

Amar Nath Goel Vs. Mayur Syntax Ltd.

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Court : Delhi

Decided On : Mar-16-1989

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Judge : Y.K. Sabharwal, J.

Appeal No. : Suit No. 1037 of 1985

Appellant : Amar Nath Goel

Respondent : Mayur Syntax Ltd.

Advocate for Pet/Ap. : R.S. Malhotra and; R.K. Virmani, Advs

Judgement :

Y.K. Sabharwal, J.

(1) On 14/06/1982 the plaintiff as usual was working in the factory premises of his employer, defendant company, least Realizing that, for him and few others, it was a bad day. On this fateful daya portion of the office building collapsed resulting in death of three persons and grave and serious injuries to various persons. The plaintiff sustained grave and serious in

(2) Defendant admits the collapse of the wall of the factory building facing the North West which bounded the Railing Department, cement go down and stores. It admits that three persons died and few including the plaintiff sustained grave and

serious injuries. Defendant also admits that plaintiff was admitted in the Nursing Home on 14/06/1982 and was discharged on 3/08/1982. Defendant has pleaded that the entire factory premises was duly constructed fully in accordance with National Building Code. Jj says that entire construction was sound and stable but due to unseen vis major circumstances which were beyond human control and can amply be described as 'act of God' were solely responsible for the collapse of the wall. The unforeseen circumstances, according to defendant, is that the wall was struck by lightening which led to the collapse. It is also pleaded that the services of the plaintiff were terminated in accordance with the terms and conditions on which he had been appointed and that on or about November 22/23rd 1982 the plaintiff was informed that his services were no longer required by the defendant.

(3) The dispute between the parties is with regard to nature of injuries suffered by the plaintiff, cause of the accident, amount of damages and the factum and validity of termination of the services of the plaintiff. Plaintiff says that defendant is absolutely liable for the collapse of its factory building. The collapse, according to the plaintiff, resulted because of bad designing, sub standard material used therein and on account of poor workmanship. He also says that the defendant did not exercise due care and attention in constructing a part of the factory building which collapsed. Plaintiff claims to have suffered permanent disability of his left leg.

(4) Before framing of issues statement of Mr. K.G. Maheshwari Company Secretary of the defendant was recorded. Mr. Maheshwari admits that no letter of termination was issued to the plaintiff. He further states that in Para 11 of the written statement it has been mentioned that plaintiff was informed on or about 22nd/ 23/11/1982 by Mr. Satish Kumar, Assistant Production Manager of the defendant about termination of his services but he is not aware if there is any record with the defendant to show that Mr. Satish Kumar did inform the plaintiff as stated in the written statement. On ! 5/05/1986 the following issues were framed :

1. Whether the collapse of the factory or part thereof resulting in injuries to the plaintiff was an Act of God absolving the defendant of its liabilities.
2. Did the defendant terminate the services of the plaintiff and if so when and was that as per the terms of the employment ?

3.If the above issues are held against the defendant to what amount of damages (not exceeding Rs. 4 lacs) is the plaintiff entitled ?

4.Did the defendant spend Rs. 17, 6961- as medical expenses on the plaintiff and if so to what effect ?

5.Relief'.

(5) issue No. 15. In order to prove the plea of 'act of God' the defendant is to sublish that the circumstances which led to the collapse of the wall werethe' which could not be foreseen and contemplated. The defendant has also establish that it had taken all reasonable care while constructing the of the building which collapsed.

(6) An 'act of God' is an operation of natural forces so unexpected that no human foresight or skill could reasonably be expected to anticipate it (Winfield on tort).

(7) The burden to prove that collapse was no account of the act of God is on the defendant. Let me now summarise the evidence of the defendant. Mr. R.K. Saxena, DW-1 who was the Development Executive of the defendant only stated that he has received the report that the wall had collapsed due to lightening. The witness had not noticed any sound and lightening on the collapsed structure an his knowledge was based on what was told to him by others.

