The Maharashtra State Road Transport Corporation Vs Rajrani Ramrang Manocha

Court: Bombay High Court

Date of Decision: Nov. 7, 1977

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 7

Citation: (1979) 81 BOMLR 241

Hon'ble Judges: Vaidya, J; Pratap, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Vaidya, J.
[His Lordship after narrating the facts giving rise to the present Appeal, proceeded.] It was next contended by Mr. Rane that

the damages awarded in these two matters were excessive and had no basis at all in the evidence on the record, in so far as the general damages

of Rs. 7,000 paid in respect of the injuries to Ramrang Manocha and Rs. 20,000 awarded as general damages to Chhabra are concerned. Mr.

Rane took us through the evidence with regard to the special damages for medical treatment and loss of earnings; but we find it impossible to

interfere with the findings of the learned Civil Judge in the two suits, so far as, those items are concerned. There was nothing exaggerated in the

plaint about the medical expenses or the medicines or the loss of earnings of the plaintiffs. We find no reason at all to interfere with the decrees

passed in respect of the same as special damages.

2. In support of the cross objections, which, as stated above, relate to the deduction of what was awarded under the Workmen''s Compensation

Act to Chhabra and what was given by the defendant No. 1 as ex gratia payment to Chhabra, Mr. Desai submitted that the compensation

awarded under the Workmen''s Compensation Act is a statutory compensation, which cannot be taken into consideration when determining

damages in respect of negligence caused by the defendant No. 2. Similarly, he contended that what was paid ex gratia could not be allowed to be

deducted, as such a deduction would be ungraceful on the part of the defendant No. 1.

3. The question of general damages raised by Mr, Rane and the question of deductions raised by Ã¯Â¿Â½Mr. Desai both relate to the difficult question

of awarding damages or assessment of damages in respect of personal injuries which is always brought at various times for consideration, including

the ''intangible considerations of loss of happiness, mental pain and shock, which cannot be measured accurately in terms of ''money. In what

appears to be the latest fundamental study of the Law of Tort by Prof. Glanville Williams and Prof. B. A. Hepple, ''''Foundations of the Law of

Tort'''', 1976, it is observed (pp. 60-61):

The confusion we have just noticed about the phrase ''special damage'' illustrates the undesirability of using technical expressions in double

meanings where this can be avoided. The unfortunate, though common, use of ''special damage'' to mean actual damage should be avoided. The

term ''actual damage'' (or just ''damage'') should be used where that is meant.

In the pleader''s sense special damage is damage that must be specifically claimed in the statement of claim, and it means all damage upon which a

sufficiently precise figure can be placed to make it reasonable to expect the plaintiff to give notice of the amount he claims. Pain and suffering are

not special damage, because their translation into money terms is arbitrary, but if the plaintiff had his clothes ruined in the accident, and incurred

hospital expenses, and loss of wages, the value of the clothes and other monetary loss up to the date of the trial would be special damage upon

which he would have to put a figure. ...

General damage, on the other hand, is damage not accurately quantifiable in money terms, for which damages can be awarded even in the absence

of any specific monetary claim in the plaintiff''s statement of claim. All that the plaintiff has to do is to claim ''damages'' at large and then the court

will make some rough assessment. For example, if the plaintiff has been knocked down by the defendant''s car and suffered pain and physical

injuries, the court may award him such damages for these matters as it thinks right, and no precise figure need be claimed on the pleadings. In

discussions about the substantive law, little use need be made of this distinction between ''special'' and ''general'' damage.

At p. 61, in the foot-note, it is further observed:

It is often said that general damage is damage that the law will presume to have followed from the tort, but one may take leave to say that this is

incorrect. For example, pain and suffering and physical injury are general damage, but they are not presumed to have followed from the tort; on the

contrary, particulars of physical injury must be furnished by the plaintiff as part of his pleadings, and evidence must be given of it at the trial. To

obtain substantial damages the plaintiff must always give evidence of the circumstances and consequences of the tort; there is no presumption to aid

him. The only damage presumed to follow from the tort is that represented by an award of nominal damages.

