

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

In the matter of an application for
leave to appeal to the Supreme Court
under and in terms of the High Court
of the Provinces (Special Provisions)
Act No. 19 of 1990, as amended by
Act No.54 of 2006.

SC/APPEAL/228/2025

SC /HCCA/LA No. 213/2023

HC Appeal No:WP/HCCA/NEG/06/2018(F)

DC Negombo Case No.9540/M

Peirisge Mary Margaret Fernando
174, Welihena,
Kochchikade

Plaintiff

Vs.

St Regis Packaging (Pvt) Ltd
120/1, Horton Place,
Colombo 07.

Defendant

AND BETWEEN

St Regis Packaging (Pvt) Ltd
120/1, Horton Place,
Colombo 07.

Defendant-Appellant

Vs.

Peirisge Mary Margaret Fernando
174, Welihena,
Kochchikade

Plaintiff-Respondent

AND NOW BETWEEN

St Regis Packaging (Pvt) Ltd
120/1, Horton Place,
Colombo 07.

Defendant-Appellant-Appellant

Vs.

Peirisge Mary Margaret Fernando
174, Welihena,
Kochchikade

Plaintiff-Respondent-Respondent

Before : Janak De Silva, J.
Menaka Wijesundera, J.
Sampath B. Abayakoon, J.

Counsel : Ms. Vijula Arulanantham instructed by Sivanantham
Associates for the Defendant-Appellant-Appellant.
Tharanatha Palliyaguruge instructed by T.K. Dharmasena
for the Plaintiff-Respondent-Respondent.

Written

Submissions : Written submissions on behalf of the Defendant-Appellant-
Appellant filed on the 27th of May, 2026.

Written submissions on behalf of the Plaintiff-Respondent-
Respondent not tendered.

Argued on : 28.04.2026

Decided on : 01.10.2026

MENAKA WIJESUNDERA, J.

The instant appeal has been filed to set aside the Judgment dated 28.03.2023 of the Civil Appellate High Court of Colombo.

When this matter was supported for leave, this Court granted leave on the following singular question of law, that is, whether,

“Have the learned High Court judges erred in law by failing to assess whether the Plaintiff established a direct correlation between the Defendants’ actions and the alleged damages as the original case is an Aquilian action”.

The Plaintiff-Respondent-Respondent (hereinafter referred to as “the Plaintiff”) instituted action in the District Court against the Defendant-Appellant-Appellant (hereinafter referred to as “the Defendant”) on 22.12.2000 praying for,

- a. A Judgment in a sum of Rs. 1,200,000 together with legal interest
- b. An interim injunction
- c. An enjoining order in the first instance
- d. A permanent injunction.

The Plaintiff led evidence before the District Court by calling a Civil Engineer, a Quantity Surveyor and some neighbours, and had marked documents pleading that the Plaintiff was the owner of the property described in the plaint and that the Defendant was the owner of the property adjacent to the Plaintiff's land on which the Defendant had been running a factory, which is the disputed matter in the instant action.

According to the evidence of the Plaintiff's case, the Defendant had been operating a factory on the said land using heavy machinery. The Plaintiff's case highlighted the fact that there were losses and damage caused to the building of the Plaintiff due to the noise and vibrations caused by the machinery and the

workings of the factory of the Defendant, which had caused cracks on the walls of the building of the Plaintiff.

This position has been substantiated by the Plaintiff by calling a Civil Engineer by the name of Christopher Seaman, who had observed cracks on the walls of the house of the Plaintiff in the bedrooms and the floor of the house showing signs of a depression, and the wall adjacent to the said depression being slightly tilted towards one side. All these observations of the said witness had been produced to the learned Trial Judge in a report marked as **P1**.

The said witness had clearly stated that the damage observed on the walls and floor of the building is not due to water retention in the soil nor due to an inferiorly built foundation of the house, and he had also marked and produced certain pictures taken by him during the site visit.

This witness had been lengthily cross-examined by the Defendant party, and he had been questioned to the fact as to why the factory of the Defendant had not sustained any damage to the walls or to the floor. He had explained, stating that at *page 164* of the brief, generally, a factory is built to sustain the noise and vibrations of the machinery of the factory, but a private dwelling place of a person is not built to sustain such noise and vibrations, which are peculiar to the workings of a factory.

Thereafter, the Plaintiff led the evidence of a Quantity Surveyor who had prepared the plan for the Plaintiff's house and had supervised the construction of the foundation as well as the house. Although the witness was subjected to lengthy cross-examination regarding his academic qualifications, he testified that he had 36 years of professional experience and was, therefore, more than capable of supervising the construction of the Plaintiff's house.

The Plaintiff herself gave evidence regarding the damage done to her house and she too had been lengthily cross-examined.

Thereafter, the Plaintiff had called three other witnesses from the neighborhood, who corroborated the Plaintiff's evidence and had said that the factory of the Defendant in their neighborhood had caused several structural problems to their private dwellings.

The Defendant himself had given evidence and had denied that his factory was causing any hazard to the surrounding neighborhood. He further stated that his factory operated with minimal noise and vibration so as not to cause damage to the neighborhood.

At the conclusion of the trial in the District Court, the learned Judge had delivered his judgment on 26.02.2018, granting the reliefs prayed by the Plaintiff in her plaint marked as “A”, “D” and “E”.

Being aggrieved by the said judgment, the Defendant preferred an appeal to the Civil Appellate High Court. The learned Judges of that Court likewise found in favour of the Plaintiff. The instant appeal is based on the said judgment of the Civil Appellate High Court

Therefore, according to the findings of both lower Courts, they had held that the damage caused to the building of the Plaintiff was due to the workings of the factory, which is deemed a wrongful act of the Defendant.

