

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.09.2025

Judgment pronounced on : 10.10.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.259 of 2023
& CMP.No.10138 of 2023

1.General Manager,
 Southern India Region,
 M/s.Air India Limited,
 No.19, Rukmani Lakshmipathy Salai,
 Egmore, Chennai – 600 008.

2.The Manager,
 Air India Limited,
 Madras Airport, Meenambakkam,
 Chennai.

3.The Deputy General Manager (Commercial),
 M/s.Air India Limited, Airlines House,
 Meenambakkam, Chennai.

..Appellants

*[Defendant's name amended as per
 order in I.A.No.2 of 2020 dated
 27.01.2021.]*

Vs.

P.Sundarapariporanam

..Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the decree and judgment dated 21.06.2022 in O.S.No.10259 of 2010 on the file of the III Additional City Civil Court, Chennai.



For Appellants : Mr.S.Satish Kumar

For Respondent : Mr.R.Subramanian
for Mr.B.Ravi

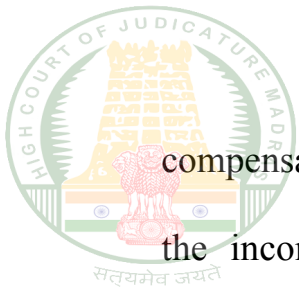
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JUDGMENT

The defendants, who have been directed to compensate the plaintiff for a sum of Rs.1,00,000/- by way of damages, are the appellants.

2.The brief facts, which are necessary for deciding the appeal, are as follows:

The plaintiff, claiming to be a frequent flier with the defendants' airlines, had travelled by the defendants' airlines IC 574 on 26.06.2002 from Colombo to Chennai. During the flight, a sealed food packet was served, in which the plaintiff noticed few strands of hair in the food, which left the plaintiff nauseous and the plaintiff was unable to make any complaint, since no complaint box or papers were available and the staff in the flight also did not hear out the plaintiff. The plaintiff took ill and immediately on landing, lodged a complaint to the 3rd defendant. Expressing regret for the incident, the defendants sent a letter dated 12.07.2002, claiming that the matter is under investigation. On 19.07.2002, the plaintiff sent a lawyer's notice, stating that he had to suffer from vomiting sensation and also stomach pain and claimed

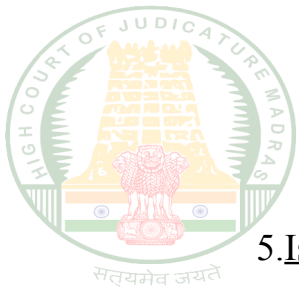


compensation. The defendants sent a reply on 20.07.2002, again regretting for the inconvenience caused to the plaintiff and the plaintiff was therefore constrained to file the suit, claiming compensation of Rs.11,00,000/-.

3.The written statement filed by the defendants are as follows:

The plaintiff admittedly is a frequent flier with the defendants' airlines and there has never been such an incident in the past and therefore, it cannot be termed as negligence, warranting a fanciful claim of Rs.11,00,000/-. It is also contended that the defendant had entrusted the catering services to Ambassador Pallava, a Five Star Hotel in Chennai and for non-joinder of the said caterer, the plaintiff has to be non-suited. The defendants have also raised a defence that there was a possibility that when the passenger opened the sealed food packet, the hair follicles of a co-passenger could have fallen in the dish. The defendants also stated that when the plaintiff had not handed over the food tray back to the defendants' staff on board and also did not request for any assistance and necessary medical attention, the plaintiff could not blame the defendants. It is also stated that the apology given and inconvenience regretted was only as a matter of courtesy and would not amount to an admission of guilt.

4.During trial, no oral evidence was let in on both sides and no document was also exhibited.



5. Issues framed by the trial Court:

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Based on the pleadings, the following issues were framed by the trial Court:

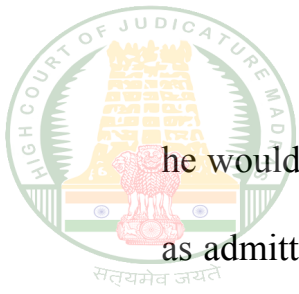
1. Whether the suit is bad for non-joinder of necessary party?
2. Whether the defendants are liable to pay damages to the plaintiff?
3. Whether the plaintiff is entitled to damages as prayed for?
4. To what relief, if any, the plaintiff is entitled?

6. The trial Court, holding that the defendants were negligent, proceeded to decree the suit for a sum of Rs.1,00,000/-, together with costs.

7. I have heard Mr.S.Satish Kumar, learned counsel for the appellants/defendants and Mr.R.Subramanian for Mr.B.Ravi, learned counsel for the respondent/plaintiff.

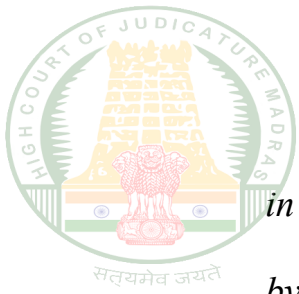
8. Arguments of the learned counsel for the appellants:

Mr.S.Satish Kumar, learned counsel for the appellants would first and foremost submit that in a suit for damages, it was incumbent for the plaintiff to enter the witness box and give evidence. The plaintiff, in the present case, has taken a risk in not entering the witness box and adducing evidence. Therefore,



he would state that the trial Court ought not to have awarded any compensation as admittedly, when there is no iota of evidence available before the trial Court and the only recourse open to the trial Court was to dismiss the suit. He would also invite my attention to the order in I.A.No.14549 of 2012, in and whereby, the defendants were directed to produce documents at the time of trial. The said application was dismissed by an order dated 04.12.2012. The plaintiff filed CRP.(PD).No.4040 of 2013. The said revision was also dismissed on 20.09.2019, giving liberty to the plaintiff to reopen the case for letting in evidence and thereafter, for the defendants to let in contra evidence.

9.The learned counsel for the appellant, referring to these orders, would contend that despite the same, the plaintiff has stayed away from the witness box and therefore, he has to suffer the consequences and the trial Court, without considering the legal position that, in a suit for damages, the burden is heavily on the plaintiff to establish, not only the liability, but also the quantum and in such event, when the plaintiff had avoided the witness box and there has been no evidence of any kind whatsoever before the trial Court, the trial Court ought not to have granted a decree even for a sum of Rs.1,00,000/-. In support of his contention, the learned counsel for the appellants would place reliance on the following decisions:



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1. *T.Subramaniam Vs. Santhamani and another*, reported in (2010) 4 MLJ 1006.

2. *Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by LR's and another*, reported in (1977) 2 SCC 49.

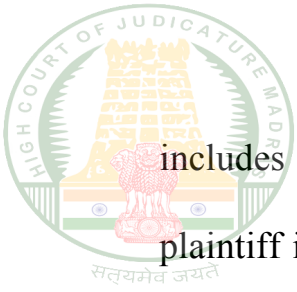
3. *Sandrayan and others Vs. S.S.Mariappan and another*, reported in (2011) 3 MLJ 533.

4. *Life Insurance Corporation of India and another Vs. Ram Pal Singh Bisen*, reported in (2010) 4 SCC 491.

10. Arguments of the respondent:

Per contra, Mr.R.Subramanian, learned counsel for the respondent would fairly state that he does not dispute the settled legal position that in a suit for compensation or damages, the plaintiff has to necessarily adduce evidence and establish the suit claim and also the quantum of compensation sought for. However, referring to the pleadings, namely the written statement, the learned counsel would contend that the defendants have not denied the incident and there is clear indication to the contra, that is, they have admitted to the complaint of the plaintiff and in such circumstances, there is no necessity for the plaintiff to lead any evidence with regard to the negligence on the part of the defendants.

11. As regards the non-joinder of the caterer, the learned counsel for the respondent would submit that the plaintiff has no privity of contract with the caterer, Ambassador Pallava and the air ticket price paid by the plaintiff



includes meals to be provided by the defendants and therefore, as far as the plaintiff is concerned, the defendants are obligated to provide food and in such process, if there is any negligence leading to a claim for compensation, it is the defendants who would be liable and the defendants cannot pass on the liability to their contractor, Ambassador Pallava, the catering unit engaged for the purposes of providing food for passengers travelling with the defendants' airlines. He would therefore state that the trial Court has considered all these factors and having found that the defendants are negligent, has rightly awarded a sum of Rs.1,00,000/-, which is only as a deterrent to the defendants and therefore, he would seek for dismissal of the appeal.

12.I have carefully considered the submissions advanced by the learned counsel on either side.

13.Points for consideration:

On consideration of the pleadings and the arguments advanced by the learned counsel on either side, the following points are formulated for decision in this appeal.

1.Whether the defendants have been negligent and deficient in service to the plaintiff?



2. Whether the suit is bad for non-joinder of the caterer, Ambassador Pallava?

3. Whether the plaintiff is entitled to the compensation of Rs.1,00,000/- as awarded by the trial Court?

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14. Point 1:

No doubt, the plaintiff has not entered the witness box to give evidence. Before the trial Court, there is no oral or documentary evidence let in on both sides. Therefore, I am left only with the pleadings, namely the plaint and the written statement. I have already extracted the plaint averments as well as the defence taken by the appellants by way of the written statement. In the written statement, the following averments are noticed and extracted:

(i) The plaintiff admits to be a frequent flier and so far no incident of this kind has happened to him and if in spite of all care and attention, a hair follicle was found in the food, it cannot be a case of negligence warranting a claim of Rs.11,00,000/-.

(ii) Even according to the plaintiff, foodstuff was in a sealed packet and once the cover is opened, one cannot assert for certain whether the hair follicle was there even at the time of packing and that it could have fallen even after the passenger had opened the food pack and even a hair follicle of a co-passenger could have fallen in the dish.



(iii) The plaintiff did not hand over the incriminating food tray/pack to the airline staff on board to enable further investigation to be carried out.

(iv) The defendants admit that after the plaintiff gave a complaint, the defendants' airlines apologized for the incident and that a courtesy extended by way of apology cannot be construed as an admission.

(v) The plaintiff orally complained while on board the aircraft and the same was *radioed through the company channel* and a senior Catering Manager went to meet the plaintiff after the flight landing.

(vi) The plaintiff could have availed of medical assistance, if he suffered from vomiting sensation and stomach pain.

15. Thus, it is seen that the defendants have blown hot and cold even in their written statement. In one breath, they claimed that there were seven airline staff on board and the plaintiff never complained to any of them. However, on their own volition, at paragraph No.10 of the written statement, the defendants admit that the plaintiff orally complained and the complaint was also radioed through the Company channel immediately and a senior Catering Manager also attempted to meet the plaintiff after the flight landed, but the plaintiff refused to meet him and instead directly went to the Airport Manager's Office to give the complaint.



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16. Further, on a overall reading of the written statement, I cannot gather any denial of the incident anywhere. On the contrary, as discussed aforesaid, the defendants, in fact, admit to the allegation that the hair follicle was found in the food packet provided to the plaintiff.

17. The legal maxim, *res ipsa loquitur* would govern the facts of the present case. The principle embodied in the said maxim fundamentally means that negligence is evident and obvious and does not require the complainant to prove anything as the res proves itself and the burden would be only upon the respondent to prove that proper care has been taken in performance of its duty to repel the charge of negligence. In other words, the act itself is prima facie evidence of negligence and the onus of proving the contrary shifts to the respondent who is alleged to have been careless and negligent. Therefore, point 1 is answered against the appellants and in favour of the respondent.

18. In view of the above, I do not find that the plaintiff has to be non suited on the ground of non-impleading the caterer, merely because the food packet contains the name of the caterer and that the defendants have no role to play in the preparation of the food, the defendants cannot wash off their heads



and contend that compensation, if any, has to be met only by the caterer and not by the defendants.

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19.Point 2:

Coming to the second point for consideration whether the suit is bad for non-joinder of the caterer, Ambassador Pallava, the plaintiff has a contract with the defendants for travel from Colombo to Chennai. Admittedly, the ticket cost paid by the plaintiff is only to the defendants. The ticket includes meals to be provided on board the aircraft. The plaintiff has absolutely no privity of contract with the caterer and the food and other beverage services that are provided by the defendants to the passengers on board in their aircraft is an independent contract between the defendants and the caterer. As far as the plaintiff is concerned, his contract is only with the defendants and the contract, namely the ticket costs includes the food being provided to the plaintiff on board the aircraft.

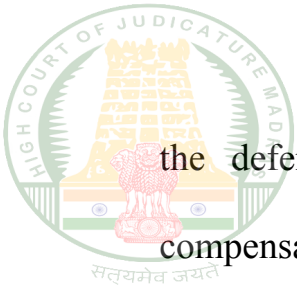
20.The defendants are therefore clearly vicariously liable to compensate the plaintiff for the negligence, namely the presence of hair follicles in the food packet, even though the food packet may not have been prepared by the defendants, but only through their agents, namely Ambassador Pallava.



Therefore, I do not find any error committed by the trial Court in finding the defendants' negligence and also the suit being not maintainable on the ground of non-joinder of the caterer.

21.Point 3:

Coming to the quantum, admittedly in a suit for compensation, being a tortious liability, the plaintiff would have to necessarily adduce oral and documentary evidence to establish the claim for compensation. The compensation, that would become payable to the plaintiff, would be only based on the actual loss or hardship suffered by the plaintiff. Admittedly, the plaintiff has not chosen to enter the witness box and despite an opportunity to lead evidence, in and by the order in CRP.(PD).No.4040 of 2013, the plaintiff has not opted to lead any oral and documentary evidence. Therefore, for want of proving the loss or injuries suffered by the plaintiff, the plaintiff cannot become entitled to any compensation. The Trial Court, on its own motion, having found the defendants to be negligent, as a sequel, has proceeded to award a minimum compensation of Rs.1,00,000/-. However, the award of compensation to the tune of Rs.1,00,000/- is clearly unsustainable, in the light of the admitted position that there is absolutely no iota of evidence on the side of the plaintiff to establish the loss or injury suffered on account of the negligence caused by

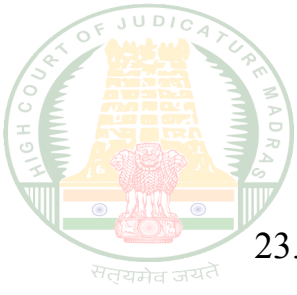


the defendants. Therefore, I am constrained to set aside the award of compensation at Rs.1,00,000/-.

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22.At the same time, considering the fact that though the plaintiff filed the suit claiming recovery of a sum of Rs.11,00,000/- towards damages and during the course of trial, the plaintiff has filed a memo, stating that no oral evidence is required on account of the defendants admitting negligence and has made a prayer to the trial Court to determine the quantum of damages and pass a decree, the learned counsel for the respondent would also across the bar, fairly concede that the plaintiff was never interested in taking any money from the defendants for the compensation, but the suit was filed only to expose the negligent acts of the defendants who charged exorbitant costs for the air travel and such careless and negligent acts should not go unnoticed and the claim should serve as a deterrent to the defendants to be careful at least in future.

22.I have no difficulty with regard to the ratio laid down in the decisions on which reliance is placed on by the appellants. The burden of proof was certainly on the plaintiff and the plaintiff having not entered the witness box cannot be entitled to succeed to a claim for compensation/damages.



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23. In view of the above, I have no difficulty in setting aside the compensation of Rs.1,00,000/- awarded by the trial Court. At the same time, having found that the defendants have been negligent and they have mischievously attempted to pass on liability to the caterer engaged by them, I am inclined to impose costs on the defendants/appellants. While setting aside the decree for compensation at the rate of Rs.1,00,000/-, I am inclined to direct the defendants to pay the costs of the suit, namely the Court fee and expenses to the tune of Rs.15,000/- and the counsel's fee of Rs.20,000/-, in all, the defendants shall pay a sum of Rs.35,000/-, as costs, to the plaintiff/respondent, within a period of four weeks from the date of receipt of a copy of this judgment. In the light of the above, the point 3 is answered accordingly.

24. In fine, the Appeal Suit is partly allowed, directing the defendants to pay a sum of Rs.35,000/-, within a period of four weeks from the date of receipt of a copy of this judgment. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

10.10.2025

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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P.B.BALAJI.J.

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To

The III Additional City Civil Court, Chennai.

Pre-delivery judgment made in
A.S.No.259 of 2023
& CMP.No.10138 of 2023

10.10.2025