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**(1918) 01 MAD CK 0002**  
**In the Madras High Court**

Vinayaga Mudaliar

APPELLANT

Vs

Parthasarathy Ayyangar minor, by next friend Gopu Aramudu  
Ayyangar

RESPONDENT

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**Date of Decision :** 09-01-1918

**Acts Referred:**

**Citation :** 45 Ind. Cas. 556 : (1918) 7 LW 415

**Hon'ble Judges :** John Wallis, C.J.; Sadasiva Aiyar, J

**Bench :** Division Bench

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**Judgement**

John Wallis, C.J.—I think there is no ground whatever for the objection taken to the action of the learned Judge in allowing an amendment

of the plaint as regards the amount claimed as damages. The application was made at the beginning of the trial, when the learned Judge reserved

his decision until he had heard more of the case. When he granted it at a later stage, it was not opposed though the order was not made by

consent. The fact that it was not opposed goes to show that the general feeling of those who had heard the evidence was that an award of Rs.

5,000 would be inadequate. The only question then is whether the sum of Rs. 12,000 awarded by the learned Judge is excessive. The principles

on which compensation should be awarded in these cases is fully discussed in the latest edition of Mr. Bewan's well-known book on Negligence.

The observations of Parke, B., in *Armstrong v. South Eastern Railway Co.* (1847) 11 Jur. 758 and of Brett, J., in *Rowley v. London and North*

*Western Railway Co.* (1873) 8 Ex. 221 were approved generally by the Court of Queen's Bench in *Phillips v. London and South Western*

*Railway Co.* (1879) 4 Q.B.D. 406 and by the Court of Appeal in *Phillips v. London and South Western Railway Co.* (1880) 5 Q.B.D. 78 giving

effect to these rulings. Lord Coleridge, C.J., when the case was retried before him, told the Jury that the amount of compensation must be fair and

reasonable but that an absolute compensation was not the true measure of damages, and in the Court of Appeal Bramwell, L.J. in *Phillips, v.*

*London and South Western Railway Co.* (1880) 5 C.P.D. 280 stated that the direction was such as was usually given and was right. *Pace M.R.*

Bewan, therefore, I think that the proper ruling is that something fair and reasonable but less than an absolute compensation should be given in

these cases. The later decision in *Johnston v. Great Westein Railway* (1904) 2 K.B. 250 was concerned with the question as to whether the Court

of Appeal should interfere with the finding of a Jury in a case of the kind, and the rule laid down was that it would do so when it was clear that the

Jury had disregarded the direction of the Court. When the damages are assessed by the Court, and the Court gives its reasons as in the present

case the Appellate Court can, of course, form its own opinion on the reasons given but should, in my opinion, be slow to interfere, unless in its

opinion the damages awarded are clearly excessive or inadequate.

2. Coming now to the facts there can be no doubt that, owing to the admitted negligence of the defendant, the plaintiff sustained dreadful injuries

and was reduced to the pitiable condition referred to by the learned Judge and that his prospects in life were completely ruined. He is, therefore,

entitled to the largest compensation that could properly be awarded to any one of his position and prospects in life. As regards this part of the case

I cannot help thinking that the learned Judge has taken rather too favourable a view. I accept the statement of the learned Counsel that the plaintiff

impressed the Court as a bright and intelligent boy. Nonetheless he was a backward boy who would not have completed his school course and

become eligible for admission to a college, until three years after the average age. This may be assumed to have been due to his father's want of

means, but that want of means would have been an even more fatal obstacle to his completing his college course and obtaining a degree in Arts, to

say nothing of Law, so as to put him on an equality with other educated boys of his age and caste. No doubt, he had a distant connection who was

in a position to help him, and such help is not infrequently but by no means invariably given. Help from this quarter appears to me to be too

problematical to take into account in assessing damages. His father was practically without means. One brother is a failed "matriculate", who is now in the Government service and debarred by his failure from rising to better paid appointments. The other brother was unemployed at the date of the trial but had been a clerk in a mercantile firm. On the whole the plaintiff's prospects were by no means so bright as those of any young lyengar boy with prents in comfortable circumstances and, able to afford him the best educational advantages. The learned Judge, as I understand him, was of opinion that Rs. 6,000 or Rs. 7,000 would not reproduce more as an annuity than an averagely successful person in the plaintiff's position would have earned, but he has felt entitled to double that sum having regard to the sufferings the plaintiff has undergone, the sufferings he will undergo and the permanent disabilities he has to suffer from. The plaintiff is, no doubt, entitled to compensation for the pains and sufferings he has undergone and will have to undergo as well as for the loss of his career, but this award, in my opinion, is something more, rather than something less, than an indemnity as it ought to be according to the authorities to which I have referred. Rs. 6,000 represents an annuity starting at much more than the plaintiff would have been likely to earn after many years of employment. I also think that having regard to the authorities I have referred to, it is going too far to double the amount awarded under this head as compensation for pain and suffering. My learned brother sitting with me, who is in a better position than I am to judge of the prospects of the boy in the plaintiff's position, holds this view even more strongly than I do. In the result, however, we have agreed that the damages should be reduced to Rs. 6,000. Otherwise the appeal is dismissed with costs.

