

THE INDIAN LAW INSTITUTE

Seminar

on

The Problems of Law of Torts

Mt. Abu - May 1969

MEASURE OF DAMAGES FOR "SHORTENED
EXPECTATION OF LIFE" IN TORT LIABILITY

By

Rajendra Nayak*

Personal injuries to human beings are frequent and sometimes, serious too. The increasing mechanization is leading towards rapid growth in the number of actions for personal injuries and death. Whatever be the kind of obligation as to source, be it *ex lege*, *ex contractu*, *quasi ex contractu*, *ex delictum* or *quasi ex delictu*, a breach or delay in the performance thereof will give rise to damages.¹ Damages are recoverable by the victim because of unlawful violation of his personal legal right. Legitimate human desires are recognized and protected by the law.

The Phrase "shortened expectation of life" connotes no more than the condition of being deprived of a state of one's mind assumed to be pleasurable. It is better expressed in a positive form as mental distress or discomfort caused by the reflection of the person concerned that the injured plaintiff will probably not live beyond a certain age estimated by the expert based on best medical testimony.² In some respect, it is a metaphysical conception, even then it is woven in some form or an other in our industrial and social life and may affect consciously or unconsciously our mental perception. A lawyer dealing with the case of personal injury will readily perceive and use the highly figurative phrase "Shortened expectation of life." "The Shortening or loss of expectation of life is a separate head of damages which enters into the

* M.L.I. (Wisconsin); LL.M. (New York), Research Associate, The Indian Law Institute, New Delhi.

1. Ambion, B.C. Civil Law, 43 Philippine Law Journal (1968) p.59.

2. See generally, 11 Aust. L.J. (1938) 537.

assessment of damages in cases of serious personal injury and damages under this head may also be claimed for the benefit of the estate of the person injured after his death, whether by reason of the injury sustained or otherwise."³ One has to see as to how the courts have interpreted this phrase through various decisions.

For the purpose of this paper, it will be assumed that plaintiff has a cause of action, i.e. his right to personal security and physical integrity has been injured by the defendant's wrongful act, negligent or otherwise. The problem to be investigated, here is as to how the damages in a case of shortened expectation of life have been assessed and what are the main technique and principles adopted and applied by the courts in India. The paper does not include within its scope the question of punitive or exemplary damages and death in relation to tort.

Now, the preliminary question in this connection arises as to the meaning of 'measure of damages'. By the measure of damages is meant the standard or method of assessment by which amount of damages is to be assessed for the injury which the plaintiff sustained. Damages will only be awarded for the natural and probable loss which is the result of the injury complained. In property cases, assessment of the damage would be comparatively easy, because the damages then are calculated by the real pecuniary loss suffered. In case of shortened expectation of life of a person assessment of damages becomes difficult. It is not easy to assess in money value the pain and suffering of a person or reduction of life. The plaintiff must sue in one action for all his certain loss, whether past present or future. Assessment of damages will be once and for all time. Although, the courts have not given specific compensation for the shortened expectation of life but it has been recognized as one of permissible areas of damages awardable for personal injuries.⁴

-
3. 11 Halsbury's Laws of England 256(3rd ed.1955).
 4. See for instance, Dinabai R. Wadia v. Faruku Mohammed, A.I.R. 1958 Madras, 218; State of Madras v. James Appadurai, A.I.R. 1959 Madras 369; Kollutal v. Hemchand, A.I.R. 1958 M.P.48; Ramsaran v. Shakuntala Bai, A.I.R.1961 Punj.400; Bir Singh v. Hashi Rishi Banerjee, A.I.R.1956 Cal.555; Manjulgouri v. Govardhandas, A.I.R.1956 Nag.86; Vanguard Fire Ins.Co. v. Sarla Devi, A.I.R.1959 Punj.297; Municipal Corporation, Delhi v. Sobhog Wanti, A.I.R.1960 Punj.300.

Assessment of damages can not be based on rigid rule or rules that will apply to all cases of shortened expectation of life. In each set of circumstances, certain relevant considerations arise and on the basis of those considerations the damages are assessed. Damages for reduced, altered or shortened expectation of life are not to be measured on the basis of the length of life that is lost, but should be measured for the loss of perspective happiness. Assessment of loss is to be valued objectively. The amount of damages may be less where the character or the habits of the person injured are calculated to lead to his future unhappiness.⁵

The English courts have already recognized shortened or loss of expectation of life besides physical pain and pecuniary loss due to bodily injury. In Benham v. Gambling,⁶ where the respondent was the father of a infant child of two and a half years, who, while a passenger in a motor car, was so injured by the car driver that he died the same day by overturned car. House of Lords said that damages given for the shortening of life should not be calculated solely, or even mainly, on the basis of the length of life this is lost, they should be fixed at a reasonable figure for the loss of a measure of prospective happiness. In Manindra v. Mathuradas,⁷ the plaintiff was injured by an advertising device consisting of a picture of cloth within a wooden frame put up by the defendant on the roof of the Cinema house of which he was the proprietor fell down on the head of the plaintiff who was passing along the pavement of a public road below, and caused a cut on the head which was three and a half inches long, one inch wide and one inch deep. It took the plaintiff about 5 weeks to recover. It was evident that as a result of the accident, the plaintiff had suffered not only physical discomfort and bodily pain but also consequent loss of prospect of enjoying a more lucrative position and consequently shortened expectation of life that held promise of the happiness which flowed from labours efficiently and easily performed. This is the principle the court laid down in the Manindra case after considering the English decisions.⁸

-
5. Trubyfield v. Great Western Rail. Co., (1937) 4 All E.R. 614.
 6. (1941) A.C. 157, H.L.
 7. A.I.R. 1946 Cal.175.
 8. For instance, Flint v. Lovell, (1935) 1 K.B.354; Rose v. Fort, (1937) A.C. 826; the Aizkaraimendi, (1931) 3 All E.R. 483; Roches v. Yates (1938) 1 K.B. 257; and Benham v. Gambling, (1941) A.C.157.

The English Courts have been of the view that a plaintiff has a legal interest entitling him to complain if the integrity of his life is impaired by tortuous act not only by pain and suffering and disability, but in relation to continuance of life for its normal expectancy. A man has legal right that his life should not be shortened by the tortuous. The expectancy of life is a thing of temporal value, so that its impairment is something for which damages should be awarded.⁹

In G. & N.I.T. Co. v. Dinkar Joshi,¹⁰ the appellant owners of a transport company, was engaged in the business of running buses between Mhow and Indore. Once it so happened that a bus which left Mhow for Indore with twenty six passengers including the respondent suddenly changed its direction to the right with the result to tore down railings of the bridge and rested on the bed of a river eighteen to twenty feet below. In consequence, the plaintiff was seriously injured. His earning capacity due to this accident was diminished and the expectation of life shortened. The Court in this case resolved as follows:

the matters that should be taken into account in the assessment of general damages are now well-established. These are (1) pain and suffering endured, past, present and future; (2) inconvenience and loss of enjoyment of life sustained, past, present and future and injury to health; (3) and a shortened expectation of life. It is no doubt difficult to make an exact and precise assessment of damages.¹¹

In the Dinkar Joshi case, the court took the view that the plaintiff was under treatment for some time and was declared to be a cripple for life. The amount Rs 30,000/- as general damages to the plaintiff-respondent is not excessive or insufficient for the pain and suffering undergone by him, for the general impairment of his health,

9. Rose v. Ford (1937) A.C. 826 (F)
10. A.I.R. 1955 Madh. Bharat 214.
11. Id. at 221.

and for the resulting shortening of the expectation life and a reduced capacity for future work.¹² The Court also considered the English cases Rase v. Ford¹³ and Phillips v. L&S.W.Rly.¹⁴ In Phillips v. L.& S.W. Rly. a proper direction to a jury in such cases was given which the court considered in the Dinkar Joshi Case. In the Phillips Case it is said as follows:¹⁵

"You must give the plaintiff a compensation for his pecuniary loss, you must give him compensation for his pain and bodily suffering; of course it is almost impossible for you to give an injured man what can be strictly called a compensation but you must take a reasonable view of the case, and must consider under all the circumstances, what is a fair amount to be awarded to him."

16

In Krishna Govinder v. Narasingam, the court relied on Benham v. Gambling to the extent that it said that there is no difficulty in stating the principle that should weigh with the court in awarding damages under this head of loss of expectation of life, particularly the classical pronouncement in Benham v. Gambling. But the Court in the Narsingham case, realized that the application of the principles to given set of facts is yet not free from difficulty. The balance of prospective happiness of the individual has first to be ascertained and that has to be commuted in money value. The court was realistic in accepting the fact that even the best and at least judicial endeavour to discharge the task of ascertaining damages cannot possibly eliminate some speculation and imaginative thinking.¹⁷

12. Id. at 222.

13. (1937) A.C. 826(I).

14. (1879) 49 L.J. Q.B. 233 (H).

