

**JAYAKODY
VS
JAYASURIYA**

COURT OF APPEAL,
DISSANAYAKE, J AND
SOMAWANSA, J.
C. A. 389/93(F)
D. C. KURUNEGALA 1461/M
JUNE 23, 2003 AND
AUGUST 2004

Damages - Result of an attack by defendant - Lex Aquilia - Compensation for physical pain - Is it allowed?

The plaintiff-respondent instituted action against the defendant appellant claiming damages for injuries suffered by him as a result of the attack by the defendant-appellant. The defendant-appellant denied the averments in the plaint. After trial, the trial court entered judgement in favour of the defendant-appellant.

It was contended that the trial court had erred in awarding damages, taking into consideration the element of pain and suffering undergone by the plaintiff-respondent as a result of the injuries.

HELD:

(i) In an action for personal injuries the plaintiff is entitled to claim compensation for pain and suffering ;

(ii) In regard to pain and suffering there are really no scales by which pain and suffering can be measured and there is no relationship between pain and money. Court can only give a general equitable assessment.

APPEAL from the judgment of the District Court of Kurunegala.

Cases referred to :

1. *Prof. Priyani Soysa vs Rienzie Arsecularatne* - (2001) 2 SriLR 293
2. *Pauw vs African Guarantee & Indemnity Co. Ltd.*, (1950) 2 SA (SWA) 132
Romesh de Silva, P. C., with *Hiran de Alwis* for defendant-appellant.
Sunil Cooray for plaintiff-respondent

Cur. adv. vult.

November 28, 2003

N. E. DISSANAYAKE, J

The plaintiff-respondent instituted this action against the defendant-appellant, claiming damages for injuries suffered by him on 17.07.1981 as a result of the attack by the defendant-appellant.

The defendant-appellant by his answer, whilst denying the averments in the plaint, prayed for dismissal of the action.

The case proceeded to trial on 8 issues and at the conclusion of the trial, the learned District Judge entered judgment in favour of the plaintiff-respondent.

It is from the aforesaid judgment that this appeal has been preferred.

At the arguments of this appeal before this Court, learned President's Counsel appearing for the defendant-appellant confined his arguments to the following 2 matters only :-

(i) That the learned District Judge had erred, in holding that the injuries sustained by the plaintiff-respondent in the absence of evidence to arrive at such a conclusion and that the evidence established that the injuries had been caused as a result of a fall.

(ii) That the learned District Judge had erred in law in awarding damages, taking into consideration the element of pain and suffering undergone by the plaintiff-respondent as a result of the injuries.

The plaintiff-respondent in his testimony set out the circumstances under which he had received the injuries which is briefly as follows :-

On 17.07.1981 when he went to the Co-operative Society office at about 9.30 in the morning the defendant-appellant had referred to him as a rogue and had inquired as to why he had come there. The plaintiff-respondent had told him that all the people knew who the rogue was, and had advised him to maintain his position. He had further said that if he were to disclose how the defendant-appellant had functioned there, that he will get into trouble and that nothing will befall him.

At this stage when the defendant-appellant had attempted to strike him with his hand, he had avoided the blow and had gone towards the road. On hearing some footsteps as the plaintiff-respondent turned back and looked, suddenly, the defendant-appellant had assaulted him with some weapon that he had in his hand. The blow had alighted on the plaintiff-respondent's left side and he had fallen. Thereafter, he had lost consciousness. When he had regained his consciousness about a month later he had observed that he was warded at the Kurunegala Base Hospital.

As a result of the injuries suffered by him he has become an invalid. He was suffering from paralysis of his limbs on his right side. He has lost his memory. He was not in a position to be engaged in employment.

As a result of his prolonged illness, specially, as he had failed to recover his senses for a long time, Polgahawela Police Station had been able to record his complaint only after 3 months of the incident. He made a statement to the Police on 17.10.1981.

The plaintiff-respondent produced copy of his statement to the Police marked P1. He called Dr. S. Abeysinghe, Consultant Neuro Surgeon who had performed an operation on him as a witness. The medico-legal report of Dr. Abeysinghe had been produced marked P2.

Dr. Abeysinghe's oral evidence and report clearly reveal that the plaintiff-respondent sustained head injuries as a result of a blow struck by a dangerous and a hard object.

Dr. Abeysinghe under cross-examination had further stated that it is possible for the injuries that were found on the plaintiff, to have been caused by a fall. He had further stated that it was also possible that the said injuries could have been caused by a single blow.

Under re-examination he stated as follows :-

Q : Can you say how these injuries were caused, whether by falling on the ground and colliding with a stone, such serious fractures : was it more likely that the injuries were caused by an attack, or by the patient having fallen down?