3. Sadasiva Aiyar, J.--The defendant is the appellant. He is trustee of a temple. The falling of the temple door through the negligence of the temple servants has injured the plaintiff, who was about 16 years old at the date of suit, in a very serious manner as spoken to by the plaintiff's 4th witness, Dr. Gibson. The plaintiff may ""never be able to walk by himself without crutches or human aid,"" and has also ""lost control of the muscles controlling the excretion of the faces and the discharge of urine. He sued through his Vakil for recovery of damages estimated at Rs. 5,000. He afterwards changed his legal adviser, and the Counsel instructed by Attorneys appeared for him at the trial. The plaint was allowed to be amended

into a claim for Rs. 12,000 and the learned Judge gave a decree for damages for Rs. 12,000.

4. It is clear from the evidence that the plaintiff's father is practically a pauper who earns nothing. The plaintiff's elder brother, who was unable to

pass the Matriculation Examination, was earning Rs. 30 a month and was probably the support of his father and of the plaintiff. The plaintiff was

studying in the 3rd form when he got his injuries, and I think he must be treated as a backward boy as, even if he continued to have his promotion

regularly, he would have got his secondary school leaving certificate only in his 19th year. The learned Judge says, ""I am not going to give this boy

annuity to compensate him for the loss of his career which would bring him more than an averagely successful person would have earned."" But I

think in giving a judgment for Rs. 12,000, he has given him such an annuity and even an annuity giving a larger income than he could reasonably

expect. Considering the plaintiff's previous scholastic career and the intelligence to be expected of a person born in the family to which he belongs,

he might be expected to earn Rs. 20 to Rs. 30 a month after he became a major. Even in that view, he cannots he said to be entitled to a sum

which would give him an annuity of Rs. 360 a year. The measure of damages in a suit like this is discussed in Mayne on Damages, ath Edition,

pages 541 to 544. In one of the cases cited Phillips v. London and South Western Railway Co. (1879) 4 Q.B.D. 406 confirmed in appeal in

Phillips v. London and South Western Railway (1880) 5 C.P.D. 280 a plaintiff, who was getting a secured income of ₹½7,000 to ₹½7,000 per

annum in medical practice and who was supposed to have been permanently disabled from earring that income, was given only ₹½7,000 as

damages by Jury, that is, a sum giving an annuity of ₹½350 at 5 per cent. The summing up of Mr. Justice Field in that case was approved of in

appeal (though a new trial was ordered on the ground that the damages did not even cover actual expenses incurred by plaintiff). The rule in these

cases is: ""You are not to give the value of annuity of the same amount as the plaintiff's average income for the rest of the plaintiff's life. If you gave

that, you would be disregarding some of the contingencies.... An accident might have taken the plaintiff off within a year. He might have lived on the

other hand for the next 20 years and yet many things might have happened to prevent his continuing his practice."" So also in another case, Parke,

B., said: "it would be most unjust if, whenever an accident, occurs, Juries were to visit the unfortunate cause of it with the utmost amount which

they think an equivalent for the mischief done.... Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such

a case give him enough to maintain him for life." Armsworth v. South Eastern By. Co. (1847) 11 Jur. 758 Bearing these observations in mind, I

think the sum of Rs. 5,000, which was demanded by the plaintiff's father in the lawyer's notice sent before the institution of the suit and which was

also claimed as reasonable damages legally claimable in the plaint before its amendment, is the amount which a reasonable Jury ought to have given

to the plaintiff and I would, therefore, hold that there was no sufficient ground for the learned Judge to be allowed the plaintiff to amend the plaint

by asking for higher damages or for allowing any portion of the additional amount claimed. I cannot, however, state that the amendment allowed

was illegally granted.

5. Mr. Grant for the respondent argued that Mr. C.P. Ramasami Aiyar in the lower Court said that provided that his client was not made

personally liable and provided the damages are given against the temple, he would not object to the amendment of the plaint. Mr. Ramasami Aiyar

on the other hand said that he remained silent as no formal application to amend was made. Anyhow, I think that the interests of the temple cannot

be said to require less protection than the personal interests of the defendant trustee, in the words of Parke, B., "the unfortunate" temple ought not

to be "visited"... "with the utmost amount which" a too compassionate Jury might think "equivalent to the mischief done." The question of the

quantum of damages in these cases is not one that can be accurately and mathematically answered. I would have been inclined to assess it at only

Rs. 5,000 or even less if I had tried the case as a single Judge exercising solely the functions of the Jury. Where two Judges sitting as an Appellate

Bench have to decide on a question of this kind, it is clearly desirable that in exercising the functions of a Jury, the Bench should come to an

agreement on a matter in which there is room for the exercise of a large though not wholly arbitrary discretion. We have (as stated as the judgment

of my Lord) agreed to the award of Rs. 6,000 as damages in this case. I would, therefore, modify the decree of the learned Judge by substituting

Rs. 6,000 for Rs. 12,000. As, however, the defendant in his appeal memorandum contended that Rs. 2,000 was a sufficient compensation and considering also the nature of the case, I would, as regards costs, not interfere with the lower Court's award in favour of the plaintiff and I would also direct the appellant to bear the respondent's costs of this appeal.