15. Ibid.

16. A.I.R. 1962 Mad. 309.

17. Id. at 312.

18

In Deepti v. Banwarilal, a fifteen year girl, who was struck by a truck while returning from her college on bicycle. She was extricated from under the truck where she was lying between the front and the rear wheels. She claimed Rs. 8400/- as general damages and Rs. 1600/- as special damages. The court examined two questions relevant to general damages: (1) the items of loss and injury for which compensation is to be claimed; (2) items to be quantified or reduced to terms of money. The difficulties are involved in calculating such items as pain and suffering past as well as future. The Court took the view regarding first question, that personal injury may range from the loss of a limb or other part of the body to minor cuts or burises and may involve not only pain and hardship, but also loss of pleasure of life. Damages are awarded for pain and suffering already sustained and likely to be sustained in future regarding the loss of amenities of life as well reduction in expectation of life.¹⁹ The Court reasoned that full compensation cannot be paid in the sense that no amount of money can fully compensate for pain and suffering, loss of expectation of life, or loss of the amenities of life.²⁰ The Court in this case relied on the English cases,²¹ where the principle of compensation is that even if the damages for personal injury are intended to be equivalent in money for the loss sustained, it is difficult to apply a definite principle of compensation upon which damages can be awarded. There is no yardstick by which the court can measure the amount to be awarded for pain and suffering or shortened expectation of life. Measure of damages vary so infinitely from case to case that there can be no fixed and unalterable standard for assessing the damages for personal injury. But the court viewed that the difficulty or uncertainty does not prevent measurement of

18. A.I.R. 1966 M.P. 239.

19. Id. at 241-242.

20. Id. at 242.

21. In Admirally Commrs. v: S.C. Valeria, (1922) A.C. 242, 248; The Mediana, (1900) A.C. 113, 116-117; The Ceramic (owners) v. The Test bank (Owners), (1942) 1 All E.R. 281; Bird v. Cocking & Sons Ltd. (1951) 2 T.L.R. 1260, 1263.

damages. The court said:

"Assessment of damages for pain and suffering has necessarily to depend upon a reasonable view of the case, having regard to all the circumstances. It is the duty of the Court to form an estimate of chances and risks, although they cannot be determined with any precision, for instance, the possibility of the injury improving or deteriorating. However, the possibilities or chances which are slight or nebulous have to be disregarded. The entire circumstances of the situation must be taken into account. Discretion must be exercised judicially and it has to be remembered that damages awarded in an action for torts are compensatory and not punitive. As regards damages to be awarded for loss of the pleasures of life. The personal circumstances of the plaintiff must form the background of the assessment."22

In the Banwarilal case, the court applied the principle of damages as laid down in Rose v. Ford,²³ It was stated in that case that impaired health and vitality not merely as a cause of pain and suffering but as a loss of a good thing in itself.²⁴ In enumerating the circumstances in assessing the damages the English Court found that the plaintiff's life would be materially shortened and the plaintiff was expected to live more and due to accident he had lost the prospect of an enjoyable vigorous and happy old age.²⁵

Swaraj Motors v. Raman Pillai²⁶ is another important case with regard to shortened expectation of life. In this case, the plaintiff, as advocate was travelling in a bus of the defendant, Swaraj Motors. During the course of journey bus was capsized at a place while negotiating a curve and giving side for another bus coming in the opposite direction. With the result the plaintiff was thrown off and fell under the bus, as a result of which he suffered a compound fracture of the bone of the lower part of the leg, a lacerated wound on the right toe and an abrasion on the dorsum of the right foot.

22. Deepti v. Banwarilal, A.I.R.1966 M.P. 239,242.
23. (1937) A.C. 826.
24. Id. at 859.
25. Id. at 847.
26. A.I.R. 1968 Kerala 315.

In this case, the court considered apprehension of shortening of life, extent of pain and suffering undergone in the past and which is likely to suffer in the future, the loss of amenities of life and the plaintiff's circumstances. The Court rejected the argument of the appellant that after the accident the plaintiff was appointed as a government pleader that he was earning more than before, that his earning capacity has not been reduced, and that loss of amenities in life or future earning capacity should not be a consideration for assessing the damages. The Court held that if with all these disabilities, the plaintiff could earn more money after rejoining the profession, certainly he could have done far better, if he was physically normal person. This is only a circumstance which would enhance the measure of damages.²⁷

In the Raman Pillai case, the court considered the English decisions given in Flint v. Lovell²⁸ and Benham v. Gambling.²⁹ It said that there was much confusion in English courts regarding the principle of assessment of damages for shortened expectation of life.³⁰ The Court of Appeal in Flint v. Lovell, was of opinion that the plaintiff might recover compensation as an independent item of damages for shortening of the normal expectation of life. Obviously this principle creates an astonishing result in the case of young man dying or suffering as a result of an accident because of such injuries as would considerably shorten his life.³¹ The object of damages is to compensate the plaintiff for what he has lost and what he has lost is what would have been in his pay packet when he took it home.³²

33

An Abdulkadar v. Kashinath, the Court laid down that the compensation need not be small or uniform there are good reason for holding that it

27. Id. at 321-322.

28. (1935) 1 K.B. 354.

