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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : December 10, 2009

Judgment delivered on : December 23, 2009

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(1) R.F.A. (OS) No. 7/2009

% Ashish Kumar Mazumdar ... Appellant
Through: Mr. K.K. Rai, Senior Advocate with Mr.
Manoj Chatterjee, Ms. K. Iyer and Mr.
B. Sengupta, Advocates.

versus

Aishi Ram Batra Charitable Trust & Ors.... Respondents
Through: Mr. A.B. Dial, Senior Advocate with
Mr. Manvendra Verma and Ms.
Rachna, Advocates.

AND

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**(2) R.F.A. (OS) No. 23/2009 &
C.M. Appl. No. 12532/2009**

% Ch. Aishi Ram Batra Public Charitable
Trust & Ors. ... Appellants
Through: Mr. A.B. Dial, Senior Advocate with
Mr. Manvendra Verma and Ms.
Rachna, Advocates.

versus

Sh. Ashish Kumar Mazumdar ... Respondent
Through: Mr. K.K. Rai, Senior Advocate with Mr.
Manoj Chatterjee, Ms. K. Iyer and Mr.
B. Sengupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Tortious liability, i.e., breach of legal duty with liability for damages is the subject matter of these two appeals, which arise out of common impugned judgment of December 02, 2008, whereby learned Single Judge has decreed the suit for damages of Shri Ashish Kumar Majumdar against Ch. Aishi Ram Batra Public Charitable Trust for a sum of Rupees Seven Lacs with interest @ 12% per annum. Batra Hospital, where Shri Ashish Kumar Majumdar (henceforth referred to as '*Plaintiff*') was admitted for treatment, is managed by Ch. Aishi Ram Batra Public Charitable Trust.

2. In the appeal, (*R.F.A. (OS) No. 23/2009*) preferred by the Batra Hospital Trust, finding of negligence returned by the learned Single Judge in the impugned judgment is assailed and the dismissal of the suit of the '*Plaintiff*' has been sought, whereas in the appeal by '*Injured*' – Plaintiff (*R.F.A. (OS) No. 7/2009*), enhancement of quantum of damages with interest from the date of institution of the suit has been prayed for.

3. With the consent of the parties, both these appeals were heard together and are being disposed of together by this common order.

4. The facts are not in dispute. What is disputed, is the attribution of negligence. Neither side is certain, as to how this unfortunate incident took place on the night intervening 31st October, and 1st November of the year 1988, in the Batra Hospital

(hereinafter referred to as Defendant-Hospital). On 27th October, 1988, Plaintiff – a bachelor, aged about 30 years, was admitted in the Defendant - Hospital with past history of intermittent fever for one month and was clinically diagnosed as a case of relapse of partially treated typhoid fever. On 28th October, 1988, the temperature of the Plaintiff was 104° F and it continued to remain high.

5. In the morning of 31st October, 1988, the doctors of Defendant - Hospital decided to stop administering Perinorm drug as they suspected that the said medicine has induced speech disorder in the Plaintiff. To combat this disorder, Plaintiff was injected with a specific drug – Phenargan, on that day, at 10.00 AM, as per the Defendant-Hospital records. Plaintiff was an indoor patient in Room No.305 on third floor of the Defendant - Hospital building and his sister Kajal was with him in the room on the fateful night. At about 2.20 AM in the night, she noticed that the Plaintiff was not in the room and she promptly informed the staff nurse on duty and then a search was conducted to trace out the Plaintiff. Hans Raj, security guard of the Defendant-Hospital reported that the Plaintiff was lying in an awkward position on the ground floor in the oncology gallery of the Defendant-Hospital at a distance of 50 yards from a point immediately below the window of Room No.305. The oncology gallery is an open to sky passage on the ground floor between the private room building and the Oncology Ward. Plaintiff suffered multiple fracture of lumbar vertebrae with complete dislocation of the spinal cord and

despite treatment, he became paraplegic, i.e., 100% disabled below the waist.

6. According to the Plaintiff, at the time of this incident, he was under the care and custody of the Defendant-Hospital, who had failed to take reasonable care and because of the negligence of the Defendant - Hospital, he is confined to a wheel chair for rest of his life and he needs a full time attendant to look after him. He is still Junior Assistant in Punjab National Bank and he claims that prospects of his promotion are quite bleak. Though the damages claimed by the Plaintiff were Rupees Fifty Eight Lacs or so, whose break up is given in para 32 of the plaint, but, he had restricted his claim for damages to Rupees Twenty Five Lacs, as he could not make arrangements for the full court fee.

