

A THE DIVISIONAL CONTROLLER, KSRTC
v.
MAHADEVA SHETTY AND ANR.

JULY 31, 2003

B [DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

C *Motor Vehicles Act, 1988—Section 166—Motor Accident—Serious injury causing 100% disability—Compensation—Claim—Rs.2.20 lakhs awarded by Tribunal—Enhanced by High Court to Rs.6.25 lakhs—On appeal, held: Under some heads compensation not justly determined by High Court—Compensation of Rs.4.5 lakhs with interest of 9% would be adequate.*

D *Motor Accident—Compensation—Determination of—Held: Compensation must be 'just'—Expression 'just' denotes equitability, fairness, reasonableness and non arbitrariness—Measure of damages cannot be arrived at by precise mathematical calculations—It would depend on particular facts of each case—Determination has to be rational, to be done with judicious approach and not the outcome of whims and wild guesses.*

E *Constitution of India, 1950—Article 142—Precedent—Binding nature of—Applicability—Held: Only the principle on which the case was decided is binding as authority—Statements not part of ratio decendi are not authoritative and they are only obiter dicta.*

Words and Phrases:

F *'Compensation'; 'damages'—Meaning of in the context of Motor Vehicles Act, 1988.*

'Act of God'—Meaning of.

G **Respondent-claimant, a mason by profession, suffered serious injury in his spinal cord in an accident by a bus of the appellant-Corporation while he was travelling in the bus as a passenger. He filed application for compensation and the Tribunal awarded compensation of Rs.2.20 lakhs taking his annual income to be Rs.12,000 per annum. Respondent approached High Court for enhancement of compensation and the same was enhanced to Rs.6.25 lakhs with interest at the rate of 9%. High Court**

H

awarded Rs.1 lakh for injuries, mental agony, pains and sufferings, Rs.2,55,000 as loss of future income taking the annual income as Rs.15,000, Rs.1.5 lakh for loss of marital life, Rs.1 lakh for future expenses for medicine and wheelchair. A

In appeal to this Court, appellant-Corporation contended that claimant was not entitled to any compensation as the accident was not due to rash and negligent driving and the same was due to act of God; that the High Court enhanced the compensation amount without any rational basis, and that the rate of interest was on the higher side. B

Allowing the appeal, the Court C

HELD: 1. The claimant is entitled to Rs.4.5 lakhs as compensation along with interest @ 9% p.a. from the date of application for compensation till payment. Regarding injuries, mental agony, pains and sufferings it is noted that the claimant was hospitalized for about seven weeks. Therefore, the amount of Rs. 1,00,000 fixed by the High Court is unreasonable. So far as the loss of earning capacity is concerned, there is no rational for fixing annual income at Rs. 15,000. Annual income is fixed at Rs. 12,000. Applying the multiplier of 17 the loss of future income is fixed at Rs. 2,04,000 instead of Rs. 2,55,000. For the loss of marital life and the non-possibility of marriage, High Court fixed the compensation at Rs.1.5 lakhs without any basis being indicated. So far as future expenses for medicines and wheelchair etc. are concerned, High Court has fixed it at Rs.1 lakh. Though High Court has not indicated any basis for award of lump sum, it cannot be denied that the claimant is on the wheelchair and would need regular medical attention because of the continued complications. The cost of expenses during hospitalization was small, because treatment was at Government Hospital. The situation would not be different for future treatments. Sum of Rs. 50,000 would be adequate. The other amounts awarded by the High Court do not call for any interference. [25-H; 24-E-H; 25-A-C] D E F

R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., AIR [1995] SC 755, distinguished. G

Nagesha v. M.S. Krishna and Anr., [1997] 8 SCC 349, referred to.

2. The term 'compensation' etymologically suggests the image of balancing one thing against another; its primary signification is H

- A** equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of 'full compensation'. 'Compensation' means anything given to make things recompense, remuneration or pay: it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined and given.
- B** Compensation is an act which a court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as equivalent: rendering of equivalent in value
- C** or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damages', although compensation may often have to be measured by the same rule
- D** as damages in an action for a breach. [20-H; 21-A-E]

Livingstone v. Rawyards Coal Co., [1980] AC 25, referred to.

- E** 3. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss,
- F** expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but
- G** amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.
- [21-G-H; 22-A-B]

- H** *West v. Shepard*, [1964] AC 326 and *Charter House Credit v. Jolly*,

[1963] 2 CB 683, referred to.

4. The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the latter case, there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent. [22-C]

Parry v. Cleaver, [1969] 1 All E.R. 555 and *Fair v. London and North-Western Railway Co.*, [1869] 21 LT 326, referred to.

5. Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived by at precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. [22-H; 23-A-E]

A *Helen C. Rebelle v. Maharashtra State Road Transport Corporation*, AIR [1998] SC 3191; *Ashwani Kumar Mishra v. P. Muniyam Babu*, [1999] ACJ 1105 SC and *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, AIR [1995] SC 755, referred to.

B *Fair v. London and North-Western Railway Co.*, [1869] 21 LT 326 and *Rushton v. National Coal Board*, [1953] 1 All E.R. 314, referred to.

