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

C.A. No. 971 / 2000 F

D.C. Mt. Lavinia No.353/94/M

Devundara Sittara Badalge Gunaratne
"Ajith Sevana"
Kiragewatta, Pitakanuwana,
Kamburupitiya.

Plaintiff

Vs.

1. Warusamanage Piyadasa Rajapaksa
   56, Munasinghe Road,
   Galawilawatta, Homagama.
2. Warnage Leslie Ratnayake,
   Ganegodawtta,
   Rukulagama, Mawanella.

Defendants

AND NOW BETWEEN

1. Warusamanage Piyadasa Rajapaksa
   56, Munasinghe Road,
   Galawilawatta, Homagama.

1st Defendant Appellant

Vs

Devundara Sittara Badalge Gunaratne
"Ajith Sevana"
Kiragewatta, Pitakanuwana,
Kamburupitiya.

Plaintiff Respondent

2. Warnage Leslie Ratnayake,
   Ganegodawtta,
   Rukulagama, Mawanella.

2nd Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Upali De Z. Gunawardena for the 1st Defendant Appellant

W. Dayaratne PC with R. Jayawardena and D. Dayaratne for the Plaintiff Respondent

ARGUED ON : 27.06.2013

DECIDED ON : 10.09.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st and 2nd Defendant Appellants (hereinafter referred to as the Appellants) in the District Court of Mount Lavinia seeking to recover a sum of Rs. 500,000/- as damages resulting from an accident in which the Respondent received grievous injuries. The Respondent has stated that the 1st Defendant Appellant was the registered owner of the vehicle bearing No 60 Sri 8565 and on or about 14th March 1993 when the said vehicle was driven by the 2nd Defendant Appellant from Wijerama Junction to Maharagama has collided with the Motorcycle bearing No. 80 Sri 6615 which was ridden by the Respondent causing grievous injuries to the Respondent.

The 1st Appellant has filed an answer denying the averments contained in the plaint and praying for a dismissal of the Respondent's action. The 2nd Appellant has not filed an answer.

The case proceeded to trial upon 13 issues. After trial the learned Additional District Judge has delivered a judgement in favour the Respondent. Being aggrieved by the said judgment dated 02.11.2000 the Appellants have appealed to this court.

At the trial the Appellants have admitted that;

- The 1st Appellant was the owner of the Tata Motor Bus bearing No. 60 Sri 8565,
- The 2nd Appellant was an employee of the 1st Appellant and the said accident occurred on 14th March 1993 within the scope of his duties,

At the hearing of this appeal the learned Counsel for the Appellants submitted that the Respondent in his claim made to the insurance corporation had at first estimated the damages only for Rs 200,000/- and thereafter at the institution of this action at paragraph 03 of the plaint the Respondent has estimated the full damages he had suffered at Rs 500,000/- and therefore the belated claim of Rs 500,000/- represents a glaringly obvious and gross exaggeration of the damages.

At the trial the Respondent has closed his case leading the evidence of the Respondent and 04 other witnesses with producing the documents marked P 1 to P 13. The 1st Appellant has closed his case without leading any evidence. It has transpired from the said evidence that the Respondent who was an employee attached to "Shin Nippon Air-conditioning Engineering Co. Ltd." was drawing a sum of Rs.7000/- per month. Dr. Wasantha Perera one of the Respondent's

witnesses, explaining the gravity of the injuries sustained by the Respondent has stated how the said injuries have become permanent impairment.

The Respondent's evidence has been corroborated by the evidence of the Police Officer who visited the scene and conducted the inquiry. He has produced the sketch of the scene marked P 12.

The learned counsel for the Appellants submitted that in quantifying the damages V 1 has to be taken in to consideration. V 1 was a document sent to the Respondent by the Insurance Corporation requesting him to estimate the damages he suffered from the said accident and to submit it to the Insurance Corporation. The Respondent has admitted the making of V 1. According to V 1 the Respondent has estimated the damages for a sum of Rs 200,000/. Accordingly it seems that at first the Respondent has claimed only Rs 200,000/- as damages.

But in his plaint the Respondent has claimed a sum of Rs 500,000/- as damages. He has explained that he has claimed a sum of Rs. 200,000/- for physical injuries and pain he suffered and the balance amount of Rs 300,000/- has been claimed for medical expenses and for the inability of going abroad. But in paragraph 7 and 8 of the plaint the Respondent has stated that he spent Rs 20,000/- as medical expenses and travelling expenses. It also must be noted that issue No 5 has been raised upon the averments contained in paragraph 7 and 8 of the plaint. He has not adduced any evidence to establish the inability of going abroad. When I consider the said evidence I am of the view that the Respondent is entitled to receive only Rs 20,000/- as medical expenses and travelling expenses. Hence the trial Court cannot grant an amount more than Rs. 20,000/- as medical expenses since that being the claim of the Respondent.

Therefore I am of the view that the Respondent's self estimate of Rs. 200,000/- was a full and final estimate of damages for physical injuries and pain he suffered and for medical expenses.

In the said circumstances I hold that the Appellant is entitled only to a sum of Rs. 200,000/- as damages. Hence the answer to issue No. 10 should be "a sum of Rs. 200,000/-." Subject to the said alterations the appeal of the Appellant is dismissed without costs.

Appeal dismissed.

Judge of the Court of Appeal