4. In Dinbai Wadia v. Farukh Mobedjina (1956) 59 Bom. L.R. 1196, S.T. Desai J. (as he then was) considered the principles of estimating the

amount of damages, in case of actionable negligence resulting in death, while repelling the argument that the ''pecuniary loss to the claimants by the

death of the deceased, who was the sole support of the family, should be assessed as nil, observing as follows (p. 1202):

Estimating the amount of damages in case of actionable negligence resulting in death is always a difficult task for the Court. The standard must not

be a subjective standard but an objective standard. Hypothetical considerations should not, as far as possible, be permitted to augment or reduce

the quantum of damages. All speculation and conjecture and considerations or sympathy and solatium have to be eschewed. Even so, certain

amount of guess work is liable to creep in. Mere speculative possibility of pecuniary benefit is not sufficient; the assessment must be based on a

reasonable probability of pecuniary benefit. In cases of higher incomes this would also be affected by Income Tax that the deceased would have

paid on his income if his life had not been cut short. Some uncertain values of reduction resulting from considerations of the widow remarrying and

other matters of doubt of an allied nature would have also to be borne in mind in arriving at the summation. The Court has some discretion in fixing

the measure of reparation and the important consideration would be the probable earning of the deceased and what is more important what

amount the deceased would have probably spent for the support of his wife and children. Expectation of life of the deceased having regard to his

age, bodily health and habits and the possibility of premature death is one of the other relevant considerations. The assessment cannot obviously be

a mere matter of multiplication of the datum or basic figure of what the deceased would probably have spent for the maintenance of the claimants

by the number of years of expectation of his life although this would have to be done in the first instance. The amount so calculated would have to

be discounted to arrive at an equivalent in the sum to be decreed as immediately payable instead of yearly payments spread over a number of

years. Where the deceased has left property which goes to the claimants, the resulting acceleration of interest in that property would also be a

factor of reduction in the final assessment.

5. Although, strictly speaking, the principles enunciated above may not be applicable to personal injuries, which have not resulted in the death, as in

the present case, some of these principles, e.g., that the standard must be an objective standard; and although it may involve some guess work,

hypothetical considerations, speculations and conjectures and mere considerations of sympathy and solatium, should not enter into the assessment

of damages, appear to us to be relevant principles.

6. It is also necessary, in this connection, to refer to the law as expounded in the seventeenth edn. (1977) of ""Salmond on the Law of Torts"" at p.

575 as follows:

After an exhaustive review of this difficult subject, the Law Commission was unable to arrive at any conclusion, except to say that "the only helpful

question that we think can be asked is a not whether the damages awarded are "right" but who ought to decide what these arbitrary amounts

should be". So as the courts make these decisions, we must turn to the cases.

7. The learned Civil Judge has relied on the decision of the Kerala High Court, as stated above; but we find that, in that case Veeran and Another

Vs. T.V. Krishnamoorthy and Another, , after referring to the distinction between special damages and general damages, which, as stated above,

is commented upon by prof. Williams and prof. Hepple, the learned single Judge awarded the sum of Rs. 578.66 p. as general damages, making

the following observations (p. 179):

. . .Even in valuing the claim, it is open to the plaintiff to put an estimate of the general damages paying court-fee thereon and offering to pay before

decree is passed additional court-fee on the fixation of damages due to him. A plaintiff claiming damages but failing to prove any special damage,

may be entitled to general damages. In The Hebriidean Coast [1961] A.C. 545 where the plaintiffs" ship had sustained damage in a collision with

the defendant"s vessel and the plaintiffs claimed Ã¯Â¿Â½1525 as special damages for loss of use of the ship for the period of detention for repairs and

general damages in unspecified sum but failed to prove special damage, the House of Lords held them entitled to general damages on the basis of

interest on the value of the ship and depreciation for the period of detention. The relief of general damages must necessarily be more imperative in a

case of collision causing personal injuries with concomitant pain and suffering-physical and/or mental. The Munsif has disallowed general damages

on the ground that the 1st plaintiff is not suffering from any infirmity after the medical treatment received by him. The reason is fallacious. What

about the pain and suffering undergone by the 1st plaintiff? They are material items for which the 1st plaintiff is entitled to pecuniary compensation

by way of general damages. The Munsif s disallowance of any general damages in the circumstances of this case was most unwarranted; but it has

been acquiesced by the plaintiffs, who did not appeal against it in the first appellate Court. Even in this second appeal, the claim is confined by

them to the sum of Rs. 578-766 p. that was awarded by the Munsif.

The case, therefore, rested on the peculiar conduct of the parties to the litigation; and cannot be relied upon as laying down principles of

assessment of general damages, as appears to have been presumed by the learned Civil Judge.

8. The principle to be followed by Court, in such cases, was laid down almost a century ago, in England, in Phillips v. South Western Railway Co.

(1879) 4 Q.B.D. 406 Field J., in summing up to the jury in that case, said:

In actions for personal injuries of this kind it is wrong to attempt to give an equivalent for the injury sustained. I do not mean to say that you must

not do it, because you are the masters and are to decide; but I mean that it would operate unjustly, and in saying so I am using the language of the

great Baron Parke, whose opinion was quoted with approval in Rowley"s case Rowley v. London and North Western Railway Co. (1873) L.R. 8

Ex. 221. Perfect compensation is hardly possible, and would be unjust. You cannot put the plaintiff back again into his original position.

9. The direction was approved by Cockburn C. J., in, appeal in that case, who added another reason (p. 407):

The compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages

would afford adequate compensation, while, on the other hand, the attempt to award full compensation in damages might be attended with ruinous

consequences to defendants Generally speaking, we agree with the rule as laid down by Brett, J., in Rowley v. London and North Western

Railway Co, that a jury in these cases "must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but

must take a reasonable view of the case, and give what they consider, under all the circumstances, a fair compensation."

In other words, more than nearly a century ago, the rule was laid down that the Court should not attempt to give perfect compensation, which is an

impossible task. The Court can give only a fair and reasonable compensation.

10. In Benham v. Gambling [1941] A.C. 157, the principles of assessment of damages in respect of negligence resulting into personal injuries, and

particularly, shortening of expectation of life, were considered by the House of Lords of England. Simon L. C. observed in that case (p. 161):

It has been recognized by judges, who have had to deal with the many cases under this head which have fallen to be decided in the last few years,

that the measurement of this head of damage in terms of money is a very difficult matter, and the House has been furnished with the assent of both

parties to this appeal, with a list of cases already decided (some of them appearing in the Reports, and others available only in shorthand notes),

which show how wide is the variation between the judgments of different tribunals of fact in assessing, under comparable circumstances, a suitable

figure of loss under this head. None the less, it must be accepted that, in cases where the victim''s life has been shortened by the accident and the

claim is properly formulated and proved, some figure to represent the loss suffered by the deceased through the shortening of his life may be

included in the damages, and several of the judges concerned have drawn attention to the need for authoritative guidance on the subject of how to

arrive at it.

He observed on p. 165:

The House is now set the difficult task of indicating what are the main considerations to be borne in mind in assessing damages under this head and,

in the event of its differing from the view taken in the Courts below, of deciding whether this difference is of a kind which would justify interfering

with the figure of 1200 I. fixed by the learned judge.

In the first place, I am of opinion that the right conclusion is not to be reached by applying what may be called the statistical or actuarial test.

Figures calculated to represent the expectation of human life at various ages are averages arrived at from a vast mass of vital statistics; the figure is

not necessarily one which can be properly attributed to a given individual. And in any case the thing to be valued is not the prospect of length of

days, but the prospect of a pre-dominantly happy life. The age of the individual may, in some cases, be a relevant factor. For example, in extreme

old age the brevity of what life may be left may be relevant, but, as it seems to me, arithmetical calculations, are to be avoided, if only for the

reason that it is of no assistance to know how many years may have been lost, unless one knows how to put a value on the years. It would be

fallacious to assume, for this purpose, that all human life is continuously an enjoyable thing, so that the shortening of it calls for compensation, to be

paid to the deceased''s estate, on a quantitative basis. The ups and downs of life, its pains and sorrows as well as its joys and pleasures-all that

makes up ''life''s fitful fever''-have to be allowed for in the estimate. In assessing damages for shortening of life, therefore, such damages should not

be calculated solely, or even mainly, on the basis of the length of life that is lost. ...

The question, thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of prospective

happiness. Such a problem might seem more suitable for discussion in an essay on Aristotelian ethics than in the judgment of a Court of law, but in

view of the earlier authorities, we must do our best to contribute to its solution.

11. H. West & Son, Ltd. v. Shephard [1964] A.C. 326: [1951] A.C. 601, was the next House of Lords decision on the point dealing with the

assessment of compensation for loss of expectation of life, where it was laid down that the guidance in Benham v. Gambling applied only to the

assessment of damages for loss of expectation of life; and it did not extend to any other class of cases (per Lord Reid, Lord Tucker, Lord Morris

of Borth-y-Gest and Lord Pearce).

12. In the meanwhile, in Davies v. Powell Duffryn Associated Collieries, Ltd. [1942] A.C. 601 a case, where there was a claim under the Fatal

Accidents Acts as well as Law Reform (Miscellaneous Provisions) Act, 1934, the House of Lords laid down that when determining compensation

under these Acts, the balance of loss and gain to dependants by the death must be ascertained, the position of each dependant being considered

separately. Lord Wright observed (pp. 611-612):

. . .The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages

all circumstances which may be legitimately pleaded in diminution of the damages must be considered. The actual pecuniary loss of each individual

entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any

pecuniary advantage which from whatever source comes to him by reason of the death.

13. In Nance v. British Columbia Electric Railway Company Ltd. [1951] A.C. 601, the Privy Council, when dealing with the assessment of

damages of a fatal accident by a motor vehicle, made the following observations on the factors to be taken into account in assessing the quantum of

damages (p. 613):

The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is not

justified in substituting a figure of its own for that awarded below simply because It would have awarded a different figure if it had tried the case at

first instance. Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be

satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or

leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must

be a wholly erroneous estimate of the damage.

All these facts and circumstances relating to the deceased or injured person involved in a fatal accident, about these liabilities, have to be taken as

factors for determining the damages. It may be noted here that, relying on these two decisions, in Municipal Corporation of Delhi Vs. Subhagwanti

and Others, the Supreme Court granted damages under the Fatal Accidents Act.

14. Again, in Yorkshire Electricity Board v. Naylor [1968] A.C. 529, the House of Lords dealt with the question of damages for loss of

expectation of life; and discussed the principles laid down in Benham"s case and other cases, some of which have been referred to above; and

refused to interfere with the compensation awarded by the trial Court.

15. It is interesting to note what Lord Devlin has said in that case (p. 549):

The difficulty about the argument is that it is only in a most exceptional case that the principles laid down in Benham v. Gambling admit of any

flexibility in the result. Every assessment of general damage for physical injury, whether it causes loss of life or of a limb or of a faculty, has got to

start from the basis of a conventional sum,. If it did not, assessments would be chaotic. Every judge has within his knowledge not only the figure of

Ã¯Â¿Â½500 as the conventional sum appropriate to loss of life, but a number of other conventional sums appropriate to losses of limbs and faculties.

But the conventional figure for loss of a limb or a faculty is only the starting-point for a voyage of assessment which may, and generally does, end

up at a different figure. To a great reader the loss of an eye is a serious deprivation; the value of a leg to an active sportsman is higher than it is to

the average man. Then there is usually some additional financial loss, actual or potential, to be taken into account.

But while the loss of a single faculty may be more serious for one individual than for another, the loss of all the faculties is, generally speaking, the

same for all. Thus for loss of expectation of life the conventional figure has become the norm, unless the case is definitely abnormal. What, then,

apart from the special case, would justify an increase or reduction in the price of happiness? No one-least of all any lawyer-can tell. The directions

laid down in Benham v. Gambling are such that, except in a strictly defined minority of special cases, the starting-point for the assessment must also

be the finish. In Rose v. Ford [1937] A.C. 826 Lord Wright, having said that damages must be fair and moderate, foresaw that special cases might

occur "such as that of an infant or an imbecile or an incurable invalid or a person involved in hopeless difficulties." Viscount Simon L. C. in Benham

v. Gambling elaborates on this. Except for the extremities of childhood and old age, prospective length of years makes no difference. Social

position and worldly possessions are also irrelevant.

. . .The fact is that the whole of this branch of the law has been settled on what Lord Wright in Rose v. Ford called "the basis of convenience

rather than of logic". The law has endeavoured to avoid two results, both of which it considered would be undesirable. The one is that a

wrongdoer should have to pay large sums for disabling and nothing for killing; the other is that the large sum appropriate to total disablement should

come as a windfall to the beneficiaries of the victim"s estate. To arrive at a figure which avoids these two undesirable results is a matter for

compromise and not for judicial determination. I cannot think that a judge derives much assistance either from the artificialities-inevitable when

convenience is cloaked with logic-in Viscount Simon"s speech or from the customary exhortations to use common sense. It would, I think, be a

great improvement if this head of damage was abolished and replaced by a short Act of Parliament fixing a suitable sum which a wrongdoer whose

act has caused death should pay into the estate of the deceased. While the law remains as it is, I think it is less likely to fall into disrespect if judges

treat Benham v. Gambling as an injunction to stick to a fixed standard than if they start revaluing happiness, each according to his own ideas.

16. The law has remained uncertain even till this day in England. Thus, in Fletcher v. Auto car and Transporters Ltd. [1968] 2 W.L.R. 743, Lord

Denning M, R... Diplock and Salmon L.JJ. considered this question once again, in the light of the principles laid down by Lord Simon in Benham"s

case and the other cases.

17. In Cain v. Wilcock [1968] 3 All E.R. 817, Willmer, Russell and Fenton Atkinson L.JJ., discussed the matter. Willmer L. J., observed (pp.

817-818):

I do not propose to review in detail the authorities relating to the assessment of damages in this class of case. The question of claims of this

character has twice been before the House of Lords, first in Benham v. Gambling, and more recently in Yorkshire Electricity Board v. Naylor. In

those two cases their lordships debated at considerable length the considerations which should be borne in mind in making awards in relation to a

claim for damages for loss of expectation of life. ""We have had our attention called to what was said by their lordships in those two cases, and it

appears that both of them were brought to the attention of the learned assistant district registrar, and were considered by him. What it has been

sought to say in order to get this appeal on to its feet is that the assistant district registrar was guilty of an error of principle in this case because he

omitted to make allowances for the tender years of this child and, it is said, arrived at what has been described as the conventional award

appropriate to an ordinary adult person.

After saying that there was no reason to interfere with the compensation awarded by the lower Court, Willmer L. J., said (p. 818):

. ...generally speaking it seems to me that it would be wise to stick (except in very exceptional circumstances) to that which may be regarded as the

conventional, although admittedly artificial figure.

18. In that very case, Russell L.J., observed after referring to the decision in Yorkshire Electricity Board''s case (p. 818):

... I dare say it is improper for me to say this, but having considered the complicated attitudes adopted on this subject by members of the House of

Lords, it seems to me that it would lead to highly desirable certainty, without much harm to insurance companies, if judges listened in silence to

argument, and simply awarded Ã¯Â¿Â½500 without giving any reasons at all.

19. The last case, which may be referred to in this connection, is the decision of the House of Lords in Parry v. Cleaver [1970] A.C. 1, where the

question was whether police pension should be ignored in assessing the plaintiff''s financial loss; and the damages which were awarded at Ã¯Â¿Â½

9,500 in that case were proper. The majority of the House of Lords held that the police pension should be ignored in assessing the plaintiff''s

financial loss; and the Court of Appeal was wrong in reducing the damages, which were awarded, by the amount of the pension.

20. The result of the above discussion is not very satisfactory in extracting any clear principles of assessment, though the above principles are

stated in the form of paragraphs 1145 to 1158 in Halsbury''s Laws of England, fourth edn., vol. 12, in respect of damages for personal injuries

cases, stating that those principles were intended to be ""a distillation of the principles daily applied by all Courts, as a result of the decisions.

21. Similarly, Salmond''s Law of Torts, seventeenth edn, (1977), pp. 575 to 581, contains a summary of the principles laid down in the aforesaid

decisions and other decisions of the Courts in England. Perhaps, the discussion must end with the following observations in ""Winfield and Jolowicz

on Tort"", tenth edn. (1975), at pages 571-572:

This is not very satisfactory as a principle, and the result is that little more can be said in general terms than that the damages awarded should be

fair and reasonable compensation for the injury, bearing in mind all the relevant heads of damage, that awards should keep pace with the times, and

that, so far as is possible, the sums awarded should bear a reasonable relationship to one another. As a practical matter, however, it is now

generally acknowledged that awards of damages for personal injuries are based upon conventional figures derived from experience and the need

for consistency is fully recognised. So long as "conventional" is not taken to mean artificial and if judges can be persuaded to apportion the total

sum awarded between the various heads of damage and to set out the factors which they take into account there is no reason why a reasonable

degree both of consistency and of fairness between litigants should not be achieved. But it remains true that every case must ultimately be decided

on its own facts and that ''the choice of the right order of figure is empirical and in practice results from a general consensus of opinion of damage-

awarding tribunals- juries, judges and appellate courts.''

22. So far as the question of deduction of the amount of compensation received by Chhabra under the Workmen''s Compensation Act is

concerned, it appears to be well settled law in England that, in an action for damages for personal injuries, this must, in assessing these damages,

be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from his injuries. The

deductibility of other sums received from public sources, such as unemployment benefit, supplementary benefit and state retirement pensions is not

yet authoritatively resolved. If deductible, they would be deductible in full. Payments made by an employer under a legal obligation are deductible

unless the contract of employment provides for reimbursement out of damages recovered, in which case the plaintiff may claim the loss. Payments

made voluntarily by an employer, payments made out of charitable motives, pensions and insurance money are not deductible. (See paragraph

1152, p. 450, of Halsbury''s Laws of England, fourth edn., vol. 12). In view of this, the contention of Mr. Desai that the amount received by the

plaintiff Chhabra under the Workmen''s Compensation Act could not be deducted from the special damages or the general damages deserves to

be rejected.

23. Similarly, Mr. Desai''s argument that Rs. 2,000 was paid ex gratia by the State Transport Corporation for meeting the medical expenses of the

plaintiff also must be rejected, because even though the payment might have been made ex gratia, in determining what is fair and reasonable

compensation in a suit, what the defendant No, 1 has paid to the plaintiff even ex gratia cannot be ignored. In our opinion, it was, therefore, rightly

deducted by the learned trial Judge.

24. We have to approach the facts of the two suits, from which the above Appeals are filed, in the light of what is discussed above regarding the

assessment of damages for personal in juries; and what has been done by the learned Civil Judge in the two suits. So far as the suit of Ramrang is

concerned, the only reason, which is mentioned in paragraph 7 of the judgment, in regard to the general damages for the personal injuries caused,

after briefly referring to the evidence of Dr. Hambardikar and Dr. Talele, is that the learned Judge merely referred to the aforesaid Kerala

judgment; and awarded Rs. 7,000 as general damages, in addition to the special damages, which, as already stated above, will not be interfered

with by us, having regard to all the evidence, which has been rightly accepted by the learned trial Judge. We have, therefore, to carefully consider

the evidence with regard to the condition of the deceased Ramrang after the accident, in the light of the allegations made in the plaint and denied in

the written-statement.

25. In his plaint, Ramrang had set out the injuries caused to him and had claimed Rs. 7,000 for bodily and mental pain and suffering, general

impairment of health and reduced capacity for work, resulting in shortening of expectation of life. Ramrang died one year and nine months after the

accident on June 20, 1968, as admitted by his brother Krishanlal Manocha.

26. Krishanlal stated in the examination-in-chief:

On account of the injury my brother was nervous and he was in such a depressed mood that he said that he would not live for more months. He

had some plans to start some business at Jalgaon. On account of the injuries he had to postpone his plans of starting new business. Rs. 7,000 are

claimed for bodily pain and suffering and mental pain and suffering, etc. My brother died in June 1968. He was not so good in his health since the

time of accident till his death. Every now and then he was telling that there was some pain in the chest from the date of the accident till his death.

He died of pain in the chest.

27. But in the cross-examination he had to admit that he did not know definitely whether his brother died of the heart attack; and till the date he

was giving evidence, he had not made any inquiry as to the cause of his death, though he denied that Ramrang was addicted to drinks; and further

he was not in a position to state separately as to how the amount of Rs. 7,000 claimed by way of damages could be stated.

28. He also admitted that the accident had not interfered with the running of the shop; and even after his death, his sister-in-law was looking after

the shop. In these circumstances., which are, to some extent, supported by the injuries and also the shock and the pain as deposed to by Dr.

Talele and Dr. Hambardikar, we do not think that it would be right to interfere with the amount of compensation of Rs. 7,000 awarded in his suit.

Ramrang was 40 years old when he filed the suit in 1967; and no evidence was led to show how exactly he died or whether he died because of the

injuries in the accident.

29. In all the circumstances, therefore, we are not inclined to hold that the claim of Rs. 7,000, which he had made, was excessive or

unconventional or out of proportion to all the facts and circumstances relating to his life and conditions of his family. First Appeal No. 26 of 1970

is, therefore, liable to be dismissed with costs.

30. Turning, now, to Chhabra''s claim, we find that, in the plaint, apart from stating the injuries, which have been already referred to above, the

only averment made in support of the claim of Rs. 20,000 was; in respect of bodily injuries, mental agony and permanent disfigurement and

disability and reduced capacity of work resulting in shortening of expectation of life.

31. All that we find in the judgment of the learned Judge with regard to his claim is that, after discussing the evidence regarding special damages,

with which we are not interfering, as already stated above, the learned Judge observes in para. 15 of his judgment in Chhabra''s Suit No. 61 of

1967:

The general damages of Rs. 20,000 are claimed. On behalf of defendants it is contended that this is an exaggerated amount and the plaintiff''s

version that he could not get a good girl on account of disfiguration does not stand to reason. It is pointed out that there are no external marks and

practically there is no disfiguration which the plaintiff has alleged. To my mind it appears that Kerala ruling to which reference is made above by me

is sufficient to allow the general damages, as it is held that while the quantum of damages are to be considered even no specific pleading is

necessary for general damages. Reference is made to Order VI, Rule 2 and Order VII, Rule 7 of the CPC in paragraph 11 of the judgment

reported in Veeran and Another Vs. T.V. Krishnamoorthy and Another, Relying on that case I hold that plaintiff is entitled to the amount of Rs.

20,000 which he has claimed on various accounts, that is, bodily injuries, mental agony, etc.

32. Mr. Desai, the learned counsel appearing for the plaintiff Chhabra found it impossible to support the reasons given by the learned Civil Judge.

But he took us through the evidence; and contended that, having regard to the three operations, which Chhabra had to undergo, as a result of the

injuries, at Bombay, and also having regard to the loss of his employment till he got a new job, the mental shock, pain and suffering caused to him

and to the members of his family, including the shock of breaking an engagement of marriage, it cannot be said that the amount of Rs. 20,000

awarded by the learned Civil Judge was excessive.

33. We have already stated above how the judgment in the Kerala case cannot be said to have laid down any general principles applicable to all

the cases. We have also discussed above the difficulty of enunciating any general principle or in applying it. However, the difficult task must be

faced by the Court. Fair and reasonable compensation should be determined, in the light of all the facts and circumstances of the case. It may be

that specific pleadings itemizing general damages may not be necessary in all cases; but there must be at least some evidence to indicate the

reasons, on the basis of which the claim is made and the damages are to be awarded.

34. In fact, Chhabra himself has tried to say in his evidence in the examination-in-chief:

I am running 32. I am unmarried. There are little abnormalities on account of the injuries I received in the accident. My biting power is reduced. I

cannot sit on the ground. These are the hitches in getting married and to get a good girl, I am unhappy and on account of the accident there is

mental agony. I am not in a position to take the travelling job on account of the accident which I could take before the accident. In other words my

future prospects are marred. I have claimed Es. 20,000 by way of damages on account of mental agonies, future prospects marred, bodily injuries,

etc.

But, in the cross-examination, he had to admit that when he was giving evidence two years later, he could remember things and did remember and

had a good memory; and he could even walk well.

35. He further admitted:

... It is a fact that the abrasion on the right side of my face described in para. No. 3 of my plaint and which is the first injury is not visible today. It is

a fact that the second injury in para. No. 3 of my plaint is not visible externally but internally I feel. Today I have no medical evidence for the feeling

of the internal injury No. 2. It is correct to say that there is nothing near my right ear so far as the third injury is stated in para. No. 3 of the plaint.

There is a small mark on my little finger, so far as injury No. 4 is concerned. It is a fact that all my natural teeth in the lower jaw are present today.

I got myself examined by a dentist in order to assess my biting power so far as the lower teeth are concerned. I am not going to examine that

dentist for proving that there is less capacity of biting in the lower teeth.

It is a fact that so far as the fractures in the jaw are concerned nothing is left today which is visible so far as injury No. 6 is concerned. It is a fact

that my hearing capacity is upto the mark. At present there is no bleeding from the right ear. It is a fact that the fracture stated in injury No. 8 in

para. No. 3 of the plaint is completely cured. I will be in a position to stand on my legs for hours together if occasion arises.

36. He had further to admit that with his certificate of training for three years of a Diploma Course in Electronic Engineering, he was able to secure

a job, as a Sales Representative, from July 1967; and that job was stationary. When he was asked to pinpoint the items of his claim, he could only

say that he was claiming Rs. 10,000 for bodily injuries and mental agonies and the remaining Rs. 10,000 for permanent disfigurement, reduced

capacity for work resulting in shortening of life and damages.

37. As he has already been paid special damages in respect of the injuries, the claim which he is making for the said injuries would be overlapping;

and that is one of the principles, which should be borne in mind when assessing damages. As far as possible, overlapping should not be allowed. In

our opinion, therefore, so far as the injuries were concerned, Chhabra was sufficiently compensated by the special damages.

