
(1996) 12 DEL CK 0034
In the Delhi High Court
Case No : Suit No. 1975 of 1994

K.L. Juneja

APPELLANT

Vs

Bawa Dan Singh

RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : (1997) 1 ACC 60 : (1997) ACJ 1246 : (1997) 1 AD 317 : (1997) 65 DLT 289 : (1997) 40 DRJ 684 : (1997) 2 ILR Delhi 196 : (1997) 115 PLR 31

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : O.P. Khadaria, Deepak, Khadaria, P. Nagesh, Ashima Gupta and R.L. Kohli, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) In this suit for damages, the plaintiff seeks a decree for Rs.20 lacs in his favor and against defendants 1 to 3. The case set up in the plaint is as follows:-

(2) The plaintiff is a Civil Engineer, who acquired B.E. from I.I.T., Delhi, and M.Tech from I.I.T., Kanpur, and worked in various capacities in several Govt. and semi Govt. institutions and construction companies. Defendant No.1, M/s. Bawa Dan Singh & Sons, is a partnership concern and defendants 2 and 3 are its partners. Defendant No.1 is the owner of multi-storeyed building, namely, 14, Barakhamba Road, New Delhi. Defendant No.1 employed defendant No.4 Ashok Nanda, a Builder and Structural Engineering Consultant, to carry out the project of construction on the floor above the fourth floor of the building in question. On December 16, 1989, the plaintiff on the invitation of the defendant No.4 visited the above said building, then under construction, for inspection of the material at fifth floor in his capacity as a consultant. After making the inspection of the material, while the plaintiff was on his way out of the building, he fell into the basement thereof through an unfenced opening. As a result of the fall the plaintiff sustained multiple fractures of spine, etc. Defendant No.4 removed the

plaintiff to Deepak Memorial Hospital located in distant Shahdara instead of taking him to any nearby Civil Hospital or a Nursing Home. The said Deepak Memorial Hospital was not equipped to render any kind of emergency treatment to the plaintiff. On the next day, viz., December 17, 1989, the plaintiff was shifted to Ganga Ram Hospital, Rajender Nagar, New Delhi, where he was operated upon on December 20, 1989 for providing a metallic support to his backbone. The plaintiff, due to the injuries, was and remains incapacitated and totally immobile which resulted in bedsores. The plaintiff remained under the treatment of various hospitals, namely, Sir Ganga Ram Hospital, All India Institute of Medical Sciences, Natural Care Centres at Lajpat Bhawan, Karol Bagh, and Nursing Homes - Handa Nursing Home, and Delhi Centre at Nizamuddin. In August 1990 the plaintiff was again operated upon for removal of the metallic support. Since the condition of the plaintiff did not improve he consulted a private neurologist, namely, Dr. A.K. Purohit of the Nizam Institute of Medical Sciences, Hyderabad, for which he had to pay him a heavy fee. Besides the fee, the plaintiff also paid his air fare from Hyderabad to Delhi and back. The said doctor prescribed costly medicines but the condition of the plaintiff has not improved. Rather the condition of the plaintiff turned serious due to the bedsores. In April 1992 the plaintiff was admitted to Handa Nursing Home where he remained up to August 1992. During that period he was operated upon number of times. Even after getting discharged from the hospital the bedsores of the plaintiff required constant dressing. The plaintiff as a result of the operations and the treatment had to incur an expenditure of Rs.5.50 lacs, the details whereof are as follows :-

Rs. (in lacs)	
I. Deepak Memorial Hospital, 0.25	II. Operation carried out in Sir Ganga Ram Hospital, Rajinder Nagar,, New Delhi., 1.50
III. For second operation at Sir Ganga Ram Hospital in August,1990. 0.30	IV. Treatment at Handa Nursing Home during April to August 1992. 1.00
V. Cost of 500 bottles of blood,, purchased @ Rs. 500.00 per bottle. 0.25	VI. Cost of medicines incurred at Handa Nursing Home. The medical bills are being filed separately. 0.50
VII. The regular visits to Sir Ganga Ram Hospital with two Attendants to shift there @ Rs.50,000.00 per year. 1.50	VIII. Daily dressing twice @ Rs.50.00 per dressing amount to Rs.36,000.00 per year., 1.20
Total : 5.50 lacs	