(8) Similarly, Mr. P.S. Shekawat, DW-2 Works Manager of the defendant also stated that he did not see any lightening effect on the building and was not aware if the lightening in fact had struck the building structure or not.

(9) Mr. Chandru, DW-4 claims to be a farmer having agricultural and near the factory premises of the defendant and made a bald statement that due to big thunder storm and lightening the factory premises and building of the defendant collapsed while he was working in his fields. He pleaded that he could not say on which place exactly the lightening had struck.

(10) Mr. P.K. Jain, PW-6 who was the Managing Director of the defendant company at the relevant time war present in his office in the factory premises does

not even state that he was informed that the wall had collapsed on account of lightening striking it.

(11) DW-7 Siddarth Jasubhai is an architect. He was a partner in the firm of Engineers which had prepared the design of the building. The building was constructed under the supervision of architects and engineers of the said firm. The services of M/s Siddarth Jasubhai were engaged to find out the cause of the collapse of the wall. On 16/06/1982, on visit to the factory premises, he found the North West wall had collapsed and part of the structure which was connected with the said wall had also been highly damaged. He visited the factory premises on 16th and 17/06/1982 to carry out full investigation to find out the causes of the collapse of the wall and to work out the extent of damage to the structure as also for its stability so that there was no accident in future. Ex.PW-7/1 is the report submitted by him.

(12) The report Ex.DW-7/1 states that the wall facing the North West side of the spinning Mill Mayur Syntax Ltd which bounded the railing department, cement godown and store collapsed between 4 and 4.30 P.M. on 14.6.82. Extensive damage resulted to the huge structure separating the roof of the railing department, cement godown and the store section which was behind the wall resulting in killing of three lives and several injured. Approximately 215 feet of wall out of 232 feet came down suddenly. The wall which came down was 12 feet high at one end and 28 feet high at the other end. Certain photographs of the collapsed wall were also taken. The report states that certain eye witnesses had informed Mr. Jasubhai that lightening accompanied by loud noise had struck the wall at point marked 'A' on the drawings. The nature of the construction of the wall has been given in the report. It is stated to be a masonry wall constructed in cement mortar 1 : 6. The report rules out the collapse of the wall on account of the severe wind, for the primary reason that the other structure of the building and none of the other factories in the Industrial Estate did not suffer any damage and by process of elimination of the other causes, comes to the conclusion, that lightening must have hit the wall resulting in its collapse.

(13) DW-7 admitted in his cross examination that collapsed wall was not shown in the original designs sent to the defendant and stated that the wall must have been constructed after the project was complete. The witness admitted that had the wall not collapsed the damage would not have been taken place. It was further stated by the witness that no part of the building for which his firm had prepared the design and which was constructed under their supervision got damaged because of lightening. The wall up to the height of 11 feet 6 inch had been constructed in accordance with the design prepared by the firm of which DW-7 was a partner. The wall over and above 14 feet 6 inches was constructed layer on and the later added portion had collapsed. The witness could not give risk factor against lightening in respect of small and medium size factories, workshop and laboratories. However, it was admitted that the risk factor, in so far as masonry wall which had collapsed, was normally cent per cent because mason is nonconductor of electricity while the risk factor against lightening for huge structure like the factory premises of the defendant was around 10%. It was also admitted that no safeguard against lightening in so far as wall which had collapsed was provided.

(14) The report Ex. DW-7/1 loses all its significance in view of oral testimony of its author Mr. Jasubhai (DW-7). That apart even complete report was admittedly not filed by the defendant. The report was accompanied with the cost of reconstruction as well as cost of construction when the wall was constructed as also the sketches and photographs. All these documents were part of the report Ex. DW-7/1. None were filed. Why these documents were not filed I cannot say. Reason must be known to the defendant. There are no reasons on record. In respect of velocity of wind Jasubhai had obtained a print out from the metrological department which had given to the defendant. This print out was also not filed by the defendants.

