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"PROBLEM OF ASSESSMENT OF DAMAGES
IN PERSONAL INJURY LITIGATIONS WITH
SPECIAL REFERENCE TO INDIA"

by

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I

The impact of modern civilization with all its ultra hazardous activities upon the lives of the human being has been tremendous. The increasing complexities of the modern life in this machine-age have created innumerable risks to human life, person and property. The magnitude of these risks is difficult to spell out. Industrialization, urbanization and rise in the fact moving traffic have resulted in a heavy loss of life, limb and damage to property. A direct cost to individual consists in loss of earning during disability, loss to property, funeral expenses and the like while indirectly society suffers the loss of the services of those killed or injured. To meet these situations our basic problem is to provide a fair and equitable compensation to the victim who can ill afford the loss and to take preventive measure to minimise these hazards.¹ This paper is limited in its scope to the first aspect of the problem only, viz, the distribution of loss in the society—a function which, to a great extent concerns the law of torts. Traditionally tort law takes account of all such cases where an injury to person or damage to property is caused or an interference in certain legally recognised interest is made. But the course of tort law is selective one. It isolates certain harmful consequences for which it is prepared to hold the wrong-doer responsible and provides remedy by way of an award of damages to the injured party. The

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1. Hasan, S.M.: Tort Law of liability for personal Injuries.

question as to how much compensation the injured party is entitled to recover for a legally recognised damage, brings the courts into insurmountable difficulties. "No body know what is the right sum of damages in any particular case, and no two cases are alike."² The elements to be taken into account in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the damages.³ The cases involving personal injuries add more complexities to the problem of assessment. Here the court is called upon to measure in monetary terms a loss which has no monetary dimensions. The items like pain and suffering, of exact measurement or arthmetical calculations,⁴ often lead to awards that involve some element of arbitrariness because they depend on a good deal of guess work or conjecture.⁵ But the fact that assessment cannot be made with mathematical accuracy can not be a reason for depriving the injured party of compensation,⁶ Therefore, on the basis of experience and administrative expediency the courts have worked out certain legal rules which aim

2. Waldon v. War Office (1956) I.W.L.R. 51 54 per Singleton, L.J.
3. Bird v. Cocking and sons Ltd. (1951) 2 T.L.R. 1260; Rushton v. National Coal Board (1953) 1 All ER314. 316; Lord Halsbury pointed out that "the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages." The Mediana, (1900) A.C. 113.116.
4. The Mediana (1900) AC 113,116;
(T) here is no yardstick by which the court can measure the amount to be awarded for pain and suffering or ensuring disability, "per Goddard, L.J. The Ceramic (owners) v. The Test bank (owners) (1942)I All E.R. 281.
5. Grand Trunk Rly Co. v. Jennings (1888)13.A.C. 800; Gobald Motor Service v. Veluswami (1962) 1 S.C.R. 929. 940
Ganpathi v. State of Madras (New Mysore)AIR 1960 Mys.222, 225; D.Balkrishna v. Sadasivaraju AIR. 1960 Mys.105, 110.
6. Satyawati Devi v. Union of India AIR. 1967 Delhi. 98 per Kapoor, J.

at stability and to some extent uniformity in the awards. The problem of assessing damages in personal injury cases is not merely of evaluating a physical hurt, in absolute terms, but for the protection of the individual who has received the injury.⁷ Therefore for the purpose of producing a reasonable result a compromise between theoretical compensation and practicality is necessary. The problem is not merely limited to the consideration of factors like breaking of bones or the loss of health but the whole matter requires a keen understanding of social responsibilities. Generally speaking the bulk of Indian decisions on assessment of damages have just reiterated the English principles on the subject or have purported to apply the language of previous decisions. The principles enunciated in English decision should be applied in Indian cases with utmost care as there exist totally different economic circumstances in the two country.⁸ Dissatisfied with the existing techniques of loss distribution function of the tort law, some writers have suggested that a system of comprehensive social insurance be introduced so that unnecessary burden may not be thrown entirely on one individual or enterprise but the burden is shared by all members of the society.⁹ In lieu of fault as the premise of liability in personal injury the law should become more hospitable to insurability¹⁰ and there should be a reconsideration of the kind of interests which are compensated and the degree of compensation for the interest which are compensable.¹¹ Even if such a scheme of social insurance is adopted there will still remain much scope for the tort law for adjudication of cases and determination of compensation in personal injury litigations. An attempt is

