

erroneous as a matter of law" (citations omitted). *Hynes v. Whitehouse*, 120 N.H. 417, 415 A.2d 876 (1980); *Gulf Oil Corp. v. Rybicki supra*. We hold that the record before us amply supports the master's findings and rulings.

Denial of the relief sought does not necessarily bar the right to damages at law. Generally, on a motion to amend to recover damages, the court can determine whether justice requires that the plaintiff be allowed to reopen the case, and if so, whether damages should be awarded and are capable of being assessed with reasonable certainty. *Gregoire v. Paradis*, 100 N.H. 21, 23, 117 A.2d 328, 330 (1955). However, based on the findings and rulings made in this case, we fail to see how even this remedy would be available to the plaintiff.

*Exceptions overruled.*

Rockingham  
No. 79-358

PAUL P. RICCARDI

v.

PAUL GARABEDIAN

June 12, 1980

*John E. Skorko*, of Derry, by brief and orally, for the plaintiff.

*Frederick W. Murdock, Jr.*, of Massachusetts, by brief and orally, for the defendant.

MEMORANDUM OPINION

This is an appeal from the Trial Court's (*Goode, J.*) denial of the plaintiff's motion for a new trial, which was filed after we

remanded the case to the trial court. *Riccardi v. Garabedian*, 118 N.H. 191, 384 A.2d 788 (1978).

In that case, the trial court denied plaintiff's motion for a continuance and required him to proceed with a trial without the benefit of counsel. When the question arose whether that denial was an abuse of discretion, we indicated that the plaintiff appeared to make out a reasonable case for a continuance. At that time, however, we declined to order a new trial because we were unaware of what facts were submitted to the trial court on that issue. *Id.* We now have the benefit of the entire record, which discloses the facts that were submitted to the trial court in support of the motion for continuance and the subsequent motion for new trial. Having reviewed that record we conclude that the plaintiff has established the facts set forth in his affidavit, which we previously indicated made out a reasonable case for a continuance and a new trial. *Id.*

We are of the opinion that the trial court's denial of the plaintiff's motion, viewed in the light of our discussion in *Riccardi v. Garabedian supra*, requires that an order granting the plaintiff a new trial be entered.

*So ordered.*

Rockingham  
No. 79-362

LAURETTA M. HYNES & a.

v.

LINCOLN A. WHITEHOUSE AND  
FLETCHER PERKINS

June 12, 1980