(15) The only evidence in support of the plea of 'act of God' is the report Ex. DW7/1, and the oral testimony of Jasubhai, DW-7. The defendant did not produce any witness from metrological department. Learned counsel for the parties had referred to National Building Code. The submission on behalf of the plaintiff was that it was obligatory for the defendant to provide proper safeguard against lightening. On the other hand the submission on behalf of the defendant was that it

was not obligatory, in absence of any evidence on the type of the construction I cannot place' any reliance on National Building Code. The further argument of Learned counsel for the defendant that no reliance should be placed on the oral testimony of defendants' own witness Jasubhai is without any substance. There is nothing on the record to suggest that because of an apprehension that his firm may not be sued by the defendant Jasubhai had given a false statement to the effect that the plans of the collapsed wall were not designed by his firm or that it was not constructed under the supervision of his firm or that the risk factor against lightening of the said wall was cent per cent. There is no evidence to warrant the acceptance of this contention by Learned counsel.

(16) Learned counsel for the defendant contended that the collapsed wall was designed and constructed under the supervision of the firm of architects of which Jasubhai was a partner and that Jasubhai had deliberately made a false statement. I do not agree. There is no evidence on record to support this contention. It was open to the defendant to produce evidence in the nature of the plans etc. to show that the collapsed wall was part of the designs prepared by the firm of Jasubhai or constructed under the supervision of the said firm. No such evidence was produced. If the oral testimony of Jasubhai is to be discarded, as contended on behalf of the defendant, then the report Ex.DW-7/1 has also to be discarded. If that be so, there will be no evidence on record in support of the plea of the defendant that lightening had struck the wall. It is not possible to place reliance on the report and ignore oral testimony of its author.

(17) The heavy burden on the shoulders of the defendant to establish plea of act of God cannot be said to have been discharged only by saying that other parts of the building did not collapse. It is not proved on records to what was the nature of construction of the other part of the building which had not collapsed. The design of the portion which had not collapsed had been prepared by M/s. Size on Consulting Engineers of which Jasubhai was a partner. This construction was supervised by said firm of Engineers and had only 10/o risk factor against lightening. Who had prepared the design of the collapsed wall When was it constructed What Precautions were taken There is no evidence, clearly the defendant has failed to produce material and best evidence. Admittedly the

collapse of the wall had resulted in serious and grave injuries to the plaintiff and the defendant can only be absolved of its liability of damages on proof of its plea of vis major or Act of God.

(18) For the reasons aforesaid I cannot accept the evidence led by the defendant to prove the plea of Act of God. There is no independent evidence to establish the said plea. The evidence is of interested persons. It is too scanty. It was the duty of the defendant to maintain wall and building in proper condition. They had to ensure that it is not dangerous. They did nothing. The defendant has failed in discharging burden of this issue. Accordingly, issue No. 1 is answered in favor of the plaintiff and against the defendant. Issue No. 2

(19) The terms and conditions of plaintiff's employment are contained in letter of appointment dated 20/04/1982 Ex. P-3. Plaintiff was appointed as Store Purchase Manager in the defendant company with effect from 26.5.82 on a consolidated salary of Rs. 2500.00 plus Rs. 500.00 HRA. Rs. 3,000.00 all inclusive. Clause 3 of letter of appointment Ex. P-3 provides that during probationary period Plaintiff's services could be terminated by giving 24 hours notice or salary in lieu thereof without assigning any reason by the management. The defendant relies upon on the said clause 3. The question, however, is whether 24 hours notice or salary in lieu thereof in terms of the said clause was given to the plaintiff. Admittedly no letter of termination was issued to the plaintiff. The case of the defendant is that plaintiff was informed on or about 22nd/ 23/11/1982 that his services were no longer required. Mr. Maheshwari, the Company Secretary of the defendant stated that, Mr. Satish Kumar, an Assistant Production Manager of the defendant company at the relevant time, had informed the plaintiff about termination of his services. Mr. Satish Kumar, DW-3 Does not state that he informed the plaintiff about termination of his services. Mr. Satish Kumar says that he does not know why plaintiff had stopped coming to the factory. There is no other evidence on record to show that notice as contemplated by clause 3 of Ex. P-3 was given to the plaintiff.

