

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

Ranjani Hewawitharana  
"Wijayagiriya",  
Gonadeniya, Udugama.

**PLAINTIFF**

C.A 1019/1997 (F)  
D.C. Galle 5182/M

Vs.

U.G. Jinadasa  
"Chandana",  
Udalawaththa  
Via Galle.

**DEFENDANT**

U.G. Jinadasa  
"Chandana",  
Udalawaththa  
Via Galle.

**DEFENDANT-APPELLANT**

Vs.

Ranjani Hewawitharana  
"Wijayagiriya",  
Gonadeniya,  
Udugama.

**PLAINTIFF-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** D. Jayatilleke for the Defendant-Appellant  
G. Prematilleke for the Plaintiff-Respondent

**ARGUED ON:** 27.02.2012

**DECIDED ON:** 27.04.2012

**GOONERATNE J.**

This was an action filed in the District Court of Galle against the Defendant-Appellant claiming a sum of Rs. 300,000/- as damages caused to Plaintiff-Respondent due to injuries suffered by her as a result of a collusion (accident) which took place on 13<sup>th</sup> June 1984, due to the negligent acts referred to in the plaint. Parties proceeded to trial on two admissions and seven issues. The Defendant was the registered owner of vehicle No. 26 Sri 7431 and that accident occurred on 13.6.1984 between motor cycle No. 80 Sri 3185 (on which the Plaintiff was traveling at the time of accident) and

vehicle where the Defendant-Appellant was the registered owner are admitted facts. Judgment was entered in favour of the Plaintiff as prayed for in the plaint on 25.3.1997.

At the hearing of this appeal learned Counsel for Appellant concentrated on the award of damages and demonstrated to this court that the case is being contested mainly on the quantum of damages. It was learned Counsel's position that the damages awarded are far excessive in the circumstances, of this case and that the learned District Judge has erred to that extent. The learned Counsel in his oral and documentary submissions urged that on certain matters the trial Judge cannot award compensation, i.e mental and physical suffering etc. Both Counsel on either side have filed very comprehensive written submissions.

The evidence of the Plaintiff-Respondent very briefly was that Plaintiff a Graduate Teacher who was on the day in question traveled as a pillion rider on the motor cycle driven by her brother and having just passed the Gonadeniya bridge, a vehicle coming from the opposite direction collided with the motor cycle . She had become unconscious immediately at the point of impact. Plaintiff in her evidence state that the vehicle coming from the opposite direction came at a very high speed. The motor cycle

driven by her brother was driven slowly at a speed of about 15 k.m.p.h. The motor cycle was driven on the correct left side but the other vehicle was driven inclined more towards the side of the motor cycle. On the question of speed and negligence there is evidence of Plaintiff and brother, of plaintiff who was riding the motor cycle and another witness W. Hemachandra. All these persons testified to the aspects of negligence. The absence of break marks and the vehicle driven by the Defendant getting struck with the bridge are all indications of high speed in the circumstances of this case and I have no hesitation in accepting and endorsing the views expressed by the learned District Judge to be correct and this court would not disturb trial Judge's findings and views on this aspect of negligence. I have perused the written submissions of Appellant on this aspect but I am reluctantly compelled to reject the submissions of negligence as urged by Appellant.

This court would concentrate on the aspect of award of damages since that would be the deciding factor in this appeal. Defendant-Appellant urge that there was no material to award a sum of Rs. 300,000/- inclusive of general and special damages. I had the benefit of perusing the several authorities cited by the learned counsel for the Defendant-Appellant.

In the law of Delict 7<sup>th</sup> Ed. – Mckerron at pg. 115 .... The object of awarding compensation for loss of earnings is to put the Plaintiff so far as money can do it, in the position in which he would have been if he had not been injured not to improve his material prospects.

The trial Judge has given due consideration to the medical evidence placed before court and to some items of evidence referred to in the course of the trial by the Plaintiff on the question of injuries caused to her due to the accident seems to be incorporated inclusive of damages in paragraphs 9 & 10 of the plaint. This court view with caution that issue Nos. 1 – 4 raised by he Plaintiff may suggest inadequacy of categorizing damages as special and general, but paragraphs 10 & 11 of plaint seems to include the required particulars.

In the light of medical evidence, it is apparent that Plaintiff has suffered injuries to a very great extent which prevents her leading a normal life. If not for the accident Plaintiff's prospects of life, being a Graduate Teacher should not be lightly taken or ignored by a Court of Law, as one could anticipate a good future for her though it is not possible to predict a bright future. The medical report marked P1 which was proved by the witness Professor Nirielage Chandrasiri had considered as variety of matters

and aspects under various items of medial categorizing. I have incorporated the following from report P1.

## 2.2 Movements:

### 2.2.1 Movements of right knee

Flexion at the right knee - 3° (normal is 120° )  
 Flexion at the left knee - 120°

### 2.2.2 Movements at the ankle

Dorsiflexion / planter flexion

Right ankle - 5° (normal is 30° )  
 Left ankle - 30°

### 2.2.3 Movements of the hip – normal

### 2.2.4 Movements in rest of the joints are normal

## Permanent defects:

- 3.1 Fixed flexion deformity of right knee and right ankle. The movement is reduced by 97 ½ % in the right knee and reduced by 83 1/3 % in the right ankle.
- 3.2 3.1 has resulted in limping, difficulty in climbing stairs and inability to run. This will be present throughout her life.
- 3.3 Reduction of 0.5 cm girth is due to wasting of muscles which has been produced by 3.1.
- 3.4 Shortening of the right lower limb by 1 cm. This will be throughout her life.
- 3.5 All of the above defects are permanent and there will be no further improvement.
- 3.6 She was 32 years when she delivered her first baby by a caesarian operation. She will not be able to have a normal vaginal delivery again.

Trial Judge has very correctly considered oral and documentary evidence (P1) of the medical aspect of this case (folios 142/143/144 of the original record)

This court also note a significant part of the judgment of the learned District Judge where the original court arrives at a conclusion to award damages as prayed for in the plaint. The following extract in this regard to be noted (District Judge had given her mind to paragraph 9 of plaint).

පැමිණිලිකාරිය ගෞරව උපාධියක් හිමිතැනැත්තියකි. ඒ අනුව ඇයගේ සාක්ෂියේදී ඇය කියා සිටියේ අනතුරෙන් පසු ඇය අවුරුදු 2 යි මාස 2ක කාලයක් නිවාඩු සිට නැවති සිටි බවත් ඒ අනුව දින 138 ක් සේවයට වාර්තා කිරීමට නොහැකි වූ බවත් සඳහන් කර ඇත. පැමිණිලිකාරියගේ සාක්ෂියට අනුව මූලික වැටුප රු. 1180.28 ක් ලබා ගෙන ඇත. ඇය අනතුර හේතු කොට ගෙන මාස 24 දින 14 ක කාලයක් පාසල් නොගොස් ඇත. තවද ඇයගේ සාක්ෂියට අනුව ඇය වාර 20 ක් පමණ තම නාවසේ සිට රෝහලට ප්‍රතිකාර ගැනීම සඳහා වාහනයකින් ගොස් ඇති අතර වාහන කුලිය ලෙස පමණක් වාරකට රු. 700/- ක් පමණ වියදම් කර ඇත. එසේම රෝහලෙන් නියම කරන ලද ඖෂධ වලට අමතරව ඇ හට පුද්ගලිකව එන්නත් ආදිය බෙහෙත් ගරනීමට සිදු වී ඇත. ඒ සඳහා ද ඇය අමතර මුදලක් වියදම් කර ඇත. විත්තිකරු වෙනුවෙන් හරස් ප්‍රමාණ ඇසු අවස්ථාවේදී පැමිණිලිකාරියට අනතුර නිසා සිදු වූ වියදම් පිළිබඳව සවිස්තර ලෙස හරස් ප්‍රමාණ අසා නොමැත. ඒ අනුව විත්තිකරු වෙනුවෙන් පැමිණිලිකාරිය

වසින් අනතුර නිසා ඇයට වඳින්න සිදු වූ තුවාල පිළිබඳව සිදු වූ පාඩුව ගැන වත්තිකරු වෙනුවෙන් තර්කයක් ඉදිරිපත් කර නොමැති අතර ඒ අනුව වත්තිකරුද එකී අලාභය සිළිගෙන ඇති බවට සැනීමට පත්විය හැකිය.

පැමිණිලිකාරිය ආභාධිකයෙකු තත්ත්වයට පත් වී ඇත්තේ වත්තිකරුගේ නොසැලකිල්ල නිසා බව පෙනේ. ඒ සඳහා වත්තිකරු පැමිණිලිකාරියට වන්දි ගෙවිය යුතුය. වත්තිකරු ගෙවනු ලබන වන්දිය පැමිණිලිකාරිය පත්ව තිබෙන ආබාධිත තත්ත්වයෙන් ඉවත් වීමට කිසිසේත් ඉවහල් නොවුවත් එකී වන්දි මගින් ඇයට අඩු ගණනේ මානසික සහනයක් ලබා ගැනීමට හැකි වනු ඇත. පැමිණිලිකාරියට සිදුව තිබෙන අලාභය ඇත්තවශයෙන්ම මුලින් තක්සේරු කල නොහැකිය. ඇය මුදලින් කර තිබෙන තක්සේරුව හුදෙක් ඇයට යම්කිසි අස්වැසිල්ලක් ලබා ගැනීම සඳහා කල තක්සේරුවෙන් මිස ඇයට සිදු කර තිබෙන පීඩාවට ගෙවනු ලබන වන්දියක් ලෙස සැලකිය නොහැකිය. එබැවින් පැමිණිලිකාරිය වසින් වත්තිකරුගේත් ඉල්ලා ඇති අලාභය සහ වන්දිය ඉතාමත් සාධාරණ වූ මුදලක් බවට සැනීමට පත්විය හැකිය.

My attention had been drawn to the case of Priyani Soysa Vs. Arsecularatne 2001(2) SLR 293, held damages claimed by the Plaintiff under the head mental shock, appear to be recoverable under Roman Dutch – Law as well as the English Law (if the test of forceability is satisfied) only if the results in psychiatric illness, damages on account of emotional shock of



short duration which has no substantial effect on the health of a person are not recoverable.

In the written submissions Roman Dutch Law principles and attitudes are also discussed. I have considered all this and arrived at a conclusion that the special damages and general damages need to be awarded in this case, and the District Judge though had not categorized damages in that way, based on evidence led at the trial on the question of damages (not contradicted) awarded damages. Whilst having in my mind the several positions taken by the Defendant-Appellant I am inclined to follow the case of *Nadarajah vs. Ceylon Transport Board*. 79 NLR 48. the dicta in the above case is still applicable in the context of the case in hand.

In the head note it is stated:

Pg. 48 ....

In a claim for damages for physical injury whether caused by negligence or otherwise the damages are, apart from special damages, at large, and will be given for the physical injury itself, and in case of disablement for its effect upon the physical capacity of the injured person to enjoy life as well as for his bodily pain and suffering.

Per Wimalaratne, J.

“The accident took place on the approach road running in front of the Fort Railway Station, within the railway premises. This is a road where many people gather

around, and a place where passengers go to and fro. There was, therefore, a high degree of care cast upon drivers of vehicles and a duty to drive extremely carefully in order to avoid possible accidents. The accident took place about 24 feet in front of the bus halt, which was situated on the pavement. One would expect the bus to have been driven alongside the pavement and halted at the bus halt, but the bus knocked down the plaintiff 24 feet in front of the bus halt, and thereafter proceeded a further 46 feet from the bus halt before it stopped. These facts show that the bus was driven at a speed excessive in the circumstances, and that the driver also failed to keep to the left or near side of the highway. The learned Judge has failed to consider these facts in relation to the issue of negligence particularized in the plaint.

Pg. 53.....

In a claim for damages for personal injury, whether caused by negligence or otherwise, the damages are, apart from special damages, at large, and will be given for the physical injury itself, and in case of disablement, for its effect upon the physical capacity of the injured person to enjoy life as well as for his bodily pain and suffering. "Such damages cannot be a perfect compensation but must be arrived at by a reasonable consideration of all the heads of damage in respect of which the plaintiff is entitled to compensation and of his circumstance, making allowances for the ordinary accidents and chances of life. Halsbury – Laws of England (3<sup>rd</sup> Edition) Vol. II, paragraph 427

The question we have to decide in appeal is whether the learned District Judge's assessment of damages is not only on the low side but also is so much on the low side that this Court should interfere with it and should increase it.

Dr. Parameswaram had examined the plaintiff subsequently on 30<sup>th</sup> June, 1975, the day before he gave evidence at the trial. On that date the fracture of the right humerus was well united and all movements were full. The fracture of the neck of the femur was healed, with a residual deformity leading to a shortening of about  $\frac{3}{4}$  inch. The external rotation and movements of his right hip are limited. The doctor is of the opinion that all acts of the right leg are limited and accordingly the plaintiff will find difficulty in sitting

cross legged, in squatting or in bending to remove his shoes. The plaintiff had tremors of the hand even prior to the accident. The accident had aggravated that condition and consequently his handwriting is not normal.

Pg. 54....

After this accident there has been no loss in his salary increments . He still continues to be employed in the Tamil section of the Broadcasting Corporation, and has been given work which does not involve his going from place to place. His salary has not been reduced for that reason. He is now a little over 51 years of age, and there is nothing to prevent him continuing in employment until the age of retirement.

The most significant feature of the man's post-accident condition as at present established is that his right hip movement is limited, with the consequential disability referred to by the doctor. The tremors of the hand were there even before the accident. Account, has, however, to be taken also of the aggravation of that condition as a result of the accident. A consideration of all the evidence leads me to the conclusion that the learned Judge's estimate of general damages at Rs. 50,000 is reasonable, and should not be interfered with.

The importance of the above decided case is that, justice Wimalaratne has discussed both the attributes of special and general damages. In the case in hand trial Judge has awarded the special damages from the evidence that transpired in court which fall in line with paragraph 10 of the plaint. The large volume of medical evidence placed before the original court and the other evidence led at the trial of that of the Plaintiff herself giving details of various aspects of her life prior to the accident and after, would give the impressions that she had been deprived of leading a

normal life. She needs to be adequately compensated. Trial Judge's assessment of general damages is more than reasonable. As such I affirm the District Court Judgment and dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL