the witnesses testify and has firsthand knowledge of the course of trial and, therefore, the established principle is that, an appellate court is, usually, reluctant to disturb a trial judge's findings of facts unless there is good reason to do. Thus, De Silva CJ observed in ALWIS vs. FERNANDO [1993 1 SLR at p.122], *"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."*. In COLLETTES vs. BANK OF CEYLON [1984 2 SLR 253], Sharvananda J, as he then was, identified *some* of the circumstances in which an appellate court would consider it necessary to revise findings of fact made by a trial judge and stated [at p. 264] *"Thus this court undoubtedly has the jurisdiction to revise the concurrent findings of fact reached by the lower court in appropriate cases. However, ordinarily*

it will not interfere with findings of fact based upon relevant evidence except in special circumstances, such as, for instance, where the judgment of the lower court shows that the relevant evidence bearing on a fact has not been considered or irrelevant matters have been given undue importance or that the conclusion rests mainly on erroneous considerations or is not supported by sufficient evidence. *When the judgment of the lower court exhibits such shortcomings, this court not only may, but is under a duty to examine the supporting evidence and reverse the findings"*. As Ranasinghe J, as he then was, said in DE SILVA vs. SENEVIRATNE [1981 2 SLR 1at p. 17] quoting Lord Reid in BENMAX vs. AUSTIN MOTOR CO [1955 AC 370], where such errors are evident, an appellate court *"ought not to shrink from that task"* of correcting erroneous findings of fact by a trial judge. However, conversely, if such errors are not evident from the evidence and record, an appellate court would, usually, be disinclined to disturb a trial judge's findings of fact.

It is apparent that, questions of law no.s (i),(ii),(iv),(vi),(vii) and (viii) are wide in scope. They cover most of the matters in issue at the trial, including the manner in which the collision occurred and whether it occurred due to the negligence of any one or more of the parties and, further, whether one of the parties should be held liable for the negligence of another party. In these circumstances, answering these questions will necessitate a consideration of the entirety of the evidence in this case with regard to these key issues.

When doing so, it will be useful to first ascertain some facts with regard to the layout of Level Crossing No. CL 78. In this regard, firstly, it undisputed that, Duwa Road crosses the Southern railway line at Level Crossing No. CL 78. It has been shown that, that, Duwa Road was a tarred road maintained by the Hikkaduwa Pradeshiya Sabhawa and that there were many houses along this road and that the road was used by the public to travel to the interior of Akura village. It is not in dispute that, Sri Lanka Railways had installed gates across Duwa Road at Level Crossing No. CL 78 and also built a gatekeepers' hut at the location.

Secondly, in the light of the above evidence, it is clear that, Level Crossing No. CL 78 was a level crossing at which the railway line crossed a *"public carriage road"* as contemplated in section 32 of the Railways Ordinance. Further, since the gates here have been installed only across Duwa Road and not across the railway line, it is evident that these gates are of the type referred to in the *proviso* to section 32 which requires Sri Lanka Railways to maintain gates which will make Duwa Road impassable at all times when a train is passing Level Crossing No. CL 78. In these circumstances, the penultimate paragraph of section 32 places a duty on Sri Lanka Railways to ensure that these gates are moved to a position that makes the road impassable, when a train is passing the level crossing. In this connection, it should also be mentioned that, Level Crossing No. CL 78 cannot be regarded as a *"minor crossing"* as referred to in section 33 (1) of the Railways Ordinance since there is no evidence that, the Minister had declared it to be a *"minor crossing"* and nor is there any evidence that provision had been made for the gates to be padlocked as required by section 33 (2) if it had been a *"minor crossing"*. Further, Level Crossing

No. CL 78 cannot be an *"occupation crossing"* provided for the use of a private owner of a road as defined in section 34 (1), since it is across Duwa Road, which is a public road.

Thirdly, the evidence establishes that, the railway line on either side of Level Crossing No. CL 78 has bends on both sides of the level crossing and that there are trees, plants and houses on either side of the railway line and Duwa Road in this area. As a result of these features, an engine driver who is driving a train approaching Level Crossing No. CL 78, cannot have a clear view of the level crossing till the train is only a short distance away from it. Similarly, a driver of a vehicle travelling on Duwa Road towards Level Crossing No. CL 78, cannot see an approaching train until it is very close by. In fact, the witnesses at the trial, were in a chorus of agreement that, this was a perilous level crossing.

Next, in order to answer the aforesaid questions of law, I should examine what the evidence establishes with regard to the functions the 2nd and 3rd defendants performed at Level Crossing No. CL 78 and the relationship between Sri Lanka Railways and the 2nd and 3rd defendants. In this regard, the evidence clearly establishes that, from 1989 onwards, the 2nd and 3rd defendants were deployed by Sri Lanka Railways to operate the gates at Level Crossing No. CL 78. It is also clear that the performance of their duties was subject to supervision by Sri Lanka Railways, which paid these defendants a sum of Rs.1,000/- each month as remuneration for performing those duties. It is also in evidence that, Sri Lanka Railways provided the defendants with a gatekeepers' hut and some items of equipment. All this was said by the 2nd and 3rd defendants and was amply confirmed by the evidence of the officer from Accounts Department of Sri Lanka Railways and is also reflected in the evidence of the engine driver.

In the light of this clear evidence, the learned trial judge correctly held, and the High Court correctly affirmed, that the 2nd and 3rd defendants were employed by Sri Lanka Railways to perform the duties of gatekeepers. Although the trial judge should have called for and obtained the documents marked "2වි1" and "3වි1", his failure to do so does not negate the validity of his determination that, the 2nd and 3rd defendants were employees of Sri Lanka Railways.

The next question is to examine what the evidence was with regard to the collision which caused Mr.Rajakaruna's death and whether the evidence establishes that there was negligence on the part of Sri Lanka Railways *or* of the 2nd and 3rd defendants *or* of the engine driver *or* of Mr. Rajakaruna, which caused or contributed to causing the collision.

In this regard, it is obvious that, since the collision occurred on the level crossing, Mr.Rajakaruna's vehicle could not have been at that specific place unless the gates across Duwa Road were *open* to allow his vehicle to get on to the level crossing. Next, since the gates were open at the time of the collision, there are, logically, only two possibilities – *either* the gates were open when Mr. Rajakaruna drove up to the

level crossing and he tried to drive across it when the train hit his vehicle *or* the gates were closed and Mr. Rajakaruna got off his vehicle and opened the gates and then tried to drive across the level crossing, when the train hit his vehicle. It is, obviously, important to ascertain which of those scenarios took place in order to determine whose negligence caused the collision or contributed to causing it.

The witness, De Silva stated that, he was riding his motor cycle and following behind Mr. Rajakaruna's vehicle and he saw the gates were *open* when Mr. Rajakaruna drove up to Level Crossing No. CL 78. This witness's evidence is to the effect that, since the gates were open, Mr.Rajakaruna continued to drive on to the level crossing in his bid to cross it, when the train hit his vehicle. De Silva also says that, the gatekeepers were not at the level crossing and could not be found. This witness was cross examined extensively by learned State Counsel appearing for the 1st and 4th defendants and by learned counsel appearing for the 2nd and 3rd defendants. A reading of the proceedings shows that, the testimony of the witness remained consistent and unshaken during the lengthy cross examination.

On the other hand, the 2nd and 3rd defendants claim that, when they heard cries from the 2nd defendant's house, they first tied the gates closed with a rope and then ran to the house. In cross examination, some inconsistencies emerged between the testimony of the 2nd defendant and the testimony of the 3rd defendant, with regard to the events that occurred on the night of 19th August 1993.

