

Mumtaz Husaln Vs. A.E. Lewis

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Court : Allahabad

Decided On : Mar-11-1911

Reported in : 9Ind.Cas.984

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Mumtaz Husain

Respondent : A.E. Lewis

Judgement :

John Stanley, C.J.

1. This appeal arises out of a suit for damages for an assault committed by the defendant upon the plaintiff. The facts of the case are stated at length in the judgment of the lower Appellate Court. It is unnecessary to recapitulate them. The assault is not disputed and the only question for the Courts below to consider was the question of damages. The Court of first instance considered that the assault was an aggravated one and there is no doubt that it was correct as to this. That Court awarded a sum of Rs. 1,300. An appeal was preferred and the learned District Judge, who considered carefully the evidence, came to the conclusion that the defendant acted under great provocation and in view of the circumstances held that Rs. 150 was, under the circumstances, sufficient compensation. He also found that the claim of the plaintiff was exaggerated and that part of the injuries of which he complained was sustained after the date of the assault.

2. The measure of damages is a question for a jury to determine. The lower Appellate Court was in a better position than we are to estimate the damages. That Court had the witnesses before it and was able to judge of the value to be attached to the evidence given in the case. In the case of *Musammatt Dhuman v. Syed Abdullah Khan* 31 A. 333 : 6 A.L.J. 381 : 1 Ind. Cas. 760 this Bench held that in a suit for damages for malicious prosecution, the question of the amount of damages is a question of fact, and it is not open to the High Court to interfere in second appeal upon such a question. A suit for damages for an assault stands as regards this question in the same position as a suit for malicious prosecution. In the judgment in the case referred to in relation to the amount of damages, we observed,--If we had to decide that question ourselves, we should certainly hold that the amount awarded was excessive, but it has been held by the Calcutta High Court in *Banee Madhab Chetterji v. Bhol Nath Banerji* 10 W.B. 164 and *Jageswar Sarma v. Dinarain Sarma* 3 C.L.J. 140 that the question of the amount of damages is question of fact and it is not open to the High Court to interfere in second appeal upon such a question. We are not prepared to dissent from the view held in these cases.' It appears to me in view of, this decision that we ought not to interfere with the decree of the lower Appellate Court in this case. I would, therefore, dismiss the appeal.

Banerji, J.

3. Upon the authorities, it must be held that the question as to the amount of damages is a question of fact, and the finding of the Court below on that question must be accepted in second appeal. For this reason we cannot interfere with the decree of the Court below. But I must, at the same time, say that I do not agree with the view of the learned Judge of the lower Appellate Court that there was sufficient provocation to justify the defendant's acts. I cannot too strongly condemn his conduct. The plaintiff is apparently a man of respectable position in life. He belongs to a respectable family; his father is a tahsildar. The defendant struck him twice with a cane, pushed him along by the back of his neck, called him names, indirectly threatened him with being tied up and thrown into the canal, and afterwards tried to set him on his horse, when he refused to get on it. All this has been found by the learned Judge, but he says that the plaintiff's conduct afforded

considerable justification for the defendant's acts. I do not think this is so. There was some provocation no doubt but it was not so great as to justify the treatment meted out to the plaintiff by the defendant. The circumstance that he was a man of violent temper did not, in my opinion, mitigate his conduct. As, however, the finding of the Court below as to the amount of damages must be accepted I agree in dismissing the appeal.

4. The order of the Court is that the appeal be dismissed but under the circumstances without costs.

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