(3) Besides due to his condition, the plaintiff has to incur recurring medical expenses of Rs.1 lac to Rs.1.50 lacs per year. The plaintiff by legal notice dated October 19, 1993 required defendants 1 to 4 to pay compensation for the damage and injury suffered by him. However, the plaintiff did not receive a positive response from the defendants and as a result thereof he instituted the instant suit praying, inter alia, for the following reliefs :-

"(I)pass a money decree of Rs.20.00 lakhs (Rupees twenty lakhs only) in favor of the plaintiff and against the defendants on account of the medical expenditure incurred during the last three years preceding to the presentation of this suit for damages, and also for the future loss to the estate of the plaintiff, in favor of the plaintiff and against the defendants; (ii) pass such further order or orders, direction or directions and grant relief(s) which this Hon"ble Court may deem just and proper in the circumstances of the case, to meet the ends of justice; and (iii) award the cost of the suit in favor of the plaintiff and against the defendants. "

(4) Defendants 1 to 3 through Mr. P. Nagesh, learned counsel, filed a written statement in which it is inter alias averred that the suit of the plaintiff is barred by time as the accident complained of occurred on December 16, 1989 and the suit was filed on September 6, 1994, after the expiry of the period of limitation. It is further stated that the incident occurred at the time when the construction of the building was being carried on by M/s. Secon - Construction Division, represented by defendant No.4 and for the purpose of construction defendants 1 to 3, on the one hand, and defendant No.4, on the other, had entered into an agreement dated October 3, 1989. It is further alleged that the plaintiff was a partner of M/s. Secon and this being so the defect, if any, in the construction of the building including the alleged failure to fence the opening through which the plaintiff fell into the basement was on the part of the plaintiff and defendant No.4. It is further contended that the plaintiff cannot claim any compensation from defendants 1 to 3 for any failure on the part of M/s. Secon represented by defendant No.4 since Secon was engaged as an independent contractor by defendants 1 to 3 for the purpose of completing the construction of the Rcc floors. Defendants 1 to 3 have completely denied their liability to indemnify the plaintiff against any claim for compensation arising out of the alleged accident.

(5) Defendant No.4 in his written statement, inter alia, stated that the plaintiff has no cause of action against him; that the suit is barred by time; that the plaint is not properly signed and verified; that defendant No.1 is the owner of the property, 14 Barakhamba Road, New Delhi, and defendant No.4 was the contractor for executing the structural Rcc work in relation to the fifth floor and upward of the aforesaid building; that defendant No.4 was not concerned with any construction or management of any floor of the complex below fifth floor; that defendant No.4 never invited the plaintiff to the site of the multi-storeyed project on December 16, 1989 or on any other date; that it was only after the incident that defendant No.4 came to know from the guards employed in the building that the plaintiff, in spite of the warnings displayed at the complex, had ventured towards the basement and had a fall; that defendant No.4 came to the rescue of the plaintiff on humanitarian grounds; and that defendant No.4 is not liable for any damages whatsoever.

(6) In view of the pleadings of the parties, the following issues were framed :-

"1. Whether the suit is within time ? 2. Whether the plaintiff suffered the fall or

accident due to negligence of the defendants? If so, of which defendant and to what effect ? OPP. 3. To what amount, if any, the plaintiff is entitled towards damages and from whom ? OPP. 4. Relief. "

(7) The plaintiff and defendants 1 to 3 in order to prove their respective stands led evidence, but defendant No.4 did not lead evidence as the plaintiff had made a statement on September 11, 1996 that he had no claim against defendant No.4 and his claim is confined only against defendants 1 to 3 (page 67 of Part I of the court record). The plaintiff produced Dr. S.K. Sogani, Neuro Surgeon, Sir Ganga Ram Hospital, and Dr. A.K. Handa, Surgeon, Handa Nursing Home, Raja Garden, New Delhi. Besides, the plaintiff appeared as his own witness.