The learned trial judge, who was required to consider the aforesaid conflicting testimony of De Silva on the one hand and testimony of the 2nd and 3rd defendants on the other hand, has accepted De Silva's evidence that, the gates were open when Mr.Rajakaruna's vehicle reached the level crossing. The trial judge has disbelieved the claims made by the 2nd and 3rd defendants that they tied the gates closed with a rope before leaving the level crossing. Describing the evidence of these two witnesses, the learned judge has said *"*මෙම සිද්ධිය සිදු වූ අවස්ථාවේදී ඔවුන් එම ස්ථානයේ නොසිටි බවත් දුම්රිය ගේට්ටුව හරහා ලණුවක් දමා ගැට ගසා පිටවී ගිය බවත්, පසුව එහි දුම්රිය අනතුරක් සිදු වූ බවට දැන ගන්නට ලැබුණු බවට සාක්ෂි ඉදිරිපත් කරයි. එම සාක්ෂි දැඩි සැක සහිත බවකි.*"*

Thus, the learned trial judge held that, the gates across Duwa Rad were *open* when Mr Rajakaruna approached them, since the 2nd and 3rd defendants had left the gates *open*. In reaching this finding of fact, the learned trial judge, who had the unique advantage of seeing and hearing all three of these witnesses and then assessing the veracity of their testimony, believed De Silva's testimony and disbelieved the claims of the 2nd and 3rd defendant.

In these circumstances, the High Court, when considering the appeal, was obliged to keep in mind the general rule that, an appellate court will attach particularly high value to a finding by a trial judge with regard to the veracity of a witness and be reluctant to reverse it, unless there are compelling reasons to do so. As Lord Loreburn observed in FRADD vs. BROWN & CO. LTD [20 NLR 282 at p. 282] with

regard to the value of a trial judge's assessment of a witness's veracity, "…..*in those circumstances, immense importance attaches, not only to the demeanour of the witnesses, but also in the course of the trial and the general impression left on the mind of the Judge present, who saw and noted everything that took place in regard to what was said by one or other witness. It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance."*. In the same vein, Ranasinghe J, as he then was, stated in DE SILVA vs. SENEVIRATNE [at p.17], *" ….. where the trial judge's findings on questions of fact are based upon the credibility of witnesses, on the footing of the trial judge's perception of such evidence, then such findings are entitled to great weight and the utmost consideration, and will be reversed only if it appears to the appellate Court that the trial judge failed to make full use of the `priceless advantage' given to him of seeing and listening to the witnesses giving viva voce evidence, and the appellate Court is convinced by the plainest consideration that it would be justified in doing so:"*. However, before getting back to the facts of this case, it should be reiterated here that, as mentioned earlier, where an appellate court is convinced, by compelling reasons which are seen from the evidence and the record, that the trial judge has been misled, either by the demeanour or by some other quality of a witness, into believing the false testimony of that witness, the appellate court would be bound to set aside an erroneous finding of fact based on the trial judge's misreading of the veracity of that witness. This must be so since the reality is that, as Lord Greene observed in YUILL vs. YUILL [1945 1 AER 183 at p.188] *"The most experienced judge may, albeit rarely, be deceived by a clever liar or led to form an unfavourable opinion of an honest witness ….."*.

In the present case, there was certainly no compelling reason apparent from the evidence and record which could have caused the High Court to disregard the assessment by the learned trial judge of the veracity of the evidence of De Silva *vis-à-vis* the evidence of the 2nd and 3rd defendants. Further, the learned trial judge's finding of fact that the gates had been left open, is in consonance with the totality of the evidence and, in fact, in their written submissions filed in the District Court, the 1st and 4th defendants have conceded that, *"It is very clear that the gate was opened at the time of the accident ….."*. Accordingly, the High Court has correctly affirmed the learned District Judge's determination that the gates had been left open.

The learned trial judge also held that the 2nd and 3rd defendants had abandoned their post at Level Crossing No. CL 78. This finding of fact is also correct since the 2nd and 3rd defendants themselves have said that, when they heard cries from the 2nd defendant's house, both of them left their post at the Level Crossing No. CL 78 and left it untended and did not return to their post even after they knew of the collision. The High Court has correctly affirmed this finding.

Next, it hardly needs to be said that, a gatekeeper at a level crossing which is equipped with gates that can be closed across the road, has the duty of closing those gates when a train is approaching and, thereby, preventing motor traffic on the road from crossing the railway line. It follows that, a gatekeeper who fails to perform that all important duty, may be held to be guilty of negligence. Thus, in NORTH EASTERN RAILWAY COMPANY vs. WANLESS [1874 7 LR HL 12], the House of Lords held that, where a railway company has installed gates which can be closed across a public highway at a level crossing, it is the duty of the railway company's servants to keep those gates closed when a train is approaching and that, the failure to close the gates is evidence of negligence on the part of the servants of the railway company. In STAPLEY vs. THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY [1865 1 LR Exchq. 21], the Court of Exchequer took the same view as did the Court of Appeal in LLOYD'S BANK vs. RAILWAY EXECUTIVE [1952 1 AER 1248].

Further, since they performed the duty of gatekeepers, *both* the 2nd and 3rd defendants should not have both left their post at the *same* time. If there was an emergency which compelled one of them to temporarily leave his post, the other should have stayed at the level crossing and been vigilant and ensured that the gates were closed when the train approached. The 2nd and 3rd defendants' failure to do so must also, undoubtedly, be regarded as negligence.

In the light of these circumstances, the learned trial judge correctly held that, the 2nd and 3rd defendants were guilty of negligence. The High Court has correctly affirmed that determination.

The learned trial judge went on to hold that, the collision was caused *solely* due to the aforesaid negligence of the 2nd and 3rd defendants since the learned judge was of the view that, when Mr. Rajakaruna saw the gates were *open*, he could reasonably expect that no train would pass by and it was safe to drive across Level Crossing No. CL 78. The learned trial judge considered that, in these circumstances, there was no negligence on the part of Mr. Rajakaruna. The learned judge did not consider that there had been any negligence on the part of the engine driver, either.

These determinations by the learned trial judge, which were affirmed by the High Court, require me to examine whether the District Court and High Court were correct when they held that the collision was caused *solely* due to the negligence of the 2nd and 3rd defendants *or* whether there has been negligence either on the part of Mr. Rajakaruna or the engine driver or both, which caused the collision or which was a contributory cause of the collision.

With regard to Mr. Rajakaruna, there is no doubt that, trains have an exclusive right to run on the railway line and a preferential right to proceed at level crossings where the railway line crosses a road or path used by other traffic and that a road user must exercise due care and caution when he approaches a level crossing– *vide:* WORTHINGTON vs. C.S.A.R. [1905 T.H.149] and DYER vs. S.A.R. [1933 AD 10]. Therefore, as Scoble states [Negligence in Delict 3rd ed. at 344], *"It is the primary duty of the road-user not to venture upon a level crossing until he has taken due*

precautions to satisfy himself that he may safely do so. In view of the potential danger of any crossing, and the preferential right of train, the duty is an extremely stringent one; no neglect by the Administration will absolve from it; and only in the most exceptional circumstances will any lesser standard than that of utmost care be tolerated.". However, it has to be kept in mind that, this statement by Scoble refers to the duty of care placed on road users at *unprotected* level crossings in South Africa at a time when it appears there was no statutory duty placed on the Railway Authority in South Africa to install gates at level crossings. In this regard, in WORTHINGTON vs. CENTRAL SOUTH AFRICAN RAILWAYS [at 151], Solomon J commented, *"There are no statutory obligations in this country, as there are in England, with regard to having gates at a crossing….."*.

In the present case, the position is significantly different since Sri Lanka Railways had installed gates at Level Crossing No. CL 78 and, as observed earlier, that appears to have been done in compliance with the requirements of section 32 of the Railways Ordinance which imposes specified statutory obligations upon Sri Lanka Railways with regard to level crossings across public carriageways. These obligations include a duty to ensure that these gates are moved to a position that makes the road impassable when a train passes the level crossing.