7. The stand of the Defendant - Hospital, throughout has been that it cannot be held responsible for the Plaintiff's act of jumping out of the window of his room, especially when, his sister was there in the room as attendant and so, the injuries sustained by the Plaintiff and the consequent complications suffered by him cannot be said to be result of any negligence on its part. There is emphatic denial of any injection being administered to the Plaintiff in the night of 31st October, 1988.

8. In the suit proceedings, four issues were claimed by the parties to it and out of them, first and the fourth pertained to the core issue of lack of care and attention by Defendant-Hospital in attending to the Plaintiff and of there being cause of action for

the Plaintiff to claim damages. Both the sides had led their respective evidence. Apart from the evidence of the Plaintiff, (PW-1), there is evidence of his sister Kajal Chakravoty (PW-2), and of his brother Mr. Ashok Kumar Majumdar, (PW-3). Sub-Inspector Kailash Chand, (PW-4), of Police Station Ambedkar Nagar, South Distt., New Delhi, proves the police complaint made by father of the Plaintiff on 01.11.1988 regarding this incident. The Disability Certificate Ex. PW-1/14 of the Plaintiff stands proved on record by Dr. R.K. Srivastava, (PW-5).

9. Whereas, Defendant's evidence comprises of the deposition of Dr. Arun Dewan (DW-1) who had treated the Plaintiff and that of Security Guard - Hans Raj (DW-2) of *Defendant-Hospital*, who was on duty in the porch area of oncology open gallery of *Defendant - Hospital*, at the time of this incident.

10. Aforesaid Issue no. (i) and (iv), have been decided together by the learned Single Judge and the finding of negligence returned is against the Defendant – Hospital. The *Second Issue* of entitlement of the Plaintiff to damages/compensation and its quantum has been decided in favour of the Plaintiff and the damages have been quantified at Rupees Seven Lacs with interest. The *Third Issue* relating to maintainability of the suit was not pressed before the learned Single Judge and the finding returned on the *Additional Issue* of Limitation is also in favour of the Plaintiff.

11. The proceedings in the Suit concluded with passing of a decree of damages quantified at Rupees Seven Lacs with interest @ 12% per annum payable from the date of the impugned judgment. In these two appeals, Plaintiff wants enhancement of the damages/ compensation awarded and the Defendant seeks setting aside of the impugned judgment and the dismissal of Plaintiff's Suit for damages.

12. Learned senior counsel for the parties have addressed this Court *in extenso* for days together and have painstakingly taken us through the entire evidence on record.

13. During the course of hearing, decisions reported in (1944) 1 K.B. 421; (1947) 1 All E.R. 344; (1951) 2 K.B. 343; (1971) 2 All ER 1240; (1974) 1 SCC 690; (1976) 1 SCC 793; (1988) R.T.R. 298; (1951) H.L. (E.) 850; (1964) 1 All E.R. 98; (1990) 3 All ER 237; (2005) 6 SCC 1; 2009 (7) SCALE 407; AIR 1953 Supreme Court 235; AIR 1969 SC 1291; AIR 1981 SC 1726; AIR 2003 SC 4319; (2003) EWCA Civ 878; (2009) 6 SCC 1; (1985) 1 SCC 231 have been meticulously referred to, by learned senior counsels for the parties.

14. The impugned judgment deals with the crucial issue of lack of care and attention on the part of the Defendant - Hospital in a most systematic manner. In the first instance, the law on the subject, i.e., of "*duty to take care*" has been adverted to by the learned Single Judge and then the foresight test has been applied. The view taken is that Quality of Care expected from

