
EDITORIAL**NAME YOUR WORTH**

Until about three years ago, the practice had been for persons suing in defamation to claim *general damages* (as opposed to special damages) without specifying any amount. In 1997 the High Court departed from that long-standing practice. It refused to hold as improper claims for general damages in the amount of RM30 million for alleged libel, in one case, and for RM15 million for alleged slander and a further RM15 million for alleged libel, in another case.

The main grounds for the decisions in the two cases were that there was nothing in the Rules of the High Court 1980 to prohibit a plaintiff from quantifying the amount of damages he claimed; that in defamation cases where damages to be awarded were in respect of loss of reputation, it was for the plaintiff to affix a figure to indicate what that loss was worth; and that the quantification of damages would obviate the element of surprise or shock to the defendant and would prevent the plaintiff from asking for a “more exorbitant figure”.

An appeal against the two decisions was dismissed by the Court of Appeal.

Since then it has become commonplace for a plaintiff to claim in the hundreds of millions of ringgit in general damages, for alleged defamation. Taking the court’s decision to its logical conclusion, it is possible for someone one of these days to assess the worth of his loss of reputation at RM1 billion and to claim that amount.

What is even more alarming is that these ‘mega’ claims are beginning to be made in negligence and other actions as well. That this could happen was something which should have been foreseen because it was impossible to confine the logical consequences of the decisions of the High Court to only cases of defamation. Once it was held that there was nothing in the rules of procedure to prohibit plaintiffs from fixing the amount of general damages they claimed, the door was open for every plaintiff, not just those claiming in defamation, to name his figure.

The reasons given by the courts for allowing plaintiffs to quantify general damages do not appear to be in accord with the practice then generally accepted in the Commonwealth, including this country. In 1965 a High Court had held that it was not the practice to specify the amount of general damages in the pleadings. That decision was not followed in 1997 on the ground that the case involved a claim for personal injury and not for defamation: awards of damages in personal injury cases and defamation actions served different purposes and had different elements and different histories, and the practice of not quantifying general damages in personal injury cases should not therefore be applied to defamation actions.

But surely those differences had been there all this while; they were not something newly discovered. In any case why should the difference in the purpose of awards in personal injury cases and in defamation actions mean that plaintiffs in defamation actions can quantify their general damages while those claiming in negligence and other actions cannot.

The proposition that the plaintiff is the best judge of the worth of his loss of reputation, too, is unsound. There is no question but that the court alone has the function of assessing damages to be awarded. The assessment is based on proof of loss. In that exercise the quantification by the plaintiff of his loss at RM100 million or RM200 million has no relevance. It is really pointless for plaintiffs to ask for whatever they wish.

The danger of the present practice of allowing plaintiffs to specify general damages is that the court can be unconsciously influenced by the enormity of the claims. A judge would look absurd if, on a claim for general damages for RM200 million for defamation, he were to award RM50,000.00 or even RM200,000.00 - the latter sum would have been considered quite a substantial award in days gone by but is nowadays a pittance. A reasonable figure in the circumstances would have to be something much more. In the result awards of damages of a few million ringgit in defamation actions have become quite common.

Compared with awards of damages in personal injury cases the amounts awarded in defamation actions seem to be wholly disproportionate and, indeed,

unrealistic. It is worthwhile to bear in mind the observation made in a judgment of the Court of Appeal in England in 1996 that it is “offensive to public opinion, and rightly so, that a defamation plaintiff should recover damages for injury to his reputation greater, perhaps by a significant factor, than if that same plaintiff had been reduced to a helpless cripple, or an insensate vegetable.”

The recent announcement by Datuk Dr Rais Yatim, the Minister in the Prime Minister’s Department, that the government is reviewing legal provisions governing awards by the courts, no doubt, reflects the government’s concern over these large amounts of damages awarded in defamation cases. In the announcement the Minister expressly made comment of the “vast disparity in damages being awarded by the court for loss of life and limb as a result of a road accident, for example, compared with that awarded for one’s reputation in a defamation suit which could reach as much as RM10 million”.

Apart from that, the undesirable effect of these substantial awards in defamation actions on the press should not be overlooked. Recently awards of RM200,000.00 were each made against two local newspapers. Such awards are bound to deter the press from exercising its right to freedom of speech and expression. With every possibility that it could be liable in damages to millions of ringgit, newspapers no longer undertake investigative journalism. While in other countries it is part and parcel of the function of the press to expose abuse of power and wrong-doings on the part of public and private individuals, in Malaysia the press cannot afford to do so. The price which may have to be paid is very high. This “gagging” by the court of press freedom is inimical to its constitutional role as the guardian of public rights. It works against the public interest.

It is timely that the whole issue of allowing plaintiffs to specify what they consider their worth in their claim for general damages and the new policy of awarding substantial damages be carefully gone into, not only in respect of defamation actions but generally.

The present unsatisfactory situation illustrates the danger in the court’s adopting a novel policy in disregard of established practice and without carefully considering the adverse and far reaching consequences its decision can have.