In answer to the Plaintiff's claim, the Defendant pleaded before this Court that, if the damage to the Plaintiff's house had been caused by the operations of the Defendant's factory, the factory building itself should likewise have sustained damage to its structural foundation and other parts of the building.

However, upon consideration of the evidence adduced by the Plaintiff before the District Court, the Civil Engineer clearly explained, at *page 164* of the brief, that factory buildings are constructed to withstand the vibrations and stresses generated by industrial operations, whereas an ordinary private dwelling is not designed for that purpose.

The Defendant has lengthily cross-examined the witnesses of the Plaintiff and they have stood the test of cross-examination quite satisfactorily. The Plaintiff and her witnesses have reiterated the position that the factory of the Defendant, which is situated 40 feet away from the house, was causing noise and vibration in the neighborhood of the Plaintiff. The expert witnesses called by the Plaintiff have very clearly stated that the cracks in the walls of the Plaintiff's house and the structural defects observed in its floor were not attributable to an inadequately constructed foundation or to the soil conditions of the Plaintiff's property, but were caused by the noise and vibrations emanating from the Defendant's factory, which is situated in close proximity to the Plaintiff's house.

Nevertheless, it is a fundamental legal principle that the findings of a trial judge should not be easily disturbed at the appeal stage unless the findings are perverse or plainly contrary to the facts in issue. This principle has been consistently affirmed in our jurisprudence as illustrated in the decisions in **Fradd v. Brown & Co. Ltd (1918) 20 NLR 282** and **Munasinghe v. Vidanage (1966) 69 NLR 97**. The rationale of this principle is that a trial Judge enjoys the invaluable advantage of observing the demeanour and deportment of the

witnesses firsthand, which is of vital importance in assessing their credibility and truthfulness.

Therefore, in the instant case, I find that the learned judges of the Civil Appellate High Court have concluded that the learned trial judge has properly evaluated evidence before arriving at the conclusion that the Plaintiff has established that the wrongful act or omission of the Defendant has caused pecuniary loss to the Plaintiff, which justifies the damages awarded by the District Court.

In order to recover damages, the Plaintiff must establish that the damage was caused by a wrongful act arising from the Defendant's negligence or intentional conduct. Under the Roman Dutch Law, such a claim is defined as an Aquilian Action. In an Aquilian action, the principal elements which the Plaintiff must establish, on a balance of probabilities, are;

1. That there was actual pecuniary loss
2. That the loss was due to the actions of the Defendant, who was acting in excess of his rights
3. He must establish *dolus culpa* on the part of the Defendant

Hence, Aquilian action is cited to clarify the evolution of liability principles from fault-based to ownership-based measures in assessing damages.

According to **Blacks Law Dictionary, 12th Edition**, page 1089, Aquilian Law (lex Aquilia) is defined as,

“A Roman law. A Roman statute imposing liability for a pecuniary loss tortiously caused and generally regulating loss caused by damage to property, including compensation to be paid for injury to another’s slave or livestock. A loss had to be financially measurable and caused wrongfully. If the liable party denied liability, then damages were doubled. This law applied to negligence as well as dolus.”

Professor R. G. McKerron, in his treatise **Law of Delict** (7th edition, 1971), defines the three essential requirements for liability in an Aquilian action as follows;

“First, a wrongful act; secondly, pecuniary loss resulting to the Plaintiff; and, thirdly, fault on the part of the Defendant.”

The first requirement means that the act complained of must involve the invasion of a right, that is to say, the violation of a legally protected interest pertaining to the Plaintiff. The second requirement speaks for itself. The third requirement means that the loss must be imputable to the Defendant; that is

to say, the Defendant must have intended the loss or could, by the exercise of reasonable care, have prevented it.

In the terminology of the Roman-Dutch law, he must be liable for *dolus* or *culpa* [page 13 *Law of Delict* (7th edition, 1971)]. This particular phrase was comprehensively considered by Justice Wimalaratne in **Pelis and Another v. Arnaashal (1980) 2 Sri L.R. 296 at 299**, wherein His Lordship held that,

“...Culpa denotes the absence of care where there is a duty to exercise care, and thus denotes conduct which is both wrongful and careless. Likewise dolus denotes not merely intention, but intentional and wrongful infliction of harm. For dolus to be actionable there has also to be a duty to refrain from doing the act which caused the harm. It is therefore clear that whether liability is based on culpa or dolus, the plaintiff must establish that the act which resulted in pecuniary loss to him was the result of a wrong done by the defendant; that it was the breach of a duty which the defendant owed to the plaintiff”.

In the matter at hand, according to the evidence which has been led before the trial judge, the expert engineer who was called as a witness by the Plaintiff has marked and produced a report as **P1**, has testified to the fact that the sole reason for the structural changes in the building of the Plaintiff is due to the vibrations caused by the noise emanating from the Defendant's factory.

The witnesses for the Plaintiff were extensively cross-examined regarding the soil condition of the Plaintiff's land, and the Plaintiff had also obtained the necessary approval from the local authority for the construction of the building. Furthermore, there had been no structural changes to the Plaintiff's building prior to the commencement of the factory's operations on the adjoining land.

Therefore, upon considering the submissions of both parties and the evidence led at the trial, it is my view that the learned trial judge has evaluated the evidence before him adequately and has concluded that the Plaintiff, who has a fundamental right to enjoy his property peacefully, has been deprived of that right due to the act or omission of the Defendant.

The Judges of the Civil Appellate High Court have correctly observed that the evidence which has been evaluated adequately by the trial judge should not be disturbed at the appeal stage unless the findings are perverse. Therefore, I see no reason to interfere with the findings of the Civil Appellate High Court.

Accordingly, I answer the aforementioned question of law in the negative and, for the foregoing reasons, I affirm the judgment of the Civil Appellate High Court, thereby dismissing the instant appeal.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT