

(1974) 01 RAJ CK 0040
In the Rajasthan High Court
Case No : Second Appeal No. 273 of 1966

Bala Ram

APPELLANT

Vs

Sukh Sampat Lal and Others

RESPONDENT

Date of Decision : 04-01-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2

Citation : AIR 1975 Raj 40 : (1974) RLW 215 : (1974) 7 WLN 63

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : P.C. Bhandari, for the Appellant; H.C. Jain, for the Respondent

Final Decision : Partly Allowed

Judgement

Kan Singh, J.—The second appeal before me is by a defendant and arises out of a suit for damages for libel. It raises questions involving the essential distinction between what are known as general damages and those characterised as special damages, as also about the mode of pleading special damages.

2. On 28-9-1957 a notice purporting to have been issued by the defendant appellant Sri Bala Ram Kachhawaha appeared in a Hindi newspaper Lok Jeevan" published by Shri Shyamsunder Vyas defendant No. 2, The paper had two offices; one at Jodhpur and another at Jaipur but it is printed at Jaipur. Plaintiff Sardarmal was an estate agent i.e., he used to bring about the sale and purchase of immovable properties on commission basis. Sri Balaram Kachhawaha was a tenant of the plaintiff's son and was occupying a shop at Sardarpura, Jodhpur. The plaintiff considered this notice to be defamatory of himself and accordingly filed the suit for damages to the tune of Rs. 3,000/- both against Shri Balaram and Shri Shyamsunder in the Court of Civil Judge, at Jodhpur.

3. Both the defendants filed separate written statements, Shri Balaram denied that he was the author of the notice purporting to have been published by him in the "Lok Jeewan". In the alternative he pleaded that whatever was stated in the

notice concerning the plaintiff, was true. Shri Shyamsunder took the position that the notice complained of had been published by him in his paper at the behest of defendant No. 1 Sri Balaram Kachhawaha. He denied that it was defamatory of the plaintiff.

4. The learned Civil Judge framed a number of issues and recorded the evidence of the parties. He came to the conclusion that it was Shri Balaram Kachhawaha at whose instance defendant No. 2 published the notice in the paper; that it was defamatory of the plaintiff and the plaintiff had suffered damages on account of the notice. He further held it proved that the plaintiff suffered loss of business to the tune of Rs. 1,000/-. He further held that the plaintiff was also entitled to the general damages to the tune of Rs. 2,000/-. Accordingly he passed a decree for Rs. 3,000/- against both the defendants.

5. Aggrieved by this decree, the two defendants filed separate appeals in the court of the District Judge, Jodhpur. The learned District Judge affirmed the findings of the first court both regarding the notice in question being defamatory of the plaintiff as well as regarding the defenant Shri Balaram Kachhawaha being its author. As regards the quantum of damages the learned District Judge held that the plaintiff had been successful in proving special damages to the extent of Rs. 1,000/- but as regards the general damages he reduced the amount from Rs. 2,000/- to Rs. 500/- only. In the result the decree was reduced to an, amount of Rs. 1,500/- only. It is against the appellate decree of the learned District Judge that Shri Balaram Kachhawaha has come in second appeal. Shri Shyamsunder defendant No. 2 has not chosen to file any further appeal and we are not concerned with him.

6. While assailing the decree of the learned District Judge, learned Counsel for the appellant candidly accepted that it was a finding of fact concurrently arrived at by the two courts below that it was Shri Balaram Kachhawaha who was the author of the notice complained of. The learned Counsel further did not question the correctness of the conclusion reached by the courts below that the notice was defamatory of the plaintiff. He, however, strenuously contended that the special damages awarded by the courts below have neither been pleaded in the plaint nor was there any adequate proof of such special damages. The argument, therefore, centred round this question. Learned Counsel invited my attention to a number of cases to which I propose to refer hereinafter. He also cited a few passages from Halsbury's Laws of England and Salmond's Law of Torts which, too, I propose to deal with hereinafter.

