1942 *Present :* **Moseley S.P.J. and Soertsz J.**

JUSTINAHAMY *v.* OBISAPPUHAMY.

106—D. C. (Inty.) Colombo, 12,078.

Interrogatory—Action for damages caused by negligent driving—Interrogatory on the acts and omissions on part of defendant's driver permissible—Interrogatory on method of assessment of damages not allowed—No part of defendant's defence.

The plaintiff sued the defendant for damages for loss of her husband whose death was caused by the negligent driving of the defendant's servant.

The defendant denied liability and set up contributory negligence.

Held, that the defendant was entitled to interrogate the plaintiff as to the acts and omissions constituting the alleged negligence on his part but that the plaintiff was not bound to answer an interrogatory concerning the method of assessment of her damages.

APPEAL from a judgment of the District Judge of Colombo.

J. E. M. Obeyesekere, for defendant, appellant.

E. F. N. Gratiaen (with him *E. G. Wickramanayake*), for plaintiff, respondent.

Cur. adv. vult.

February 19, 1942. MOSELEY J.—

The plaintiff is suing the defendant for damages for the loss of her husband, whose death she imputes to the negligent driving of a servant of the defendant. She claims Rs. 5,000 damages. The defendant in his answer, dated August 30, 1940, denies liability and sets up contributory negligence. On June 13, 1941, the defendant filed two interrogatories,

the first of which was directed towards the alleged acts or omissions on the part of the driver. This interrogatory was answered. The second was in the following terms :—

"How do you estimate the loss and damage amounting to Rs. 5,000 set out in paragraph 5 of the plaint ?"

The plaintiff's answer to this interrogatory was as follows :—

"I am advised that I need not answer as it is not sufficient material at this stage."

The defendant then applied for an order, as provided by section 100 of the Civil Procedure Code, requiring the plaintiff to answer. This appeal is from the refusal of the District Judge to make such an order. The learned District Judge in arriving at his conclusions considered the local authorities which had been brought to his notice, viz., :—*Ralph Macdonald & Co. v. The Colombo Hotels Company* [1] and *Wijeratne v. The China Mutual Life Insurance Company* [2], and considered that neither of these cases is of assistance to the defendant in the present proceedings. He concluded his observations with the following words :—

"The onus of proving her damages lies on the plaintiff. The methods by which such damages are to be assessed are well known ; and there should not be the slightest difficulty for Counsel for the defence, while the trial is proceeding, to cross-examine the plaintiff and her witnesses on the question of damages."

It seems to me that in regard to *Ralph MacDonald & Co. v. The Colombo Hotels Company (supra)* it is only necessary to observe that discovery was ordered by this Court in that case on the ground that it was "highly inconvenient, and a cause of extra expense, for actions to be tried piece-meal . . . ." For the reason given by the learned District Judge in the observations which I have quoted above I cannot see that any similar situation involving inconvenience or expense is capable of arising in the present case. In *Wijeratne v. The China Mutual Life Insurance Company (supra)* the Court (per Bertram C.J.) seems to have been clearly of opinion that a trial might, in certain circumstances, take place piece-meal, and thought that before the defendant, in that case the Insurance Company, should be called upon to disclose its profits, the liability of the company to pay a share of the profits to the plaintiff should be established. The learned District Judge's view that neither case helps the present defendant seems to me the correct one.

Counsel for the respondent drew our attention to the case of *Neckram Dobay v. Bank of Bengal* [3], where the plaintiff sued the Bank for damages for the improper sale of some Government promissory notes which had been deposited as security for certain loans. The defendant Bank sought to interrogate the plaintiff as to his method of estimating the specific amount of damages claimed. In the course of his judgment, Macpherson J. said :—"If the interrogatory is intended to elicit the principle on which the damages are estimated, the defendant is not entitled to discover on the point." "In any case," said he, "the inquiry is premature, as the

[1] *19 N. L. R. 109.* [2] *22 N. L. R. 43.*

[3] *14 Cal. 703.*

question whether there has been any wrongful act committed and whether the plaintiff is entitled to any damages must be first determined". In that case, the learned Judge had considered the English cases from which he deduced the principle that where the question is simply as to the amount of damages to be awarded, and the defendant wishes to satisfy the demand, he is entitled by means of interrogatories to elicit all the information which will enable him to do so. The position was not, however, so clear when the right to damages was in contest. It is not suggested in the case before us on behalf of the defendant that there is any desire on his part to satisfy the demands of the plaintiff.

In a recent case which came before this Court, viz., *Wijesekere v. The Eastern Bank,, Limited* [1], Nihill J., in disallowing interrogatories which had been ordered by a District Court, quoted the following observation of Smith L.J. in *Kennedy v. Dodson* [2]:—

> "The legitimate use and the only legitimate use of interrogatories is to obtain from the party interrogated admission of fact which it is necessary for the party interrogating to prove in order to establish his case;"

So in the present case it seems to me that the defendant, having denied liability and set up contributory negligence, was entitled to interrogate the plaintiff, as he did, as to the acts and omissions constituting the alleged negligence on his part, but that the learned District Judge was right in refusing to order the plaintiff to answer an interrogatory concerning the assessment of damages which matter formed no part of the defendant's case.

I would therefore dismiss the appeal with costs.

SOERTSZ J.—I agree.

Appeal dismissed.