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7. Miller: Selected Essays on Torts "Assessment of Damages in Personal Injury Actions" p.189.
 8. State of Madras v. J. Appadurai AIR 1959 Mad. 369,370.
 9. W.G. Friedmann: Social Insurance and the Principle of Tort liability 63 Harvard L.R. 241(1949). Harper and James. The Law of Torts: Vol.2. Chap.13;
 10. Jaffe: Damages for Personal Injury: The Impact of Insurance, 18 Law and Contemp. Prop 219 (1953).
 11. ibid p. 235.

made in this paper to survey the various techniques adopted by the Courts in India in respect of assessment. The scope of this paper is limited to personal injury litigation as there exist fairly settled rules of assessment of damages in other areas.

II

Most of the cases for personal injuries are founded upon a tort such as assault, negligence and breach of statutory duty the rules relating to assessment of damages are similar in all these cases.

There has been a controversy in the legal circle as to whether governing principle is that of restitutio in integrum or whether the plaintiff is entitled to fair compensation. Winfield believes that the basic principle of assessment of damages in tort is that of restitutio in integrum in all cases except the case of exemplary damages.¹² This means that the person who has been injured by the wrong of another should be restored to the position in which he would have found himself but for the wrongful act. In actual practice, in case of torts involving personal injury cases sometimes - this cannot be done.¹³ So Pollock¹⁴ takes the position that compensation and not restitution is the proper test. Most of the writers on the subject support this latter view.¹⁵ This view is probably more true in personal injury cases in fact as well as

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12. Winfield: Law of Tort 7th Ed. p. 775; Also Street, Principle of Law of Damages p.3; In Liesbosh (Drödger) v. Edison S.S. (1933) A.C.449; 463 Lord Wright described the principle of restitutio in integrum as "the dominant rule of Law". "Subsidiary rules can be justified if they give effect to that rule."
 13. C.f. The remarks of Viscount Dunedin in Admiralty Commissioner v. S.S. Valeria (1922) 2 A.C. 242, 248 "if by somebody's fault I loose my leg and am paid damages, can anyone in his senses say I have had restitution in integrum?"
 14. Pollock on Torts (15 Ed) p.140.
 15. Mc Cormick, Damages 520, 137 (1935); 1 Sedgwick, Damages S. 29; Munkman, Damages for Personal Injuries and death (3rd Ed) pp 1-3, Munkman holds the opinion that restitutio in integrum is not a primary rule as Prof. Street believes; but is a derivative rule, that where it is impossible to restore status quo, e.g. by repairs to a chattel, the cost of that restoration is the measure of compensation.

theory.¹⁶ The principles of exemplary damages and nominal damages which rest on different footing play an insignificant part in this areas.¹⁷ Indian decisions present a picture of compromise between these two principles of assessment.¹⁸ Where damage to property is the basis of action, the courts have invoked the doctrine of *restitutio in integrum*¹⁹ but this principle can not be applied to personal injury cases as there can be no restitution for items like pain and suffering or loss of limb. The trend in England and other common law jurisdictions is veering towards the recognition of fair compensation as the basic purpose of the law of damages in personal injury litigations.²⁰ In British Transport Commission v. Gourley²¹ Lord Goddard, said:

"Damages which have to be paid for personal injuries are not punitive, still less are they a reward. They are simply compensation...."

A similar observation has been made by Lawson J., in Gooper v. Firth Brown Ltd:²²

"It seems to be that the object of damages is to compensate the plaintiff for what he had lost...."

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16. Harper and James: Op cit, pp.1300-1301.
 17. The Courts in India generally do not favour the award of exemplary damages. The Calcutta and Allahabad High Courts have in some cases awarded such damages where the defendants' conduct was dishonest, outrageous or scandalous; See C. Kameshwara Rao, Law of Negligence p.116 (1968).
 18. Salmond also attaches importance to both of these principles as each of them has its own proper sphere of operation. Salmond on Torts (12th Ed)p.312.
 19. Lionel Edwards v. State of W. Bengal, AIR (1967) Cal. 191.
 20. 4 Restatement of Torts S.901; Fleming, Law of Tort, (2nd Ed.) 204-211.
 21. (1956) A.C. 105 at p. 209.
 22. (1963) I.W.L.R. 410.

It appears from the study of English and Indian decisions that cardinal principle is that the plaintiff should get full, fair and reasonable compensation.²³

III

In regard of the measurement of damages the courts have developed certain principles regulating recoverable heads of damages. Mr. Justice Naik of the Madhya Pradesh High Court has very clearly presented various Heads of recoverable damage in a recent case.²⁴ He says:

"Damages are of two kind; general and special. General damages are non pecuniary losses which can not be calculated in terms of money. Such non pecuniary losses are thus: (a) in respect of pain and suffering and the shock suffered by the plaintiff.... (b) loss of amenities of life, such as plaintiff suffers by reduced enjoyment of life due to damages caused by the assault and which may apart from any material or pecuniary loss, be attended upon the loss of amenities, (c) loss of expectation of life (d) inconveniences and discomfort; and (d) exemplary damages where the conduct of the defendant had been so outrageous or scandalous that more punitive damages need be awarded against him in favour of the plaintiff.

On the other hand special damages are such damages which can be computed in terms of money. In regard to such pecuniary loss the plaintiff is entitled to recover.

(a) Expenses which he was called upon reasonably to incur for medical treatment, nursing, special medical, improvements or reconstruction carried out in his house as a consequence of his injuries, extra domestic

23. Just to quote few:
Fair v. London and North Western Rail Co. (1869) 21, L.T. 326; Phillips v. London & South Western Rail Co. (1879) 4 QBD 406. Rushton v. National Coal Board (1953) 1 All ER 314 Gwalior & N.I. Transport v. Dinkar Joshi AIR (1955) M.B. 21 State of Madras v. Appadurai, AIR (1959) Mad. 369.

24. Bhairondin Girdharilal v. Phulchand Ratan Chand AIR 1967 M.P. 48.

help which he was called upon to employ and the like. Under this head even the expenses incurred by the plaintiff in respect of his or her spouse's visit to hospital are recoverable."

(b) The second head under this item is "loss of earnings or other profits: This includes damages in respect of earnings or profits which the plaintiff had lost as a result of his injuries upto the date of trial.

(c) The third head is 'handicap in the labour market. Courts are empowered to award to plaintiff under this head such sum in respect of prospective loss of earning as he may be found entitled to when a person suffers minor injuries causing some permanent disability which may have no permanent effect on his earnings but may still handicap him in the performance of his pre-accident work, such person is at disadvantage compared with his colleagues in the labour market,

(d) The last head may be material loss other than lose of earning which the plaintiff suffer due to wrongful act of the defendant. Thus if the plaintiff as a part of fruits of his employment material benefits other than his pecuniary earnings, for example, free board and lodging, he is entitled to be awarded by way of damages the pecuniary equivalent of such material benefits. Similarly if there is serious injury or disfigurement which reduces the prospect of marriage of a female plaintiff such disfiguration would represent a real material loss and be taken into account in assessing damages,"²⁵.

The classification of general and special damages and itemised heads of damages there under has been generally adopted by all the High Courts in India.²⁶ With respect to pleadings and proof of general and special damages different rules prevails. Halsbury states that "General damage is the kind of damage which the law presumes....to flow from the

25. Ibid p, 49.

26. Shri Ram v. Delhi Electric Tramway Co. AIR 1919 Lah. 213 Vishnue Digamber v. B.B. and C.I. Rly. AIR (1924) Bom. 27 Gwalior and N.I. Transport v. Dinkar Joshi AIR (1955) M.B. 214 State of Madras v. J. Appadurai AIR (1959) Mad. 369 Bombay S.R.T. Corp. v. Narayan AIR (1963) Mys. 161 Swaraj Motors v. Raman Pillai AIR (1968) Kel. 313.

wrong complained of²⁷." Therefore general damages or non pecuniary loss need not be averred and proved in the court of law.²⁸ On the other hand, every item of special damages or pecuniary loss must be specially pleaded and proved.²⁹ But a plaintiff is not precluded from recovering ordinary damages in cases where he fails to prove special damages unless special damages is the gist of the action.³⁰ The rule that damages must be certain, which prevails in America,³¹ is neither applicable to India nor England.

IV

It would not be possible to spell out the various methods of calculations in respect of all heads of recoverable damage in a short paper like this. Therefore we have been very selective. In principle, the measure of damages for pecuniary loss is the exact amount of money which has been lost or spent as a consequence of the injury. It was laid down in British Transport Commission v. Gourley that so far as loss of earnings and out-of-pocket expenses are concerned the injured party should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened. This principle echoes in the judgment of Ramaswami, J. in State of Madras v. J. Appadurai,³³ in the following words:

"In so far as the injury results in actual pecuniary loss, past or prospective, the plaintiff should be awarded full compensation for that loss...."

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27. Halsbury's Laws of England 3rd ed. vol. 11 p. 217.
 28. Ram Das v. Raja AIR (1958) Rak. 257 Omkarmul v. Bahwari Lal AIR (1962) Raj. 127.
 29. Admiralty Comms. v. S.S. Susquehanna (1926) AC 655 Bhairodin Girdhari Lal v. P. Patan Chand AIR (1967) M.P. 48, 49
Swaraj Motors v. Raman Pillai, AIR 1968 Kel. 313.
 30. Madan Mohan Dutt v. Gokul Das 10 M.L.A. 563, 574.
Puran Toli v. Govinda Ram 15 C.F. L.R. 39.
 31. Harper and James: Law of Torts. 1304 (Vol. 2)
 32. (1956) A.C. 105.
 33. AIR (1959) Mad. 369, 371.

The past loss, if proved will be awarded as special damages. The calculation of loss of earning down to trial is not free from difficulties. It is easier in cases of salaried person or other categories of wage earners but difficulty arises in case of self employed and professional men. The courts have to take into account the fluctuations and ups downs in trade or profession.

The future pecuniary loss whether it is loss of earning capacity or expenses to be incurred in future can not be assessed in absolute term. The future or prospective loss is awarded as a part of general damages. In regard to calculation of prospective loss, Ramaswami, J. in the above mentioned case has pointed out that in case of such a loss plaintiff is not to be awarded his annual earnings multiplied by the number of years for which he could be expected to have worked, if he had not been injured. Because "a simple calculation of this sort will ignore many contingencies which would or might operate to reduce the plaintiff's future earnings and so would mean that the plaintiff would get more than full compensation for his loss."³⁴

Thus all future chances of life are to be taken into consideration and where the expectancy of life is reduced due to the injury caused to the plaintiff, he is entitled to recover for prospective loss to the extent of his shortened life and not for full normal period of life.³⁵ Thus the damages on this count will only be an estimate, often a very rough estimate,³⁶ of the present value of the prospective loss.³⁷ But

34. AIR 1959 Mad. 369, 371

35. Harris v. Brights Asphalt Contractors (1953) 1 All-ER 395.
Oliver v. Ashman (1961) 3 All-ER 323.

36. Per Lord Reid in British Transport Commission v. Gourley (1956) A.C. 105.

37. Swaraj Motors v. Raman Pillai AIR (1960) Kel. 315, 320

the amount to be recovered under this item is not subject to any reduction on the ground that the injured party has a private income or that he will receive some benefits like insurance.³⁸ The fact that plaintiff was not earning or has no earning capacity (as in case of child) does not preclude him from claiming damages under this head if there is an impairment of his earning capacity.³⁹ In such a case it should be considered what a person having the particular qualifications would, in the environment in which he was situated at the time of injury be able to earn and then award a sum as the court think best having in view all the uncertainties of the life.⁴⁰

Winfield has complained about this practice of breaketing the future loss of earning with pain and suffering which rendered the law of damages impossible for any intelligent treatment.⁴¹ Again what plaintiff will get on this count can not be the exact amount lost as a consequences of the wrong. The theory that for all pecuniary loss plaintiff is entitled to full compensation is difficult to reconcile with this technique of splitting some items of pecuniary loss under the special damages while other under general damages. A plaintiff not satisfied with the award of damages for past and future pecuniary loss will have no chance in appeal of claiming a rise in the amount awarded by the court as he would never know as to how much compensation was awarded for prospective loss. In view of these short-comings Prof. Street has suggested actuarial computation which can provide a considerable measure of precision in calculating damages for lose of earning. He urges that actuarial evidence in personal injury litigation should become a standard procedure.⁴²

30. In England half of the value of certain benefit according to the plaintiff under National Insurance Acts is to be taken into consideration while computing the damages.

39. Jone v. Richard (1955) 1 W.L.R. 444.458.

40. Brokleband Ltd. v. Noor Ahmed AIR 1938 Cal.104;
Shree Ram v. Delhi ET Ltd. Co. AIR (1919) Lah. 213.

41. Winfield: Law of Tort 776.

42. Street: Principle of Law of Damages p. 137.

Non-Pecuniary loss

In regard to non-pecuniary⁴³ loss which does not admit of assessment by arithmetical calculations, it has been emphasised in a number of decisions,⁴⁴ the plaintiff should be awarded fair and reasonable compensation and such compensation is to be assessed in the light of previous awards in respect of comparable damage.⁴⁵ The principle of having regard to comparable cases although settled as accepted practice earlier was formulated for the first time by Birkett, L.J., in Brid v. Cocking and Sons Ltd.⁴⁶ In Rushton v. National Coal⁴⁷ the same learned judge brought out the point that a social element is involved in the valuation:

"I still think, that it is the most useful thing to look at comparable cases to see what other minds have done, and so to gather the general consensus of opinion as to the amount which a man in a certain state of society ought to be awarded".

This principle was approved by the House of Lords in H. West to Sons Ltd. v. Shephard⁴⁸ and also by the Privy Council in Singh v. Toong Fong Omnibus Co. Ltd.⁴⁹ In the latter case (an appeal from Singapore) it was pointed out by Lord Morris that the comparison should be with cases in same jurisdiction or in a neighbouring locality where similar social economic and industrial

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43. Munkman, O.cit, describes non-pecuniary loss as personal loss.
44. Monarch Steam Ship Co. v. Karlshamns Oljefabrikar (1949) AC 196; Admiralty Comms. v. Susquehanna (owners) 1926 A.C. 655, Manley v. Rugby Portland Cement Co. 1952 CA No.206; Crawford v. Erection Co.Ltd., (1953)CA No.254; Rushton v. National Coal Board (1953)1 All.E.R.314; British Transport Commission v. Gourley(1956) AC 105.
45. Per Ramaswami, J.
46. (1951) 2 T.L.R. 1260.
47. (1951) 1 All Er 314.317.
48. (1964) A.C. 326.
49. (1964) All ER 925 P.C.

conditions exist'. The principle that the courts should be guided by previous awards in respect of comparable case by and large has become an accepted practice in personal injuring litigations in India.⁵⁰

But this technique of comparison of awards in cases of non pecuniary loss has one serious drawback. Damages are awarded for such varied items like pain and suffering including mental pain and anguish diminished capacity of work, loss of amenities of life. A useful comparison of one case with another can only be made if like can really be compared with like.⁵¹ For the purpose of comparison the data on above variable must be precisely available to the Court. With the exception of loss of expectation of life, the court makes lump sum award for all the above mentioned itemised heads of damage. This make it impossible to know as to how much amount the judge has in his mind at the time of awarding the damages. Thus how can in absence of precise information a realistic comparison can be made between cases involving different kinds of injuries. Again there court may be called upon to assess damages for a peculiar type of injury as it happened in Wise v. Kaye.⁵² where the plaintiff was a young woman rendered unconscious from by the accident and who was still unconscious at the hearing of the appeal three and a half year latter, her life being described as the "living death." The remarkable fact about this case is that it isolates the actual physical injuries from the physical pain and mental anguish. Cases of such type may come before the Courts which are incapable of comparison with any previous case. Therefore a sound basis for the assessment on non pecuniary loss has to be evolved. In his dissenting judgment in a Wise v. Kaye,⁵³ Diplock L.J. said that only possible yardstick in such case was loss of pleasure or happiness, suffered by the plaintiff. He maintained that process of comparing awards does

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50. Gwalior N.I. Transport v. AIR 1955 M.B.
State of Madras v. J. Appeduari AIR (1959) 315
Ganpathi Bhatta v. State of Mysore AIR 1960 Mys.
222; Swaraj Motors v. Raman Pillai AIR 1960
Kel. 315.
51. Winfield: Law of Tort. 779.
52. (1962) 1 QB 360.
53. ibid.

not "result in any actual figure in money.... unless one postulate a right figure.. for some particular kind of injury; which can be used as the datum in the proportion sum. No purely logical process can enable one to arrive at the datum; it must be found empirically."

The rule of loss of pleasure or happiness suggested by Diplock L.J. was rejected by the House of Lords in West & Sons Ltd. v. Shephard.⁵⁴ There is a need for consistency in the award of damages personal injury litigation and to a great extent consistency can be achieved if the judges can be persuaded to apportion the total sum awarded between the various heads of damages and to set out the factors which they take into consideration. This will also help the appellate court to determine the reasonableness in award of damages by the trial Court.

Previous awards in comparable cases can not be treated as a basis for assessment of damages, they are merely tools which can aid the courts in arriving at a fair and reasonable amount of compensation while following the previous awards courts have to take into consideration the relative purchasing power of the rupee which has diminished in recent times.⁵⁵ The reported decisions indicate that fairly substantial amounts have been awarded under the head of General damages in India.⁵⁶

54. (1963) 2 W.L.R. 1359.

55. Ganapathi v. State of Mysore AIR 1960 Mys. 222.

56. Sorabji Harmousji v. Jamshedji, 21 I.C. 705, where Rs.10,000 were granted; Corporation of Calcutta v. Anderson, I.I.R.10 Cal.446 (Rs.6,500), Kessujee v. G.I.P.Ry., 6 Bom.L.R. (Rs.600); Sri Ram v. Delhi Electric Tramway, etc. Co. (Rs. 4,000); States of Madras v. James Appadurai, A.I.R.1959 Mad. 369 (Rs.10,000) Vinayaja Mudaliar v. Parthasarathi, 45 I.C.556 (Rs.6000 awarded); Manindranath v. Madhuradas, A.I.R.1946 Cal. 175, (Rs.5,000 for pain and suffering); Ganapathi v. State of Mysore, A.I.R. 1960 Mys.222 (Rs.6,000); Hazarilal v. Lokshman (1960) M.P.L.J. (notes)1841 (Rs.3,000).
B.Girdharilal v. Rattan Chand AIR 1967 M.P.40 (in an action for assault an award of Rs.3000 was affirmed); Behari Lal v. Md. Qurban AIR 1964 Pat. 372 (award of Rs.3000 was made but appeal was dismissed under limitation Act.; Swaraj Motors v. Raman Pillai AIR (1960) Kel.315 (the award of Rs.25,000 as general damages was considered moderate but plaintiff could not recover as the claim was time barred.

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Since the decision in Flint v. Lovell⁵⁷ it has been well established that damages for loss of expectation of life can be claimed as a separate head which had hitherto been only a subjective elements in awarding damages for pain and suffering. In Rose v. Ford⁵⁸ the House of Lords put the seal of approval on Flint v. Lovel. Rose v. Ford was fought under survival statute⁵⁹ and the House of Lord held that damages under this head can be claimed by the representative of the deceased person. This led to tremendous litigation and heavy awards, often conflicting, under this head. The position was again corrected by the House of Lord in Benham v. Gambling⁶⁰ where the award of £1200 was reduced to £200 in respect of a child of two years old. It was laid down in this case that 'the thing to be valued is not the prospect of length of days but the prospect of a predominantly happy life.'⁶¹ Benham v. Gambling was supposed to have set a standard, a conventional figure in the region of £200 under this head. This is considered to be most notable example of judicial legislation in recent years and which had had an effect upon the subsequent awards. Subsequent awards have increased the amount in view of the depreciation in the value of pound.⁶² In H. West and Son v. Shephard⁶³ the House of Lord accepted that quantum of damages in claim by living plaintiff is not different from claims by representative of deceased person. Lord Reid said:

"It is now a rule of law that if a man is cut off in the prime of life, then no matter how bright his prospects only a conventional sum of £500 or so can be awarded in respect of his lost years."

Recently the House of Lord in Naylor v. York shire Electricity Board⁶⁴ reverse the judgment of the Court of Appeal where a majority had awarded £1000 under this head and restore the award of £500. An interesting feature of this case is found in Lord Devlin's suggestion that "this head of damage should be abolished and replaced by a short Act of Parliament, fixing a suitable

57. (1935) KB 354.

58. (1937) AC 826.

59. The Law Reform (Miscellaneous Provisions) Act, 1934.

60. (1941) A.C. 157.

61. ibid at p. 166

62. Hart v. Griffiths - Jones (1948) 2 All ER. 729

63. (1964) A.C. 326

64. (1967) 2 W.L.R. 1114

sum which a wrong-doer whose act has caused death should pay into the estate of the deceased."⁶⁵ It may be noted that in cases arising in India under this head no specific awards appears to have been fixed. In cases which arise under the Fatal Accident Act often the expectation of life, of the deceased having regard to his age bodily health and habits and the possibility of premature death is one of the relevant consideration in assessment of damages.⁶⁶ In a recent case⁶⁷ involving personal injury the Kerala High Court considered, the shortening of life as an item forming part of general damages. It would not be desirable if the Indian Courts follow the English practice and fix a conventional sum for this head of damages or any other.

Since Indian Courts do not generally make a separate award for this head, it is not possible to find out whether the amounts awarded under this item are fair and reasonable or unduly excessive. In so far as expectancy of life is concerned the courts in India do not take assistance of mortality tables or annuity tables. The question of determination of expectancy of life is considered as an estimate or to some extent conjecture.⁶⁸

V

From the forgoing discussion it is amply clear that assessment of damages is a very difficult task and is full of complexities. The Judges face dilemma when they are called upon to evaluate and measure the imponderables. Their task is no easier even when they have to assess compensation for pecuniary loss. In the course of time some principles have emerged in this branch of law. The Courts speak in terms of formula for measuring damages but it appear that they hesitate to apply these formula in every case.

65. ibid. p. 1128

66. Dina R. Wadia v. Farukh Mobedna AIR 1958 Bom. 218,221.

67. Swaraj Motors v. R. Pillai AIR 1968 Kel. 315.

68. Gobald Motor Service v. Velu Swamy 1962 (ISRC 929,940)

A study of Indian cases on the point will disclose that the judicial thinking is in line with the observation of Lord Wright in Davies v. Powell Duffryn Association Collieries Ltd.⁶⁹ that "there is generally so much room for individual choice that the assessment of damages is more like the exercise of discretion than an ordinary act of decision." Once the Courts conform to the standard of the past this is considered enough. The Courts rarely indicate in their judgment a detail analysis of factors which were in their mind at the time of awarding compensation. The system of lump sum award save their decision from a close scrutiny. The present difficulties and shortcomings of the assessment techniques in personal injury cases can not be removed even if a comprehensive social insurance scheme is introduced in India. The Courts still be called upon to perform the function of the loss distribution in the society. The process of assessment of damages involves much judicial discretion. As the vital interests of the society are involved in this process it may legitimately demand that the discretion should be exercised to the best of its advantage.

69. (1942) A.C. 601.