
(2007) 08 SHI CK 0021
In the High Court Of Himachal Pradesh

Munish Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Citation : (2008) ACJ 2332 : (2007) 3 ShimLC 341

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal is directed against the judgment and decree passed by learned single Judge of this Court in Civil Suit No. 117 of 1991 decided on 1.9.2000 dismissing the suit filed by the plaintiff/appellant.

2. The undisputed facts are that the bridge over Garali Khud known as "Garali Khud Bridge" was damaged on 7.8.1984. This bridge was thereafter closed to all vehicular and other traffic. On 18.9.1988 at about 5 p.m. the plaintiff Munish Kumar was travelling on his motor cycle No. PAH 3340 from village Badoh to Garoh in Tehsil Nurpur, District Kangra, H.P. One Ravinder Kumar was travelling as the pillion rider. The bridge falls on this route. Plaintiff went on to the bridge but since the bridge was incomplete and two spans were missing he along with his motor cycle and pillion rider fell off the bridge into the khud and sustained injuries.

3. The disputed facts are that according to the plaintiff there was no blockade at the bridge and there was no indication or any signage to show that the bridge was incomplete or damaged. According to the plaintiff the impression which was got was that the bridge was in normal condition and it was safe to pass through the same. The approach to the bridge is after a curve and is at an incline and the complete bridge was also not visible. Plaintiff alleges that the accident in question occurred due to sheer negligence of the defendants in not keeping the bridge in a proper condition. It is further contended that the defendants had not

put up any signage or blockade to advise the public that the bridge is damaged and nobody should go on to the bridge.

4. According to the plaintiff he has suffered serious spinal injuries resulting in paraplegia. He has suffered 100 per cent permanent disablement and is absolutely bedridden and unable to perform his bare physical functions. He cannot even answer the call of nature and hence filed a suit for recovery of damages of Rs. 12,00,000.

5. The defendants while contesting the suit had admitted the fact that they owe a duty to the general public to ensure that the roads, bridges and paths are properly maintained. However, according to the defendants after the bridge was damaged on 7.8.1984 a diversion through the khud was provided on both sides of the bridge. Signboards were fixed indicating that the bridge was damaged and the road leading to the bridge was closed by placing boulders and other material. According to the defendants they had taken all steps to forewarn the general public about the damage of the bridge and the accident occurred due to negligence of the plaintiff himself.

6. On the pleadings of the parties, the learned single Judge framed the following issues:

(1) Whether the plaintiff met with the accident as alleged in para 2 of the plaint? OPP

(2) If issue No. 1 is proved in the affirmative, whether injuries were suffered by the plaintiff due to negligence of the defendants? OPP

(3) To what compensation, the plaintiff is entitled to on the basis of averments made by him? OPP

(4) Whether the plaintiff is entitled to interest, if so, on what amount and at what rate? OPP

(5) Relief.

7. The single Judge has decided issue No. 1 in favour of the plaintiff and has held that the accident did occur. However, the learned single Judge held that the accident did not occur due to negligence of the respondents and consequently held that the plaintiff was not entitled to any compensation and, therefore, the question of payment of any damages or interest did not arise. Aggrieved by this judgment and decree the present appeal has been filed.

8. Two questions arise for adjudication in the present case: (i) whether the learned single Judge was right in holding that there was no negligence on the part of the defendants; and (ii) if the aforesaid question is decided in favour of the plaintiff then to what amount of compensation the plaintiff is entitled to and whether the plaintiff is entitled to interest and if so at what rate?

9. With regard to the first question, as already spelt out above the defendants

have not denied their duty to maintain the road. The learned single Judge has relied upon certain English authorities to hold that the plaintiff would be entitled to compensation only in case he proves misfeasance (positive action) on the part of the defendants and would not be entitled to damages in case of nonfeasance (omissions).