38. So far as the shock and pain was concerned, particularly having regard to the fact that the owner of the car Ramrang had claimed only Rs.

7,000; and also having regard to the admissions made by Chhabra about his condition two years after the accident, which showed that he was

quite competent; and a further admission made by Mr. Desai before us that he was even subsequently married to another girl, we think that the

general damages of Rs. 20,000 awarded to him were excessive and out of all proportion to the circumstances relating to his case.

39. It is also to be noted that Chhabra admitted in the cross-examination about his marriage engagement in the following words:

It is a fact that before the date of accident that is October 3, 1966, I was well settled in my life. I was engaged to a good girl before the accident

and the engagement was broken on account of disfigurement. Miss Makhija was the girl with whom I was engaged in the year 1966. The

engagement stood six months prior to the accident. My marriage with her was fixed in the month of November 1966. That girl is married in the

year 1967. I am not going to lead any evidence either oral or documentary to prove that the engagement of my marriage broke on account of the

accident.

40. In the absence of any other evidence, it is difficult to hold that Chhabra suffered in the matrimonial sphere on account of the accident,

particularly when he admitted that there was no disfigurement or disablement in this connection. Never-the-less, the doctor, who operated him, Dr.

Chawara, who was examined on commission in Bombay, has given evidence that on account of the fracture of the right femur there would be slight

difficulty in movements such as running and squatting on the ground.

41. There would be a permanent disability and it would be roughly 15 per cent, disability in both the cases viz. jaw and the femur; and having

regard to this evidence and also having regard to the pain and suffering which Chhabra had to undergo as a result of the operation; and further

having regard to the compensation, which the owner of the car himself had claimed, though he was only a few years older than Chhabra, we are of

the opinion that Chhabra would not be entitled to more than Rs. 7,000 for mental shock and pain, loss of expectation of life and general damages

caused on account of the injuries.

42. It may be also reasonable to award Rs. 1,000 more as damages to him in respect of the breaking of the engagement, although it is not proved

satisfactorily by him that his engagement in fact broke due to the accident. This is a factor, which is in addition to the other factors, which weighed

with us when determining the compensation for Ramrang.

43. It is true that there is so much room for legitimate difference of opinion about damages in such a case that, ordinarily, an appellate Court would

be slow to interfere with the damages awarded by the trial Court. However, in the present case, as already stated above, the learned Judge has not

given any reason or discussed properly the evidence part and the admissions, which are referred to above, made by Chhabra.

44. In this connection, it is necessary to refer to the following passage in ""Salmond on the Law of Torts,"" seventeenth edn. (1977), at p. 580, with

regard to the functions of the Court of appeal:

... It must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant

factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high

that it must be a wholly erroneous estimate of the damage. It has been said that the court would interfere if it said to itself "Good gracious me-as

high as that." In exceptional circumstances the Court of Appeal may take account of facts occurring after the date of the judgment.

45. In fact, we have discussed above the factors, which we have taken into consideration, including the fact that, after the date of the judgment of

the trial Court, Chhabra was happily married, as stated by Mr. Desai; and the defects, as stated by Dr. Chawara, were not such disabilities which

have prevented Chhabra from securing a good job in his own life, as stated above. We have, therefore, interfered, because we were satisfied that

the amount of Rs. 20,000 awarded by the learned trial Judge was arbitrary and inordinately high in all the facts and circumstances relating to

Chhabra"s suit.

46. In the result, the decree passed by the learned Civil Judge in Special Civil Suit No. 61 of 1967 on August 26, 1969, is modified by substituting

for the figure of Rs. 26, 611.71 p., Rs. 14,611.71 p. Subject to the said modification, which means that the defendants have to pay to the plaintiff

Rs. 14,611.71 p. instead of Rs. 26,611.71 p., the decree passed by the learned Civil Judge is confirmed.

47. Notwithstanding this modification, however, we think that this is a case, where the appellants must bear the costs of this appeal, because they

had challenged the decree on the ground that the finding of the trial Court was wrong in respect of the negligence of defendant No. 2, as we

confirm the decree subject to the modification of the decree, as stated above.

48. First Appeal No. 56 of 1970 is also dismissed with costs, subject to the modification as stated above. Cross objections in First Appeal No.

56 of 1970 dismissed with no order as to costs.

49. Both the appeals accordingly dismissed, subject to the modification mentioned above in First Appeal No. 56 of 1970, with costs.