

J. Subbiah Reddy (since deceased) and another - *Appellants*

*v.*

T. Jordon - - - - - *Respondent*

FROM

THE COURT OF THE HONOURABLE THE BRITISH  
RESIDENT IN MYSORE, BANGALORE

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 18TH JUNE, 1945

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*Present at the Hearing:*

LORD GODDARD  
SIR MADHAVAN NAIR  
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from the judgment and decree of the Additional Judge of the Court of the Honourable the British Resident in Mysore, Bangalore, dated 14th August, 1940, varying a judgment and decree of the District Judge, Bangalore, dated 20th November, 1939.

The claim of the plaintiff was for damages for injuries sustained by him in an accident to a motor car in which he was a passenger. He sued J. G. Anniah Reddy, the first defendant and second appellant who was the driver of the car, and his father, J. Subbiah Reddy, the second defendant and original first appellant, who was the owner of the car. Subbiah died on 20th December, 1940, and appellants (i) to (xvi) are his legal representatives.

The material facts are that in September, 1937, the plaintiff, who was a motor engineer and salesman, was negotiating for a position in International Motors, Bangalore, a concern owned by defendant 2, in which defendant 1 was employed. In the morning of 27th September, whilst the draft of a proposed agreement between plaintiff and the firm was being typed, defendant 1 took the plaintiff out in a Skoda car in order to demonstrate the performance of the car. In the course of the drive there was an accident due to the failure of defendant 1, who was driving, to notice an obstruction across the road in time to avoid it. The car overturned, and the plaintiff's left arm was severely injured, and eventually had to be amputated below the elbow. Both the Lower Courts held that the accident was caused by the negligence of defendant 1, and in Their Lordships' view this finding, which is one primarily of fact, is clearly right, and must be accepted. The Trial Judge passed a decree against defendant 1 for Rs.12,500 damages, but dismissed the suit against defendant 2. In appeal the Additional Judge increased the damages to Rs.25,000 and reversed the decree dismissing the suit against defendant 2. In the result he passed a decree against both defendants for Rs.25,000 and costs.

Their Lordships feel no doubt that the Additional Judge was right in holding defendant 2 liable. The car in which the accident occurred belonged to him, and was used in connection with his business; it was being driven by his son, who was employed in the business; and the car was being demonstrated to one about to join the business, that is for the purposes of the business. It is clear therefore that defendant 1 was acting within the scope, or apparent scope, of his authority as a servant of defendant 2, and the latter is answerable for his tort.

The only question which requires consideration on this appeal is that of damages, and this raises a question of some importance. The respondent has not appeared, but Mr. Quass for the appellants has argued that the Additional Judge had no right to interfere with the amount of damages found by the Lower Court. He relies upon the rule acted upon by the Court of Appeal in England which was stated recently by Greer, L.J., in *Flint v. Lovell* [1935] 1 K.B. 354, in these terms:—"This Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

This rule originated at a time when the assessment of damages was the province of the jury, and illustrates the reluctance which an appellate court always feels in interfering with the decision of a trial court upon a question of fact, especially when the decision is that of a jury. In British India civil suits are not tried with a jury, and trial judges generally have less experience in assessing damages for tort than have judges in England, where such claims are very common. An Appeal Court should never interfere arbitrarily and without good reason with the decision of the Lower Court, and upon questions of fact the advantage which the Trial Judge enjoys in having seen the witnesses, and sometimes in knowledge of local conditions, must always be recognised; but where such considerations do not operate, an Appeal Court is entitled, and indeed bound, to give effect to its own view on matters within its competence. To hold otherwise would be to deprive parties of the benefit of a right of appeal which they possess. Their Lordships see no sufficient reason for holding that in British India the full rigour of the rule stated in *Flint v. Lovell* applies. They think therefore that the Additional Judge was entitled to act upon his own view as to the amount of damages, and they proceed to consider how far his award was justified by the evidence.

The plaintiff claimed Rs.60,000 as damages. The Trial Judge (as already mentioned) assessed the damages at Rs.12,500. He based this figure upon the general claim for disfiguration, loss of health, pain and suffering, and expenses of treatment, and on the handicap which the plaintiff would suffer in his earning capacity by the loss of an arm. The learned Judge, however, stated that the reduction of the plaintiff's income had not been shown, nor could it be said, to be due wholly, or even largely to the injury he had received. Therein the learned Judge was not correct. The evidence of the plaintiff was that down to the month of the accident he had been employed by Mysore Motors at a salary of Rs.200 a month and a commission which brought his total earnings up to Rs.350 to Rs.400 a month. The manager of Mysore Motors put the commission at Rs.125 to Rs.150 a month. The plaintiff further gave evidence that owing to the loss of his arm he was unable to obtain a licence to drive a car, and that his earnings at the time of the trial were Rs.80 salary and commission, bringing his total earnings up to Rs.130 a month. His employer put the latter figure at Rs.140. There is therefore satisfactory evidence that the earnings of the plaintiff had been reduced by about Rs.200 a month since the accident, and it is a legitimate inference that the

reduction was the result of the accident, since it is obvious that loss of an arm and consequent inability to drive a car must be a serious handicap to a motor salesman. In appeal the Additional Judge doubled the damages, but gave no detailed reasons for so doing. Damages for tort are based on the loss suffered by the plaintiff, and the consideration that the decree of the Appeal Court was against an additional defendant who might be in a better position to pay than the defendant originally held solely liable is irrelevant. Their Lordships think that the Additional Judge was not justified on the materials before him in awarding so large a sum as Rs.25,000, but on the other hand that the Trial Judge did not give sufficient weight to the evidence of actual loss of earning capacity by the plaintiff. In Their Lordships' view Rs.15,000 is a fair sum at which to assess the damages.

Their Lordships will therefore humbly advise His Majesty that the decree of the Additional Judge be varied by reducing the sum decreed from Rs.25,000 to Rs.15,000. In other respects the decree will stand, and there will be no order as to the costs of this appeal.

In the Privy Council

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T. JORDON

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DELIVERED BY SIR JOHN BEAUMONT

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