specialized private hospitals is not ordinary but of a high degree. The medical record of the Plaintiff has been relied upon by the learned Single Judge in the impugned judgment and it reveals that the alleged history given by the Plaintiff after this incident was of having sleep difficulty and deciding to go for a walk and all that Plaintiff remembered was falling on the steps. The evidence of Dr. Arun Dewan of *Defendant-Hospital* has been referred to, regarding patient becoming delirious or incoherent in case of high grade fever. The suggestion given by the *Defendant-Hospital* to Ms. Kajal, (PW-2) sister of the Plaintiff in cross-examination, of Plaintiff's speaking incoherently and with difficulty on 31st October, 1988, i.e., the day of the incident, has been admitted by her. Furthermore, the medical record of the day of this incident clearly indicated that the Plaintiff continued to have high fever. On the basis of this medical record, learned Single Judge arrived at a conclusion that the Plaintiff was delirious and had gone out of his room for a stroll as he was not able to sleep and a strict vigil by the hospital staff was required to prevent a patient from taking steps or acting in a manner that could cause injury or harm. The stand of the *Defendant-Hospital* of Plaintiff jumping out of the window of his room has been rejected by the learned Single Judge on preponderance of probability. While applying principle of '*res-ipsa loquitur*', learned Single Judge has drawn inference of negligence against the *Defendant-Hospital*.

15. Aforesaid finding of the learned Single Judge has been challenged by learned senior counsel for the Defendant-Hospital by contending that the principle of '*res-ipsa loquitur*' has been incorrectly applied by the learned Single Judge to the facts of this case and the learned senior counsel for the Defendant-Hospital has referred to number of English decisions, as noted above, to assert that the principle of '*res-ipsa loquitur*' is inapplicable to the facts of the instant case and the burden of proof never shifts and is always upon the person who alleges negligence.

16. Learned senior counsel for the Defendant-Hospital has emphatically contended that the Court cannot make out a new case and the decision has to be rendered based on the pleadings of the parties. It was pointed out that the Plaintiff had jumped out of the window of his room and for this act of the Plaintiff, Defendant - Hospital cannot be held responsible because sister of the Plaintiff was very much present in the room and this fact stands affirmed by the Plaintiff himself in his replication. An effort has been made by learned senior counsel for the Defendant-Hospital to show that there is variation in the version of this incident as given in the police complaint vis-à-vis the version of this incident in the plaint and also in the evidence of the brother and sister of the Plaintiff. According to learned senior counsel for the Defendant-Hospital, there was no negligence on the part of the Hospital and therefore, the impugned judgment deserves to be set aside and the suit of the Plaintiff ought to be dismissed.

17. Learned senior counsel for the Plaintiff supports the impugned judgment by asserting that the conclusions arrived at by the learned Single Judge are based on cogent evidence and there is no admission in the replication about Plaintiff jumping out of the window of his room and since Plaintiff was in delirium and was under care and management of the Defendant-Hospital, therefore, they owe an explanation regarding happening of this incident. Learned senior counsel for the Plaintiff states that the principle of '*res-ipsa loquitur*' has been rightly applied by the learned Single Judge in holding the Defendant-Hospital responsible for this incident, but the damages awarded are highly inadequate and they deserve to be suitably enhanced.

18. Nothing else has been urged on behalf of either side.

19. Before adverting to the rival submissions of the parties, it would be appropriate to first deal with the application of Defendant-Hospital seeking permission to lead additional evidence by way of placing on record the drawings/maps (Annexure-1 and Annexure-2) of the Defendant - Hospital to show that below the window of Room no.308-305 etc., there is open space which is 15 feet wide and is popularly known as 'Oncology Gallery/Corridor'. There is a vague reference in this application to some photographs submitted by the Defendant-Hospital in the Court on the last date of hearing. Notice of this application was issued to the opposite side and liberty was granted to file reply, which has not been filed. Such like applications cannot be

routinely allowed on the premise that there is no opposition to it. Applicant has to make out a case as to why the evidence now sought to be led was not produced in the suit proceedings/trial Court. No such explanation is coming forth in the application nor it has been so argued. Moreover, the two site plans Annexure-1 and Annexure-2, accompanying this application in respect of which additional evidence is sought to be led are mere photocopies and are not duly authenticated by its maker. Moreover, taking on record, this additional evidence cannot be said to be essential for the just decision of this case, as these documents do not indicate with precision, the place where plaintiff had fallen or the place from where Security Guard saw the Plaintiff lying in awkward position on the ground. In these circumstances, we are not inclined to allow this application and it merits rejection. It is accordingly rejected.

20. Before coming to the merits of this case, it needs to be noticed that the Plaintiff had given up the challenge to the diagnosis, medical procedure and the treatment given in the Defendant-Hospital. Therefore, reliance placed upon decisions of the Apex Court, in **Jacob Mathew** [(2005) 6 SCC 1] and **Nizam's Institute** [(2009) 6 SCC 1], is misplaced as these two cases pertained to medical negligence.