6. While fixing compensation for pain and suffering as also for loss of amenities of life the features like his age, marital status and unusual deprivation he has undertaken in his life has to be reckoned. [24-D]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5453 of 2003.

From the Judgment and Order dated 4.10.2001 of the Karnataka High Court in M.F.A. No. 3577 of 2000.

P.R. Ramasesh for the Appellants.

D

G. Ananthamurthy for P.P. Singh, for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

E

Mahadeva Shetty (hereinafter referred to as 'the claimant') suffered serious injuries on 4.6.1995 as a result of a vehicular accident where a bus bearing No.KA-01/F 5097. belonging to Karnataka State Road Corporation (hereinafter referred to as 'the Corporation') was involved. According to the claimant, the accident took place on account of rash and negligent driving by driver of this bus. As a result of the accident the bus plunged into a ravine resulting in serious injuries to the spinal cord of the claimant and made him a paraplegic. He filed an application for compensation before the Civil Judge (Senior Division) & JMFC, Nanjangud, (hereinafter referred to as 'the Tribunal') claiming compensation of Rs.9.83 lakhs. According to the claim

F petition filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') the claimant was a Mason by profession. The bus in which he was a passenger plunged into a pit by rolling down from a great height, and he sustained injuries and a few persons lost their lives on account of the accident. He was hospitalized for about 7 weeks i.e. days from 5.6.1995 to 23.7.1995. There was fracture of T12 vertebra and consequent damage to nerve system

G of the whole body below the hips and the body has been functionless. Limbs

H

have become functionless permanently due to failure of nerve system due to accident and he has also lost sexual power. He was earning Rs. 3,000 per month at the time of accident. It was stated that he was of good health at the time of accident. A

Stand of the Corporation in reply to the claim petition was that the accident was not due to rash and negligent driving, but an act of God and that there was no rashness and/or negligence as claimed by the claimant. B

On consideration of the materials on record and the evidence of witnesses examined, the Tribunal awarded compensation of Rs.2.20 lakhs. It was stipulated that the amount be paid with interest @ 6% p.a. from 28.12.1999, i.e. the date when claimant tendered evidence in support of the claim. C

Matter was carried in appeal by the claimant before the Karnataka High Court for enhancement of compensation. The Corporation supported the order dated 24.5.2000 of the Tribunal taking the stand that there was no infirmity in the order. In appeal the High Court raised the amount of compensation to Rs.6.25 lakhs. Under various heads, the amounts of compensation as awarded by the Tribunal and the High Court are as follows: D

Heading	Tribunal	High Court	
(a) Pain & Suffering	Rs.25,000	Rs.1,00,000	E
(b) Mental agony	Rs.25,000	Both under the head injury, pain and suffering	
(c) Medical Expenses	Rs.15,000	Rs.15,000	F
(d) Transportation	Rs.5,000	Rs.5,000	
(e) Loss of marital life	Rs.75,000	Rs.1,50,000	
(f) Loss of future income	Rs.75,000	Rs.2,55,000	G
(g) Future expenses	-----	Rs.1,00,000	
(h) Interest	@ 6% from the date of recording Evidence.	@ 9% from the date of petition.	H

A Learned counsel for the appellant submitted that without any rational basis the High Court has enhanced the compensation, while the Tribunal under the Act had indicated cogent reasons for the award made by it. It is pointed that the claimant was working as a Mason and he did not have permanent job. His engagement depended on several factors, like availability of engagements. When it rains, and in several other periods, normally a Mason would not have work. That being the position the High Court was not justified in taking Rs.15,000 as monthly income. The rate of interest justified by the High Court is on the higher side. In any event the accident was an act of God and no compensation is payable.

B

C In response learned counsel for the claimant submitted that the High Court has considered all the legal and factual factors and has rightly awarded the amount, particularly when disability was 100% and the claimant has become a cripple. Strong reliance was placed on a decision of this Court in *Nagesha v. M.S. Krishna and Anr.*, [1997] 8 SCC 349 to contend that the quantum of compensation awarded was meet and the proper.

D Rival stands need consideration.

E The expression “act of God” signifies the operation of natural forces free from human intervention, such as lightening, storm etc. It may include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, preventive action can be taken. Lord Westbury defined act of God (damnum fatale in Scotch Laws) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognize the possibility. This appears to be the nearest approach to the true meaning of act of God. Lord Blancaburgh spoke of it as “an irresistible and unsearchable providence nullifying are human effort”.

F

G

H The term ‘compensation’ as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. ‘Damages’ on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term ‘compensation’ etymologically suggests

the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of 'full compensation'. That concept was first stated by Lord Blackburn in *Livingstone v. Rawyards Coal Co.*, (1980 AC 25).

The "Rule of Law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. 'Compensation' means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay: it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined and given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damages', although compensation may often have to be measured by the same rule as damages in an action for a breach. The term 'compensation' as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; 'damages' on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. 'Compensation' is a return for a loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind.

It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in *West v. Shepard*, (1964) AC 326. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives

A due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. Upjohn L.J. in *Charter House Credit v. Jolly* (1963) 2 CB 683 remarked, 'the assessment of damages has never been an exact science; it is essentially practical'.

C The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the later case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent. In *Parry v. Cleaver*, (1969) 1 All.E.R. 555 Lord Morris stated as follows:

D "To compensate in money for pain and for physical consequences is invariably difficult, but.....no other process can be devised than that of making monetary assessment."

E The main principles of law on compensation for injuries were worked out in 19th Century, where railways accidents were becoming common and all actions were tried by Jury. Though the cases have antiquated air it is still useful to refer to them. The necessity that damages should be 'full' and 'adequate' was stressed by the Court by Queen's Bench in *Fair v. London and North-Western Railway Co.*, (1869) 21 LT 326. The word 'compensation' is derived from Latin word "compensare" meaning "weigh together" or "balance". In *Rushton v. National Coal Board*, (1953) 1 All.E.R. 314 it was observed:

G "Every member of this Court is anxious to do all he can do to ensure that the damages are adequate for the injuries suffered, so far as they can be compensated for an injury, and to help the parties and others to arrive at a fair and just figure."

H It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden

scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See *Helen C. Rebello v. Maharashtra State Road Transport Corporation*, AIR (1998) SC 3191.

This Court in *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, AIR (1995) SC 755 laying the principles posited:

"Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned,

- A they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”
- B

Here also because of the accident the appellant had become paraplegic. The principle has been re-agitated in by the Court in *Ashwani Kumar Mishra v. P. Muniam Babu*, [1999] ACJ 1105 SC.

C

- A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life the features like his age, marital status and unusual deprivation he has undertaken in his life has to be reckoned.
- D

- Coming to the injuries, mental agony, pains and sufferings it is noted that the claimant was hospitalized for about seven weeks. Therefore, the amount of Rs. 1,00,000 fixed by the High Court is unreasonable.
- E

- So far as the loss of earning capacity is concerned, it is noted that the Tribunal had calculated the income at Rs. 12,000 per annum, and the High Court enhanced it to Rs.15,000. It referred to Schedule (II) to the Act for fixing national income and the multiple. Though multiple of 17 as fixed by the High Court seems to be in order, there is no rational for fixing annual income at Rs. 15,000. The Tribunal had taken into account the possibility of non-engagement and the wages claimed. Same appears to be rational. Therefore, the annual income is fixed at Rs. 12,000. Applying the multiple of 17 the loss of future income is fixed at Rs. 2,04,000 instead of Rs.2,55,000 as fixed by the Tribunal.
- F
- G

- Coming to the loss of marital life and the non-possibility of marriage, the Tribunal had indicated basis for fixing the quantum at Rs. 75,000. Without any basis being indicated, the High Court fixed at Rs.1.5 lakhs by referring to the case of *R.D. Hattangadi* (supra). The special features of that case are non-existent in the case at hand. The injured in that case was an advocate
- H

who was married. In the case at hand the claimant is a bachelor. Several other factors were considered in the earlier case to fix the quantum. Therefore, the amount awarded by the Tribunal is restored. So far as future expenses for medicines and wheelchair etc. are concerned, the Tribunal as noted above had not awarded any compensation. But the High Court has fixed it at Rs.1 lakh. Though High Court has not indicated any basis of award lump sum, it cannot be denied that the claimant is on the wheel chair and would need regular medical attention because of the continued complications. The cost of expenses during hospitalization was small, because treatment was at Government Hospital. The situation would not be different for future treatments.

Above being the position, sum of Rs.50,000 would be adequate. The other amounts awarded by the High Court, in our considered opinion, do not call for any interference. Similar is the case for rate of interest awarded. The total amount comes to Rs. 4,49,000, which is rounded to Rs. 4.50 lakhs.

So far as *Nagesha's* case (supra) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.

The claimant is entitled to Rs. 4.5 lakhs as compensation along with interest @ 9% p.a. from the date of application for compensation till payment.

- A** Out of the aforesaid sum a sum of Rs.3.5 lakhs along with entire interest payable shall be deposited in a fixed deposit for not less than five years in a nationalized bank. The claimant will be entitled to draw interest on the deposit, which shall be re-deposited for further terms of five years. In case of urgent need it shall be open to the claimant to move Tribunal for release of any part of the amount in deposit. The Tribunal shall consider the request for withdrawal and shall direct withdrawal in case of an urgent need and not otherwise of such sum as would meet the need. It shall be specifically indicated to the Bank where the deposit is to be made that no advance or withdrawal of any kind shall be permitted without the order of the Tribunal. It shall be open to the claimant to approach the Tribunal for variance of the order
- B** relating to deposit in fixed deposit, if any other scheme would fetch better returns and also would provide regular and permanent income. The amount awarded along with interest shall be deposited within period of four weeks from today after adjusting any amount already deposited. The deposits shall be made with the Tribunal.
- C**
- D** The appeal is allowed to the extent indicated. Costs made easy.

K.K.T.

Appeal allowed.