29. (1941) A.C. 157.

30. A.I.R. 1968 Ker. 315, 321.

31. Ibid. See also Benham v. Gambling where the Court correctly said that the method of estimating this head of loss is that, whether in the case of a child or an adult, very moderate amount should be awarded as damages.

32. Cooper v. Firth Brown Ltd. 1963-1 W.L.R. 418.

33. A.I.R. 1968 Bom. 267, 271.

should be moderate. Damages are not be awarded for sentimental reasons or as punishment for negligence. The money is not enjoyed as compensation by the deceased but the heir of the deceased should not be unduly enriched at the cost of another. In the Kashinath case the court emphatically said that the objective test of happy life is a correct test to be applied after considering the relevant circumstances of the case and reasonable amount should be given as damages under this head. The amount should be moderate for the reasons already stated.³⁴

The English and Indian cases regarding shortened expectation of life reveal difficulty of proper compensation for the plaintiff whose life expectancy has been shortened by a wrongfully inflicted injury. Damages under this head can not be measured by any arithmetic computation to award the money to compensate pain and suffering of a person sustained by reason of an accident. This gives rise to a problem whether compensation for pecuniary loss is to be computed over the plaintiff's normal life span or over his span as shortened by the injuries. Damages computed on the basis of the plaintiff's normal expectation of life would result into over-compensation. Because under this formula the plaintiff would recover full damages for those years he will not be alive and will have no life expenditure. The compensation based on the formula of full life expectancy therefore is not a correct one. It is a good formula in favour of the plaintiff, because it will reward him for those years he will not live. In this regard it will be easy to explain the formula by an illustration. Suppose ten years in plaintiff's normal expectancy of life has been reduced permanently unusable which results into economic loss amounting Rs.500/- per month and plus medical expenses. His claim would be for ten years Rs.60,000 plus medical expenses. But the court would be hesitant to give the full amount as compensation and would award damages after discount plus some medical expenses. In this regard the court will have to rely on medical report about the plaintiff's expectancy of life.

34. Id. at 271.

Another problem which is also pertinent in this connection relates to the calculation of wages lost due to shortened expectation of life. The courts have awarded compensation in such cases on the basis of the injured person's life expectancy shortened by the accident.³⁵ The English Courts have awarded compensation for reduction in life expectancy as an independent item of damages but they have estimated damages for lost wages only for those years of life of the injured person for which he would remain alive.

English and Indian Courts in assessing compensation regarding shortened life expectancy have not uniformity of opinion. The Indian Courts have frequently relied upon English decisions. The English courts, in a series of decisions have treated the shortening of life expectancy as a separate and distinct area of damages. They had been of the view that curtailment of life expectancy was not merely pain and suffering but it is a loss of vigorous, happy and healthy life. In Benham v. Gambling, the loss was of the prospect of a predominantly happy life.³⁶ If the effect of the plaintiff's injury is that his expectation of life is shortened, he cannot claim damages for loss of earnings during the period he might otherwise have expected to work.³⁷ In estimating the value of lost amenities, besides deprivation of one's favourite recreation and prevention from practising one's hobbies, due consideration was also given to the loss of expectation of life.³⁸ No reduction in amount of compensation is to be made because the plaintiff is so badly injured that he will be unable personally to enjoy the damages.³⁹ In India some of the High Court

35. Harris v. Bright's Contractors, Ltd. (1953) 1 All E.R. 395, Cf. Roach v. Yates (1938) 1 K.B. 256.

36. (1941) A.C. 157, 166 Cf. The "vigorous, happy and healthy life" of Roach v. Yates (1938) 1 K.B. 257.

37. Oliver v. Ashman (1961) 3 All E.R. 323, C.A.; Wise v. Kaye, (1962) 1 Q.B. 683.

38. Street, H. The Law of Torts (1963) 448.

39. H. West & Sons, Ltd. v. Shephard, (1964) A.C. 326 Wise v. Kaye, (1962) 1 Q.B. 683; Adrews v. Free Borough (1967) 1 Q.B. 1,2.

concern with this opinion. For instance in the Banwarilal case,⁴⁰ the High Court of M.P. while considering the quantum of compensation did pay premium to the circumstance that the plaintiff after getting injured would not be able to play badminton and would also be unable to ride a bicycle.⁴¹ The Court was, therefore, of opinion that the plaintiff must be awarded damages for pain and suffering and for loss of certain amenities of life.⁴²

The technique of assessment of damages adopted by the English courts has its own drawbacks. "Loss of expectation of life" is a vague concept and any attempt of the court to determine by any measure the amount of damages for it will depend on a variety of incalculable factors.⁴³ It is a difficult task for a judge to determine with precision the actual loss of life expectancy inspite of the best medical testimony. Inaccuracies can not be ruled out in cases where compensation is awarded for loss of earnings to be occurred in the prospective life of the seriously injured man. However, in awarding damages for loss of future earnings, the normal expectation of life is taken into consideration not the expectancy curtailed by the injury.

It is difficult to award proper and adequate compensation based on statistical or actuarial tests because they represent averages and resulting figures may not apply in a particular case or in all the cases. In certain cases age of the plaintiff may be significant even then arithmetical calculation may not help to know for how many years his age may have been reduced. To know the loss of exact years and to assess the value of those years is a difficult task. In view of India's Socio-economic conditions of the people, their "the ups and down", "pains and sorrows", "pleasure and joys of life", "employment opportunities and unemployment of the people", all these factors have to be taken into considerations for the award of damages for shortened expectation of life. While awarding damages, court has to look into the circumstances

40. A.I.R. 1966 M.P. 239.

41. Id. at 242.

42. Id. at 243.

43. Damages for Loss of Life Expectancy, 33 ILL, L. Review (1938-39) 969.

under which man's expectation of life is shortened. In case of an uneducated boy of ten years, who has no status and about whose prospect and prosperity at this age nothing is yet certain, the court will award far less compensation than to a grown up man who is educated, well-settled and has certain future prospects in life.

In assessing damages, no amount of money could fully compensate the victim for his injuries. The most that could be done was to award the plaintiff such compensation as was reasonable in all the circumstances of the case.⁴⁴ Damages for the shortening of life should not be calculated solely on the basis of the length of life that is lost, but should be fixed at a reasonable figure for loss of prospective happiness. If, however, the character or habits of the deceased were calculated to lead him to a future unhappiness or despondency that would be a circumstance justifying a smaller award. No consideration should be given to financial losses or gains during the period of which the victim has been deprived of, damages being awarded in respect of loss of life, not of loss of future pecuniary prospects.⁴⁵ The House of Lords in Benham v. Gambling purported to do no more than settle the principle upon which damages for loss of expectation of life are to be awarded, was not concerned with the effect of shortened expectation of life on the award of damages for loss of future earnings.⁴⁶

It cannot be overemphasized that problem of measuring damages for shortened, altered or reduced expectation of life is a problem of evaluating a physical hurt and to know its impact on the injured individual. In this regard the principle which the courts have evolved may be

44. Roach v. Yates, (1938) 1 K.B. 257.

45. Benham v. Gambling, (1941) A.C. 157.

46. Damages Occasioned By Shortened (or lengthened) Expectation of Life, 79 South African L.J. (1962) 42, 51.

summarized as follows:

- (a) Damages are based on prospective happiness of the plaintiff after injury and not on the prospect of length of life or span of life. The loss of expectation of life must be distinguished from the loss of expectation of happiness.
- (b) After injury happiness of the plaintiff is estimated on the basis of "what further life would bring him in terms of happiness." In this regard, the life of the injured person prior to injury is taken into consideration for measuring damages.
- (c) Plaintiff's social and economic status is not the criteria for assessment of damages.
- (d) Well-settledness in life is also one of the important principles to be applied in assessing damages.
- (e) Reasonable figures should be chosen and should not be inordinately high in awarding damages.
- (f) The view that the future happiness of the plaintiff is not the only criterion for measuring damages, but also prospects of future happy life, habits of the individual, his health and to some extent his age would be all relevant factors to be considered for measuring damages in view of the circumstances under which the incident occurred.

The damages which are awarded by the courts in India will however, have to be arbitrary. There are absolutely no rational and scientific standards or yardstick by which the damages due to shortened expectation of life and happiness may be measured. The Courts by and large have followed the principle of English Common Law on the subject. The English cases, however, can not be solely relied to provide solutions to Indian problems. In calculating damages the courts have been unable to estimate the quantum of damages on any fixed scale. The quantum, therefore, has to be necessarily arbitrary.