21. There can be no straight jacket formula to marshal out as to what set of cases, the principle of '*res-ipsa loquitur*' would apply. Many English Decisions have been cited where on the peculiar

facts, it was concluded that this principle would not apply, but there are few decisions of the Apex Court, in **Krishna Bus Service**, (1976) 1 SCC 793 and of **Shyam Sunder**, (1974) 1 SCC 690, where this principle has been applied. It has also been applied in **Cassidy vs. Ministry of Health**, (1951) 2 K.B. 343, which is somewhat akin to the present case as it had dealt with the liability of the hospital for the negligence of the medical staff. The doctrine of '*res-ipsa loquitur*' was applied and it was held that the onus lay on the hospital authority to prove that there had been no negligence on its part or on the part of anyone for whose acts or omissions, it was liable and that onus had not been discharged.

22. In the instant case, learned Single Judge has applied '*res-ipsa loquitur*', a principle of evidence effecting onus. This doctrine of '*res-ipsa loquitur*' applies when on the basis of evidence available, inference of negligence can be drawn when the negligence cannot be proved and conclusively established. The *three conditions* which are required to be satisfied for invoking this doctrine, have been taken note of by the learned Single Judge, and are as under:-

***“Firstly,** the happening should be unexplained. **Secondly,** unexplained would not have happened in ordinary course without negligence on the part of somebody **and lastly,** circumstances are a pointer to negligence of the defender rather than any other person. The last requirement is usually fulfilled when there is*

material to establish that the damage/ loss was caused by an instrument/act or omission under the maintenance and control of the defender. The above doctrine therefore requires facts which sufficiently indicates and point towards negligence but the real actual cause is unknown or known only to the defender.”

23. Paragraph 16 of the impugned judgment logically explains the necessity of invoking the principle of ‘*res-ipsa loquitur*’ in the instant case. This reasoning appeals to us and deserves to be taken note of and is as under:-

“16. Duty of care in the case of hospitals is not limited to diagnosis and treatment but extends to providing safe and secure place to ensure that the patients do not injure themselves. It is not uncommon that patients who are sick or under medication can become delirious, incoherent or act in a manner which would be harmful and not in their interest. Patients under the influence of drugs/medicines, due to high fever, nature of disease or psychological reasons need not obey instructions/advise of doctors, can become disoriented and lose ability to decide what is right or wrong. Reasonable foresight predicates that hospitals should be conscious and aware that mishaps or injuries can result to a patient and keep supervision and surveillance to check, prevent and protect patients from doing anything or acting in a manner which might cause harm to themselves or even others. Instances when a patient in a delirium or in psychosis cannot be regarded as farfetched or beyond reasonable

contemplation. The defendant-hospital therefore was aware and had duty to take care that the plaintiff does not act in a manner by which he would injure and cause harm to himself. The defendant-hospital owed this duty of care to the plaintiff. It is, therefore not possible to accept the contention of the defendants that they did not owe duty to take care of the plaintiff beyond the diagnosis and treatment. The plaintiff was admitted and confined to bed in the hospital. Duty to take care included duty to prevent the plaintiff from moving out of the room, going down the staircase or injuring or causing harm to himself by taking a stroll. The defendants were aware and had knowledge that a sick patient may get injured or harm himself if he decides to go out for a stroll or a walk, even when his physical condition does not permit or allows him to do so. Injury or harm to patients is reasonably foreseeable. Strict vigil in hospital premises and round the clock safety checks are required to prevent a patient from taking steps or acting in a manner that could cause injury or harm.”

24. Needless to say that a common sense approach is to be adopted in a matter like present one. Balance of probabilities ought to be the yardstick. The true test has to be of foreseeability. In each case, a balance must be struck between the magnitude of the risk and the burden on the Defendant in doing or not doing, what should have been done? The law in all such cases, exacts a degree of care commensurate with the risk. In some cases, where there is only a remote possibility of injury,

no precaution need be taken. The application of '*standard of reasonable care*' in a particular case is a question of fact and cannot be put under the weight of accumulated precedents. In every case, where '*a duty of care*' exists, the Court must consider the applicability of '*res-ipsa loquitur*'. It is, of course, understandable that if the Defendant - Hospital had succeeded in proving that the Plaintiff had jumped outside the window of his room, then, question of negligence on its part does not arise.

