

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

Weerasekera Mudiyaselage Jayatilake,  
(Deceased)  
Gardiya Punchihewage Chandrawathie,  
Dambagalle Junction,  
Monaragala.

C.A. No. 581 / 2000 F  
D.C. Monaragala No. 1848 / M

Substituted Plaintiff

**Vs.**

1. Dr. P. A. D. Darmathilake,  
Athurugiriya,  
Millewa, Horana.

And 05 Others

Defendants

**And Now Between**

Weerasekera Mudiyaselage Jayatilake,  
(Deceased)  
Gardiya Punchihewage Chandrawathie,  
Dambagalle Junction,  
Monaragala.

Substituted Plaintiff -Appellant

**Vs**

1. Dr. P. A. D. Darmathilake,  
Athurugiriya,  
Millewa, Horana.

And 05 Others

Defendants-Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Ashiq Hassin with Chulani Hettiarachchi for  
the substituted Plaintiff Appellant  
Vickum De Abrew SSC for the Defendant  
Respondent

ARGUED ON : 19.03.2013

DECIDED ON : 09.07.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) has instituted the said action against 1<sup>st</sup> to 6<sup>th</sup> Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Monaragala praying for a judgment to recover a sum of Rs.3,500,000/- as damages. The Respondents has prayed for a dismissal of the Appellant's action. The case proceeded to trial upon 33 issues. After trial, the learned Additional District Judge has dismissed the Appellant's action. Being aggrieved by the said judgment dated 26.07.2000 the Appellant has appealed to this court.

The Appellant's case was that he was bitten by a dog on 19.02.1993 and he took medical treatments from the Monaragala District Hospital. At the said Hospital the 1<sup>st</sup> Respondent has prescribed Anti-rabies Vaccine (ARV) daily for 14 days. Accordingly ARV has been given to the Appellant for about 10 days without any complaint. But on 01.03.1993 when the Appellant was back at home after treatments he has shown certain symptoms and has been admitted to the District

Hospital, Monaragala and later transferred to Badulla Hospital and General Hospital, Colombo, respectively. The Appellant position was that the said ailments were occasioned as a result of the 1<sup>st</sup> Respondent's treatments in that the 1<sup>st</sup> Respondent has been negligent in prescribing ARV without carrying out a pre-testing and thereby the 1<sup>st</sup> Respondent was guilty of negligence in the discharge of her professional duties.

The 1<sup>st</sup> Respondent contended that the Appellant has failed to prove the professional negligence of the 1<sup>st</sup> Respondent. No doubt that the Appellant has made an attempt to impose a delictual liability upon the 1<sup>st</sup> Respondent. It is manifest that today the delict known as *damnum injuria datum* created by the *Lex Aquilia* has become a general remedy for loss wrongfully caused by another under the Roman Dutch Law. In contrast, under the English Law, the Common Law has developed a specific delict of negligence (See The History of Negligence in the Law of Torts - Winfield 1926 42 LQR 184).

Requisites of an action under the *Lex Aquilia* have been expressed by different text writers in different ways; but substantially they are the same. Wickramanayake, gives the requisites as;

- (i) The plaintiff must show actual pecuniary loss. An exception is the award of compensation for physical pain suffered by a person injured through the negligence of another.
- (ii) He must show that the loss was due to the unlawful act of the defendant or that the defendant was acting in excess of his rights.
- (iii) He must show *dolus* or *culpa* on the part of the defendant (The Law of Delict in Ceylon 1949).

Mc Kerron, states the essentials of liability in the Acquilian action are (i) a wrongful act, (ii) pecuniary loss resulting to the plaintiff, and (iii) fault on the part of the defendant (The Law of Delict 1965).

In the case of Professor Priyani Soyza vs. Rienzie Arsecularatne (2001) 2 SLR 118 Dheeraratne, J. observed that "The accepted test currently applied in the English Law to determine the standard of care of a skilled professional, commonly referred to as the Bolam test, is based on the dicta of Mc Nair J. in his address to the jury, in *Bolam Vs. Friern Hospital Management Committee* (1957) 2 ALL E.R. 118. At page 122 he explained "A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art..... Putting it another way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view." The Bolam test is a departure from the test of the hypothetical reasonable skilled professional. The former places emphasis on the standards which are in fact adopted by the profession, while the latter concerns itself with what ought to have been done in the circumstances."

In the light of the said premise it seems that a doctor is not guilty of negligence if he has acted accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art. The Respondent has not adduced evidence in order to establish that there has been a pre-testing to be carried out prior to the prescribing of ARV to a patient complained of a dog bite. On the other hand it has been in evidence that at the time relevant to this action ARV was the only treatment available to a person complained of a dog bite.

It must be noted that the rabies virus is a neurotropic virus that causes fatal disease in human and animals. Rabies transmission can occur through the saliva of animals. Rabies virus causes acute infection of the central nervous system. Five general stages are recognized in humans: incubation, prodrome, acute neurologic period, coma, and death. The incubation period is exceptionally variable, ranging from fewer than 10 days to longer than 2 years, but is usually 1 to 3 months. Early diagnosis is difficult. Rabies should be suspected in human cases of unexplained viral encephalitis with a history of animal bite. Unvaccinated persons are often negative for virus-neutralizing antibodies until late in the course of disease.

When I consider the seriousness of the decease it is clear that the 1<sup>st</sup> Respondent did not have any other option other than administering ARV to the Appellant. On the other hand the 1<sup>st</sup> Respondent was bound by accepted norms and principles of the medical profession to treat the Appellant with the available medicine in order to save his life. Hence the 1<sup>st</sup> Respondent cannot be blamed in administering ARV to the Appellant.

In the said circumstances I see no reason to interfere with the judgement of the Learned Additional District Judge dated 26.07.2000. Hence I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal