IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal filed under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended by Act No. 54 of 2006.

SC Appeal No. 107/2019
SC/HCCA/LA/80/2019
WP/HCCA/MT/08/2017
DC Moratuwa Case No. 1311/M

Konni Arachchige Sriyanthi Samanmali,
37/12, 3rd Lane, Rawathawatta, Moratuwa.

PLAINTIFF

Vs

Suraweera Arachchige Milton Suraweera
Driver of the Army, No. 83821,
Army Camp, Panagoda, Homagama,

Presently at, Polgahakanda,
Guruwala, Dompe.

DEFENDANT

And between

Konni Arachchige Sriyanthi Samanmali,
37/12, 3rd Lane, Rawathawatta, Moratuwa.

PLAINTIFF – APPELLANT

- Vs -

Suraweera Arachchige Milton Suraweera
Driver of the Army, No. 83821,
Army Camp, Panagoda, Homagama,

Presently at, Polgahakanda,
Guruwala, Dompe.

DEFENDANT – RESPONDENT

And now between

Suraweera Arachchige Milton Suraweera
Driver of the Army, No. 83821,
Army Camp, Panagoda, Homagama,

Presently at, Polgahakanda,
Guruwala, Dompe.

DEFENDANT – RESPONDENT – APPELLANT

- Vs -

Konni Arachchige Sriyanthi Samanmali,
37/12, 3rd Lane, Rawathawatta, Moratuwa.

PLAINTIFF – APPELLANT – RESPONDENT

Before: **Vijith K. Malalgoda, PC, J**
Mahinda Samayawardhena, J
Arjuna Obeyesekere, J

Counsel: S. A. D. Suraweera for the Defendant – Respondent – Appellant

Harindra Banagala with T.M.J.M. Tennekoon for the Plaintiff – Appellant – Respondent

Argued on: 16th June 2023

Written Submissions: Tendered on behalf of the Defendant – Respondent – Appellant on 20th August 2019

Tendered on behalf of the Plaintiff – Appellant – Respondent on 1st December 2021

Decided on: 2nd August 2024

Obeyesekere, J

This is an appeal arising from a judgment delivered on 6th February 2019 by the Civil Appellate High Court of the Western Province holden at Mount Lavinia [the High Court]. By the said judgment, the High Court, (a) set aside the judgment delivered by the District Court of Moratuwa on 10th October 2016 dismissing the plaint, and (b) granted the relief prayed for by the Plaintiff – Appellant – Respondent [**the Plaintiff**].

Aggrieved, the Defendant – Respondent – Appellant [**the Defendant**] sought and obtained the leave of this Court on 19th June 2019 on four questions of law.

The facts in brief

It is admitted that on 17th May 2004, the Defendant, who was attached to the Sri Lanka Army, had driven a water bowser belonging to the Sri Lanka Army bearing No. ශ්‍රී7468 to the Moratuwa Depot for a mechanical examination of the said vehicle. Around 3.30pm that day, while travelling on the Galle Road from Moratuwa towards Panadura, the left rear wheel/s of the water bowser driven by the Defendant had run over Prasanna Ranjith, who was riding a push bicycle on the main road and caused his death.

The Plaintiff who is the widow of Prasanna Ranjith filed action in the District Court of Moratuwa claiming that the accident occurred due to the negligence of the Defendant. She had stated that her husband was the sole breadwinner of the family and was responsible for providing for their three young children. She had claimed a sum of Rs. 1,500,000 as damages from the Defendant. In his answer, the Defendant admitted that he was the driver of the said bowser but denied that Prasanna Ranjith was run over after being knocked down by the bowser. It was the position of the Defendant that he was not negligent and that the said accident occurred due to the negligence of the deceased.

At the trial, the Plaintiff gave evidence and led the evidence of an Officer from the Moratuwa Police who had conducted the investigation into the accident. Neither of these two witnesses had seen the incident. Thus, at the close of the Plaintiff's case, the evidence available was the sketch of the accident prepared by the Police that showed that Prasanna Ranjith had been run over by the bowser driven by the Defendant, the place of impact

and the situation of the bowser after Prasanna Ranjith had been runover. The Defendant thereafter gave evidence where he narrated his version of the manner in which Prasanna Ranjith had been run over. After a trial spanning over ten years, the learned District Judge delivered the judgment on 10th October 2016 dismissing the plaint. On appeal, the learned Judges of the High Court set aside the said judgment, and awarded the Plaintiff the sum of Rs. 1,500,000 claimed as damages.

Questions of law

Leave to appeal has been granted in respect of the following questions of law:

(1) Whether the Plaintiff has led evidence to establish the fact that the said accident had taken place due to the negligence and/or reckless driving on the part of the Defendant?

(2) Whether the Plaintiff has established before Court that she is entitled to compensation of Rs. 1,500,000?

(3) Could the Plaintiff have and maintain the present action in the present form without adding the State as a party to the present action?

(4) In the circumstances pleaded, is the judgment of the District Court according to law and according to evidence adduced in the case?

Failure to name the State as a defendant

Where injury has been suffered as a result of a motor accident involving a vehicle driven by any person other than the owner of such vehicle, it is not mandatory that the owner be added as a defendant. However, as a matter of practice, the owner is named as a defendant on the basis that the owner is vicariously liable for the acts of his servant or agent who was driving the vehicle. It has been pointed out by Dr. Wickrema Weerasooria in **Law Governing Insurance, Negligence Damages and Third Party motor claims** [2013] that, "*All text writers are agreed that the common law rule that the owner of a vehicle is normally vicariously liable for the negligent driving of his or her vehicle was the result of*

judicial decisions. … The Courts established this rule because often the driver was a 'man of straw' that is a person who did not have the financial means to pay for the damages/injuries he had caused. "

However, an employer is vicariously liable only for those acts that are committed by his or her employee during the course of that employee's employment but not in respect of other acts committed by such employee. In paragraph 2 of the plaint, the Plaintiff had alleged that the Defendant was driving vehicle No. ශ්‍රම7468 at the time of the accident but had not alleged that the Defendant was doing so in the course of his employment with the Sri Lanka Army. The Defendant too had admitted that he was driving the said vehicle but had not taken up the position that he was acting within the course of his employment at the time of the accident. As a result, the 3rd question of law was not raised by either party before the trial Court.

Taking into consideration all of the above, I am of the view that the failure to name the State as a defendant is not fatal to the maintainability of this action against the Defendant. The 3rd question of law is therefore answered in the affirmative.

Requirements of an Aquilian action

I shall now consider the 1st and 4th questions of law.

While the Aquilian action and the *Actio Injuriarum* are the foundation stones of the Roman-Dutch Law of delict, the Aquilian action is the general remedy for wrongs to interests of substance (monetary or financial loss), while the *Actio Injuriarum* is the legal remedy for wrongs to interests of personality (such as compensation for insult and abuse etc). Where death or physical injury has been caused in motor accidents, the legal remedy for seeking civil damages is the Aquilian action.

As pointed out by Professor R.G. McKerron in his treatise, **Law of Delict** [7th edition (1971); Juta and Company Limited], the three essentials for liability in the Aquilian action are as follows:

"*first, a **wrongful act**; secondly, **pecuniary loss** resulting to the plaintiff; and, thirdly, **fault** on the part of the defendant. The first requirement means that the act complained of must involve the invasion of a right - that is to say, the violation of a legally protected interest - pertaining to the plaintiff. The second requirement speaks for itself. The third requirement means that the loss must be imputable to the defendant; that is to say, the defendant must have intended the loss or could by the exercise of reasonable care have prevented it - in the terminology of the Roman Law, he must have been guilty either of dolus or of culpa*." [Page 13]

McKerron goes on to state as follows:

"*The question for judges and juries is not what a man was thinking or not thinking about, expecting or not expecting, but whether his behaviour was or was not such as we demand of a prudent man under the given circumstances. Considered as an objective test, **negligence may be defined as conduct which involves an unreasonable risk of harm to others. It is the failure in given circumstances to exercise that degree of care which the circumstances demand***." [Page 25}

"*But negligence will not be a ground of civil liability unless there existed in the particular case a legal duty to use care. A man cannot be charged with negligence if he has no obligation to exercise diligence. The legal conception of negligence, therefore, involves two elements – a duty of care and a breach of that duty*."

"*The duty to take care is the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others, and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed*." [page 26]

"*No duty of care exists **if the defendant could not reasonably have foreseen that his act might cause harm to the plaintiff**. … A person must take precautions against harm happening to another if the likelihood of such harm would be realised by the reasonable prudent man. He is not however bound beyond that. He need not take*

precautions against a mere possibility of harm not amounting to such a likelihood as would be realised by the reasonably prudent person." [page 28]

"*In determining the amount of care that a reasonable man would take in a given case there are two main considerations. The first is the degree of risk run – the likelihood of the injury being in fact caused. The second consideration is the seriousness of the injury risked – the gravity of the consequences if an accident should occur*." [Page 37]

"*The question whether, in any given situation, a reasonable man would have foreseen the likelihood of harm and governed his conduct accordingly, is one to be decided in each case upon a consideration of all the circumstances. Once it is clear that the danger would have been foreseen and guarded against by the diligence paterfamilias, the duty to take care is established, and it only remains to ascertain whether it has been discharged*." [page 29]

Evidence led by the Plaintiff

I shall now examine the evidence in order to determine if the Plaintiff has established that the Defendant owed a duty of care towards Prasanna Ranjith and whether that duty of care has been breached by the Defendant.

It is clear from the evidence of the Police Officer that, that part of Galle Road between Katubedda Junction and the beginning of the new Galle Road at Moratuwa consisted of three lanes in each direction and that the carriageway was separated by a centre island. The accident which resulted in Prasanna Ranjith who was cycling on Galle Road in the same direction as the bowser and in front of the bowser being run over by the left side rear wheel/s of the bowser had occurred opposite Dharmarama Road situated on the seaside while the bowser was travelling towards Moratuwa.

According to the sketch prepared by the Police of the scene of the accident [**P9**], the cumulative width of all three lanes was 8.4m from the edge of the pavement situated on the left side of the road upto the edge of the centre island on the right side. Although the Police Officer had not measured the width of each lane, it is safe to assume that each lane

was of equal width and therefore each lane was 2.8m wide. The point of impact was 3.4m away from the edge of the pavement, which means that the deceased was travelling on the left side of the centre lane at the time of the accident.

By the time the Police arrived at the scene of the accident, the deceased had been taken to hospital, where he succumbed to his injuries the same day. It is admitted that the left rear wheel of the water bowser had run over the deceased. The Cause of Death Form [**P6**] confirms that the death occurred due to, "*haemorrhage and shock due to multiple injuries to the chest, abdomen and pelvis due to blunt injuries consistent with runover injuries.* "

Although the Plaintiff is unable to state the precise manner in which the accident occurred, the Defendant owed a duty of care to a fellow road user who was travelling in front of him. With it being established that Prasanna Ranjith had been run over by the left side rear wheel/s of the bowser and that on the face of it the duty of care owed to Prasanna Ranjith has been breached by the Defendant, I am satisfied that the Plaintiff has established a prima facie case of negligence on the part of the Defendant.

<u>The evidence of the Defendant</u>

The evidence of the Defendant is therefore critical in determining the manner in which the accident occurred. The Defendant states that having completed the mechanical examination of the vehicle, he was travelling with another person who was attached to the Moratuwa Depot at a speed of 20-30km on the Galle Road. He states that around 3.30pm, **he saw** three cyclists travelling ahead of him. The Defendant does not state on which lane he was travelling nor does he state the lane on which the three cyclists were travelling. However, in view of the fact that, (a) the point of impact was 0.6m from the left edge of the centre lane, (b) the front of the bowser did not knock Prasanna Ranjith, (c) the bicycle did not have any damage, and (d) the evidence of the Defendant that he overtook the three cyclists from the right, it appears that the Defendant's vehicle was behind the cyclist on the centre lane, and most importantly, that the cyclists were clearly visible to the Defendant.

Having gone past the cyclists, the Defendant states that he heard a noise, which prompted him to immediately look at the side mirror of the bowser and at which point of time he saw one of the cyclists – Prasanna Ranjith – hit the left side of the bowser. Given the fact that, (a) there is no evidence to suggest that the front of the bowser hit Prasanna Ranjith, and (b) Prasanna Ranjith was run over by the rear wheel/s of the bowser, it appears that Prasanna Ranjith has been hit by the side of the bowser as soon as it passed him. I have already noted that the bicycle had not been damaged as a result of the accident, which means that the bicycle did not hit the bowser but that it's the bowser that brushed against Prasanna Ranjith as a result of the Defendant's failure to maintain a safe distance from the cyclist at the time of overtaking him.

Analysis of the evidence by the District Court

I shall at this point refer to the following analysis of the evidence by the District Court of the manner in which the accident took place:

> "එම අවස්ථාවේ පැමිණිලිකාරියගේ ස්වාමි පුරුෂයා පාපැදියක් පදවමින් ප්‍රධාන මාර්ගයේ ගමන් කරමින් සිටි ඇති අතර, විත්තිකරු පාපැදිය පසු කර ඉදිරියට තම බවුසර් රථය ධාවනය කරමින් සිටියදි පාපැදිකරු බවුසර් රථයේ ගැටීමෙන් මෙම අනතුර වූ බවට පැමිණිල්ලෙන් සාක්ෂි ඉදිරිපත් කර ඇත. **විත්තිකරු විසින් පදවාගෙන ගිය බවුසර් රථයේ පැමිණිලිකාරියගේ ස්වාමි පුරුෂයා පදවාගෙන ගිය පාපැදිය ගැටුනු බවට ඉදිරිපත් වූ සාක්ෂිය විත්තියෙන් හබ කර නැත. විත්තිකරු ද, එය පිළිගෙන ඇත.** විත්තිකරු තම සාක්ෂියේ දි පාපැදිය තම වාහනයේ පිටුපස ප්‍රදේශයේ වැදුනු බවට දැනුණු බව පවසා ඇත. එසේම ඔහුගෙන් හරස් ප්‍රශ්න අසන ලද අවස්ථාවේ දි විත්තිකරු තම පැති කණ්ණාඩියෙන් පාපැදිය තම බවුසර් රථයේ පිටුපස වම් ටයරය අසල ගැටෙනවා දුටු බවට පොලිසියට ප්‍රකාශයක් ලබා දි ඇති බවට පිළිගෙන ඇත. **ඒ අනුව පාපැදිය බවුසර් රථයේ ගැටීම පිළිබඳව පාර්ශවයන් අතර හබයක් නොමැති බවට පැහැදිලිය. එසේම බවුසර් රථය ඉදිරියට ගමන් කරමින් සිටියදි බවුසර් රථයේ වම්පස පිටුපස ටයරය අසල පාපැදිය ගැටුණු බවටද, පාර්ශ්වයන් අතර හබයක් නැත.**
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> පෙර සඳහන් කළ පරිදි මෙම අනතුර විත්තිකරු විසින් ධාවනය කරමින් තිබූ බවුසර් රථයේ වම්පස පිටුපස ටයරය අසල පැමිණිලිකරු ධාවනය කළ පාපැදිය ගැටීමෙන් සිදු වී ඇති බවට තහවුරු වී ඇත. ඒ අනුව විත්තිකරුගේ ලොරි රථය ඉදිරියෙන් පාපැදිය ගැටීමෙන් සිදු වූ අනතුරක් නොවන බවට පැහැදිලිය.
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> මෙම අනතුර සිදුවීම සම්බන්ධයෙන් තහවුරු කිරීම සඳහා සාක්ෂි දිමට පැමිණි මොරටුව පොලිස් ස්ථානයේ නිලධාරියෙකු වන පොලිස් කොස්තාපල් 70877 සුසන්ත කුමාර යන අයගේ සාක්ෂි සැලකිල්ලට ගැනිමේ දි පෙනි යන්නේ, **මෙම අනතුර සිදු වූ ස්ථානයේදිම විත්තිකරු තම බවුසර් රථය නවතා තිබූ බවය. ගැටීමෙන් අනතුරුව විත්තිකරු වාහනය ඉදිරියට ධාවනය කර නොතිබූ බව ඔහුගේ**

සාක්ෂිය අනුව තහවුරු ව ඇත. වින්තිකරු ද පවසා සිටියේ අනතුර සිදු වූ අවස්ථාවේ තමන් ඉතාමත් අඩු වේගයකින් තම බවුසර් රථය ධාවනය කරමින් සිටි බවය."

Breach of the duty of care

This brings me to the most important question in this case, that being whether the conduct of the Defendant falls below the standard expected of a reasonable prudent man. Any reasonable prudent man overtaking another road user would know that the failure to maintain a safe distance from other road users when overtaking such road users, can endanger the lives of such other road users and result in a breach of the duty of care owed to such road users.

In order to answer the above question, and bearing in mind that the point of impact was 0.6m on the centre lane, I shall come back to the point at which the Defendant, travelling behind the cyclists on the centre lane, decided to overtake the cyclists. Section 148(3) of the Motor Traffic Act provides that, "*A motor vehicle shall not be driven so as to overtake other traffic unless the driver of the vehicle has a clear and unobstructed view of the road ahead of him.*" With the width of one lane being 2.8m, and with the distance from the left side edge of the road to the point of impact being 3.4m, it is clear that the cyclist was on the left side of the centre lane. Given the width of the bowser, the Defendant could not have overtaken the cyclist while remaining on the centre lane. He was therefore required to move completely onto the corner right lane in order to safely overtake the cyclist and avoid brushing against the cyclist. The Defendant does not state there were vehicles on his right side which prevented him from moving the bowser completely onto the corner right lane of the road. Had he said there were vehicles on the corner right lane of the road, the Defendant could not and should not have overtaken the cyclist while being on the centre lane as the width of the lane was insufficient to safely pass the cyclist. With a vehicle not being there on the corner right lane, the Defendant could have moved completely onto the right corner lane, and with there being a distance of over 2.2m between the left side of the bowser and the cyclist, the Defendant could have safely overtaken the cyclist.

But, in view of the distance from the left edge of the road to the point of impact [3.4m], it is clear that the bowser driven by the Defendant was partially on the centre lane and partially on the right lane at the time it overtook Prasanna Ranjith. This proves that the Defendant did not move completely onto the right lane as he should have in order to overtake Prasanna Ranjith but did so, if at all, only partially. Given the space available on the right side of the road, it is clear that the Defendant failed to maintain a safe distance between the cyclist and the bowser at the time he overtook the vehicle, thus resulting in the left side of the bowser brushing against Prasanna Ranjith and throwing him under the rear wheel of the bowser. The fact that an accident will occur if one fails to maintain a safe distance when overtaking a vehicle is a result foreseeable to a reasonable prudent man. I am therefore satisfied that the Defendant has breached the duty of care he owed to Prasanna Ranjith.

Findings of the District Court and the High Court

Although the District Court had analysed the evidence correctly, it erred, when it came to the following conclusion:

> "මෙම අනතුර සිදු වූ අවස්ථාවේ විත්තිකරු තම බවුසර් රථයේ මාර්ගයේ මැද නිරුවේ ධාවනය කරමින් සිටි බවට පැමිණිල්ලේ සාක්ෂි අනුව තහවුරු වී ඇත. එය පොලිස් නිලධාරියාගේ සාක්ෂි අනුව පැහැදිලි වේ. එසේම විත්තිකරු ධාවනය කළ බවුසර් රථයට වම්පසින් මාර්ගයේ මීටර් තුනකට අධික ඉඩ ප්‍රමාණයක් අනෙකුත් වාහන ගමන් කිරීම සඳහා තිබූ බවට ද ඔහුගේ සාක්ෂිය අනුව තහවුරු වී ඇත. ඒ අනුව පාපැදිකරු වන මිය ගිය අය හට තම පාපැදිය ධාවනය කිරීම සඳහා ප්‍රමාණවත් ඉඩ තිබූ බවට එමගින් තහවුරු වේ. ඒ අනුව පැමිණිල්ලෙන් ඉදිරිපත් කර තිබෙන සාක්ෂි සැලකිල්ලට ගැනීමේ දී මෙම නඩුවේ විත්තිකරු අදාල අවස්ථාවේ නොසැලකිලිමත් ලෙස තම බවුසර් රථය ධාවනය කරමින් සිටි බවට ද ඔප්පු වී නොමැති බවට තීරණය කරමි."

The District Court has proceeded on the basis that the cyclist had sufficient space to travel on the left lane of the road but has failed to consider that it was the Defendant who was behind the cyclist and that the Defendant had sufficient space to overtake the deceased from the right without being too close to the cyclist but that the Defendant failed to do so.

The High Court however found that the Defendant had been negligent for the following reasons:

"*The Defendant's own version of the accident as stated in his aforesaid testimony has not even been considered by the learned Additional District Judge, when he was delivering the said judgment.*

Had the aforesaid evidence of the Defendant been considered and evaluated by the learned Trial Judge in a judicious perspective, he could not have arrived at the conclusion that the Defendant was not guilty of negligence. The said evidence would clearly establish that the Defendant has seen the deceased cyclist riding in front of him before the collision and that the accident occurred only because of the fact that the Defendant attempted to overtake the three cyclists including the deceased.

The learned Additional District Judge has arrived at a conclusion that the deceased cyclist had collided with the vehicle driven by the Defendant which is not supported by the evidence of this case. ***It is evident that after overtaking the cyclist, the Defendant had taken the bowser truck on to his left side of the road*** *where the rear left side tyre collided with the cyclist. Thereafter the Defendant saw the collision from the left side mirror of the bowser truck.*

It is my view that the learned Trial Judge has not given due consideration to the evidence relating to the investigation, how the accident took place.

While overtaking the cyclist, the Defendant shouldn't have taken the bowser truck on to his left side of the road, obstructing the path of the cyclist. It shows the Defendant driver was driving the bowser negligently." [emphasis added]

The above conclusion reached by the High Court is consistent with the position of the bowser after the accident, as borne out by the sketch P9 and the evidence of the Police Officer, and establishes that the Defendant has breached the duty of care that he owed to Prasanna Ranjith. In these circumstances, I am of the view that the Plaintiff has established that the accident took place due to the negligence on the part of the Defendant. I would therefore answer the 1st question of law in the affirmative and the 4th question of law in the negative.

Damages

Professor McKerron in his treatise, **Law of Delict** [supra], states that:

> *"Damages are also distinguishable as being either sentimental or patrimonial. Sentimental damages are damages awarded as a solatium for wounded feelings or for mental pain or suffering. As a general rule, sentimental damages will not be awarded unless the wrong complained of constitutes an injuria. Patrimonial damages, on the other hand, are damages awarded as compensation for calculable pecuniary loss sustained by the plaintiff in consequence of the wrong complained of."* [Page 113]
>
> *"The plaintiff must prove that the act complained of caused him damnum – that is, patrimonial loss. By damnum is meant not damage to a thing, but pecuniary loss, accrued or prospective, to the person injured; that is to say, loss in respect of property, business, or prospective gains, capable of pecuniary assessment."* [Page 51]
>
> *"Unless the wrong complained of constitutes an injuria, or the action is brought to establish a right, the rule is that* ***the plaintiff is only entitled to damages in respect of such calculable pecuniary loss as he can prove that he has actually sustained or is likely to sustain.*** *But,* ***it is to be observed that a court is not justified in refusing to award the plaintiff damages, merely because the quantum is difficult of assessment. If it is clear that the plaintiff has sustained, or will sustain, damage, and the best evidence available as to the amount thereof has been produced, the court must do the best it can, on the evidence before it, or assess the damages to which he is entitled****."* [Page 114]

In **Mahipala and Others v Martin Singho** [(2006) 2 Sri LR 272], the plaintiff was riding a bicycle when he was knocked down and run over by a vehicle belonging to the Sri Lanka Army driven by the defendant. The evidence was that the injuries suffered by him were lifelong. With regard to the manner of calculating damages, the Court of Appeal observed as follows:

"The learned District Judge had considered the plaintiffs 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 Mc Kerron 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 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."*

Gaffoor v Wilson [(1990) 1 Sri LR 142] was a case where the plaintiff claimed damages for the loss of financial support arising from the death of her son which was brought about by the negligent driving of a motor vehicle by the defendant's servant. Amerasinghe, J referring to the absence of actuarial evidence before Court, stated that, "*For although the formulation of a successful claim for prospective damages or the rebuttal of an extravagantly large one is never a simple exercise in actuarial mathematics … such evidence would have been invaluable especially in assessing how much capital should be paid to the plaintiff to enable her to have a fixed sum per month for life. The absence of actuarial evidence does not absolve me from the duty of assessing damages. I must do the best I can."*

According to the Plaintiff, Prasanna Ranjith was 36 years at the time of the accident and had his whole working life before him. He was the sole bread winner of a family of three young children, was a carpenter by profession with expertise in wood engraving, worked as a daily paid employee at a furniture shop in Homagama and was drawing a salary of

approximately Rs. 15,000 per month. There were instances where he worked 25 days of the month and earned more than Rs. 15,000 per month. The Plaintiff had claimed a sum of Rs. 1,500,000 as damages, the entirety of which has been awarded by the High Court. It is true that other than her evidence, the Plaintiff has not led any other evidence including that of the purported employer to establish his employment or income. The fact remains however that Prasanna Ranjith was the sole breadwinner and that the Plaintiff and her three children who were completely dependent on the income of Prasanna Ranjith for their sustenance had been left destitute as a result of his death.

Although no reasons have been given by the High Court for awarding the said sum of Rs. 1,500,000, as viewed by McKerron, in such a context, the Court is not justified in refusing to award the plaintiff damages merely because the quantum is difficult of assessment. Therefore, taking into consideration the above matters, I am of the view that a sum of Rs. 1,500,000 as damages is a reasonable assessment of the damages sustained by the Plaintiff. I would therefore answer the 2nd question of law in the affirmative.

Conclusion

In the above circumstances, the judgment of the High Court is affirmed, and this appeal is dismissed. The parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda, PC, J
I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J
I agree.

JUDGE OF THE SUPREME COURT