(20) Learned counsel for the defendant, in the alternative contended that the plaintiff was informed about the termination of his services on receipt of letter

dated 14th/ 16/03/1984 (Ex. 2-3). The case of the plaintiff as set out in the plaint is that he had joined duties on 1/10/1982 and was working normally up to 23/11/1982. On 24/11/1982 he got ready to be picked up by the factory Van to take him from his residence at Ghaziabad to the factory premises but the Van did not turn up on that day. That very day in the evening he was informed by the Assistant Production Manager at his residence that he was required by the Managing Director of the company to see him before he could proceed any further with his job. The plaintiff made several unsuccessful attempts to meet the Managing Director. In the meantime plaintiff was receiving assurances from Works Manager of the factory that the Managing Director was considering the possibility of assigning him a new job but nothing happened. On 4.2.84 the plaintiff learnt from the office of the Deputy Labor Commissioner, Ghaziabad that defendant had already terminated his services. The plaintiff thereupon addressed a letter dated 29.2.84 (Ex.P-2) protesting against the action of the defendants. In reply to letter Ex. P-2 plaintiff received letter dated 14/ 16/03/1984 (P-3) from the defendant. In letter Ex. P-3 reference has been made to clause 3 of the appointment letter dated 20.4.82 (Ex. P-I). This letter Ex. P-3 states that according to the said clause 3 plaintiff's services have been terminated. Along with letter Ex. P-3 a copy of letter dated 30/01/1984 (P. 4) sent by defendant to the Regional Conciliation Officer was enclosed.

(21) Learned counsel for the defendant relying upon clause 3 of the letter of appointment Ex. P-I and letter Ex. P-3 contended that, in any case, services of the plaintiff stood terminated on receipt of letter Ex. P-3 even if it is held that notice of termination was not given to the plaintiff on 22nd/ 23/11/1982. The termination on receipt of letter dated 14th/ 16/03/1984, it is contended, is in accordance with the contract of employment of the plaintiff. The contention that services of the plaintiff stood terminated on receipt of letter Ex. P-3, in my opinion, is well founded. It has not been shown as to how the termination on receipt of letter dated 14th/ 16/03/1984 (Ex. P-3) is not in accordance with the terms of employment. In fact, learned counsel for the plaintiff did not seriously contest that plaintiff's services stood terminated on receipt of letter Ex. P-3. However, there is no evidence on record as to date of dispatch or date of receipt of this letter though admittedly this letter was received by plaintiff. Ordinarily, in India a letter is received by the

addressee within a day or two of its dispatch but in the facts and circumstances of this case I will assume that this letter was received by the plaintiff in the month of March 1984. It follows that his services stood terminated with effect from 1/04/1984. Accordingly, I hold that services of the plaintiff stood terminated in the month of March 1984 and termination was as per terms of employment. Issue No. 2 is answered accordingly. Issue No. 3

(22) The break up of damages claimed by the plaintiff in the plaint is as under :-

(1) Damages for wrongful and malicious removal from service Rs. 2,50,000-00 (2) General damages for anxiety shock etc. Rs. 1,50,000-00 (3) Compensatory damages for medical expenses etc. Rs. 6,000-00 (4) Reimbursement of medical bill as referred to in para 26. Rs. 2,473-50 (5) Special damages for permanent disability. (a) Income (c) Rs. 3,000.00 p.m. for 18 years 9 months (the prospective period of time the plaintiff was likely to work up to the age of 58 years reckoned from 31.10.82 when he last drew his salary). Rs. 6,75,000-00 (b) Expected annual growth income for 18 years 9 months aforesaid Rs. 350.00 p.m. (subject to the maximum growth up to Rs. 3,000.00). Rs. 5,11,200-00 (c) Would have been benefits arising from perquisites, annual leave etc. Rs. 2,37,214-00 (d) Losing benefits like provident fund, gratuity etc. Rs. 1,50,000-00 Rs. 19,81,887-00 Less: Allowance for uncertainties affecting then come of the plaintiff during the said 18 years months. (-) Rs. 2,50,000-00 Net amount claimed by the plaintiff. Rs. 17,31,887-50