(8) In so far as defendants 1 to 3 are concerned, only defendant No.3 appeared as a witness.

(9) PW-1 Dr. S.K. Sogani proved the medical record of the plaintiff including the bills Ext. PW1/2 and Ext. PW1/3 in respect of treatment of the plaintiff which he underwent at Sir Ganga Ram Hospital. In his examination-in-chief he further stated to the effect : The plaintiff was admitted in Sir Ganga Ram Hospital on December 17, 1989 with multiple fractures of spine and arm and injuries to the lung cavity. He was not able to pass urine and stools and was not able to move his body below his nipples. His spinal cord was stabilised by a team of doctors consisting of neuro surgeons and Orthopedic specialists. The plaintiff remained in hospital for nineteen days and was discharged in the same state as he was brought except that his spine was fixed by a metallic device. The plaintiff was again admitted on August 2, 1990 for removal of metallic implant which had performed its function by giving stability to the spine but in so far as his neurological status was concerned, there was no improvement. He had suffered a serious damage to his spinal cord. There has been no recovery in the last six years and future recovery in such type of cases was not possible. The plaintiff has to remain on wheel chair for the rest of his life and he will not be able to know about his bowel and urine sensations. The injuries to the plaintiff were attributable to a fall. Bedsores were still persisting and the plaintiff was likely to develop repeated urine and bowel infections.

(10) In cross-examination Dr. Sogani stated that the plaintiff was admitted in Sir Ganga Ram Hospital and his eyes and ears were also examined and it was discovered on neurological examination of his brain that his faculties above the nipple were normal.

(11) PW-2 Dr. A.K. Handa, Surgeon, Handa Nursing Home, in his statement referred to the treatment of the plaintiff. He stated that the plaintiff came to him for treatment in April 1992 and remained with him for a period of four months during which time he performed four surgical operations and also administered to him life saving drugs. As regards the medical status of the plaintiff, he stated that the plaintiff had paraplegia below second dorsal spine. The doctor also referred to the fact that the plaintiff required 50 bottles of blood during his stay

in the hospital, and he was charged a sum of Rs.95,000.00 as fee and expenses of the Nursing Home. The witness also alluded to the fact that the plaintiff was admitted for the second time in his hospital in August 1995 for the treatment of bedsores. As per his opinion, the plaintiff requires constant treatment and has poor chances of recovery. He would not be able to walk during his life time and will remain a sick man and would not be able to lead a normal life. Dr. Handa further stated that the expectancy of life of the plaintiff, in a condition in which he was placed in, had surely been reduced. The witness proved summary of treatment Ext. PW2/1 (pages 51-52 of Part Iii of the court record) which had been prepared and signed by him. At this stage it will be convenient to refer to the summary of treatment, which reads as follows :-

"TOWHOM It May Concern This is to certify that Mr. K.L. Juneja s/o Sh. Har Prakash Juneja R/o B-2/10, Rajouri Garden, New Delhi, has been under my treatment since April 1992. Mr. Juneja is a paraplegic and this occurred during his visit to a building site. He was admitted here in April 1992 with bilateral ischio-rectal abscess, septicemia and severe cellulite in the perineum. He was operated here 4 times. A permanent colostomy has been done. Bilateral gluteal flat rotation done to cover the sacral wounds. He required approx. 50 units of blood to recover from his severe illness. He was admitted here till July 1992. He has been under my care since then. He was readmitted here in April 1995 to cover residual areas in the sacral area but with partial success. Mr. Juneja's condition remains critical in view of extensive physical damages due to the high level of paraplegia. It is very unlikely that he will be able to walk and do about his normal activities. He is undergoing severe physical emotional and financial trauma because of his injuries. "