7. In Odgers on Libel and Slander (sixth edition), the author points out that the damages are of two kinds; (i) general and (ii) special. General damages are such as the law will presume to be the natural or probable consequences of the defendant's words; they need not therefore be proved by evidence. Special damages are such as the law will not infer from the nature of the words themselves; they must therefore be specially claimed on the pleadings, and evidence of them must be given at the trial. Such damages depend upon the

special circumstances of each case, upon the defendant's position, upon the conduct of third persons, etc. It is pointed out that in some cases special damage is a necessary element in the cause of action. When on the face of them the words used by the defendant clearly must have injured the plaintiff's reputation, they are said to be actionable per se; and the plaintiff may get a verdict for a substantial amount without giving any evidence of actual pecuniary loss. But where the words are not necessarily prejudicial to the plaintiff's reputation, evidence must be given to show that in fact some appreciable injury has followed from their use; if no such evidence be forthcoming, the Judge will stop the case. The injury to the plaintiff's reputation is the gist of the action; he has to show that his character has suffered through the defendant's false assertions; and where there is no presumption in the plaintiff's favour, he can only show this by giving evidence of some special damage.

8. According to Salmond on the Law of Torts (15th Edition,) damages are classified in several ways; (i) Nominal or real, (ii) Real damages, (iii) General or special damages: (iv) Compensatory, aggravated and exemplary damages. I may also refer to a recent case of the House of Lords, *Cassell & Co. Ltd. v. Broome* (1972) 1 All ER 801. This was a case of exemplary or punitive damages.

9. In the present case we are concerned with general or special damages only. Though I may add a word here that underlying concept of awarding damages to an injured party is compensatory, for the loss of some kind, be it in reputation or otherwise. But it is recognised on all hands that general damage is a kind of damage which the law presumes to follow from the wrong complained of and which, therefore, need not be expressly set out in the plaintiff's pleadings. Special damage on the other hand is damage of such a kind that it will not be presumed by law and must therefore be explicitly alleged in the pleadings so that the defendant may have due notice of the nature of the claim, otherwise the plaintiff will not be permitted to give evidence of it. (Vide Salmond on the Law of Torts at page 715).

10. I may read paragraphs 222, 223 and 224 from Halsbury's Laws of England. (Vol. 24 Third Edition) cited by the learned Counsel for the appellant:--

"222. Special damage. Apart from general damages for injury to reputation, special damages in the strict sense of the term may be awarded, if expressly claimed, in respect of any material temporal injury proved to have been suffered as the natural result of the defamatory publication complained of (i), Special damage is the loss of some material temporal advantage (k), pecuniary or capable of being estimated in money (1), which flows directly and in the ordinary course of things (m) from the act of the defendant or an act for which he is responsible (o).

223. Example of what is not special damage. The following are examples of what does not amount to special damage:--

Mere injury to the feelings (p); the illness of the plaintiff, illness not being a

natural result of defamatory words (q); the illness of any other person (r): the death of any other person (r); the mere loss of the society of acquaintances or friends, as contrasted with the material loss of hospitality (s): the loss of membership of some society or congregation constituted for religious purposes, the membership of which does not carry with it material temporal advantages (t); any damage not pecuniary or capable of being estimated in money (u).

224, Examples of special damage. The following are examples of what amounts to special damage (a):

Loss of consortium of husband (b); loss of marriage (c); loss of material hospitality (d); loss of employment (e): loss of dealing, even though it might have turned out unprofitably (f); loss of particular customers (g): a general falling off of profits (h); and any other material loss (f), such as has already been defined (k)."

11. Learned Counsel emphasised that loss of particular customers relates to the impairment of plaintiff's reputation as a businessman and it would be a special damage, Learned Counsel, therefore, argues that the amount of Rs. 1,000/- awarded by the learned District Judge, could not have been awarded at all as no special damage was pleaded, much less any particulars of such damage furnished in the pleadings.

12. Before proceeding further, I find it convenient to refer to the relevant paragraphs of the plaint. I may further read the notice in question as well.