(23) The plaintiff has restricted its claim to Rs. 4 lakhs. As would be seen from the above break up the plaintiff has claimed general as well as special damages. Unlike general damages the special damages are to be claimed specifically and proved strictly. I have held above that the services of the plaintiff stood terminated with effect from 1/04/1984. The plaintiff had been paid his salary only up to October 1982. He is deemed to be in service up to March 1984 and is entitled to all service benefits including salary for this period. The salary of the plaintiff was Rs. 3,000.00 p.m.. He is thus entitled to recover from defendant Rs. 51,000.00 as salary for 17 months i.e. from November 1982 to March 1984. This amount will fall under the head of special damages. The plaintiff has claimed this salary and has

successfully proved his claim of salary for these 17 months.

(24) Besides salary plaintiff has also claimed (1) expected annual growth income; (2) would have been benefits arising from perquisites, annual leave etc. and (3) losing benefits like provident fund, gratuity etc. The defendant, on the other hand, says that from out of salary for the period November 1982/03/1984 a sum of Rs. 2337-50 plus Rs. 5063.00 i.e. Rs. 7400.00 should be deducted on account of income tax which would have been deducted at source. In support of the contention that the amount of income tax is liable to be deducted from the amount of damages, Learned counsel has relied upon *British Transport Commission v. Gourley* 1956 (1) App Cas 189 where the House of Lords held that in assessing damages for loss of personal earnings in cases of personal injury the tax which the plaintiff would have to pay had he continued to receive those earnings must be taken into account. In this Judgment Lord Keith of Avonholm gave a dissenting opinion. Learned counsel for the plaintiff has relied upon judgment of Supreme Court of Canada in *Ontario v. Jennings* 1957 D.L.R. 644 for the proposition that there should be no deduction from the amount awarded for lost earnings on the assumption that plaintiff would have had to pay income tax on the earnings whether or not lump sum judgment is subject to tax. The lump sum is uncertain enough as it is. To assess another uncertainty-the incidence of income tax-would be an undue preference for the case of the defendant or his insurance company. I am inclined to agree with the reasons given in the judgment of Supreme Court of Canada and with the opinion of Lord Keith. I adopt the said reasons and wish to add no more except that the plaintiff would have received the amount of salary month by month between the period November 1982 and March 1984 of which he was deprived and will be entitled to receive it now after lapse of many years. I may also add that it is not the case of defendant that the amount of compensation will be payable by them to the income-tax department. Furthermore, this amount of Rs. 7400-50 will be set off against plaintiff's claim for benefit like increments annual leave etc. The defendant is not entitled for any deduction as claimed by it.

(25) Plaintiff has further claimed reimbursement of medical bill for period 19/08/1980 to 11/10/1982 which was duly passed by defendant for payment of Rs. 2473-50 to the plaintiff. Payment was actually not made. The fact is established by

testimony plaintiff PW-4. There is no evidence to the contrary. Counsel for the defendant has not questioned plaintiff's right to receive this amount.

(26) Before determining the amount of general damages to which the plaintiff may be entitled, let me first analyze evidence on nature of injuries sustained by the plaintiff and its effect on him. Admittedly the plaintiff has suffered serious injuries as has been admitted by P.K. Jain, DW-6. There is also no dispute that the plaintiff remained in a Nursing home for nearly seven weeks from 14 6.82. to 3/08/1982. The plaintiff had sustained grave injuries to both his legs. the spinal cord, his face and mouth in addition to multiple injuries in other parts of his body. He suffered fractures at the ankle area of both his legs, multiple fractures of bones of his back and serious injuries to his jaws and teeth resulting in one of the front teeth pushed out of his muscles piercing his chin and destabilisation of quite a few of his teeth. The injuries to his face necessitated 23 stitches. Both his legs (from foot to the knee) were kept in plaster for six weeks and for that period he had to constantly to lie on his back without the permission of even turning his side for brief spells. The functioning of plaintiff's leg was seriously impaired. He was disabled to walk in normal manner with the efficacy and facility which he enjoyed before the accident. In spite of the sustained and prolonged treatment the state of plaintiff's health did not improve. The plaintiff needs the help of a stick in his right hand and attendant on his left side to enable him to walk. His right leg too has developed continual affliction in the nature of periodic swelling and unbearable pain after the strain of walking even at short distance. There was no improvement in the condition of plaintiff's left foot drop in spite of treatment of various doctors. The aforesaid are the nature of injuries given by the plaintiff in his evidence. There is no cross examination of the plaintiff on the nature of injuries suffered by him and the said injuries are deemed to be admitted.

(27) The plaintiff had also examined three doctors. PW-2 Dr. Arya is a physiotherapist and has been attending to the plaintiff. Dr. Arya has deposed that due to deficiency in muscle power in regard to ankle dorsal flexors, it will not be possible for the plaintiff to lift his ankle and as such he will not be in a position to walk normally and there is no chance of his getting totally fit or improving on the muscle power.

(28) PW-3 Dr. (Mrs.) J.S. Khurana is a Radiologist and has proved the three X-ray reports Exs.PW3/1 to Ex.PW3/3. The X-ray reports give the nature of the multiple fractures in dorsel spine and both the ankles suffered by the plaintiff. The witness has not been cross examined at all.

(29) The third doctor examined by the plaintiff is Dr.P.R. Kucheria,PW-6.PW.6Dr.Kucheriais the Chief Surgeon of Friends Medical Centre.He has given details of the injuries suffered by the plaintiff. Dr. Kucheria has deposed that plaintiff was found to have developed complete foot drop of the left foot due to injury to the lateral popliteal nerve and that he was able to walk with great difficulty only a few steps and that too with the help of walking aid frame. Dr. Kucheria has opined that the foot drop of the plaintiff has become permanent and on account of injuries particularly injuries at his spine the plaintiff has lost his physical functional efficiency and is not fit to cope with even ordinary physical exertion and has become an invalid person for remaining years of his life. He has also opined that the plaintiff will not be able to work rest of his life as a normal man and will need walking aids like stick or crutches to walk. He has further opined that even a short walk with the help of such aids will always mean a great physical strain for him. The witness has further deposed that management of the defendant company was informed at the time of discharge of the plaintiff about the gravity of the injuries suffered by him on account of said accident and the prognosis of these injuries in terms of his permanent physical disability. Dr. Kucheria says that 'foot drop' means that foot moves in two directions-downwards which is called planti flexon, and upward which is called dorsi flexon. It is explained that when a particular person is capable to move his foot upward it is described as foot drop. The causes of foot drop have also been given. The opinion of the doctor is that plaintiff's foot drop has become permanent and is not curable.

(30) Learned counsel for the defendant criticised the evidence ofDr. Kucheria and firstly submitted that the doctor did not produce the record about the minor accident which the plaintiff had after the accident in question. It was explained that the said record was destroyed when the Nursing Home was shifted. There is no suggestion to Dr. Kucheria that because of any minor accident the injury has become permanent and as such I do not find any substance in the submission of

learned counsel in this regard.

(31) Counsel for defendant then submitted that the plaintiff had denied about the minor accidents after the accident in question whereas the doctor stated that the plaintiff had reported about minor accidents which he had after the accident of 14/06/1982. These are trifling matters and are of no consequence.

(32) Lastly, learned counsel for the defendant argued that in examination-in-chief Dr. Kucheria deposed that he had examined the witness when the examination-in-chief was given on affidavit dated 16/10/1982 although in cross examination he stated that he had examined the witness for the last time in the year 19⁸⁵. Such minor discrepancies cannot be of any effect particularly when the defendant has not been able to extract anything of substance in the cross examination.

(33) Doctors are not shown to be interested witnesses. I attach great importance to the evidence and reports of the doctors. This evidence gives quite an accurate idea of the nature of injuries the plaintiff sustained, his sufferings and the effect on his future life. The evidence remains uncontroverted. The defendant has not examined any doctor. It was open to the defendant to move an application for getting the plaintiff examined by some doctor. No such application was made. The plaintiff has established that he has suffered permanent disability of his left foot and will not be able to walk normally without the aid of crutches.

(34) From the evidence on record it stands established that the plaintiff will not be able to walk as a normal person. He will not be able to take the workload in the manner he was doing before the accident. He will always need an attendant. From the testimony of DW-6 Mr. P.K. Jain the Managing Director of the defendant company at the relevant time it stands established that the plaintiff lost his job with defendant as a result of effect on his efficiency after the accident. Mr. Jain stated that 'because of the injury the plaintiff was not able to take the workload. The plaintiff was store-in-charge. The store work is little heavy. The plaintiff wanted some lighter job. I was also interested in giving some lighter job to the plaintiff but no such job was available. Accordingly, the services of the plaintiff were terminated.'

(35) From the above statement of Mr. Jain it is evident that the plaintiff lost the job because of the injuries suffered by him in the accident.

(36) The plaintiff has claimed special and general damages amounting to Rs. 4 lakhs. I have held above that the plaintiff is entitled to Rs. 51,000.00 as Special damages. The plaintiff has also established his claim of Rs. 24,735.00. This leaves a balance of Rs. 3,46,520.00. The plaintiff has claimed future salary as special damages. The services of the plaintiff stood validly terminated with effect from 1/04/1984. He is not entitled to any salary from 1/04/1984. The question as to what amount the plaintiff is entitled as damages for loss of future earnings has, however, to be considered while assessing general damages. He is also entitled to compensation for both past and future, pain and suffering.

(37) The determination of amount of general damages is mostly a difficult question. The sum to be awarded is always dependent upon all the detailed circumstances of the case. 'No one knows what is right sum of damages in any particular case and not two cases are alike (Singleton L.J. in *Waldon v. War Office* 1956 (1) W.L.R. 51).

(38) What amount should I award to the plaintiff on account of physical pain and mental anguish and future loss of earning. Before determining the amount let me summarise the findings which emerge from the aforesaid discussion and analysis evidence.

(1) The plaintiff was employed with defendant on a salary of Rs. 3,000.00 p.m. at the time of accident. (2) The accident was not because of an Act of God. (3) Defendant had not exercised due care and attention in constructing collapsed portion of the building. (4) Plaintiff sustained grave and serious injuries as a result of the collapse of the wall of the building. (5) Plaintiff is permanently disabled. (6) Plaintiff suffered physical pain and mental anguish as a result of the injuries. (7) There has been loss of future earnings of the plaintiff.

(39) Money cannot renew a shattered human frame still the law has said that this is a head of damages for which monetary compensation can be awarded and court must do the best it can and award what is fair and reasonable compensation.

Future loss cannot be easily calculated because of many imponderables which enter into the assessment. The court must estimate the period of future disability and plaintiff's probable future rate of earning by arriving at a lump sum and this must then be discounted to allow for the fact that he receives a lump sum forthwith instead of payments spread over a period of time and for normal vicissitudes of life and contingencies such as the possibility that his working life might have been curtailed later by some happenings. It is not possible to calculate the pecuniary loss to a high degree of exactness and damages for future loss of earning have often been awarded in one lump sum together with damages for mental pain and suffering. I will conclude by what Diplock L.J. has said about the standard which the law applies on award of damages, namely, 'if it is not wholly extinctive and incommunicably ie, is based, apart from pain and suffering upon the degree of deprivation-that is, the extent to which the