(12) The plaintiff also appeared as his own witness. He is 51 years old. At the outset he gave his qualifications and the various positions held by him. The plaintiff stated that he has set up his own consultancy and a material testing laboratory; that on the fateful day, i.e., December 16, 1989, he was executing several jobs including the one at the Supreme Court; that defendant No.4 on December 16, 1989 had called him to his office at 14 Barakhamba Road, New Delhi, as he wanted him to inspect some concrete job and extension of reinforcement; that he reached the office of defendant No.4 at 12 Noon on that day; that he met defendant No.4 at the fifth floor of the building; that he inspected the concrete work and while he was coming down from the building and approaching towards his car he fell into an opening which had not been fenced; that the opening was about 30 feet deep and as a result of the fall he was injured and felt that his legs were not part of his body as they were not moving; that defendant No.4 and other persons assembled at the spot removed him from the basement but not before lot of time had gone by; that thereafter, defendant No.4 removed him to Deepak Memorial Hospital located at Shahdara; that this was deliberately done in order to avoid registration of a medico legal case; that next day plaintiff's family made arrangements to take him to Sir Ganga Ram Hospital where he was operated upon by a team of specialists; that

after he was discharged from Sir Ganga Ram Hospital where he was getting treatment from Dr. Sogani who used to visit his house; that he also visited All India Institute of Medical Sciences and consulted various specialists and till date he was getting medical treatment; that he even called Dr. A.K. Purohit from Hyderabad, who was supposed to be an authority in neuro surgery; that the said doctor gave his opinion-cum-prescription dated December 4, 1992 marked "X"; that a sum of Rs.7,000.00 was paid to Dr. Purohit as air fare and Rs.2,000.00 for transport and fee; that he purchased medicines vide bills Ext. PW3/1 to Ext.PW3/13 and spent a huge amount of money on account of medical bills; that because of his physical condition he remained in great amount of agony and susceptible to infection; that he incurs recurring expenses for his treatment and on an average he spends Rs.10,000.00 per month on medical bills and treatment; that as on September 1994 he had spent an amount of Rs.5.50 lacs on his treatment; that he has suffered permanent disability and the worst sufferers are his wife and children; that due to his physical condition he has to specially employ an attendant to look after his needs; that defendant No.4 was an employee of defendants 1 to 3 and he called him on behalf of defendants 1 to 3 for consultation; that he fell into the opening due to the fault of the defendants; that he gave legal notice to the defendants in October 1993 vide Ext. PW3/14 to which he did not receive any reply; and that he requested the defendants orally to pay him compensation for the accident and for the day-to-day sufferings.

(13) In the cross-examination the plaintiff admitted that defendant No.4 had offered him a partnership but he had declined the same as he had many jobs in hand; that when he entered into the building he did not see any opening and there was no warning board on the premises in regard to the opening; that no chowkidar had been employed by defendants 1 to 3 to warn the visitors about the opening; and that on December 16, 1989 he inspected the concrete work which was being carried on in the building.

(14) It needs to be pointed out that learned counsel for defendants 1 to 3 did not cross-examine the witnesses either on the question of opinions of the doctors including opinion of Dr. Purohit marked "X" or the expenses said to have been incurred by the plaintiff for his treatment.

(15) In so far as the statement of defendant No.3 Mr. Anand Singh Bawa is concerned it is to the effect that there was a contract between Bawa Dan Singh and Sons (defendant No.1) and M/s. Secon - Construction Division, belonging to defendant No.4, and the contract was for the purpose of laying Rcc floors at the fifth floor level and upwards. It was further stated that when the construction was in progress, material had been stacked on the ground floor and the people were also working at the ground floor. The witness asserted that Mr. Nanda of Secon Construction Division had put up warning boards at the site and had taken all precautions to cover any opening on the ground floor level. He also asserted that he had never met the plaintiff and he had not contacted the plaintiff through

any person. It was further stated that the plaintiff was never invited at the site by him and even after the accident the plaintiff did not contact him.

(16) In cross-examination, defendant No.3 admitted that the fourth respondent was not concerned with construction below fifth floor. He further admitted that construction below fifth floor of the property had always been under the control and management of defendant No.1. As regards basement he stated that it was dug in early 1970s and the digging work was done departmentally by his firm. In this regard he also stated that the basement was being maintained by defendants 1 to 3. He denied the suggestion that warning board was not displayed near the opening. However, he admitted that the opening was not fenced but the same was covered. He also affirmed that no parapet wall was constructed over the opening of the basement. He, however, denied the suggestion that defendants 1 to 3 were negligent in not fencing the opening of the basement. The witness was not aware whether the plaintiff was a partner in Secon or of defendant No.4. He did not dispute the fact that he came to know about the accident but did not get in touch with the plaintiff.