13. The notice complained of is reproduced in extenso in para 3 of the plaint and it is as follows:

bf"rgkj

^^eq>s lquus dks feyk gS fd ljdkjey ukedk ,d nyky esjs uke ls tehu ?IyKV? bR;kfn ds >qV lksns djrk gS A esjk bu lksnsa ls dksbZ rkYyqd ugh gS A lks eS bl bf"rgkj ls gj vke o [kkI turk o ljdkj dks lqfpr djrk gwa fd esjh ,sls lksnsa dh dksbZ ftEesnkjh ugh gS vxj og djrk gS rks lc ftEesnkjh mlh dh gS A gks ldrk gS fd ;s lc lksns >qBs ukeks ls bUde VsDI dh pksjh djus ds okLrs djrk gks A

ckykjke dPNokgk]

fdjk.kk epZ.V] 5&ljdkjiqjk jksM] tks/kiqj^^

In para, 4 of the plaint it was pleaded that the defendant No. 1 had got published the above notice knowing fully well that it was false and that thereby the plaintiff would be grossly defamed. In para 5 it was. inter alia, pleaded that the defendants had the motive to cause harm to the plaintiff so that his clients may not have any business through bis agency and further people had understood the notice in that sense, I may read paras Nos. 6 and 7 in full:

^^?6?;g gS fd bl bf"rgkj ds izdk"ku ls eq?ks dh izfr"Bk] usduke] [;kfr o bTtr dks cgksr gkfu igqaph o yksx eq?bZ ls ?k`.kk dh ?f"V ls ns[kus yxs c eq?bZ ds O;olk;

dh cMh Hkkjh gkfu igqaph o eq?bZ dks Hkkjh ekufld fpUrK gqbZ A eqnk;yk ua- 2
es ;g bflrgkj fcuk fdLh tLVdkt ;k fMxq fMyhtsUI ds ckn fn;k A

??? ;g gS fd eq?bZ dks ekugkfu o uqd"kkk eq?k;yfge dh gjdr ds dkj.k :- 2000?
o :- 1000? ?e"K% tqeys :- 3]000@&,o tuJy Msestst ikus dk eqIr g? gS ftldk ;g
nkok is"K gSa^^

The plaintiff went on to say in subsequent paragraphs that the defendant No. 2 was reckless and grossly negligent and further neither of the defendants had replied to the plaintiff's notices. The plaintiff, therefore, further led a claim for exemplary damages.

14. A bare perusal of the relevant paragraphs of the plaint shows that what was pleaded by the plaintiff, were general damages and not special damages. It is of course true the plaintiff had subdivided his claim for damages for loss of reputation leading to loss in the business under two heads. Under the one he claimed Rs. 2,000/- and under the second Rs. 1,000/-. But while aggregating this he made it absolutely clear that this amount he was claiming as general damages. It is true that in para 8 of the plaint he laid a claim for exemplary damages as well but perhaps it was little realised what exemplary damages meant and no attempt was made at the trial or in the appeal before the District Judge to justify this claim nor have the courts below awarded any exemplary damages. Therefore. I leave this matter at that,

15. The purpose of pleadings is to ensure a fair trial of the issues involved and in all fairness to the opposite party, therefore a party should plead all such essential facts as he seeks to prove at the trial so that the opposite party may not be taken by surprise. In *Ratcliffe v. Evans* (1892) 2 QB 524 the Lord Justices pointed out that it is an ancient and established rule of pleading that actual temporal loss must be alleged with certainty and precision in all cases of the kind. They further pointed out that it is also an ancient and established rule of pleading that the question of generality of pleading must depend on the general subject-matter. A number of cases were referred to in this judgment but I need not cite them here. I may refer again to the House of Lords case ILR (1972) 1 All ER 801 regarding the pleadings. Their Lordships were considering the question of damages in respect of libel in that case though such damages were awarded as exemplary or punitive damages. Lord Hailsham, L. C. made the following observations while concluding his speech:

"Lest I should have been thought to have forgotten it, I would observe that the Court of Appeal overruled the decision of Lawton J. that a claim for exemplary damages should be pleaded. I am content to accept their view on the basis of the present practice. But in the light of the decision of this House in the instant case I propose to refer to the Rule Committee the question whether in the light of *Rookes v. Barnard* and the present decision the present practice should not be altered. There is much to be said for the view that a defendant against whom a claim of this kind is made ought not to be taken by surprise."

