

1937

Present: Maartensz and Koch JJ.

WICKREMANAYAKE *v.* THE TIMES OF CEYLON,
LIMITED.

224—D. C. Colombo, 5,005.

*Defamation—Measure of damages—Proof of special damage unnecessary—
Roman-Dutch law.*

Where, in an action for defamation, the words used by the defendant are *prima facie* actionable it is not necessary to give proof of special damage.

Plaintiff may recover a verdict for damages without giving evidence of actual pecuniary loss.

A PPEAL from a judgment of the District Judge of Colombo.

Hayley, K.C. (with him *N. E. Weerasooria* and *E. B. Wickramanayake*),
for the appellant.

H. V. Perera, K.C. (with him *N. Nadarajah*), for the respondents.

Cur. adv. vult.

November 17, 1937. MAARTENSZ J.—

This is an action for the recovery of a sum of Rs. 20,000 as damages sustained by the plaintiff by reason of a libellous paragraph being published concerning him in the issue of the newspaper known as the Times of Ceylon, dated January 24, 1936.

¹ 21 N. L. R. 165.

The defendants who are the proprietors and editor-in-chief respectively of the newspaper in question admitted the publication of the paragraph and that it was libellous, but denied that the plaintiff suffered the damages claimed. They alleged that they had made all possible amends for the publication of the paragraph by publishing an apology and an expression of regret in the issue of the paper dated January 27, 1936, and they brought into Court a sum of Rs. 500 as representing the damages suffered by the plaintiff.

The District Judge awarded the plaintiff Rs. 500 as damages and directed him to pay the defendants' costs.

The plaintiff appeals from this award.

I do not think it necessary to set out the paragraph complained of in full. It is sufficient to say that it purports to be a report of certain proceedings in the Police Court of Galle in which one Letchimanan Chettiar charged one Mr. Benjamin Jayesekere with cheating, and the plaintiff with abetment.

As the libel must have injured the plaintiff's reputation it is actionable *per se* and the plaintiff may recover a verdict without giving any evidence of actual pecuniary loss. (Nathan's *Common Law of S. Africa*, vol. III., p. 1626, s. 1585.)

The plaintiff in his plaint claimed damages for pain of mind and injury to his reputation, and, judging by the averments in paragraphs 7 to 10 of the plaint, on the ground of his defeat at the poll taken for the election of a member to the State Council by the Galle electorate. The last ground of claim was abandoned at the trial.

It was not alleged or proved that the defamation was deliberate and malicious, or that the defendants, who were deceived by the forgery of the signature of their reporter in Galle, Mr. Wootler, to the communication, were culpably reckless or negligent in the matter. There were therefore no circumstances to enhance the damages.

The 24th of January, 1936, was a Friday. The plaintiff heard of the paragraph that night and instructed his Proctor, Mr. Jayasundere, to send a letter of demand to the second defendant demanding payment of a sum of Rs. 50,000 as damages sustained by the plaintiff by reason of the publication (letter P 8). The letter was according to the second defendant's evidence received by him on the 27th; but he had received on the 25th a telegram from Mr. Wootler in which he denied sending the report. In the issue of the 27th, the second defendant published an apology. I do not think I can possibly accept the suggestion that the apology was a tardy one. P 9 is a copy of the apology that was published. It appeared as a second leading article and is headed "Forged Report sent to 'Times of Ceylon'. Claims for damages follow".

These headlines would certainly draw the attention of the readers of the paper to the article. There should also in my opinion have been a headline to indicate that the article was intended to be an apology for the publication of the report.

The article contains a resumé of the report and states that it has been found to be false, that the Times of Ceylon had no reason to suspect the authenticity of the report, which bore what seemed to be the signature of Mr. S. T. Wootler, the representative of the Times of Ceylon at Galle, and

that letters of demand have been received from Mr. Jaysekere and Mr. Wickremanayake claiming as damages Rs. 20,000 and Rs. 50,000 respectively.

There follows an unqualified apology and an expression of regret for the publication of the report.

The article concluded with a statement to the effect that the apology is published in the earliest possible issue after the receipt of confirmation of the facts, a repetition of the statement that the journal had no reason to suspect the authenticity of the report and that the matter has been placed in the hands of the Criminal Investigation Department.

The second defendant replied to Mr. Jayasundere's letter of demand on January 27 (P 10) intimating that he greatly regretted the publication of the "para" and that he is tendering an apology in the issue of the paper of the 27th, and requesting him in the circumstances to withdraw his letter and claim of January 24.

Mr. Jayasundere replied by letter P 11 dated January 31, 1936, that his client has instructed him to say that his reputation has been irreparably damaged and that the statement that the report was based on a forgery is not proved to his satisfaction.

In conclusion Mr. Jayasundere stated: "My client is willing to reconsider the amount of damage if an unqualified apology is tendered to him through your journal".

The second defendant inquired what further apology was required (P 12).

Mr. Jayasundere in reply sent a draft of the apology (P 14) which his client wanted published in a prominent place in the newspaper.

The draft apology is a resumé of the report, a statement that the report is false and an expression of regret for the pain of mind and body unwittingly caused to Mr. Wickremanayake.

The second defendant replied that he was prepared to publish the apology on condition that the claim for damages was withdrawn (P 15).

The condition was not agreed to and the apology required by the plaintiff was not published.

The plaintiff in evidence admitted, at page 26 of the record, that the three paragraphs of the article published in the issue of January 27 were by themselves a complete apology. He alleged however that it was qualified by the introduction of the letters of demand. The plaintiff appears to object to the reference to the letters of demand on the ground that it suggests that the plaintiff himself sent a false report to the "Times" for the purpose of making money (page 23 of the record). On the same page, he said that he learnt from Mr. Jayasundere that Mr. Wootler made this suggestion to Mr. Jayasundere. Mr. Jayasundere denied hearing Mr. Wootler making such a statement (page 51). He said however that there was general talk to that effect and that it may have reached him tenth hand. There is therefore no reliable evidence that anyone drew from the reference to the letters of demand an inference that the plaintiff sent a false report to the newspaper for the purpose of making money. In my judgment there is nothing in the article containing the apology from which such an inference can reasonably be drawn.

Apart from the omission in the heading of any words to indicate that the article was intended to be an apology—which I have already referred to—the article was, in my opinion, an adequate apology and it is as required coupled with an expression of regret for the publication of the false report. The District Judge has therefore not misdirected himself, as was urged by the appellant, regarding the adequacy of the apology, and, as I have already observed, there was no tardiness in its publication. No exception was taken to the apology on the ground that it did not appear in a prominent place in the newspaper or that it was printed in such small type as to escape the notice of a reader of the paper.

It was also urged that the District Judge had misdirected himself as regards the claim for damages resulting from the injury to the plaintiff's reputation. On this point the District Judge in his judgment said: "No damages need be considered on the ground that plaintiff has lost professionally, for plaintiff himself cannot produce a single person who has deserted him; he says it is too early to judge. If for 24 years plaintiff had held a very high place in the public esteem, and has proved to his clients that he is quite dependable, I should be very surprised to find any client deserting him because of some publication in a newspaper which had never reached him, and which newspaper subsequently apologised for the publication. If by any accident his clients include some rogues I should imagine that the fact that he was suspected of some sharp practice will only commend him to them on that ground. Damages, therefore, need not be considered on that ground.

"There then remains only to consider damages on the ground of the pain of mind which the plaintiff had sustained by the publication of the libel. I do not think one need consider the question of loss of reputation or pecuniary loss at all. His reputation seems to be as high as it was before".

The law on this point as stated by *Odgers on Libel and Slander*, pp. 304 and 305 is as follows:

"When on the face of them the words used by the defendant clearly must have injured the plaintiff's reputation, they are said to be actionable *per se*; and the plaintiff may recover a verdict for a substantial amount without giving any evidence of actual pecuniary loss".

"General damages are such as the law will presume to be the natural or probable consequence of the defendant's conduct. They arise by inference of law, and need not therefore be proved by evidence. Such damages may be recovered wherever the immediate tendency of the words is to impair the plaintiff's reputation, although no actual pecuniary loss has in fact resulted. They will only be presumed where the words are actionable *per se*".

Under the Roman Dutch law, "where words are defamatory they are *prima facie* actionable, and it is unnecessary, whether they be spoken or written, to give proof of special damage". (*Nathan*, vol. III. p. 1626, s. 1585).

The observations I have quoted from the judgment are not consonant with the law as laid down in the passages from *Odgers* and *Nathan*. They indicate that the District Judge has not distinguished between general and special damages.

The District Judge awarded the sum of Rs. 500 as damages for pain of mind only.

In my judgment he should have awarded the plaintiff damages for injury to his reputation as well. I do not think it necessary to remit the case to the District Judge to assess the damages as they do not depend on any findings of fact and we are in as good a position as the District Judge for the purpose of deciding what sum should be awarded as damages for injury to the plaintiff's reputation.

I think the plaintiff should be awarded a sum of Rs. 500 for injury to his reputation in addition to the amount awarded.

The plaintiff will have costs in the Rs. 1,000 class and pay the defendants the difference as excess costs incurred by them by reason of the action being brought in a higher class.

The plaintiff in his petition of appeal prayed for judgment for Rs. 20,000. He has succeeded to only a very small extent. I accordingly make no order as to the costs of appeal.

Koch J.—I agree.

Judgment varied.