10. In *Wilson v. Kingston-Upon-Thames Corporation* (1949) 1 All ER 679 the plaintiff, who was thrown from his bicycle and injured owing to the defective condition of the surface of a road, claimed damages from the defendants, the Highway Authority, on the ground that they had carried out repairs to that part of the highway so negligently that it had again become out of repair by the time of accident. It was held that lack of repair of the highway arose from nonfeasance and not from misfeasance in repairing the road negligently and, therefore, the defendants were not liable.

11. In *Burton v. West Suffolk County Council* 1958 ACJ 100 (CA, England), the defendants therein, a local authority, had taken over a road part of which was frequently flooded during heavy rains. In March 1954, the defendants had carried out some drainage work on the road, but although the work done resulted in some improvement and was properly carried out and constituted no danger, it was inadequate and road was still liable to flooding after heavy rains. It was the defendant's practice to have warning flags or lamps put on the road when there was likelihood of danger to vehicles due to flooding. On the night of 11.12.1954, as the plaintiff was driving his motorcar along the road, the car skidded on a patch of ice, ran off the road into a tree and was damaged and the plaintiff was injured. At the time of accident there was no flooding; the thin coating of ice which caused the skid was on a part of the road which tended to keep damp owing to the inadequate drainage. The plaintiff claimed damages against the defendants on the grounds (a) that as the Highway Authority, the defendants were guilty of misfeasance in that they had attempted to improve the drainage but had not completed the work adequately and the road was still dangerous; and (b) that the defendants were negligent in failing to have the warning lights placed on the road on the night of accident. It was held that the defendants were not liable to pay any damages to the plaintiff for the following reasons:

(i) The fact that the drainage work done by the defendants was inadequate, was not misfeasance on their part. It was a case of nonfeasance; and

(ii) there was no duty on the defendants to give warning of ice on the road.

12. Both these aforesaid cases were considered by the Apex Court in *Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and Others*, . In the case before the Supreme Court a roadside tree, which was in a good condition, without any warning fell on the deceased Jayantilal while he was walking on the footpath. Jayantilal sustained injuries and died as a result thereof. The plaintiffs being his widow and children filed a suit for claiming damages. The Apex Court discussed the entire law on the subject. With regard to negligence the Apex

Court held as follows:

(11) ...Negligence is failure to use such care as a reasonable, prudent and careful person would use, under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Negligence also is an omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

(12) Negligence and tort have been viewed without elaborately embarking upon the definition of "tort" applicable to varied circumstances and the scope of negligence in its wider perspective. Let us proceed to consider the meaning of "negligence" in the context of tort liability arising in this case. In every case giving rise to tortious liability, tort consists of injury and damage due to negligence. Claim for injury and damage may be founded on breach of contract or tort. We are concerned in this case with tort. The liability in tort may be strict liability, absolute liability or special liability. The degree of liability depends on degree of mental element. The elements of tort of negligence consist in-(a) duty of care; (b) duty is owed to the plaintiff; (c) the duty has been carelessly breached. Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognised by law to avoid any conduct fraught with unreasonable risk of damage to others. The question whether duty exists in a particular situation involves determination of law. Negligence would in such acts and omissions involve an unreasonable risk of harm to others. The breach of duty causes damage and how much is the damage should be comprehended by the defendant. Remoteness is relevant and compensation on proof thereof requires consideration. The element of carelessness in the breach of the duty and those duties towards the plaintiff are important components in the tort of negligence. Negligence would mean careless conduct in commission or omission of an act connoting duty, breach and the damage thereby suffered by the person to whom the defendant owes. Duty of care is, therefore, crucial to understand the nature and scope of the tort of negligence.

The Apex Court thereafter considered the concepts of misfeasance and nonfeasance and drew the following distinctions between them:

(38) There is a distinction between misfeasance (positive action) and nonfeasance (omission). Misfeasance is the wilful, reckless or heedless conduct in the commission of a positive act lawfully done but with improper conduct. Nonfeasance means non-performance of some act which ought to be performed or omission to perform required duty or total neglect of duty. In the case of misfeasance, the defendant is the author of the source of danger to cause damage due to careless conduct, to the person/ property of plaintiff. He has knowledge that the act may give rise to tort but in the case of nonfeasance

several factors require consideration for giving rise to actionable negligence...

