

1946

Present: Keuneman S.P.J. and Jayetilleke J.

KURUPPU, Appellant, and IRANGANI GUNESEKERE,
Respondent.

319—D. C. Colombo, 19,919.

Breach of promise of marriage—Exemplary damages—Certain circumstances which do not justify imposition of exemplary damages.

In an action for breach of promise of marriage the following are items of evidence to be taken into account in determining whether exemplary damages should be awarded: (1) the fact that it was the plaintiff who induced the defendant to promise to marry her, (2) the fact that both parties knew before the engagement that there was a serious obstacle in their way, and that the breach was mainly due to this anticipated cause.

The fact that after the action was instituted the defendant at first denied and later admitted that there was a promise in writing is not a good ground for awarding exemplary damages.

A PPEAL from a judgment and decree of the District Court of Colombo.

The plaintiff sued the defendant for damages for breach of promise of marriage. In awarding Rs. 3,500 as damages the trial judge thought that "the conduct of the defendant does call for some degree of exemplary damages".

The evidence in the case disclosed that the engagement was mainly due to the initiative of the plaintiff and that it was broken off because the consent of the defendant's mother could not be obtained. The opposition of the defendant's mother was well known to both parties from the beginning. The defendant was a fairly young man entirely dependent on his mother. In the circumstances it was contended in appeal that the imposition of exemplary damages was not justified.

H. V. Perera, K.C. (with him *E. B. Wikramanayake*), for the defendant, appellant.—The trial judge held that this case was one which called for exemplary damages. This finding cannot be justified. The plaintiff was older than the defendant and the engagement was mainly due to the initiative of the plaintiff. The engagement was short lived, namely, 5 months. Not much publicity was given to the engagement. Finally, the engagement was broken off because the consent of the defendant's mother was not obtained. The opposition of the defendant's mother was well known to the plaintiff right from the start.

Further the defendant is entirely dependent on his mother. He owns a quarter share of lands valued at Rs. 28,000 subject to a life interest in the mother and subject to a *fidei commissum* in favour of his children. The defendant's interests cannot be worth much. The defendant now draws a salary of Rs. 177.50 a month.

Under the circumstances this was a case which only called for nominal damages. See *Mashin v. de Silva*¹.

N. Nadarajah, K.C. (with him *H. W. Jayewardene*), for the plaintiff, respondent.—It was nothing wrong if the plaintiff set about to secure

¹ (1942) 23 C. L. W. 107.

the engagement. There is no doubt that the parties were very much in love with each other. The defendant entered the engagement fully aware of his mother's opposition.

The plaintiff is past thirty and has lost prospects of contracting any other marriage now. She has lost a good job for the sake of the anticipated marriage and has spent over Rs. 1,000 in getting her trousseau ready.

The conduct of the defendant has been dishonourable firstly in trying to induce the plaintiff to break off the engagement; secondly, in taking refuge under his mother's opposition and finally in denying in his answer that he promised to marry the plaintiff in writing.

Apart from actual expenses incurred and compensation for loss of marriage special damages may be awarded to punish the defendant. See *Gunasekera v. Amerasinghe*¹, *Quirk v. Executor of Thomas*². Exemplary, punitive or vindictive damages may be given. See Van Zyl Vol. II., 3rd Edition 588; Nathan: Law of Damages p. 86 and p. 178; 10 Halsbury 110 (Hailsham Edition).

The defendant is an Honours Graduate and the property of which he owns a quarter share must be worth much more than Rs. 28,000 now.

The damages assessed by a judge or jury should not ordinarily be interfered with. See *Flint v. Lovell*³.

Cur. adv. vult.

November 1, 1946. KEUNEMAN S.P.J.—

The plaintiff brought this action for breach of promise of marriage. The District Judge entered decree for the plaintiff for Rs. 3,500 and costs. In awarding this sum the District Judge thought that "the conduct of the defendant does call for some degree of exemplary damages".

The only question in this appeal relates to the question of damages.

The evidence in the case discloses that the plaintiff, who was some years older than the defendant, first fell in love with the defendant, and that she tried to interest the defendant in herself and to induce him to propose to her. In fact in one of her letters she says—"I have simply forced you to love me, and you are already getting tired of me" (see D 12 of September 30, 1942). There is good reason to think that the engagement was mainly due to the initiative of the plaintiff, and the District Judge has in substance so held. He has however pointed out that the plaintiff did this in a proper manner and that no blame can be attributed to her. He has accordingly held that this fact is a ground neither of mitigation nor of aggravation.

In my opinion this finding is not quite correct. The fact that it was the plaintiff who induced the defendant to promise to marry her is surely an item of evidence to be taken into account in determining whether exemplary damages should be awarded.

The plaintiff and the defendant became engaged to be married about the middle of August, 1942, and from that date several letters passed between the two indicating that they were deeply in love with each other. But from the beginning it was realized by both of them that there was a serious difficulty in their way, and that was the improbability

¹ (1910) 5 A. C. R. 123.

² (1916) L. R., 1 K. B. 516 at 527.