16. The above passage unmistakably shows that a claim for damages should be made in a way that the defendant against whom the claim is made, is not taken by surprise. Can we say in the present case that the plaintiff has pleaded in his plaint the so-called special damage, as has been awarded to him by the courts below?

17. The plaintiff never pretended to make any claim for the so-called special damage at all in the plaint and the courts below were clearly in error in thinking that the plaintiff claimed special damages sought to be proved by the evidence, I have been taken through the relevant portion of the plaintiff's statement. He stated:--

^^esjs fctusl es Hkh eq>s dkQh uqd"kku jgk A esjh U;kfr tkfr c yksxks dh utjksa es eS dkQh fxj x;k vkSj esjh dkQh cnukeh gqbZ A bl v[kckj es lwpuk bZ- ,DI- 1 fudyus ds ckn eSaus bUdeVsDI fMikVZesa.V es bUDok;jh dh tks bZ- ,DI- 4 o bZ- ,DI- 5 gS A bUdeVSDI dh bUDok;jh esa eq>k;yk usa tks ckrsa Nkih oks xyr lkchr gqbZ A eSa edkuksa o ?ysVks ds [kjhn QkjksDr o jgu eqUrfdyh ds ekSdks dh nykyh dk ?kU/kk djrk gwa A bf"rgkj bZ- ,DI- 1 ds Nius ls eq>s esjs /kU/ks esa uqd"kku gqvk tks uhps eqfto gS A tks vklkeh esjs ekjQr lkSnk [kjfnus ckys Fks mUgksus ugh [kjhnk A dY;k.key us nqljs ds ekjQr [kjhn fd;k ftldh otg ls eq>s 1801&A& dk uqdlku gqvk A ukjk;.knkl egs"ojh ds lkSns es 300A&A& NksVey Hk.Mkjh ds lkSns ls 250 A& o mejkopUnth Hk.Mkjh ds lkSns es 200? nyirjkoth fala?koh 200? ?,izksDIhesVI? mijksDr vl[kklku us lkSns esjs ekjQr ugh fd, D;ksafd v[kckj esa esjs f[kykQ lwpuk fudyh Fkh A vxj eSa mijks? v"k[kklku ds lkSns djrk rks eq>s nykyh ds ?ij fy[kh jdesa gj lkSnks esa feyrh A eq>s ekgkfu o ekuflid fpUrK dh ctg ls 2000A&A dk uqd"kku gqvk A

I am afraid the plaintiff was not justified in leading evidence of concrete instances of transactions allegedly resulting in a pecuniary loss to him on account of the defamation without laying the necessary foundation for the same in the plaint. I will be dealing with the claim for general damages regarding any expected loss of business resulting from the libellous statement Learned Counsel for the appellant submitted that whatever has been allowed to the plaintiff as special damages, could not be allowed at all and the amount of Rs. 500/- awarded to the plaintiff as general damages should alone be awarded, if at all, I find that Ratcliffe's case (1892) 2 QB 524 deals with the question whether loss of credit in business could be claimed or proved by general evidence, The various early cases which are referred to in this judgment are not available to me here and, therefore, I have to go by the observations and references made in the judgment of Ratcliff's case itself. It is pointed out that if over and above this general damage, further particular damage is under the circumstances to be relied on by the plaintiff, then such a particular damage must be alleged and shown. But it is added that a loss of general custom flowing directly in the ordinary course of things from a libel may be alleged and proved generally and it is not a special damage. Reference is made to Harrison v. Pearce. (1859) 32 LT (OS) 298 and the observations of Pollock, C. B. are quoted. I may read the

relevant passage in the judgment of Boweti, L. J. :--

"If, indeed, over and above this general damage, further particular damage is under the circumstances to be relied on by the plaintiff, such particular damage must of course be alleged and shown. But a loss of general custom, flowing directly and in the ordinary course of things from a libel, may be alleged and proved generally. "It is not special damage" -- says Pollock, C. B., in (1859) 32 LT 298 -- "it is general damage resulting from the kind of injury the plaintiff has sustained." So in *Bluck v. Lovering* (1885-1 TLR 497), under a general allegation of loss of credit in business, general evidence was received of a decline of business presumably due to the publication of the libel, while loss of particular customers, not having been pleaded, was held rightly to have been rejected at the trial".

A number of other cases such as *Ingram v. Lawson* (1840) 6 Bing NC 212 were also referred to. Referring to *Evans v. Harries* (1856) 1 H & P 251 the learned Lord Justice went on to point out that in that case the words reflected on an innkeeper in the conduct of his business and the custom consisted of diverse persons, guests and customers of the inn -- a floating and transitory class. The Court held that general evidence of the decline of business was rightly receivable. A query was made by Martin, B., giving an example of a public-house keeper, whose only customers were passers-by as to how he is to shew a damage resulting from the slander, unless he is allowed to give general evidence of a loss of custom. A number of other instances were given which I need not quote, but the gist of the discussion is that where the customers are persons who are casual or fleeting, the loss resulting from the libel could only be pleaded or proved in a general manner.

18. In my humble view, therefore, there can be a claim for general damage in respect of a loss of custom on account of a libel. If over and above this some particular loss is claimed resulting from particular customers or persons, then that may fall under the category of a special damage.

19. Here I revert to para 224 from Halsbury's Laws of England already extracted in full. Learned Counsel argued that the present case falls in the category of examples of special damage given in this para, the loss of the plaintiff is either a loss of particular customers as he has sought to prove by evidence or a general falling of profits or any other material loss. The line may at times be difficult to draw between what is general damage and special damage. But the line though it may be thin, is yet there and there can be two categories of damages general and special, even in respect of a loss resulting directly from a defamatory allegation against a person engaged in a business. It will by and large depend on the nature of one's business. If the person concerned is dealing with a particular category of customers who regularly approach him, then it may very well in a given case, fall under the category of a special damage. But if the transactions that the person would be undertaking are casual and the customers are such who do not regularly seek him, then in that given context the loss of business

can be taken to be a general damage.

20. Now as I have already observed the learned District Judge has gone a little astray in treating the plaintiff's claim for damages in respect of a sum of Rs. 3,000/- as comprised of two parts (i) general damages to the tune of Rs. 2,000/- and (ii) special damages to the tune of Rs. 1,000/-. This is not really so as is clear from the plaint. Learned Counsel for the appellant, submitted here that the plaintiff has not come in appeal Or filed any cross-objection regarding the claim for general damages and the claim for special damages goes over board in its entirety. I am afraid I am unable to accept this. Where the plaintiff got the relief be it as special damages or as general damages, he got the relief or solatium in the shape of money awarded to him alright and I do not think that it was necessary for him to come in appeal only for having a conversion for whatever was awarded as special damage to be treated as general damages instead, Therefore, to my mind the entire claim of the plaintiff under the head general damages is open for consideration.

21. The plaintiff was carrying on the business as the estate agent and the property owners or individual purchasers of such property would be going to him not regularly but at intervals and at times the interval between two transactions may be considerable. Therefore, it is a case where the words spoken of the plaintiff are per se defamatory and it can be presumed that some loss of business was suffered by the plaintiff on account of the attack on his character as a businessman. Therefore, the claim for damages has to be assessed on that footing, ignoring particular instances sought to be proved by the plaintiff. One circumstance that has transpired is that the defamatory statement about the plaintiff was made on 28-9-1957 at a time when a civil suit for fixation of standard rent between Sri Balaram defendant and the plaintiff's son was pending.

22. So far as the assessment of general damages after sub-dividing the claim though erroneously as one part for general damages and the other for special damages, the learned District Judge has proceeded on the footing that the claim for general damages be assessed at 25% of what the plaintiff has claimed. It is not a matter where I should interfere with the discretion of the learned District Judge and, therefore, adopting the same criterion though I should not be understood to say that at all times this would be a rule, I fix the total damages to be awarded to the plaintiff at Rs. 750/- only.

23. The result is that. I allow this appeal in part and while modifying the decree of the learned District Judge, I reduce the amount of the decree from Rs. 1,500/- to Rs. 750/- only. The parties are left to bear their own costs throughout.