The Apex Court further held that principles of negligence apply to public authority also. In this regard the Supreme Court held as follows:

(39) It could be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when the public interest requires it. Whether the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. The liability in tort is for the damage done, not for damage merely foreseeable or threatened or imminent...

The position was summarised in the following words:

(57) It would thus be seen that each case requires to be examined in the light of special circumstances, viz., whether the defendant owed a duty of care to the plaintiff, whether the plaintiff is a person or a class of persons to which the defendant owed a duty of care, whether the defendant was negligent in performing that duty or omitted to take such reasonable care in the performance of the duty, whether the damage must have resulted from that particular duty of care which the defendant owed to the particular plaintiff or class of persons. Public authorities discharge public obligations to the public at large. Therefore, it owes a duty of care at common law to avoid causing present or imminent danger to the safety of the plaintiff or a class of persons to which the plaintiff belongs. It is a statutory duty of care under common law which could give rise to actionable claim in the suit of the individual and it is capable of coexistence alongside a statutory duty. The duty of care imposed on a local authority by law may not be put beyond what the statute expects of the local authority or Corporation to perform the duty. The tort of insuperable negligence would emerge from imminent danger created by positive act. But the duty of care imposed on the local authority by law may be gauged from the circumstances in which and the conditions subject to which the duty of care has been imposed on the statutory authority. The imminent danger theory must be viewed keeping at the back of mind the act or conduct creating the danger to the plaintiff or the class of persons to which he belongs and that by negligent conduct the defendant causes damage to the property or person of the plaintiff, though the defendant is not in know of the danger. Defendant also in given circumstances, must owe special responsibility or proximity imposing foreseeable duty to care, to safeguard the plaintiff from the danger or to prevent it from happening.

(58) But when the defendant was not in know of the discoverable defect or

danger and it caused the damage by accident like sudden fall of the tree, it would be difficult to visualise that the defendant had knowledge of the danger and he omitted to perform the duty of care to prevent its fault. There would be no special relationship between the statutory authority and plaintiff who is a remote user of the footpath or the street by the side of which the trees were planted, unless the defendant is aware of the condition of the tree that it is likely to fall on the footpath on which the plaintiff/class of persons to which he belongs frequents it. The defendant by his nonfeasance is not responsible for the accident or cause of the death since admittedly there was no visible sign that the tree was affected by disease. It had fallen in a still condition of weather.

(Emphasis added)

13. A perusal of the judgment of the Apex Court clearly shows that Apex Court has held that where the defendant could foresee that if proper care is not taken an accident may occur then negligence would be attributed to the defendant. When a duty to take care is cast upon a party it must ensure that it takes adequate measures to avoid an accident. Every person has a right to use a road or highway under common law. When the defendant creates by positive action any danger and no signals or warnings are given and consequently damage is done the proximate relationship gets established between the plaintiff and the accident. The Supreme Court has held that if this is established then the causation cannot be said to be remote. The Apex Court also held that when the defendant omits to perform a particular duty enjoined by the statute or does that duty carelessly there is proximity between the accident and the non-performance of the duty, the defendant can be held liable to the damages. It is in the light of the aforesaid exposition of law that the present case has to be decided.

14. The admitted facts are that bridge was to be maintained by the defendant. The defendants have clearly admitted in their written statement that the defendants owe a duty to maintain and construct the roads and also owe a duty to the general public to see that the roads, bridges, pathways are properly maintained and that no danger or harm ensues from a lawful use of such roads. It is admitted that the bridge was damaged on 7.8.1984. Obviously once the bridge was damaged it was the duty of the defendants to provide an alternative to the bridge and more than that there was a duty cast upon the defendants to ensure that the approach to the bridge is blocked and proper signages affixed to warn the general public that the bridge should not be used.

15. At this stage it would be relevant to refer to the statements of some of the witnesses. The plaintiff was examined on commission and has stated that there was neither any signage nor approach road to the bridge had been blocked. The suggestions put to him in cross-examination are that the PWD had put warning signboards and the boulders had been placed on the road at the point where the diversion had been constructed, have been denied by him.

16. Ravinder Kumar, pillion rider was examined as PW 6. He has also stated that

no warning signboards had been placed. He has denied the suggestion that a diversion had been provided near the tea shop just before the bridge. A suggestion was also put to him that there was a warning signboard but he has denied the same. No suggestion was put to this witness that there was any blockade on the road.

17. Kanshi Ram, PW 7, is a resident of village Bassa Waziran next to the bridge. He has stated that the accident took place and has also stated that no blockade had been placed on the road. He has denied the suggestion that PWD had put up warning signboards and had also put up a blockade on the road.

18. Jarnail Singh, PW 8, reached the site of the accident immediately after the accident. He has also stated that there was no blockade on the road. The only suggestion put to him was that a warning board had been put up by the PWD authorities regarding damage of bridge which he has denied. There is no suggestion that any blockade had been put.

19. From a perusal of the statements it is clear that whereas to some of the witnesses a suggestion has been put that both warning sign and blockade had been put, to the other witnesses the only suggestion put was that warning signs had been erected.

20. The defendants examined a number of witnesses. Inder Singh, DW 1, is the Assistant Engineer. According to him the approach to the bridge on both sides were closed by placing stones and barricades but in cross-examination he admitted that he has not seen the washed away bridge himself.

21. K.N. Sharma, DW 2, has made a similar statement and he has also proved measurement books to show that the PWD authorities had spent some money for setting up the blockade as well as painting of signages. He has also admitted that though there is mention in the measurement books about the painting of the signboards but there is no mention about the actually fixing of the signboards. According to him parapets had been raised on both sides of the bridge for blocking the passage to the bridge which parapets were 6 ft wide and 1 1/2 ft high and according to him no traffic could cross the parapets and in case any person tried to go on the bridge then he would have struck against the parapet.

22. S.K. Sharma, DW 3, has made a similar statement and according to him signboards had been affixed at the point where the diversion started on both sides to indicate that the bridge was damaged. He also states that the road leading to the bridge had been closed by placing boulders. To the similar extent is the statement of Om Parkash, DW 4, who is the Work Inspector of the concerned Sub-Division.

23. The defendants have taken conflicting stands. As already pointed out above to some of the witnesses the suggestion put is only that signboards had been placed whereas to the other witnesses the suggestion is that signboards had been placed and the approach road had been blocked by placing boulders. Junior

Engineer, DW 2, however set up a new case that parapets were raised which blocked the entrance to the bridge. If that were so then the motorcyclist could not have crossed over.

24. On consideration of the entire evidence we are of the considered view that the defendants have miserably failed to show that either the approach road to the bridge had been blocked or warning sign-ages were in existence in the year 1988. This Court cannot lose sight of the fact that bridge was damaged on 7.8.1984 and the accident in question took place on 18.9.88, i.e., after 4 years. Even assuming that the boulders had been placed across the road in the year 1984 there is no evidence to show that the boulders were in position in the year 1988 also. Similarly, assuming for the sake of argument that signboards had been affixed in the year 1984, there is no evidence to show whether the said signboards were in existence in the year 1988 and if they were in existence what was their condition. Over a period of 4 years the signboards would have virtually become illegible. No evidence has been led to show that the signboards were ever re-painted. The statement of DW 2 that parapets had been raised is obviously false and is not supported by the other witnesses of the defence. The independent evidence of the villagers who have been examined and who had their residence next to the bridge is absolutely clear that there were neither any signboards nor any boulders placed across the road.

25. In the instant case it was the duty of the defendants to ensure that after the bridge had been damaged, the approach road to the bridge was blocked in such a fashion that no person could approach the bridge. The accident in question has not occurred a few days after the bridge was damaged. It occurred more than 4 years after the bridge had been damaged. What prevented the defendants from constructing a proper permanent blockade across the road when the bridge was not repaired by them in 4 years? With due respect to the learned single Judge, we are of the opinion that he gravely erred in holding that at best this was a case of nonfeasance and not of misfeasance. We are of the considered view that a positive duty was cast upon the defendants to block the approach road to the bridge and to put up adequate signages to warn the public about the damage of the bridge. The duty did not end here. It was the duty of the defendants to ensure that these blockades and signboards are properly maintained and kept functional till the bridge was completed. The evidence in this behalf is totally lacking. We are of the view that the plaintiff, therefore, has successfully proved that the accident occurred due to negligence of the defendants.

26. Coming to the question of damages, the evidence led by the plaintiff is that he is a graduate in commerce. After completing his studies he joined business of selling and supplying "bidis" in the area of J&K, parts of Punjab and parts of Himachal Pradesh. In the accident the spine of the plaintiff was damaged, both his ribs were fractured and he suffered many other serious injuries. He has been paralysed from below his armpits and there is no sensation in his body below his armpits. He remained admitted in hospital for about 3 months but his condition

did not improve. He remained under treatment at various places. He has also proved a number of documents to prove the expenses incurred on his treatment.

27. Dr. Rajesh Paul, PW 12, has stated that the plaintiff was admitted in Christian Medical College & Hospital, Ludhiana on 19.9.1988. He suffered fracture of 3rd and 4th dorsal vertebrae with complete paraplegia, fracture of lower end radius and ulnar styloid right side, fracture of lower end radius and ulnar styloid left side and laceration scalp and face. According to him, complete paraplegia means complete loss of function of lower limbs. The patient had to remain bedridden and cannot even answer the call of nature. He has stated that the plaintiff was discharged on 10.12.1988 and catheter was inserted since the patient was unable to pass urine on his own. There is virtually no effective cross-examination of this witness. The version of PW 12 is supported by Dr. Kim Mammen, PW 14.

28. Dr. J.S. Bhinda, PW 20, has also stated that the plaintiff is suffering from complete paraplegia of the lower limb. He has also proved the disability certificate, Exh. PW 1A.

29. From the evidence on the record it clearly stands proved that the plaintiff is suffering from paraplegia and he is bedridden and there is absolutely no chance of his recovery.

30. With regard to income of the plaintiff, the evidence of Vinod Verma, PW 11, Tax Assistant in the Office of Dy. Commissioner, Income Tax, Special Range, Amritsar, is relevant. He has produced the record relating to the income of the plaintiff from the assessment years 1989-90 to 1996-97. He has also stated that the plaintiff has been given the benefit of deduction admissible under Sections 80-C, 80-CCA, 80-L, 80-U(1)(ii) since he is handicapped to the extent of more than 50 per cent. The net taxable income of the plaintiff for the assessment year 1989-90 is Rs. 27,000, for the assessment year 1990-91 is Rs. 92,305, for assessment year 1991 -92 is Rs. 27,120, for assessment year 1992-93 is Rs. 65,800, for assessment year 1993-94 is Rs. 68,670, for assessment year 1994-95 is Rs. 66,080, for assessment year 1995-96 is Rs. 91,190 and for the assessment year 1996-97 it is Rs. 1,20,990.

31. From the above evidence, it is clear that despite the accident the plaintiff has been earning. However, this does not mean that the plaintiff has not suffered any loss of income in the past. It is also clear that this is the net income after claiming all the deductions including the deductions available on account of being handicapped.

32. The principles with regard to the determination of the just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause a deprivation to the body which causes losses which entitle the plaintiff to claim damages. The damages may vary according to the gravity of the injuries sustained by the plaintiff. On account of injuries, plaintiff may suffer consequential losses, such as, (i) loss of earnings, (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant

charges, etc. and (iii) loss or diminution to the pleasures of life by loss of a particular part of the body and then loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary. But that all have to be converted into rupees and paise. It is impossible to equate human suffering and personal deprivation with money. However, the court has to make judicious attempt to award the damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant.

33. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injuries for the deprivation suffered by him throughout his life. They should not be only token damages.

34. Under the head of non-pecuniary damages, the damages could be awarded for personal loss, damages for pain and suffering, loss of amenities, personal inconvenience and discomfiture keeping in view the facts of each case. Under the head of pecuniary damages, it is only the actual money spent on the treatment, transportation, etc., actual loss of income and the estimated future loss of income which has to be awarded.

35. The following observations of Lord Morris in his quite often-quoted speech in *H. West & Son Ltd. v. Shephard* 1958 ACJ 504 (HL, England), are quite apposite:

(13) ...Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that the Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards...

36. Lord Denning while speaking for the Court of Appeal in England in the case of *Ward v. James* (1965) 1 All ER 563 laid down three basic principles. His Lordship observed:

Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be

able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.

37. A Division Bench of the Karnataka High Court in *Basavaraj v. Shekhar* 1987 ACJ 1022 (Karnataka), held:

(8) .. .If the original position cannot be restored-as indeed in personal injury or fatal accident cases it cannot obviously be-the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so "make good" the damage.

38. In *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, , speaking about the heads of compensation, the Apex Court held thus:

(9) Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earnings of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

39. In *Phillips v. Western Railway Co.* (1874) 4 QBD 406 Field, J., while emphasising that damages must be full and adequate held thus:

You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.

40. Although it is true that there are difficulties and uncertainties in assessing damages in personal injuries sustained by a person, that realism should not preclude an assessment as best as can, in the circumstances, be made. In the case of *Mediana* (1900) AC 113 Lord Halsbury held:

Of course the whole region of inquiry into damages is one of extreme difficulty.

You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But, nevertheless, the law recognises that as a topic upon which damages may be given.

41. In *Perry v. Cleaver* 1969 ACJ 363 (HL, England), Lord Morris of Borth-y-Gest held thus:

To compensate in money for pain and for physical consequences is invariably difficult but...no other process can be devised than that of making a monetary assessment.

It is well settled that in a personal injury case, injured has to be compensated under the heads: (1) pain and suffering; (2) loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; (5) medical treatment and other special damages like transportation or travelling expenses, nutrition and food, etc. While determining compensation under the above heads, the two main elements to be borne in mind are: personal loss and the pecuniary loss. Chief Justice Cookburn in *Fair v. London & North Western Railway Co.* (1869) 21 LT 326 distinguished the above two aspects thus:

In assessing (the compensation) the jury should take into account two things, first, the pecuniary loss (the plaintiff), sustains by accident; and secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income.

42. *McGregor on Damages*, 14th Edn., para 1157, referring to heads of damages in personal injury actions states:

The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury and the courts have subdivided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.

43. Besides, the court is well advised to "remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin

that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", is quite apposite to be kept in mind by the court in determining compensation in personal injury cases.

44. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 1980 ACJ 55 (SC) the Apex Court held:

The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

45. Taking into consideration, the law laid down by the Hon"ble Apex Court, this Court in *Brestu Ram Vs. Anant Ram and Others*, held:

It is pecuniary loss, i.e., capable of calculation in terms of money, and non-pecuniary loss, i.e., loss that cannot be easily assessed with accuracy-Pecuniary loss is the loss suffered by the victim due to the loss of earnings or other profits which he had been earning and was to earn in future at the same rate or at some promoted scale. Non-pecuniary loss consists of damages awarded for pain and suffering, loss of amenities and loss of enjoyment of life and prospects. Under the non-pecuniary loss, for want of accurate assessment, a global figure could be arrived at and paid as compensation. Under pecuniary loss the assessment can be made easily by taking into consideration at least monthly income actually earned by the victim and the difference between what he would be capable to earn on disablement.

46. It is well settled that in disablement cases, the compensation has always to be higher than even in cases of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages, which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings, completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living.