(17) It is in the light of the above evidence that the issues are required to be determined.

ISSUENO.1: It is not disputed on both sides that Article 113 of the Limitation Act, 1963, is applicable. This article reads as follows :- Description of suit, Period of limitation, Time from which period begins to run 113. Any suit for which no period of limitation is provided elsewhere in this Schedule., Three years, When the right to sue accrues. Learned counsel for defendants 1 to 3 submitted that the suit was barred as the right to sue accrued on the date of the accident, i.e., December 16, 1989, and the suit was filed on September 6, 1994, after the expiry of three years. Learned counsel contended that the period of limitation started running from December 16, 1989.

I have considered the submission of the learned counsel for the defendants but I regret my inability to accept the same. In a case of this nature right to sue accrues when the damage ensues or becomes evident. Injury caused could be physical injury or material injury. Though the plaintiff received the injuries on December 16, 1989 but at that point of time he could not be aware of the nature and extent of the injury and damage which became evident only after the plaintiff was operated upon on various dates and upon the opinion which he finally received from Dr. A.K. Purohit. Opinion of Dr. Purohit dated December 4, 1992, marked "X", is as follows:

"KISHANLALJUNEJA, 47 years/male. 4.12.92. Spastic paraplegia following upper thoracic Spinal trauma. Flexor spasms +++ spasticity + Poor lower limb control. Dysure atrophy of the lower limb muscles. Bilateral adducts is and hamstring contractures. Urgency and urgency incontinence of urine. UTI. Colostomy done 6 months back. Bed sores - healing clinical picture unstable. This middle aged man had fall(en) in a ditch on 19th December 1989 and developed paraplegia

immediately. Spinal fixation was done 4 days later. The rods were removed in August 1990. He was improving steadily but slowly in his motor functions and was able to put a few steps with the help of walker and callipers. He developed bedsores and septicaemia in early months of 1992. He regressed in his motor functions by April 1992. He was operated for bedsores, and a colostomy was done to prevent soiling of the bed sores by fecal matter.

PRESENTLY he was paresthesia flexor spasms and scissoring in lower limbs. Unable to sleep comfortably on sides due to development of crossing in the lower limbs. He can be made to stand with callipers in a very awkward posture and with heavy support while sitting, with legs hanging down he gets flexor spasms. There is no complain of presence of clones like movements in the lower limbs. xxxxxx "

(18) A perusal of the above opinion makes it clear that the condition of the plaintiff was improving steadily but slowly, but he developed bedsores and septicaemia in early 1992 and he regressed in his motor functions by April 1992. This would indicate that in December 1992 the plaintiff became aware of the injuries and damage caused to him as a result of the accident. Earlier to that he could not have guessed for sure the extent of the damage due to the above said catastrophe and what would be the recurring expenses for the continuous medical attention which he would need in his condition. Without knowing the nature and extent of the damage or the injury sustained by him, a person cannot be expected to file a suit against the tort-feasor. Man is a creature of hope which belies the idea that things will not change for the better. Unless the plaintiff is given a categorical opinion that his condition is irreversible he is not expected to stir up litigation as otherwise it will be against the public interest. The instant Article of the Limitation Act has to be construed liberally so as not to deprive the person, who suffered injury, the legitimate dam ages. A strict interpretation of Article 113 would defeat the ends of justice and would not be in keeping with the principles of equity and fair play. Take a case where a person suffers an injury and goes into coma. He remains in coma for a period of three years and thereafter he revives. In such a case what should be the starting point for limitation. Obviously, it cannot be the day when he received the physical injury. Some times the injuries are latent and their effect appears only after some time. In those cases also it cannot be said that the starting point for limitation should be the day when accident took place. The Supreme Court in Jay Laxmi Salt Works (P) Ltd. Vs. State of Gujarat, , held that the cause of action to claim damages arises when actually the loss has taken place. In this regard the Supreme Court observed as follows :-