A : "My conclusion is that this was a hard blow by being hit with some object. If the patient had a fall one would expect more injuries. If there was a stone and the patient was excited the head could have struck (on it), somewhere, and if that happened only the head would have been injured, and there may not be any injuries elsewhere on the body."

Dr. Abeysinghe further stated that he could not definitely rule out the possibility of the injury having been caused by a fall.

The defendant-appellant in his evidence had denied that he assaulted the plaintiff-respondent and testified to the fact of seeing the plaintiff-respondent running away on seeing him. He further stated that he had learnt thereafter that the plaintiff-respondent had received injuries as a result of a fall.

The learned District Judge, after embarking on an evaluation and analysis of the evidence had rightly held that the injuries caused to the plaintiff-respondent was as a result of the plaintiff-respondent being dealt a blow by the defendant-appellant. The learned District Judge had rejected the evidence of the defendant-appellant to the effect that the plaintiff-respondent had received injuries as a result of the plaintiff-respondent's act of running away on seeing the defendant-appellant and having had a fall on the tarred road.

Learned President's Counsel appearing for the defendant-appellant further contended that awarding of damages which was not quantified was wrong. He further contended that the learned District Judge erred in ordering damages for pain of mind and suffering which was not allowed by law.

The contention of learned President's Counsel appearing for the defendant-appellant that the plaintiff-respondent has not quantified the damages is not tenable. The plaintiff-respondent has claimed Rs. 275,000/- as compensation. He has claimed Rs. 8,500/- as hospital expenses, Rs. 4,490/- for expenses on account medicines, Rs. 750/- for ayurvedic treatment, Rs. 1,260/- for nursing attendant charges and Rs. 10,000/- for special foods and beverages, totalling up to Rs. 25,000/- and a sum totalling up to Rs. 300,000/-.

Further it was contended by learned President's Counsel that the award of compensation for physical pain caused to a person injured through negligence was not allowed in an action under 'Lex Aquilia'.

He cited the decision of *Prof. Priyani Soyza vs Rienzie Arsekuleratne*⁽¹⁾.

However in *Prof. Priyani Soyza Vs Rienzie Arsekularatne (Supra)* Dheeraratne, J at pages 302 stated " Damages claimed by the plaintiff under the head of mental shock, appear to be recoverable under the Roman Dutch Law as well as the English Law (if the task of reasonable foreseeability is satisfied), only if that results in psychiatric illness. Damages for emotional shock of short duration, which has no substantial effect of the health of a person are not recoverable."

At page 304 Dheeraratne, J stated further "of course compensation for injured feelings arising out of and flowing naturally from physical hurt done, could be claimed under the *Lex Aquilia*. See *Pauw vs African Guarantee and Indemnity Co. Ltd.*⁽²⁾.

Mc Keron in the *Law of Delict* (1965) 6th edition at page 114 under the heading personal injuries has stated ;

In an action for personal injuries the plaintiff is entitled to claim compensation for:

- (1) actual expenditure and pecuniary loss ;
- (2) disfigurement, pain and suffering and loss of general health and the amenities of life ;
- (3) future expenses and loss of earning capacity

The damages recoverable under the second head cannot be assessed on any arithmetical or logical basis

The usual method adopted is to take all the circumstances into consideration and award substantially an arbitrary sum.

Macintosh and Scobee, on "Negligence in Delict" 5th edition at page 261, under the head of "Damages for Personal Injury" has stated that "the general principles in relation to compensation payable for injuries negligently inflicted on oneself personally have been laid down in a number of decisions to the effect that the plaintiff is entitled to compensation for both pecuniary and non-pecuniary loss such as :

- (a) all necessary expenses such as medical and hospital alteration.
- (b) loss of future earnings.
- (c) compensation for loss of amenities.
- (d) compensation for the shortening of one's expectation of life.
- (e) compensation in respect of pain, suffering or deformity sustained Where damages are claimed for bodily injury, the plaintiff is not required to put a separate money value on each different element of the general damages he has suffered. In regard to pain and suffering, there are really no scales by which pain and suffering can be measured and there is no relationship between pain and money.
- (f) loss of wages.
- (g) compensation for change in personality

Items (c) and particularly (e), however are not capable of any precise estimate; the court can only give a general equitable assessment."

Thus, it is manifest that the award of compensation for physical pain caused is recoverable and the learned District Judge has rightly ordered compensation on that account too.

Therefore, I am of the view that the learned District Judge has embarked on a proper evaluation and analysis of the evidence and entered judgment in favour of the plaintiff-respondent. I see no basis to interfere with his said judgment.

The appeal of the defendant-appellant is dismissed with costs fixed at Rs. 5000/-.

SOMAWANSA, J. — I agree.

Appeal dismissed.