47. On the basis of the above legal position, the damages under various heads are assessed as follows:

Loss of actual income:

48. The plaintiff was bedridden for 3 months. Even thereafter he could not work for at least three months. From the various returns filed it can easily be assumed that even at the time of accident the income of the plaintiff was not less than Rs. 5,000 per month and, therefore, net loss of income for about 6 months would be Rs. 30,000 and the plaintiff is entitled for the same.

Future loss of income:

49. The evidence led by the plaintiff himself shows that he has continued to earn

and that he is still running his business. However, the disability which the plaintiff has suffered is so great that it can reasonably be assumed that in case the plaintiff had not suffered such an injury his income would have grown at a much larger pace. The plaintiff belongs to a middle class family. He was running a joint business with his partners. The income is continuing more because of the efforts of the partners than of the plaintiff. In case the plaintiff has not been completely paralysed he would have contributed to the business in much greater measure. The income of the partnership can reasonably be presumed to have been much higher if the plaintiff could have taken active part in the business. Taking a conservative view in the matter, the future loss of income can reasonably be assessed at Rs. 1,500 per month or Rs. 18,000 per year. The plaintiff was aged about 30 years at the time of the accident and it would be reasonable to apply a multiplier of 15 and the plaintiff is entitled to Rs. 2,70,000 on this account.

Medical expenses:

50. Next comes the question of assessment of expenses. The plaintiff has proved on record the medical expenses to the extent of Rs. 6,999.50. A number of other documents have been produced but unfortunately not proved on record. However, keeping in view the fact that at such times when the relatives of the injured person are only interested in his welfare they do not retain all the documents and also keeping in view the total amount of hospitalisation of almost 3 months the plaintiff is held entitled to medical expenses amounting to Rs. 30,000.

Attendant expenses:

51. In the present case, the plaintiff when he was in the hospital for 3 months was attended upon by his relatives, two of whom, i.e., his brother and brother-in-law have appeared in the witness-box. The plaintiff during the period of hospitalisation must have been attended upon by at least two persons and even if the attendant expenses for boarding and lodging, etc. are taken at Rs. 100 per day per head the plaintiff is entitled to Rs. 18,000 for attendant charges during the hospitalisation. It has come in evidence that the plaintiff is totally bedridden. He will require an attendant throughout his life. Plaintiff in his statement has submitted that he has engaged one person to help him in exercising his limbs and massage him and two persons are required to look after him.

52. Keeping into consideration the nature of injuries and the statement of the plaintiff that his attendant is being paid Rs. 1,000 per month plus free meals, the expenses of attendant are fixed at Rs. 1,500 per month, i.e., Rs. 18,000 per year. Applying the multiplier of 15, the plaintiff is entitled to Rs. 2,70,000 on this account.

Pain and suffering and loss of amenities of life:

53. In the present case, the plaintiff has suffered immense pain and suffering. He remained admitted in hospital for 3 months. His entire future life has been totally

marred. He is a cripple. He is bedridden. He is dependent on others throughout his life. His agony and misery can never really be compensated. Taking an overall perspective of the matter the plaintiff is held entitled to Rs. 1,00,000 on account of pain and suffering and Rs. 1,00,000 for loss of amenities of life, i.e., Rs. 2,00,000 in all.

Loss of marital prospects:

54. The plaintiff was a bachelor. His marital prospects are nil. He is awarded Rs. 50,000 for loss of marital prospects.

55. In view of the above discussion the plaintiff is held entitled to a total compensation of Rs. 8,50,000.

56. Keeping in view the existing law " and the existing bank interest rates it is held that the plaintiff shall be entitled to interest at the rate of 6 per cent per annum on the amount of Rs. 8,50,000 from the date of filing of the suit till payment of the amount.

57. In view of the above discussion, the appeal is allowed. The judgment and decree of learned single Judge is set aside and a decree for Rs. 8,50,000 along with interest at the rate of 6 per cent per annum w.e.f. 10.9.1991, the date of filing of the suit till the date of payment/deposit of the amount, is passed in favour of the plaintiff and against the defendants. The plaintiff shall also be entitled to the costs of the proceedings throughout.