

(1928) 01 MAD CK 0022
In the Madras High Court

Tadi Sarareddi (dead) and Another	APPELLANT
Vs	
Chelamcherla Brahmayya, minor by mother and guardian Rattamma	RESPONDENT

Date of Decision : 24-01-1928

Acts Referred:

Citation : (1929) 29 LW 419 : (1928) 55 MLJ 586

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—The main question in this Second Appeal bears on the correct measure of damages in a case in which the defendant,

as the agent of the plaintiff, unlawfully and without authority, disposes of mercantile goods belonging to the plaintiff. It has been found by the Lower

Appellate Court that the disposal of the goods by the defendant was wrongful, was without authority and that this was on the 22nd August, 1920.

Information of this wrongful sale appears to have been given to the plaintiff-principal on the 28th of the same month. The Lower Appellate Court

has granted damages to the plaintiff-appellant on the scale of the market value of jaggery which was the merchandise concerned on or about the

28th August. This second appeal has been filed on behalf of the plaintiff and the argument has been addressed at considerable length by Mr.

Lakshman, the learned vakil for the appellant, that the principle on which the Lower Appellate Court assessed damages payable to the plaintiff

was wrong. His contention was twofold. In the first place, he argued that in all cases of conversion, the proper measure of damages must be the

highest market value in respect of the goods at any time between the date of the conversion and the date of the verdict. This is what has been

referred to in Sedgwick on Damages as ""the highest intermediate value."" So far as it is concerned, it is impossible to accede to such a contention as

the general rule applicable to all cases without distinction. The principle underlying the grant of damages is undoubtedly this; the Court will, so far

as money can do it, place the plaintiff in the same position in which he would have been if the wrong charged had not been committed. It is clear

that, so far as the English cases go, there has been no definite rule that has been laid down by the learned Judges. In Sedgwick's book in

paragraph 508 (a) the following illuminating passage occurs:

The most important point to be gathered from the English cases seems to be that the measure of damages is regarded as very much at large and

dependant upon the particular circumstances of the case, and that there is no unalterable rule of the highest market value between the date of

conversion or breach and that of the trial.

2. Undoubtedly, if the principle governing the grant of damages is as stated above, it follows necessarily that in every case it is a question for the

Court to determine what the proper measure is, having regard to all the circumstances, the date when the wrong is committed, the place where it is

committed and the circumstances under which it is committed. It cannot at the same time be said that the rule of the highest intermediate (sic).

3. There may conceivably be cases where that must be regarded as the proper measure, but the circumstances of the case are that the goods

which are alleged to have been converted are ordinary goods of merchandise - jaggery, and with regard to this, there is no allegation before us and

indeed there could be none that similar goods or goods of even similar quality were not obtainable or obtainable in sufficient quantity at that time

and place. The rule with regard to damages applicable to cases of ordinary merchandise would undoubtedly be different to the rule applicable to

articles of peculiar value, such as pictures and so on and also to such articles of special value as precious gems, pearls and so on. The goods in

question having been ordinary goods of merchandise, we have to derive the proper measure of damages by the application of the principle already

enunciated. Assuming then that on the 22nd there was this wrongful conversion, it follows that, as the plaintiff did not come to know of the

wrongful conversion till the 28th, he could not have, by anything that he did,

placed himself in a position to repair the damages done to him during the interval. The Lower Appellate Court has fixed the market value on the 28th as the proper measure of damages. Mr. Lakshman has contended and properly contended that, even with regard to ordinary merchandise, it is reasonable that a person like the plaintiff should have a reasonable time to go into the market and purchase the requisite quantity in order that he may secure to himself the profit obtainable on a rising market. The next date after the 28th, with regard to which we have the market rate in the evidence before us, appears to be the 9th September.

The evidence is that on that date jaggery of the same quality was sold at Rs. 4-12-0 per maund. It would have been necessary for the plaintiff to raise the necessary amount for the purchase of a large quantity of jaggery to go into the market and purchase the same. We are satisfied that the time till the 9th September would be a reasonable time to allow to the plaintiff for this purpose. Taking it so, it follows, that, if the plaintiff had wanted on the 9th September, to go into the market and replace the goods that he had been wrongfully deprived of, he would have had to pay Rs. 4-12-0 per maund. His own goods have been sold, according to the findings undisputed here, at Rs. 4-7-0 per maund. The rate taken by the Lower Appellate Court for awarding damages is Rs. 4-11-3 as on the 28th. We think that, taking all the circumstances into consideration, to take the rate on the 28th would be unreasonable and that giving the plaintiff a few more days for the purpose of making and completing his arrangements, the rate on the 9th September should be taken. It follows from this that the plaintiff would be entitled to further damages at 9 pies per maund in addition to the amount of damages already granted to the plaintiff by the Lower Appellate Court. Mr. Lakshman has, for the purposes of his contention, referred to the case of *Greening v. Wilkinson* (1825) 1 C & P. 625. That was a case of detainer and as pointed out by their Lordships of the Judicial Committee in (1878) ILR 4 116 (Privy Council), the principle for the award of damages in cases of proper conversion is different to the principle applicable to cases of wrong detainer. After all, a Court can only do its best by way of fixing the amount by the grant of which it will seek to place the plaintiff, as far as money can do it, in the same position in which he would have been, had not the wrong

complained of been committed. In this case there can be no doubt whatever that, in the 16 or 17 days which the plaintiff would have had before

the 7th September, he would have been able to replace all the goods that had been lost to him, by going into the market and purchasing the same.

That, therefore, we must regard as the proper measure of damages in this case. Mr. Lakshmananna also contended that in the present case the

defendant was the agent of the plaintiff and therefore in a fiduciary position. His contention apparently is that with regard to a person in a fiduciary

position the rule as to damages must be different to the rule with respect to other persons or wrongdoers. It is impossible generally to agree to any

such proposition. There may no doubt be, in the circumstances of the wrongdoer having been a person in a fiduciary character, room for raising

certain presumptions; but no such circumstances appear in the present case and there is no room, on the facts and circumstances of the case

before us, for involving any such presumption, the articles being ordinary articles of merchandise and there being no question as regards the quality

or. otherwise. And it is impossible in this case to say what the particular legal position of the wrong-doer was as to the amount to be awarded to

the plaintiff for the loss of his property, and that alone is what we are concerned with in a case for damages for wrongful conversion. The same

principle which we have adopted has been indicated and enunciated in the case of *Manchubhai Navalchand v. John H. Tod* ILR (1894) B. 633 by

Mr. Justice Farran delivering the judgment of the Court. He says at page 635:

In. the case of articles of common merchandise, the state of the market subsequent to the sale would afford the criterion by which to fix the loss.

4. After all in this country the damages have to be fixed not by a jury but by the Court itself and the Court can only do so, taking into consideration

all the circumstances; and so doing we have arrived at the conclusion already stated. The decree, therefore, passed by the Lower Appellate Court

will be modified in the manner suggested and we understand that, by so calculating, the amount that would be payable by the defendant to the

plaintiff would be Rs. 501-4-0. The decree of the Lower Appellate Court will be modified accordingly. In the circumstances of the case we make

no order as to costs of this Second Appeal.