In these circumstances, road users who are aware that Sri Lanka Railways has installed and operates gates across Duwa Road at Level Crossing No. CL 78 and know, from past experience, that these gates are closed when a train is passing the level crossing, are entitled to reasonably expect that, when the gates are open, there is no danger of a train approaching and they can safely cross the railway line. It may even be said that, at this type of level crossing, open gates amount to an intimation made by Sri Lanka Railways to such road users that, a train is not approaching and that it is safe to cross the railway line.

Thus, in MERCER vs. SOUTH EASTERN AND CHATHAM RAILWAY COMPANIES' MANAGING COMMITTEE [1922 2 KB 549] the plaintiff was injured when he was hit by a train at a level crossing which the plaintiff had tried to cross because the gate, which was usually closed whenever a train was approaching, was kept open. The King's Bench held that, the failure to close the gate amounted to negligence on the part of the Railway Company. Lush J stated [at p.550],*"It was thus the practice of the railway company to keep the wicket gate always locked if a train is approaching, and only to have it unlocked when no train was approaching. On the occasion in question, owing to the neglect of the signalman, the gate was unlocked at a time when a train was approaching. To those who knew of the practice this was a tacit invitation to cross the line.".* In the same vein, in NORTH EASTERN RAILWAY COMPANY vs. WANLESS, Lord Cairns observed [at p. 15], *"It appears to me that the circumstance that the gates at this level crossing were open at this particular time, amounted to a statement, and a notice to the public, that the line at the time was safe for crossing….."*. Similarly, in STAPLEY vs. THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY, Channel B commented [at p. 27], *"Then, the carriage gate being open, and no gatekeeper present,, a foot passenger*

was invited by that state of things to pass across the line, and the conduct of the company, therefore, was, we think, evidence of negligence to go to the jury.". and Pollock CB said [at p.28], *"…. But the company by their conduct clearly intimated to him that no train was approaching ….."*.

In South Africa too, the duty of care placed on a road user at a level crossing which is *protected by gates*, was likely to be different if the road user was aware, from previous experience, that the practice was for the gates to be closed when a train was passing. Thus, with regard to the law in South Africa relating to level crossings which are protected by gates, Scoble states [at p.346], *"if the plaintiff could show that from previous experience he had concluded that the gates were always shut when a train was approaching, this would constitute an element to be taken into account when judging his conduct."*. For example, in MANCHO vs. S.A.R. [1928 AD 891], where the Railway Company usually deployed a man to warn passersby of an approaching train and the plaintiff's husband saw that there was no warning signal and crossed the railway line when he was hit by a train and died, it was held that, there was no negligence on his part.

With regard to Mr.Rajakaruna, as a motorist who had frequently driven on Duwa Road and being a person from that area, he would have known that Sri Lanka Railways had installed gates which were closed whenever a train is expected to pass Level Crossing No. CL 78. Therefore, when Mr. Rajakaruna saw the gates at this level crossing were *open*, he was entitled to assume that, train would not pass the level crossing at the time he drove on to the level crossing. It cannot be said that Mr. Rajakaruna should have reasonably foreseen that a train would pass when the gates were wide *open*. McKerron [7th ed. at p.60], referring to this type of situation, comments that, *"Speaking generally, a person is entitled to assume that others will act with due care in regard to his safety, and is therefore not bound to take precautions against the mere possibility of negligence on the part of another."* McKerron also observes, citing the decision in MANCHO vs. S.A.R., *"….. although the plaintiff may have acted in a manner which was prima facie dangerous and imprudent, he may have been so put off his guard that he was justified in assuming that he might safely act as he did."*.

Further, due to the bends in the railway line and trees, plants and houses, it is probable that Mr. Rajakaruna did not see the beam of light cast by the headlight of the train. Similarly, it is probable that, within the cocoon of his vehicle with the background noise of the engine of his vehicle and the sea which is close by, he could not hear the sound of the horn or of the train. The probability is also that, due to the layout of Level Crossing No. CL 78 and its surroundings, Mr. Rajakaruna could not see the train until it was too late for him to avoid the collision. In these circumstances, it cannot be said that, Mr. Rajakaruna was negligent when he tried to drive across Level Crossing No. CL 78 at a time when the gates across Duwa Road were *open*. Thus, the present case is not one in which the negligence of the road user had caused or contributed to causing the collision at the level crossing, as was the case in BUCHANAN vs. S.A.R [1915 N.P.D.95] and McRITCHIE vs. S.A.R [1918 NPD 311] cited by the 1st and 4th defendants or in the well known cases of

UNION GOVERNMENT vs. LEE [1927 AD 202 and JORDAAN vs. C.S.A.R. [1909 TS 465].

With regard to the engine driver, his duty of care in the present case was to approach the level crossing at a speed which is appropriate to the location, to sound the horn in a manner which gives adequate warning before approaching the level crossing and to keep a good look out over the railway line and its surroundings. ln WORTHINGTON vs. CENTRAL SOUTH AFRICAN RAILWAYS, Solomon J held that, an engine driver who approached a level crossing has a duty *"…..to give due and timely warning of its approach and also not to be travelling at such an excessive rate of speed that the warning it might give should be of no avail. What is an excessive speed and what is due warning must entirely depend on the special circumstance of each case."*. Similar views were expressed in England in CLIFF vs. MIDLAND RAILWAY COMPANY [1870 5 LR QB 258] and SMITH vs. LONDON MIDLAND & SCOTTISH RAILWAY [1948 SC 125]. In the present case, the evidence establishes that, the engine driver took these precautions and was not negligent.

Thus, the learned trial judge's determination that the collision was caused solely due to the negligence of the 2nd and 3rd defendants, was in conformity with the evidence. The High Court, has correctly affirmed that determination. Before moving on to the next issue, I should mention here that, the decision PERERA vs. C.G.R. [1988 2 CALR 139] which the 1st and 4th defendants appear to rely on, is not relevant to the present case since, in that case, the lorry driver who drove across the railway line ignored the warning given to him by the gatekeeper to stop and there were also other factors which established negligence on the part of the lorry driver.

Next, since it has been proved that, the 2nd and 3rd defendants were employees of that Sri Lanka Railways, it follows that, Sri Lanka Railways will be vicariously liable for loss and damages caused to any person as result of any negligent acts or omissions of the 2nd and 3rd defendants which are within the scope of their employment as gatekeepers. As Mckerron states [The Law of Delict, 7th ed. at p. 89], *" It is now settled law that a master is liable for the wrongs of his servants committed in the course of their employment, or, as it is commonly put, within the scope of their employment."*. Further, there can be no doubt that, since the 2nd and 3rd defendants were employed by Sri Lanka Railways to perform the duties of *gatekeepers* at Level Crossing No. CL 78, the negligent acts and omissions of the 2nd and 3rd defendants of keeping the gates open when a train was approaching and abandoning their post, were acts and omission which were within the scope of their employment. Therefore, the learned District Judge has correctly held that, Sri Lanka Railways and the State are vicariously liable for these negligent acts and omissions of the 2nd and 3rd defendants. The High Court, has correctly affirmed that determination.

It should also be mentioned that, since the train that crashed into Mr.Rajakaruna's car at about 11pm on 19th August 1993, was an unscheduled train which reached Level Crossing No. CL 78 more than half hour after the last scheduled train passed

that level crossing at about 10.20 pm, Sri Lanka Railways had a duty of care to inform the 2nd and 3rd defendants to expect the arrival of an unscheduled train at Level Crossing No. CL 78 at approximately 11pm. Sri Lanka Railways could have easily informed the 2nd and 3rd defendants by means of a message passed to them from the Kahawa Station or the Ambalangoda Station which are both close to Level Crossing No. CL 78. The failure of Sri Lanka Railways to so inform the 2nd and 3rd defendants, amounts to negligence. Further, it appears to me that, the failure on the part of Sri Lanka Railways to install a telephone in the gatekeepers' hut at Level Crossing No. CL 78, may also be regarded as negligence. It can be also said that, the failure on the part of Sri Lanka Railways to ensure that, two other gatekeepers took over from the 2nd and 3rd defendants who had worked for sixteen hours at a stretch by 10pm on 19th August 1993, also amounts to negligence. Next, the failure of Sri Lanka Railways to install warning signs on either side of Duwa Road before the level crossing, was negligent. Therefore, it can be said that, apart from Sri Lanka Railways being vicariously liable for the negligence of the 2nd and 3rd defendants which caused the death of Mr.Rajakaruna, Sri Lanka Railways is also directly liable by reason of its own negligence. Thus, in LLOYDS BANK vs. RAILWAY EXECUTIVE, the Railway Company's failure to adequately warn the public of the approach of trains, was held to amount to negligence on the part of the Railway Company.