³ (1935) L. R., 1 K. B. 354 at 359 and 360.

of the defendant's mother consenting to the marriage. There can be no question but that the parents of the plaintiff desired that consent, and that the plaintiff herself fully appreciated the difficulty even before the engagement commenced (see D 9).

Within a few days of the engagement (see defendant's letter P 10 of August 17, 1942) it was made quite clear that the prospect of getting the consent of the defendant's mother was negligible. The plaintiff replied by D 9 of August 19, 1942, strongly urging the defendant not to tell his mother for the time being, and in a later letter (D 10 of August 24, 1942) she suggested that his mother should not be informed till after the notice of marriage had been given. The District Judge has held that it was the defendant who first suggested this policy of silence, but no evidence has been shown to me which supports that view, and the documents clearly indicate that it was the idea of the plaintiff and that the defendant only reluctantly fell in with her suggestion. The policy of silence failed, because the defendant's mother received information from interfering friends and at first suspected and later about October, 1942, received confirmation of her suspicions. As the defendant put it in P 14 of October 22, 1942, "I had no need to tell my mother, for she forestalled me by coming down on her son in a flood of tears. I said very little for I knew it was useless". The defendant at the time hoped that he would still be able to win his mother's approval, but the mother took energetic action, even visiting the plaintiff's parents with a view to ending the engagement. There can be little doubt that this was the rock on which the engagement foundered. At the time the defendant was a fairly young man entirely dependent on his mother.

From then it was only a question of time for the engagement to be broken off.

Now it is a matter to be taken into consideration that both parties knew before the engagement that there was a serious obstacle in their way, and that the breach was mainly due to this anticipated cause. Had the policy of silence not been adopted at the instance of the plaintiff, it seems clear that the engagement would have had an earlier termination. This aspect of the matter has not really been appreciated by the District Judge but I think it has a strong bearing on the question whether exemplary damages should be awarded in this case.

The engagement was in fact broken off by the defendant in January, 1943, and the whole period of the engagement was four or five months. Very little publicity was given to the engagement. The defendant's mother was not informed of it and efforts were made to prevent her hearing of it. It is true that the plaintiff's father and mother were informed and that the plaintiff informed some of her friends, but there is no evidence to suggest that other possible suitors were likely to have heard of the engagement and been deterred.

There is one matter which is urged against the defendant. In his letter P 9 of January 6, 1943, the defendant wrote that he had grown into one of the "more disagreeable and unacceptable" of the "Sama Samajists" and had entertained the view that he did not believe in an attachment between a man and a woman for the rest of their lives. He however

hastened to add that in his case there was no other girl involved. The plaintiff quite sensibly replied in D 17 that she knew several people who were Sama Samajists and had noticed nothing queer about them. The District Judge thought that P 9 was written by the defendant to try and induce the plaintiff herself to break off the engagement. There may be some substance in this, and the letter certainly was not written in a spirit of candour and sincerity. But I do not think that, in weighing all the circumstances, we must count this a sufficient reason for giving exemplary damages. Apart from this, there is no question that the defendant's conduct has not been dishonourable and that he has not attempted to take advantage of the plaintiff's affection for him.

After the action was instituted the defendant at first denied and later admitted that there was a promise in writing. I am not satisfied however that this is a good ground for awarding exemplary damages. In all the circumstances I do not think this is a case that calls for the imposition of exemplary damages.

At the time the defendant broke off the engagement he was a student working for the Civil Service Examination. He was entirely dependent on his mother. He had property—a quarter share of certain lands gifted by his father, valued at about Rs. 28,000 in 1934, and probably worth much more now; but the gift was subject to a life interest in favour of the mother and also to a *fidei commissum* in favour of the children of the defendant.

The defendant did not succeed in getting a post in the Civil Service and is now employed as a schoolmaster, in receipt of emoluments to the extent of Rs. 177-50 a month. The District Judge rightly held that the defendant "though not destitute, is at present without means". His future earnings are problematic. I have also pointed out that the defendant did no harm to the plaintiff and that the engagement was of very short duration and received only a very limited publicity. The plaintiff on the other hand has said that at the request of the defendant she refused an offer of employment as a Junior Matron in a Ratnapura school. No details have been given as to the salary or the terms of employment and it is difficult to assess the damages in this respect. Counsel for plaintiff also claimed that she should be awarded Rs. 1,000 for clothes alleged to have been made for the wedding. The District Judge has not allowed this item and there is an absence of detail and of corroboration in this respect, and further it is not clear why clothes should have been ordered for the wedding when the date had not been fixed. I do not think this last item can be entertained.

In all the circumstances I think the amount of Rs. 3,500 awarded by the District Judge is too high and that exemplary damages are not called for. I think a fair estimate of the damages is Rs. 2,000, and I accordingly substitute that sum for the sum awarded by the District Judge.

The defendant-appellant is entitled to half the costs of this appeal. The order for costs in favour of the plaintiff in the District Court will stand. The counter-objections of the plaintiff are dismissed.

JAYETILEKE J.—I agree.

Appeal partly allowed.