"It is the individual or the single act which by itself furnishes the cause of action. But there may be others where even though injury may have been caused but the cause of action may not arise unless something more happens. For instance, if one accumulates something hazardous on its own premises and it leaks then the cause of action will arise not by accumulation or even by merely leakage but

cause of damage and injury. Therefore, the construction of the words "when" and "takes place" used in Article 36 has to be construed liberally so as not to deprive the person who suffers damages. In wrongs like negligence, strict liability or violation of public duty time begins to run not before the damage takes place. But the computation under the article has to be from malfeasance, misfeasance and non-feasance. It has been explained earlier that the negligence or violation in such duty which results in damages could not furnish the starting point. What could be the other point? The cause of action to claim damages arises when the actual loss has taken place. It is thus not the date on which negligence or mistake took place but the date when injury is suffered."

(19) The Supreme Court while referring to the starting point for computing the limitation has clearly laid down that the cause of action arises when actual loss has taken place and not on the date on which negligence or mistake took place. Thus, taking cue from the above observations of the Apex Court, I am of the opinion that the starting point for computing limitation in the instant case would be the date when the extent of the actual damage as a result of the accident became evident.

(20) It may be noticed that from April 1992 to August 1992 four operations were performed on the plaintiff in Handa Nursing Home (please refer to pages 51 to 53, Part Iii of the court record). Therefore, this period is extremely important as during this period the plaintiff suffered considerable expenses. Finally it was on December 4, 1992 that Dr. A.K. Purohit opined that the plaintiff had regressed in his motor functions and the suit was filed on September 6, 1994. Therefore, the suit is within time being within three years of the opinion of Dr. A.K. Purohit. Even if period of limitation is calculated from April 1992, the suit would be within time. Accordingly, the suit is held to be within time. Issue No.1 is, Therefore, decided in the affirmative. Issue No.2:

(21) It is not disputed that the building is owned by defendants 1 to 3. As per the statement of defendant No.3 the construction below fifth floor of the property had always been under the control and management of defendant No.1, and the construction division of Secon was not concerned with construction below fifth floor. It is also evident from the statement of defendant No.3 that the digging work of the basement was done departmentally by defendant No.1 and the basement was also being maintained by it. It has further come in the cross-examination of the defendant No.3 that there was no parapet wall over the opening of the basement. He also did not refute the suggestion that the opening was not fenced. All that was stated by defendant No.3 was that the opening was kept covered. He failed to elaborate as to how the opening was covered and with what material. It is not the case of defendants 1 to 3 that they had placed a warning board at an appropriate place to put on guard unsuspecting visitors who were not aware about the location of the opening. They failed to summon defendant No.4 as a witness in support of their case that defendant No.4 had placed a warning board at the appropriate place. Since defendant No.4 had

nothing to do with the construction below fifth floor, it does not stand to logic that defendant No.4 would have undertaken the trouble of putting the warning board at an appropriate place. Assuming for the sake of argument, even if a warning board was placed, no witness has come forward to state the location of the board and its actual contents. As the building was owned by defendants 1 to 3, it was they who were responsible for the safety of the visitors. Since the plaintiff fell into the basement through the opening it will not be incorrect to assume that even if the opening was covered, the cover was not strong enough to take the load of an average person. The owner of the building was obliged to keep the dangerous openings closed adequately so that there was no chance of a mishap. Such a duty of care is cast upon the owner, and if he lacks in that duty he is liable for damages. Basic elements of torts are: injuries and damage due to lack of foresight or failure to observe duty of care. This duty of care is towards persons generally. Learned counsel for defendants 1 to 3 submitted that his clients did not owe any duty of care to the plaintiff as he was not invited by them. I do not agree with the learned counsel. The owner of the building is always required to act in a manner so that no person whether an invitee or a trespasser is subjected to a hidden or concealed danger which he cannot reasonably foresee or comprehend. The principles governing the law of torts are developing and expanding and cannot be cribbed or put in a strait-jacket. In order to meet the exigencies of a situation the categories of duty of care cannot be restricted. For awarding damages it is enough to show that the injury resulted due to lack of foresight. The owner who himself creates danger on his land is bound to pay damages in case of a possible injury to a person. Since the plaintiff while walking towards his car fell into the basement, it would have been for the defendants to explain the circumstances in which the plaintiff sustained injuries. The fall of the plaintiff into the basement would clearly indicate the negligence of defendants 1 to 3. In such a situation the principle of *res ipsa loquitur* applies and it is not for the plaintiff to prove that defendants 1 to 3 were negligent or lacked foresight. On the contrary it was for defendants 1 to 3 to prove that they were not negligent and they had taken every precaution to secure the safety of all invitees and visitors. In fact defendants 1 to 3 owed a common duty of care to the humanity at large [See *British Railways Board v. Herrington* (1972) 1 All Er 749; and *Southern Portland Cement v. Cooper* (1974) 1 All E.R. 87]. In the instant case, defendants 1 to 3 have miserably failed to prove that they were not negligent or they had taken requisite precautions. Defendants 1 to 3 do not even claim to have fenced the opening of the basement. They also do not claim to have put up warning boards. To exonerate themselves of their liability they should have proved that the opening of the basement had been properly sealed and fenced to protect an unwary visitor against an accident.

(22) Learned counsel for defendants 1 to 3 submitted that the plaintiff is not entitled to claim damages as he was a partner of defendant No.4. This fact is denied in the written statement filed by defendant No.4. In the cross-examination defendant No.3 has himself stated that he had no knowledge of the

fact whether the plaintiff was a partner of defendant No.4. Therefore, in view of the stand taken by defendant No.3 in his statement, the submission of learned counsel for defendants 1 to 3 has to be rejected.

(23) Having regard to the above discussion I have no hesitation in holding that the plaintiff suffered the fall or the accident due to the lack of observance of common duty of care by defendants 1 to 3. Issues No.3 and 4:

(24) In para 9 of the plaint the plaintiff has given details of the expenditure incurred by him for his treatment. These details have been mentioned in the earlier part of the judgment. In the testimony of the plaintiff this position has been affirmed. The same position also emerges from the statement of Dr. S.K. Sogani and Dr. A.K. Handa. In the testimony of the plaintiff it has also been asserted that he is spending a sum of Rs.10,000.00 per month for his treatment and medical attendant. In this regard he has stated as follows :-

"I have to incur recurring expenses for the treatment of the same. On an average I have to spend Rs.10,000.00 per month on the medical bills and treatment. As on September 1994 I had spent a amount of Rs.5.50 lakhs on my treatment."

(25) The learned counsel for the defendants did not cross- examine the plaintiff with regard to the medical expenses incurred by him. The evidence of this plaintiff on this count goes un rebutted and has to be accepted.

(26) Having regard to the fact that the plaintiff is 51 years of age and has been paralysed and crippled from below his nipples and had to spend a sum of Rs.5.50 lacs on his treatment till September 1994 and also has to incur a recurring expenditure of Rs.10,000.00 per month or Rs.1.20 lacs per annum, I consider it appropriate to award a sum of Rs.12 lacs as damages in favor of the plaintiff and against defendants 1 to 3.

(27) Since the plaintiff has already been paid a sum of Rs.50,000.00 pursuant to the interim order of this Court dated September 7, 1994, this amount will be deducted from the damages which have been awarded in favor of the plaintiff. As a result of this, the defendants 1 to 3 will now be liable to pay damages in sum of Rs.11.50 lacs to the plaintiff.

(28) Accordingly, a decree in the sum of Rs.11.50 lacs is passed in favor of the plaintiff and against defendants 1 to 3 with costs. In case defendants 1 to 3 fail to pay the decretal amount within six weeks of the date of communication of the order, the plaintiff will be entitled to interest at the rate of 12% per annum on the decretal amount from the date of institution of the suit till realisation. The plaintiff will communicate this order to defendants 1 to 3.