

IN THE FIJI COURT OF APPEAL

Civil Appeal No. 71 of 1986

Between:

NIRMALA WATI  
d/o Sadhu Prasad

Appellant

and

1. A. HUSSAIN & CO. LTD.

2. ASIM HUSSAIN  
d/o Ashik Hussain

Respondents

Mr. V. Maharaj for the Appellant

Mr. A. Kohli for the Respondents

Date of Hearing: 10th March, 1987

Delivery of Judgment: 13th March, 1987

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant (plaintiff) was employed by the respondents (defendants) as a clerk whose duties included banking the day's takings.

On Christmas Eve, 1984, after the appellant had finished work and left for home, the second respondent who managed the business for the first respondent checked the day's records and found the amount paid into the bank to be \$1,000 short. He reported the missing \$1,000 to the police and named the appellant as the person he suspected of stealing it.

On returning from the police station he made a more thorough check which revealed an error on the part of his cashier giving the total takings as \$4,500 instead of \$3,500. The amount paid into the bank was correct and no money was in fact missing. All this took some three hours. He rushed back to the station to inform the police of the error but was too late.

A police party had, in the meantime, gone to the appellant's house where she and her husband had been entertaining visitors. They had disrupted the party, searched the house and brought the appellant to the police station for questioning. She was still there when the second respondent arrived to advise them of the error. He made no apology to the appellant then or at any time subsequently. She left the respondents' service, found other comparable employment in the same town and instituted proceedings in the Supreme Court for damages for wrongful confinement.

Giving judgment in the appellant's favour  
Rooney J. said:-

" The aggravating features in this case are that the plaintiff was detained by the police in the presence of friends and relatives and no apology was offered to her by the person responsible.

On the other hand the effect on the plaintiff's reputation was short lived. About one week later she found employment as a cashier with another firm and has been so employed ever since.

The detention, although it constituted an unpleasant experience for the plaintiff was not of long duration.

I award the plaintiff \$500 damages and the costs of this action. However, as the proceedings ought to have been instituted in the Magistrate's Court, the costs are limited to those which would have been awarded if the

action had been commenced and heard in the Magistrate's Court at Labasa. Such costs are to be taxed by the Registrar in default of agreement. "

The appellant appeals to this Court on the following grounds:-

- "1. THAT the award of \$500.00 damages in favour of the Appellant was too low having regard to all the circumstances of this case.
2. THAT the learned trial Judge erred in law in holding that the Appellant ought to have instituted proceedings in the Magistrate's Court and further erred in limiting the costs of the action in favour of the Appellant to the Magistrate's Court level."

Ground 1

The principle to be followed by an appellate court in a case of damages was stated thus by Wright L.J. in *Davies v. Powell Duffryn Associated Collieries* (1942 A.C. 601 at 616):-

"An appellate court is always reluctant to interfere with a finding of the trial judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages which differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate."

And again -

"Where, however, the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of

discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer L.J. in Flint v. Lovell (I). In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

It is difficult enough to assess damages in cases of physical injury; it is much more so where only psychological injury or injury to reputation occurs.

We find here no misapprehension of facts or application of wrong principle. The Judge took into account the absence of apology on the second respondent's part and his attempt to shift the responsibility for the entire episode onto the police. Though the figure of \$500 may in the circumstances, appear somewhat low, we do not consider there is sufficient reason for this court to interfere with it.

The ground, therefore, fails.

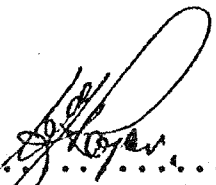
Ground 2

As for costs we are satisfied that the appellant was justified in instituting proceedings in the Supreme Court. To her the matter was of considerable importance and she was seeking aggravated damages. It is not at all unusual for such proceedings to be taken, and dealt with,

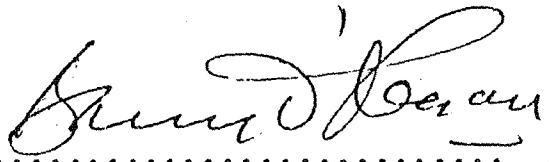
in the Supreme Court. (See for instance Manorma Raju v. Gurnam Singh & H.B. Singh Ltd: FCA 65 of 74). Mr. Kohli, who did not represent the respondents in the Supreme Court, did not seek to oppose this ground. No application would appear to have been made at any stage for this trial to be set down at Labasa for hearing and the matter was dealt with at Suva involving the parties in somewhat higher costs.

The ground succeeds and the order for costs is set aside. In its place is substituted an order that costs, if not agreed, be taxed as being those recoverable in Supreme Court proceedings.

As the appeal has only partially succeeded there will be no order as to costs in this court.

  
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