25. Impugned judgment conclusively rules out the possibility of the Plaintiff jumping out of the window of his room and in this regard, reliance has been placed upon the affidavit of the Medical Director of the Defendant - Hospital which indicates that the window in the room of the Plaintiff was three feet above the floor level of the room and the width of the window was just one feet. There was three feet wide ledge outside the said window which was further protected by three feet high steel hand rails and tow rails. Learned Single Judge has relied upon the aforesaid affidavit of the Medical Director of Defendant-Hospital as well as the photographs to reach most probable conclusion that a sick patient like the Plaintiff who had been suffering from high fever for a month or so, would hardly have any physical strength to manage to climb out of the window of his room and would also cross the ledge outside the window which was protected by high steel railing and land himself at a place, which was at some distance from below the window of his room. Impugned judgment also takes note of the fact that the medical file of the Plaintiff did

not reveal that he was depressed or was having suicidal tendency. Another pertinent aspect, which has been taken note of, in the impugned judgment, is that upon learning about missing of the Plaintiff, when the hospital staff had rushed into the room of the Plaintiff, they did not notice if the window of his room was open or not? Since the room was centrally air conditioned, it would have been certainly noticed by the nursing or the security staff if the window of the room was open after this incident. It is nobody's case that the window of the room of the Plaintiff had been or could have been closed from outside. Medical record does not indicate that Plaintiff had made any suicide attempt by jumping from the window of his room. The noting in the medical record is to the contrary.

26. The alleged history given by the Plaintiff after this incident to the doctor of the Defendant - Hospital was that he had gone for a walk as he was unable to sleep. Since Plaintiff was in delirium, therefore, all that he remembered is that of falling on the steps. There is evidence of the Security Guard that the Plaintiff was found lying in the Oncology Gallery/Corridor, a few feet away from immediately below the window of the room of the Plaintiff. In this view of the matter, neither the reasoning nor the conclusion arrived at by the learned Single Judge of Defendant - Hospital failing to prove that Plaintiff had jumped out of window of his room, is unwarranted.

27. An attempt by Defendant - Hospital to wriggle out of the aforesaid conclusive finding by relying upon a so-called admission of Plaintiff jumping out of window of his room is futile. In fact, it was the positive case of the Defendant - Hospital that the Plaintiff had jumped out of the window of his room and in Replication, what has been stated is that the Defendant admits that Plaintiff had jumped out of the window of his room. Though, this stray sentence is not happily worded, but it certainly cannot be read to be an admission on the part of the Plaintiff. In any case, even admissions can be shown to be wrong. In fact, it has never been the case of the Plaintiff that he had jumped out of window of his room. Medical record reveals the initial version of the Plaintiff of this incident of his having walked out of his room to have a stroll as he was not able to sleep.

28. In normal course of events, it is highly unlikely that the hospital staff or the nursing staff on duty at the Nursing counter in the corridor outside the room of the Plaintiff would not have noticed the Plaintiff walking in the corridor past midnight, had they been awake or present there. There is no cross-examination of the Plaintiff on this vital aspect. Nor anyone from the nursing staff, supposed to be present at Nursing Station in the corridor, has been got examined by the Defendant – Hospital. To rule out any negligence on its part, it was incumbent upon the Defendant - Hospital to have got examined the nursing/para-medical staff, which was on duty on the floor where the room of the Plaintiff was located. In the absence of authenticated site plan of the

spot, Defendant-Hospital fails to prove the exact place, where plaintiff had fallen. This was crucial for establishing the case of the Defendant-Hospital. Even the photographs to effectively indicate the spot are not on the record. For this vital lacuna, the Defendant - Hospital has to suffer the consequences.

29. The so-called variation in the version regarding this incident inter-se police complaint and the plaint, vis-a-vis the evidence of brother and sister of the Plaintiff, not much is required to be said, for the reason that it is cardinal principle of law that before any adverse inference is drawn against a witness regarding any improvement, variation or diversions, the same has to be put to the witness and if this is not done, then no advantage accrues to the opposite party. Otherwise also, we find that the so-called variation in the version of this incident in the police complaint, vis-à-vis, the oral testimony of the Plaintiff is inconsequential. It cannot be forgotten that a police complaint or an FIR is not an encyclopedia and it is just a first information of an incident and it is not supposed to contain minor details of the incident. It is a matter of record that the police complaint was not made by the Plaintiff but was given by his father. In any case, nothing turns on it.

30. In all fairness to the Defendant-Hospital, it needs to be pointed out that the doctor, who treated the plaintiff has claimed that on 31st October, 1988, at 10.00 a.m., the plaintiff was administered Phenargan Injection, whose effect lasts for 10-12

hours. During the course of hearing, much emphasis was laid by learned senior counsel for Defendant-Hospital upon negating plaintiff's version of administering Phenargan drug to him at 10.00 pm on that eventful day, i.e., on 31st October 1988 thereby certainly making the plaintiff's delirious. It is true that medical record produced by the Defendant-Hospital reveals that Phenargan Injection was administered to the plaintiff at 10.00 am on that day but does not rule out administering it again at night as Dr. Arun Diwan does not categorically rule it out. The best evidence to resolve this controversy was the production of medical record of evening of 31st October 1988. For reasons best known, it has been withheld by the Defendant-Hospital. This calls for drawing of adverse inference against the Defendant-Hospital. Had it been produced, it would have revealed if in the evening of 31st October, 1988, plaintiff had high grade fever justifying delirious condition of the plaintiff.

31. From the medical record of the Defendant-Hospital itself, it emerges that the Plaintiff had walked out of his room in the Corridor for having a walk as he was not able to sleep and since the Plaintiff was under care and management of the Defendant-Hospital, therefore, it was incumbent upon the Defendant-Hospital to have given a reasonable explanation as to how this incident took place. The explanation given by the Defendant-Hospital of Plaintiff jumping out of window of his room hardly merits acceptance for the reasons noted above. Learned Single Judge has rightly rejected the theory of Plaintiff jumping out of

window of his room as propounded by the Defendant-Hospital. We find no reason to take a different view.

32. Sheet anchor argument advanced on behalf of the Defendant- Hospital is that Court cannot make out a new case and the decision has to be rendered on the case pleaded. To support this argument, reference has been made by learned senior counsel for the Defendant-Hospital to the decisions of the Apex Court reported in AIR 1953 Supreme Court 235; AIR 1969 SC 1291; AIR 1981 SC 1726 and AIR 2003 SC 4319. There can be no two opinions about it. However, what is required to be pleaded are the facts and not the evidence. Order VI Rule 2 of the Code of Civil Procedure is categorical about it. It clearly mandates that pleadings to state material facts and not evidence. **In *Kali Prasad Aggarwal vs. Bharat Coking Coal Ltd.***, AIR 1989 SC 1530, Apex Court has ruled that *when evidence adduced by both the parties has been considered, it cannot be now said that the evidence should not be looked into.*

33. After having been meticulously taken through the pleadings and evidence of this case, by learned senior counsels for the parties, it can be unhesitatingly said that the impugned judgment is in consonance with the pleadings and the evidence led by the parties. It would be indeed preposterous to say that entirely a new case has been made out in the impugned judgment or that it is not based on evidence. Rather, we find that the learned Single Judge has taken the pains to not only reproduce the relevant part

of the medical record but has also reproduced the crucial portion of the evidence of pertinent witnesses. Indeed, the impugned judgment is well reasoned and it not only correctly states the facts but also effectively deals with the evidence in its proper perspective and aptly applies the law to return a finding of negligence against the Defendant – Hospital. In this view of the matter, reliance placed upon decisions reported in AIR 1953 Supreme Court 235; AIR 1969 SC 1291; AIR 1981 SC 1726 and AIR 2003 SC 4319 is clearly misplaced.

34. As a sequel to the above narration, findings of the learned Single Judge on Issue no.1 & 4 are hereby affirmed and as a necessary consequence thereof, the appeal of the Defendant - Hospital (R.F.A. (OS) No. 23/2009) is dismissed with costs. During pendency of this appeal, the decretal amount was deposited by the Defendant - Hospital and vide order of May 29, 2009, by way of interim measure, Registrar General of this Court was directed to release 50% of the deposited decretal amount to the Shri Ashish Kumar Majumdar, Respondent herein. The remaining decretal amount so deposited was to be invested by the Registrar General in Fixed Deposits (with automatic renewals). Now, with dismissal of this appeal, Registrar General of this Court is directed to release the remaining 50% of the decretal amount deposited with interest accrued thereon, to Respondent – Shri Ashish Kumar Majumdar forthwith.

35. Now we shall deal with the appeal of the Plaintiff/Appellant (R.F.A. (OS) No. 7/2009) for enhancement of the compensation/damages of Rupees Seven Lacs awarded to him. Enhancement is sought on the ground that the impugned judgment nowhere compensates the Plaintiff/Appellant for the loss suffered, the expenses already incurred and still being incurred by the Appellant on account of medical treatment, cost on medicine, full time attendant and on account of physical pain, trauma suffered by him. Award of interest from the date of the suit is claimed as it is said to be compensation for late payment of damages by the erring party.

36. While deciding issue no.2, regarding quantum of damages, learned Single Judge has noted that the Plaintiff / Appellant was employed with Punjab National Bank at the time of this incident and he continues to remain in employment. The finding returned on this issue is that there is lack of evidence regarding loss of promotion and of Plaintiff/Appellant being not reimbursed either the medical bills or the recurring medical expenses. Plaintiff/Appellant has been found entitled to both pecuniary and non-pecuniary damages like pain and suffering, mental and physical shock, loss of amenities, hardship, mental stress, future prospects, etc. and while relying upon the two decisions of the Apex Court in ***R.D. Hattangadi versus Pest Control (India) Pvt. Ltd.***, (1995) 1 SCC 551 and ***Lata Wadhwa versus State of Bihar***, (2001) 8 SCC 197, learned Single Judge has awarded lump sum damages of Rupees Seven Lacs on both the counts i.e.

pecuniary or non-pecuniary, and pendentelite interest has not been granted to the Plaintiff/Appellant because he continues to remain in employment.

37. It is a matter of record that the Plaintiff/Appellant has restricted his claim for damages to Rs.25 lacs in the plaint. However, the break-up of damages of Rs.58 lacs odd, has been spelt out, which is as under:-

<u>Details</u>	<u>Amount (Rs.)</u>
A. The expenses incurred by the Plaintiff while in Defendant's hospital i.e. the cost of Alpha bed, 'taylor's Bruce, 20 unit blood, medicines and expenses on private nurse (para 19 above)	Rs.35,000/-
B. The loss of past and future earning and earning capacity as stated above, in para 27	Rs.35,40,000/-
C. Expenses on attendant as stated in para 28 above	Rs.4,80,000/-
D. The expenses on treatment as stated in para 29 above	Rs.4,80,000/-
E. No pecuniary loss as stated in para 30 above	Rs.3,42,000/-
F. Loss of pension	Rs.9,42,000/-

Total	Rs.58,19,000/- =====

38. The learned Single Judge has quantified the damages at Rupees Seven Lacs (7 Lacs) as the quantum of compensation in para 34 of the Impugned Judgment, taking into consideration the

pecuniary and non pecuniary damages. The learned Single Judge has however not expanded on how he has calculated the said lumpsum amount of Rs 7 Lacs. The Plaintiff was 30 years of age when he met with the unfortunate accident and had 27 years of service remaining with him and was to retire in year 2015. The Plaintiff is still said to be in the course of the employment but has become disentitled to the benefits of service that would have accrued to him if he had not become paraplegic after the accident. Though no cogent evidence is forth coming, it seems logical to us that the loss of future prospects in such a case of hundred percent disability should be quantified at Rs.4,00,000/- looking at the comparatively young age at which the Plaintiff met with the accident. The compensation for keeping an attendant can be awarded at Rs.4,00,000/- and other non-pecuniary losses including pain and sufferance, loss of limb etc at Rs.3,00,000/-. Total compensation is quantified at Rs.11,00,000/-. We are further of the view that it would not be appropriate to award interest from the date of the accident, that is, 31.10.1988, equally there is no justification mentioned by the learned Single Judge for granting interest from the date of the judgment. We grant interest from the date of the filing of the suit, that is, 29.10.1991 at 12 percent per annum.

39. In the light of the above observations, the appeal of Plaintiff/Appellant (R.F.A. (OS) No. 7/2009) is allowed in aforesaid

terms. In view of the nature of the litigation, the costs of this appeal are made easy.

40. Both these appeals as well as pending application are accordingly disposed of.

Sunil Gaur, J.

Vikramajit Sen, J.

December 23, 2009
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