
(1879) 07 CAL CK 0009

Calcutta High Court

Case No: None

Anundo Lall Dass

APPELLANT

Vs

Boycaunt Ram Roy

RESPONDENT

Date of Decision: July 11, 1879

Citation: (1880) ILR (Cal) 283

Hon'ble Judges: Richard Garth, C.J; White, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We presume that it is to compensate for this injury, as well as perhaps for a portion of the broken glass and the removal of the furniture, that the Judge has given Rs. 1,200 damages.

2. We are asked to say that this sum is not enough, and to make a substantial addition to it; but I really see no sufficient reason for increasing the damages, and if I did, I find nothing in the plaintiff's evidence to afford me any reasonable guide as to the sum I should give.

3. I entirely reject as unfair and extortionate the theory of Mr. Cantwell, that the ruinous condition of the plaintiff's house was attributable to the defendant's negligence, and that the house should be rebuilt at the defendant's expense; and rejecting this I find no other evidence whatever to inform me what the proper amount of damages should be.

4. The plaintiff and his advisors have, I presume, thought it good policy to adhere to their own extravagant claim, and to provide the Court with no means of assessing the damages, except upon the basis of that claim; so that if we were disposed to take a more moderate view of the defendant's liability, we can only assess the damages by guess work.

5. This is not only an unusual, but, in my opinion, a most improper and reprehensible way of presenting a case to the Court. A plaintiff who prefers a claim like the present, of which the Court, having regard to the circumstances, may take two or more different views, is bound to be prepared with proper evidence of the amount of his damages, according to whichever of those views the Court may think it right to adopt; and if he chooses to confine his evidence of damage to one theory only, which the Court in their discretion think proper to reject, he must take the consequences of his imprudence.

6. The only real guide which the Court has as to the cost of rebuilding the part of the west wall which came down, is the rough estimate of Mr. Williamson, who puts it at from Rs. 500 to Rs. 600, and we have no means whatever of estimating the expense of rebuilding the godowns, &c., which were attached to the inside of that wall.

7. Altogether I consider that, the plaintiff's case has been presented to the Court in an exaggerated, not to say a dishonest, form. I do not see sufficient reason for increasing the amount of damages, and if I did, I find no evidence on the record which would afford me any safe means for doing so.

8. Mr. Jackson, under these circumstances, has contended very strongly on behalf of his client, that, as there is no evidence upon the record which would enable the Court to assess the proper amount of damages according to the view which we take of the case, it is our duty to frame an issue or issues, &c., and either to send the case back to the lower Court u/s 566 of the new Code to take additional evidence there, or else to take fresh evidence ourselves in this Court for the purpose of determining the plaintiff's rights.

9. But in my opinion the provisions of that section are not intended to apply to a case of this nature, and if they were, I certainly, in the exercise of my discretion, should refuse to act under it in this instance. That section is intended to provide for cases where some point has come to light in the Appellate Court, which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below.

10. But in this case no new point has arisen, and nothing new has transpired, which the plaintiff was not perfectly aware of at the time when he brought his suit. There is no necessity here for any fresh issue. The only issue necessary to the ends of justice is that which has been already raised and tried in both Courts,--namely, to what damages, under the circumstances, is the plaintiff entitled.

11. The mistake, if any, has arisen from the plaintiff's own omission to bring forward proper evidence at the proper time in support of his own case, or rather from his determined persistence in endeavouring to enforce a claim which, in our opinion, is unjust and untenable.

12. If we were to allow him under such circumstances to remodel his case, and to try it over again with fresh evidence upon a more reasonable principle, we should, be introducing a very mischievous practice. We should be encouraging dishonest plaintiffs to try experiments with the Court by setting up and insisting upon extravagant claims, in the well-assured hope that if they failed in establishing those claims, they would be allowed to amend the proceedings and try their case over again upon a fairer and more moderate basis.

13. I think that the appeal should be dismissed with costs on scale 2.