For the reasons stated above, I hold that, the High Court correctly affirmed the learned trial judge's analysis of the evidence and findings of fact which are referred to in questions of law no.s (i), (ii), (iv), (vi),(vii) and (viii). There were *no* reasons evident from the record which would have justified the High Court setting aside those findings of fact of the trial judge. The High Court has also duly considered the grounds of appeal set out in the 1st and 4th defendants' petition of appeal. Therefore, questions of law no.s (i), (ii), (iv), (vi),(vii) and (viii) are answered in the negative.

Question of law no. (iii) raises the issue of whether the judgment of the District Court was not in accordance with the requirements of section 187 of the Civil Procedure Code. Section 187 requires that the judgment of a trial judge must concisely state the cases of the parties, the issues, the determinations of the Court on the issues and the reasons for the Court reaching those determinations. A perusal of the judgment of the learned District Judge establishes that, the requirements of section 187 have been fully met. The learned trial judge has stated the cases of the parties and examined and evaluated the evidence of each witness and the totality of the evidence. He has stated the issues and applied his determinations with regard to the evidence, to the issues. He has given reasons for his findings. This is certainly not an instance where the trial judge has given bare answers to the issues without stating his reasons for doing so or has failed to examine and evaluate the evidence germane to the issues or has failed to consider the totality of evidence or has simply recited the evidence and then said that he accepts the evidence of one party without giving reasons for doing so, as was the case in LUCIHAMY vs. CICILIYANAHAMY [59 NLR 214], MEERAMOHIDEEN vs. PATHUMMA [76 CLW 107] and WARNAKULA vs. JAYAWARDENA [1990 1 SLR 206] which have been cited by the

1st and 4th defendants. Therefore, question of law no. (iii) is answered in the negative.

Question of law no. (v) raises the specific issue of whether the learned High Court judges misdirected themselves with regard to the obligations and duties of Mr.Rajakaruna, as a driver of a vehicle, at a level crossing. Question of law no. (ix) raises a general question as to whether the learned High Court judges erred in their decision with regard to the duty of care placed on Mr. Rajakaruna, the 2nd and 3rd defendants, the engine driver and Sri Lanka Railways. These issues have been considered when answering questions of law no.s (i),(ii),(iv),(vi),(vii) and (viii). For the reasons set out earlier, questions of law no.s (iii) and (ix) are also answered in the negative.

Since all the questions of law raised by the 1st and 4th defendants have been answered in the negative, this appeal must be dismissed and there is no need for me to consider the question of law raised by the plaintiff.

Finally, the award of damages in a sum of Rs.3,500,000/- by the District Court, was affirmed by the High Court. The plaintiff has not, at any stage, in either the High Court or before us, taken up a position, that this sum was inadequate. Therefore, I refrain from looking into the adequacy of the damages that were awarded.

The judgment of the High Court is affirmed. Thus, the plaintiff-respondent-respondent is entitled to forthwith recover the sum of Rs.3,500,000/- with legal interest thereon and costs in the manner prayed for in the plaint, as awarded by the District Court, together with the costs awarded by the High Court. This appeal is dismissed with costs in a sum of Rs.150,000/- on account of the costs in this Court.

Judge of the Supreme Court

Upaly Abeyrathne J.
I agree

Judge of the Supreme Court

Anil Gooneratne J.
I agree

Judge of the Supreme Court