

**MAHIPALA AND OTHERS  
VS.  
MARTIN SINGHO**

COURT OF APPEAL.  
BALAPATABENDI. J.  
WIMALACHANDRA. J.  
CA 1014/2003 (F).  
DC ANURADHAPURA 15378/M.  
FEBRUARY 15, 2005.  
JUNE 23, 2005.

*Road Accident-Army Vehicle-Cyclist injured- Negligence ?- No valid driving licence- Motor Traffic Act as amended by Act, No. 21 of 1981- section 149, section 151 (3)- Effect of a plea of guilt in a criminal case relevant in a civil matter ? – Acceptability ?- Damages- Assessment thereof- Circumstances.*

The plaintiff-respondent instituted action against the defendant- appellants claiming jointly and severally a sum of Rs. 300,000 as damages. The position of the plaintiff-respondent was that, he was riding his bicycle and was knocked down by an army truck driven by the 1st respondent. In the Magistrate's Court the defendant-appellant was charged mainly for driving negligently, recklessly and dangerously without care or regard to the other road users and knocking down the injured, causing grievous injuries to him. The trial Court awarded him Rs. 300,000 as damages.

On appeal—

**Quarare :**

"Whether a judgment or conviction in a criminal case is relevant in a case in a Civil Court in respect of the same matter, and if so what effect it can have on the consideration of the civil matter".

**HELD :**

- (1) The defendant's unqualified plea of guilt is most relevant and admissible as evidence of negligence on his part. The plea of guilt in a criminal court is admissible in civil proceedings, and when the 1st defendant pleaded guilty to the charges of reckless and negligent driving under the Motor Traffic Act, it has legal proof in the legal sense.
- (2) It appears that the defendant-appellant had failed to exercise that degree of care the situation at the time of the accident demanded — his negligence was proved.

- (3) In an action for personal injuries the plaintiff is entitled to claim compensation for (1) actual expenditure and pecuniary loss (2) disfigurement, pain and suffering and loss of health and amenities of life (3) future expenses and loss of earning capacity.
- (4) The trial Judge is not wrong in awarding a lump sum of Rs. 300,000 as damages to the plaintiff. Damages awarded will have to be increased taking into account the inflation in the economy and the depreciation of the Sri Lankan currency, thus legal interest should be added to the lump sum awarded from the date of judgment till payment in full.
- (5) The damages to be awarded is calculated on the assumed loss to the victim in money terms at the time of the trial, but the monetary loss will increase with inflation as inflation leads to increase in wage levels.

**Appeal from the judgment of the District Court of Anuradhapura.**

**Cases referred to :**

1. *Hollington vs. Hewthorn Ltd.* 1943-1KB 587, 1943 2 All ER 35.
2. *Mickelberg vs. Director of the Perth Mint* 1986 WAR 365
3. *Sinniah Nadarajah vs. Ceylon Transport Board* 1978- 79 – 2 Sri LR 48
4. *B. Meenakshisundaram Cheety vs. Kuttimalu* 1958 Kerale 38.
5. *Reyneke vs. Mutual and Federal Insurance Co. Ltd.*, 1991 – 3 SA 412 (W) at 419 (1)

V. de Abrew SC for defendant-appellant.

K. Patabendige for plaintiff-respondent.

*Cur. adv. vult.*

February 17, 2006.

**WIMALACHANDRA, J.**

This is an appeal from the judgment of the learned District Judge of Anuradhapura dated 24.03.2003. The plaintiff-respondent (plaintiff) instituted this action against the defendants-appellants (defendants) claiming from them jointly and severally a sum of Rs. 300,000/- comprising of general damages, special damages, loss of general health and the amenities of life, loss of future expenses and loss of earning capacity. The learned District Judge awarded the said sum of Rs. 300,000/- to the plaintiff as

damages. It is from this order that the defendants-appellants (defendants) have filed this appeal.

The plaintiff alleged that on or about 14.09.1993, whilst he was riding his bicycle on the left side of the road at Puliankulama, he was knocked down by the truck bearing number 6306 belonging to the Sri Lanka Army, driven by the 1st defendant. The plaintiff raised the issue Nos. 1, 2 and 3 as to whether the said accident was caused due to the negligence of the 1st defendant.

The evidence of the plaintiff reveals that at the time the accident took place, he was riding his bicycle along the Jaffna-Anuradhapura road, towards Anuradhapura, on the left hand side of the road and the truck was driven by the 1st defendant on the same side of the road. It had come from behind the plaintiff. Admittedly at the time of the accident this vehicle was being driven by the 1st defendant, acting within the scope of employment.

What is required firstly is a consideration of the evidence in order to ascertain whether there has been negligence on the part of the driver of the vehicle, the 1st defendant. The plaintiff said the vehicle that came from behind knocked him on the right hand and when he fell down, the vehicle went over his body. On the question as to which side of the vehicle struck which part of the plaintiff's body, there does not appear to be any discrepancy between his evidence and the statement he made to the Police. The learned District Judge has considered the evidence of the witness, Ariyapala, who had been with the plaintiff, riding his bicycle in front of the plaintiff. The learned Judge has correctly analysed the evidence of Ariyapala, who had corroborated the evidence of the plaintiff as to the occurrence of the accident. The learned Judges states thus :

“පැමිණිලිකරු කැඳවූ ආර්යපාලගේ සාක්ෂිය මෙම නඩුවේ වැදගත් සාක්ෂියක් බව පෙනීයන අතර පැමිණිලිකරු තමාට සිදුවූ අනතුර සම්බන්ධයෙන් කියා ඇති කරුණු මෙම සාක්ෂිකරුගේ සාක්ෂිය හා මනාව සැසඳේ.”

A further matter that appears to be relevant is that at the time of the accident the 1st defendant did not possess a valid driving license issued by the Commissioner of Motor Traffic. He said he has only a driving license issued by the Army. However, he was unable to produce any documentary evidence to establish that he had a valid driving license issued either by the Commissioner of Motor Traffic or by the Army. In his evidence the 1st defendant made the following admissions (*vide* page 119 and 120 of the Appeal Brief).

ප්‍ර : රටේ සාමාන්‍ය නීතිය යටතේ රියදුරෙකු වශයෙන් මෝටර් රථ ප්‍රචාරක කොමසාරිස් දෙපාර්තමේන්තුවෙන් බලපත්‍රයක් අරගෙන නැහැ ?

- උ : නැහැ.  
 ප්‍ර : ට්‍රැක් රථයක් මහා මාර්ගයේ පැදවීම සම්බන්ධයෙන් මෝටර් රථ ප්‍රවාහන කොමසාරිස් දෙපාර්තමේන්තුවෙන් ලබාගත් අවසර පත්‍රයක් තිබිය යුතු බව දන්තවාද ?
- උ : දන්නවා.  
 ප්‍ර : එහෙම දැනගෙන තිබියදී තමයි එවැනි නීත්‍යානුකූල අවසර පත්‍රයක් නොමැතිව තිබියදී තමයි එම ට්‍රැක් රථය පදවාගෙන ආවේ.
- උ : යුධ හමුදා බලපත්‍රයක් තිබුණා. යුධ හමුදාවේ වාහනයක් තමයි පදවාගෙන ගියේ.  
 ප්‍ර : එදින රිය අනතුරු සිදුවෙන අවස්ථාවේදී වාහනය පදවාගෙන යනවිට එවැනි බලපත්‍රයක් තිබුණේ නැහැ නේද ?
- උ : තිබුණේ නැහැ.

Furthermore his negligence was quite apparent in that, in the instant when he saw a bus approaching from the opposite direction he had tried to overtake the cyclist who was in front instead of waiting till the bus passed, without paying attention to the cyclist and other users of the road. After the accident, he had stopped his vehicle about hundred feet away from the place of the accident. As a reasonable prudent man he should have taken precautions to avoid any collision when he was overtaking the plaintiff's bicycle, which was on the left side of the road in front of his vehicle. He would have foreseen the possible harm to the other road users when he was overtaking them. It appears that he had failed to exercise that degree of care the situation at the time of the accident demanded.

A further matter that appears to me to be relevant is that the defendant pleaded guilty to charges under the Motor Traffic Act (Cap 203 of Sri Lanka Legislative enactments) for negligent driving. The question that arises is whether a judgment or conviction in a Criminal Court is relevant in a case in a Civil Court in respect of the same matter and if so, what effect it can have on the consideration of the civil matter.

The 1st defendant was charged in respect of the said accident under the Motor Traffic Act (Cap 203) as amended by Act, No. 21 of 1981 and Act, No. 40 of 1984, for failure to report an accident, for negligent driving in breach of section 151(3) and for failure to avoid an accident in breach of section 149(1) of the Motor Traffic Act. The main charge was driving the vehicle bearing No. යු. න. 6306 negligently, recklessly and dangerously, without care or regard to the other road users and knocking down the cyclist, Martin Singho, causing grievous injuries to him. The accused (1st defendant) tendered an unqualified plea of guilt to all charges, whereupon the accused was ordered to pay Rs. 600 as State costs. [Journal Entry dated 23.08.1995 of the case record of M. C. Anuradhapura case No. 6648 (page 187 of the Judge's brief)]

The 1st defendant's plea amounted to an admission that he drove the Army truck bearing No. යු. න. 6306 on that occasion negligently, recklessly

and dangerously, without care or regard to the other road users, at an excessive speed and lost control of the said vehicle and knocked down the cyclist, Martin Singho, causing grievous injuries to him. The 1st defendant's unqualified plea of guilt is most relevant and admissible as evidence of negligence on the part of the 1st defendant.

The learned State Counsel contended that a plea of guilt in a criminal case has no effect on the consideration in a civil matter. The learned State Counsel heavily relied on the unreported Court of Appeal judgment in CA No. 146/91(F) CA minutes of 29.10.1996. In this case Justice Edussuriya, held that a plea of guilt in a criminal case does not establish negligence in a civil action. The Court of Appeal of the United Kingdom in *Hollington Vs. Hewthorn Ltd.*<sup>(1)</sup> held that evidence of a conviction was inadmissible in subsequent proceedings. However the full Bench decision in *Western Australia in Mickelberg Vs. Director of the Perth Mint*<sup>(2)</sup>, refused to follow that decision, and held, evidence of a prior conviction is admissible.

The Supreme Court of Sri Lanka has also held that a plea of guilt in a criminal court is admissible in civil proceedings. In the Supreme Court case of *Sinnaih Nadarajah Vs. Ceylon Transport Board*<sup>(3)</sup> it was held that where the driver of a vehicle is sued along with his employer for the recovery of damages resulting from an accident in which the plaintiff suffered injuries by being knocked down, a plea of guilt tendered by the driver, when charged in the Magistrate's Court in respect of the same accident, is relevant as an admission made by him and ought to be taken into consideration by the trial judge in the civil suit. Wimalaratne, J. who delivered the judgment in this case referred to the aforesaid case of *Hollington Vs. Hewthorn and Co. Limited* (supra) and said (at 52),

**" In *Hollington Vs. Hewthorn & Co. Ltd.*, (supra) a conviction of one of the defendants for careless driving was held to be inadmissible as evidence of his negligence in proceedings for damages on that ground against him and his employer. But had the defendant before the Magistrate pleaded guilt or made some admission in giving evidence that would have supported the plaintiff's case, this could have been proved but not the result of the trial ! per Goddard, L. J. .... The 2nd defendant's plea of guilt in the Magistrate's Court was, therefore, most relevant and to have been taken into consideration by the learned Judge in assessing the plaintiff's case"**

The law in regard to this is explained by Ratnalal & Dhirajalal in "The Law of Evidence", 19th edition at page 185, with reference to Indian cases, as follows :

**"It is a well-recognised principle of law that a conviction in a criminal case is no evidence of the facts on which that conviction was based in a civil case in which those facts are in issue or form the subject-matter of the suit. But the authorities are clear that, when a conviction is based on a plea of guilty, that plea is relevant and to prove in the judgment in the criminal case is admissible in evidence in the subsequent civil suit in which the facts giving rise to the charge are in issue or form the subject matter of the suit."**

***Meenakshisundaram Cheety Vs. Kuttimalu*<sup>(4)</sup>—**

In assessing the plaintiff's case the learned Judge has considered the plea of guilt of the 1st defendant in the case filed against him under the Motor Traffic Act for negligent driving in breach of section 151(3) of the Act, by committing one or more of the grounds of the negligent acts described in the charge. The 1st defendant's plea of guilt is most relevant and the learned Judge has correctly taken that into consideration. In criminal proceedings the prosecution must prove its case beyond reasonable doubt. However in civil proceedings a balance of probability is sufficient to decide the case in favour of the plaintiff. The plaintiff is not required to demonstrate his case. When the 1st defendant pleaded guilty to the aforesaid charges of reckless and negligent driving under the Motor Traffic Act, in the Magistrate's Court, it has legal proof in the legal sense.

The 1st defendant in his evidence said that he did not know how the accident happened. In the absence of any explanation as to how the accident occurred, the reasonable inference that could be arrived at is that the accident was caused due to the negligence of the defendant. He did not give any evidence to show that he took all reasonable precautions to avoid the accident.

The only question which remains to be decided is the measure of damages. R. G. Mc Kerron in "The Law of Delict", 6th edition at page 209 states thus :

**"By the measure of damage is meant the standard or method of calculation by which the amount of damage is to be assessed ..... where the injuria is clear, substantial damages will as a rule be given, although no actual damage is proved."**

With regard to personal injuries, Mckerron, explains thus :

"In an action for personal injuries the plaintiff is entitled to claim compensation for :

- (1) actual expenditure and pecuniary loss
- (2) disfigurement, pain and suffering, and loss of health and amenities of life,
- (3) future expenses and loss of earning capacity."

At the time of the accident, the plaintiff was 58 years old and he was employed as a tractor driver. This is borne out by the evidence of his wife and Ariyapala. In the absence of evidence to the contrary it can be admitted that he was employed as a tractor driver at the time of the accident. It could be assumed that if the plaintiff was not seriously injured, he would have utilised his earning capacity until normal retiring age. The plaintiff said he was drawing a salary of Rs. 2,000 per month employed as a tractor driver. The damages awarded is calculated on the assumed loss to the victim, in money terms, at the time of trial. But the monetary loss will increase with inflation as inflation leads to increases in wage levels.

The learned District Judge has also considered the loss of general health, pain and suffering and the loss of amenities of life. He has discussed this aspect of the matter, giving the main points in summarized form in the following manner :

“ඔහුට මෙම අනතුර සිදුකොටගෙන (හේතුකොටගෙන) පූර්ණ අබලතාවයකට පත්ව ඇති අතර ඔහුගේ ජීවිතයේ ඉතිරි කොටස සාමාන්‍ය නිරෝගී අයකු ලෙස කටයුතු කළ නොහැකි බව ද ලිංගික වශයෙන් බෙලහින් බවට පත්ව ඇති බව ද සාක්ෂිවලින් මතුව ඔප්පු කර ඇති බවට මම සැකීමකට පත්වෙමි. ඒ අනුව පැමිණිලිකරුගේ වයස හා ඔහුගේ සාමාන්‍ය ජීවිත ආයු අපේක්ෂාව සලකා බලන විට පැමිණිලිකරු ඉල්ලා ඇති වන්දි මුදල සාධාරණ වන්දි මුදලක් බව පෙනේ.”

According to the Medico-Legal Report of the plaintiff produced marked 'P8' at the trial, the nature of the injuries sustained by the plaintiff are as follows :

- (1) Crush injury in the lower abdomen, pelvic region and hip region
- (2) abrasion over right upper thigh
- (3) abrasion over right hand elbow thigh

Internal Injuries :

- (a) multiple pelvic bone fracture
- (b) the bladder was ruptured
- (c) Urethra was lacerated

The Judicial Medical officer, Dr. Thennakoon who had examined the victim said that he will suffer latent physical conditions consequent upon the accident. In his evidence he said : (*vide*-page 95 of the Appeal brief).

“..... මෙම ශල්‍යකර්මය සිදුකළ තුවාලය අනුව අනිවාර්යයෙන් සිදුවන තත්ත්වයක් වන මුත්‍ර නාලය සිහින්වීම ඇතිව එම නාලය පළල් කිරීම කීප වරක්ම සිදුකළා ..... අනිවාර්යයෙන් මුත්‍ර නාලය සිහින්වීම සහ මුත්‍ර නාලය වරින්වර පළල් කිරීම සිදුවිය යුතුයි. ඔහුට මුත්‍රා බර දරා සිටීමේ ශක්තියක් නැතිවෙනවා. අනිවාර්යයෙන්ම සිදුවෙන දෙයක් නම් ඔහුට නොදැනුවත්ම මුත්‍රා පිටවීම ..... තුවාල සිදු වූ ආකාරයට පුරුෂලිංගය අප්‍රාණවීම නිසා ලිංගික ක්‍රියාවලීන් යෙදීමට ඇති සම්භාවිතාවය හීනවේ. රෝගියාට සිදු වූ ආබාධ ස්ථිරවම ඔහුට මුළු ජීවිත කාලයටම සිදුවෙනවා. මුත්‍රා නාලය සිහින්වීම සිදුවෙනවා. ඒ සඳහා ශල්‍යකර්ම කිරීමට සිදුවෙනවා ..... මේ අනුව මගේ නිගමනය වන්නේ මෙම තුවාලකරුට මුළු ජීවිත කාලය තුළම ස්ථිර ආබාධ තත්ත්වයකින් පසුවීම සිදුවන බවයි”

Dr. Thennakoon further said that already six surgical operations have been performed on the victim.

The plaintiff can claim compensation not only for the physical injury that had been occasioned by the accident and its aftermath, but also for the inconvenience and loss of amenities. This includes the deprivation of the ability to participate in normal activities in day to day life. This may also include the deprivation of sexual pleasure, mental suffering and frustration resulting from the victim's inability to lead a normal life. In the instant case the Medical Officer who had examined the plaintiff said, as a result of the injuries sustained by him he may have to suffer for the rest of his life.

Burchell in "Principles of Delict", Cape Town, Juta & Co. (1993) at page 136 has this to say on loss of amenities of life-

"The legal concept of amenities of life comprises all the factors which go to make up an enjoyable human life .....  
As Claasen, J., in *Reyneke Vs. Mutual and Federal Insurance Co. Ltd.*<sup>(5)</sup> said :

"The amenities of life flow from the blessings of an unclouded mind, healthy body, sound limbs and the ability to conduct unaided the basic functions of life such as running, eating, reading, dressing and controlling one's bladder and bowels."

The plaintiff after being injured by this road accident due to the negligence of the 1st defendant is no longer able to control the passing of urine and rendered impotent. Thus the injuries sustained by the plaintiff have deprived him of amenities of life.

The learned District Judge had considered the plaintiff's pain and suffering, loss of amenities of life and loss of earning capacity and awarded a lump sum of Rs. 300,000. By their very nature various forms of non-



patrimonial loss such as pain and suffering or loss of the amenities of life are difficult to translate into monetary terms with precision. So it is not unusual to assess together as one sum the computation of damages for pain and suffering and loss of amenities of life. In awarding a lump sum as damages when the wrong complained of constitutes personal injuries, it is difficult to assess damages on a logical basis. In this regard Mckerron in "The Law of Delict" at page 114 has this to say :

**"The damages recoverable under second head, (disfigurement, pain and suffering loss of general health and the amenities of life) cannot be assessed on any arithmetical or logical basis. There are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The usual method adopted is to take all the circumstances into consideration and award substantially an arbitrary sum."**

In the circumstances, it is my considered view that the learned District Judge is not wrong in awarding a lump sum of Rs. 300,000 as damages to the plaintiff.

It is to be noted that the damages awarded is calculated on the assumed loss to the plaintiff, in money terms, at the time of trial. This action was instituted on 23.05.1995 and the judgment was delivered on 24.03.2003. **Accordingly, the damages awarded to him by the District Court will have to be increased taking into account the inflation in the economy and the depreciation of the Sri Lanka Currency. Therefore in my view legal interest should be added to the aforesaid sum of Rs. 300,000 from the date of the judgment until the payment is made in full.**

On a consideration of the totality of the evidence, oral and documentary, led in this case, it is my considered view that the learned Judge has come to a correct finding. Accordingly, I see no reason to interfere with the findings of the learned District Judge. For the reasons given in this judgment, I dismiss the appeal with costs. The plaintiff is entitled to recover the damages awarded by the District Court with legal interest until payment in full.

**BALAPATABENDI, J.**— *I agree.*

*Appeal dismissed.*