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

M. B. J. Fernando,
No.156, Sri Somarathana Mawatha,
Bellanwila, Borelasgamuwa.

Plaintiff

SC (CHC) Appeal 43/2017
HC (Civil) No.360/2011/MR

Vs.

Sri Lanka Insurance Corporation Ltd.
“Rakshana Mandiraya”, No.21,
Vauxhall Street, Colombo 02.

Defendant

And Now

Sri Lanka Insurance Corporation Ltd.
“Rakshana Mandiraya”, No.21,
Vauxhall Street, Colombo 02.

Defendant- Appellant

Vs.

M. B. J. Fernando,
No.156, Sri Somarathana Mawatha,
Bellanwila, Borelasgamuwa.

Plaintiff- Respondent

Before : Mahinda Samayawardhena, J.

Dr. Sobhitha Rajakaruna, J.

Menaka Wijesundera, J.

Counsel : Rajendra Jayasinghe instructed by Manjula Jayathilake for the Defendant-Appellant.

Uditha Egalahewa, PC, with Amaranath Fernando, instructed by Ms. Niluka Welgama for the Plaintiff-respondent.

Written Submissions : Latest written submissions filed on behalf of the Plaintiff - Respondent on the 16th of June 2026.

Written submissions filed on behalf of the Plaintiff - Respondent on the 17th of October, 2022.

Written submissions filed on behalf of the Defendant - Appellant on the 27th of September 2022.

Argued on : 03.03.2026

Decided on : 10.07.2026

MENAKA WIJESUNDERA J.

The Defendant-Appellant in the instant matter (hereinafter referred to as the "Appellant") has filed the instant appeal to set aside the judgment dated 21.07.2017 of the Commercial High Court.

The Plaintiff-Respondent (hereinafter referred to as the "Respondent") has filed the said plaint in the Commercial High Court on the 23rd of August, 2011, seeking from the Court an order directing the Appellant to pay the Respondent a sum of Rs. 3,330,940.00 together with interest calculated at the rate of 18% per annum from the 1st of July, 2011.

The Respondent had filed the above plaint for the loss caused by floods to his premises, which had been insured with the Appellant by agreement dated 14th of June, 1995. The Respondent had claimed that on or before the 7th of August, 2010, floods damaged his premises. The Appellant had considered the claim made by the Respondent, and had concluded that the cause of damage did not come under the purview of the policy obtained by the Respondent and, as such, that the damage had not taken place due to any of the grounds covered under the policy of insurance of the Respondent. Thereafter, the Respondent filed an action in the Commercial High Court against the Appellant.

The Appellant had admitted the validity of the Respondent's claim but denied any liability to make a payment under the said policy. The Appellant, in his answer, had repudiated the claim of the Respondent, apart from the reasons stated above, that the cause of the stated damage had not been caused by any of the peril requested to be covered by the policy of the Respondent. Further to that, the Respondent had claimed that the loss had been caused by a landslide, which, the Appellant has stated, has been an excluded peril under the policy. Therefore, the Appellant had moved the court to dismiss the action of the Respondent.

When the matter went to trial, the Respondent called his witnesses, and he himself had given evidence. In his evidence, he had claimed that he submitted a claim form to the Appellant, and he had been cross-examined on this, where the Appellant had brought to the notice of the Respondent that he claimed damages based on a landslide caused by heavy rain. Thereafter, the Appellant had shown him the fact that the landslide hazard had not been included in the insurance policy obtained by the Respondent.

Thereafter, he was cross-examined with regard to Clause 4 of the insurance policy, which provides coverage for loss or damage caused, whether directly or indirectly, by landslides, irrespective of whether such landslides are incidental to a cyclone, storm, or tempest. Nevertheless, his claim had been regarding his retaining wall collapsing after the heavy rains. However, upon re-examination, it was brought to the court's attention that the house and boundary wall/retaining wall were mentioned in the schedule to the insurance policy.

The Respondent called a geologist attached to the National Building Research Organisation (NBRO) as a witness, and his report was marked and produced as *P2.* On *page 123* of the Appeal Brief, the geologist had stated that the collapse of the Respondent's retaining wall was attributable to the blockage of the drainage system, resulting in rainwater seeping into and accumulating within the soil. According to him, the consequent increase in pressure on the retaining wall ultimately led to its collapse.

The geologist had further stated that this wasn't a natural landslide and that it was a collapse of the retaining wall (*at pages 124-127*). He had specifically mentioned, on *page 128* of the brief, that it was definitely not a natural landslide. The Learned Counsel appearing for the Respondent contended before this Court that the geologist's report had been prepared following a site inspection conducted nearly two years after the incident in question. However, it must be observed that a qualified expert is capable of identifying and assessing the natural features and formations of the terrain, including the characteristics of the soil, rock, watercourses and other geological conditions, despite the lapse of time. That is the reason he has been called an expert.

According to Black's Law Dictionary, 12th edition, page 722, an expert is,

> *"Someone who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder"*

The evidence of the geologist was further substantiated by the evidence of a civil engineer called by the Appellant. At *page 167* of the Appeal Brief, he stated that,

> *"the cause of the damage was not the flood. Cause of damage was slow perforation of water. Perforation of rainwater because on this particular day the damage was suffered. There has been only 8.2 mm of rainfall."*

He further stated that a rainfall of 8.2 mm was comparatively minimal and incapable of causing what is commonly understood as a flood. However, he explained that there had been a flow of water in the area, which is predominantly hilly terrain and therefore incapable of retaining water. Accordingly, even in the event of heavy rainfall, water would flow downhill rapidly within a matter of minutes, whilst simultaneously seeping into the soil. Such seepage, he stated, could result in the accumulation of water behind the retaining wall, thereby increasing pressure on the structure and ultimately causing its collapse. Therefore, he has concluded that the reason for the damage to the retaining wall had been the pressure exerted on the wall by the water collected in the soil.

A representative of the Appellant company gave evidence that the Respondent's insurance policy did not provide coverage for landslides. Furthermore, although the Respondent had sought to rely on clause 4 of the policy, he stated that the term "flood" was defined therein as the escape of water from a natural or artificial watercourse. Accordingly, he had stated that, in the present case, there had been no escape of water from either a natural or artificial watercourse. Therefore, he had said the claim of the Respondent could not be paid.

At the conclusion of the case, the learned High Court judge held in favour of the Respondent and directed the Appellant to pay as per the prayer in the plaint. The instant appeal has been filed by the Appellant being aggrieved by the said judgment.

The main contention of the learned counsel appearing for the Appellant before this Court was that the Respondent had applied for a claim that his building had been damaged by a landslide and that his insurance policy had covered peril caused by cyclone, storm, tempest, and floods. However, the learned Counsel argued that the evidence of the Respondent and that of the expert geologist from the National Building Research Organisation (NBRO) did not establish that the facts narrated by the Respondent's witnesses fell within the definition of a flood. The learned President's Counsel appearing for the Respondent argued that the counsel for the Appellant was smart enough to refrain from bringing the notice of the court to the definition in clause 4, which reads as follows:

> *"a flood is an escape of water from a natural or artificial water course"*

Therefore, he had stated that the instant case falls within the second part of the definition as an artificial water course. He went on to elaborate on the evidence of the geologist and the civil engineer, who had said that the damage caused to the retaining wall was due to the collection of water that had seeped into the soil and had added pressure to the structure of the wall. Therefore, the learned President's Counsel averred that it was an artificial water course which caused damage to the retaining wall. He further brought to the court's attention the principles of proximate cause and direct cause. At this juncture, it's pertinent for us to examine the definition of the two aforementioned terms.

According to Black's Law Dictionary, 12^{th} edition, page 274, the terms "proximate cause" and "direct cause" are defined as follows, respectively:

> *"A cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor."*
>
> *"A cause that directly produces an event and without which the event would not have occurred."*

The learned President's Counsel stated that the proximate cause of the loss was the heavy rainfall experienced during the relevant period and the direct cause was the escape of water from an artificial watercourse. On that basis, he had contended that the incident in question unequivocally came within the scope of coverage afforded by Clause 4 of the Respondent's insurance policy.

Therefore, upon analysing the submissions and evidence of both parties, the Respondent, in my opinion, had established the fact that the damage was caused to the retaining wall due to the floods and the evidence of the geologist from the NBRO had substantiated this position. The evidence of the Appellant's witness, the civil engineer, had also stated that the cause was not a landslide but an accumulation of water caused by the rain, which had put pressure on the structure of the wall; therefore, the proximate cause had been, as stated by the learned President's Counsel for the Respondent, that it was due to flooding.

The evidence of the geologist brought by the Respondent had stated that the concrete drainage system on the nearby land adjacent to the Respondent's house had been poorly maintained and that there was a lack of a proper surface drainage system to drain stormwater down the slope. Therefore, the geologist pointed out that the damage had been caused by the steep slope gradient, clay-rich weathered rock masses and residual soils, the lack of a proper drainage network in the neighbouring lands and the excessive rainwater pressure created by the accumulation of water behind the retaining wall.

Therefore, even in his evidence, it is quite obvious that the proximate cause had been the flood and the direct cause had been the escape of water from an artificial water course, adding pressure to the retaining wall. The cross-examination of the witness of the Respondent had not tilted or swayed the position he had taken up in his examination-in-chief. Evidence of the Appellant's witness also had more or less substantiated the evidence of the witness of the Respondent.

Having considered the evidence in its entirety, I am of the view that the water pressure acting behind the retaining wall, as referred to by the Appellant's witness, was in fact a consequence of flooding, as evidenced by the findings of the NBRO geologist. Consequently, I find that the proximate cause of the Respondent's loss and damage was not a landslide, but the retention and accumulation of floodwater behind the retaining wall, which generated the pressure that ultimately caused its failure.

The damage suffered by the Respondent had been established by the evidence of a quantity surveyor, which had not been successfully challenged by the cross-examination conducted by the Appellants. The amount calculated by the quantity surveyor had been nearly Rs. 5 million, but the Respondent had claimed only Rs. 3 million with interest from the Appellant.

The learned High Court judge, having carefully analyzed the evidence put forth by both parties and the law pertaining to the instant case, concluded that the Respondent should be granted the relief sought in the plaint.

In view of the material stated, I am of the opinion that there is no reason to set aside the judgment of the learned High Court judge dated 21st July 2017.

As such, the instant appeal is dismissed.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT