1956 *Present :* Pulle, J., and Sansoni, J.

A. M. APPUHAMY *et al.*, Appellants, *and* A. E. RANASINGHE *et al.*, Respondents

*S. C. 14–15—D. C. Colombo, 22,727*

*Delict—Collision—Negligence—Assessment of damages—Power of appellate court to intervene.*

The appellate court can properly interveno if the sum awarded as damages by a trial Judge in respect of a delict is so inordinately low as to amount to a wholly erroneous estimate of the damage.

[1] *4 S. C. C. 119.*

APPEAL and cross-appeal from a judgment of the District Court, Colombo.

*H. V. Perera, Q.C.*, with *H. W. Jayewardene, Q.C.*, and *A. C. M. Uvais*, for the defendant, appellant in S. C. 14 and respondent in S. C. 15.

*G. E. Chitty*, Q.C. with *A. S. Vanigasooriyar* and *A. M. Coomaraswamy*, for the plaintiff, respondent in S. C. 14 and appellant in S. C. 15.

*Cur. adv. vult.*

May 17, 1956. PULLE, J.—

The plaintiff in this action suffered injuries when a motor car, driven by him on the evening on 29th March, 1948, came into collision with a lorry driven by a servant employed by the defendant. The plaintiff alleged negligence on the part of the lorry driver and claimed Rs. 50,000 as damages. The defendant pleaded that the collision was caused solely by the negligence of the plaintiff and, in the alternative, that it was due to an inevitable accident. He put forward also the plea of contributory negligence. The learned trial Judge held that the collision was due solely to the negligence of the driver of the lorry and awarded the plaintiff Rs. 15,000 as damages.

There are two appeals. The first by the defendant is against the finding of negligence and the second, by the plaintiff, is against the assessment of damages as being inordinately low.

On the issue of negligence the trial Judge has accepted the evidence of the plaintiff that shortly before the collision there was no other vehicle on the road intervening; that the lorry which at first was on its proper side gradually moved towards its right and ultimately collided with the plaintiff's car, although he had slackened his speed and moved to the extreme left of the road.

The driver of the lorry was not called as a witness. The owner who travelled in it gave evidence as also a person called Jacolis Costa. Their evidence that the lorry was following a cart and that, for some reason which is not very clear, the driver applied the brakes whereupon the lorry skidded to the right and the plaintiff's car, coming in the opposite direction, ran into the lorry has been rejected. It was, therefore, inevitable that the Judge should find that the defendant's driver was solely to blame for the collision and we accordingly dismiss the defendant's appeal.

The submissions made to us in support of the plaintiff's appeal are set out compendiously in his petition as follows :

> " The evidence disclosed and the learned trial Judge found that the plaintiff-appellant had suffered several head and face injuries of the most terrible and permanent kind with considerable impairment of hearing, speech and powers of mastication, that the plaintiff-appellant was rendered a victim of insomnia and recurrent pain, that the structure of the plaintiff's face, mouth palate and jaws were broken and permanently deformed that the plaintiff-appellant was as a result of the accident compelled to abandon his career abroad as a student of architecture and that he had endured great pain, suffering and expense during the prolonged period of his stay in hospital ..... in all the circumstances the quantum of damages is grossly inadequate and bears no reasonable compensatory relation to the loss and damage and pain of mind and body caused to the plaintiff-appellant. "

The plaintiff was in the General Hospital from the 29th March, 1948, for three weeks. He re-entered under the care of Dr. M. V. P. Peiris, F.R.C.S., on the 29th April, 1948, and remained till 8th May, 1948. He was again admitted under the care of the same surgeon on the 24th January, 1949, and discharged on the 18th February, 1949.

It cannot be for a moment doubted that the plaintiff suffered very severe injuries. His right ear is completely and the left ear partially deaf. Dr. Peiris describes the result of his examination on the 29th April, 1948, as follows :

> " When I examined him he had fractures of the upper jaw, involving the malar, that is the cheek bone. He had lost several teeth in the upper jaw ... His face was deformed and he was not able to close his jaws ; the jaws did not close properly. One had gone in and one was projecting out. The teeth of the upper and lower jaws were not in alignment. That would cause disability in mastication. The whole of the upper part of the face had been driven in including the nose. "

The plaintiff had to submit himself to a painful treatment to bring the jaws together. Wires were passed through the upper jaw and attached to a frame in order to pull it out. The plaintiff had to be in this position for about two or three weeks. The treatment proved unsuccessful and the final condition of the plaintiff is described as " a permanent deformity in the face and defect in the proper closure of the jaws ". Further, his speech is defective and owing to the damage to the ear sinuses he is liable to constant headaches permanently impairing his general health. The learned Judge says, " He is unable to masticate his food and his health is *ruined* .... The physical [pain that he had to endure was immense ".

At the time of the accident the plaintiff was spending his vacation in Ceylon. He had come from Bombay where he was going through a

five-year course in architecture at the Sir J. J. School of Architecture. He had to abandon these studies and set himself up in an export and import business with a partner to which he contributed a capital of Rs. 4,000.

Our attention has been drawn to several cases in the English reports where sums as large as £9,000 had been awarded as damages to persons who had suffered less grievous injuries than the plaintiff in the present case. I do not feel that the damages awarded in the present case should for that reason be enhanced. It is essential to consider closely the facts of each particular case. The cases are helpful to the extent that a court would not hesitate to award a very large sum by way of damages, if that is the only adequate way of compensating an injured person.

To justify, however, a variation of damages awarded by a Judge of first instance the principle applicable is stated by Viscount Simon in *Nance v. British Columbia Electric Railway Company Ltd.* [1] as follows :

> "Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as the taking into account some relevant factor or leaving out of account some relevant one) ; or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

While the learned Judge has not attempted, perhaps wisely, to quantify the damages under various headings it cannot be said that he misdirected himself on any principle of law or misapprehended the facts. We have before us the case, which is not common, of a plaintiff whose hope of pursuing a professional career has been frustrated by the negligent act of the defendant's servant. Besides having suffered intense bodily pain, he is left with a permanent deformity of his face and is deprived, for the rest of his life, of taking his food in the normal way. A very large part of his sense of hearing is gone and the after effects of the accident have rightly earned the verdict that his health is ruined. It seems to us, with all respect to the learned Judge, that the amount is so inordinately low as to amount to a wholly erroneous estimate of the damage. We, therefore, vary the decree under appeal by enhancing the damages to Rs. 30,000. The plaintiff will be entitled to the costs of his appeal. The order as to costs made by the District Judge will, of course, stand.

SANSONI, J.—I agree.

*Appeal No. 14 dismissed.*

*Appeal No. 15 allowed.*

[1] *(1951) A. C. 601.*