
(1935) 01 AHC CK 0030
In the Allahabad High Court

B.B. and C.I. Ry. Co.

APPELLANT

Vs

Dwarka Nath

RESPONDENT

Date of Decision : 23-01-1935

Acts Referred:

Citation : AIR 1935 All 669

Hon'ble Judges : Bajpai, J

Bench : Division Bench

Judgement

Bajpai, J.—This is a second appeal by a Railway Company against the decree of the Courts below awarding damages to the plaintiff for loss sustained by him through fire. The origin of the fire was stated to be that certain sparks from an engine of the Railway Company fell on the grass growing: on the Railway bank and spreading on to the jungle of the plaintiff's adjoining land damaged some patel grass and trees. The plaintiff is the owner of village Bhoianpore Chirpura and a portion of its area is situated close to the Railway line which passes over a certain portion of the land of this village. There are waste and jungle lands belonging to the plaintiff in this village and various kinds of timber and fruit trees and patel grass grow on these lands. The plaintiff's case is that on 13th April 1930, a passenger train owned by the B.B. & C.I. Railway Company was running between Cawnpore and Farrukhabad, and certain sparks from the engine were responsible for the fire and the damage to the plaintiff's property. Courts below have decreed the plaintiff's suit for damages to the extent of Rs. 600 on the finding that the defendant company was guilty of negligence.

2. In second appeal it is contended before me that on the findings of the lower appellate Court no negligence, such as is actionable in law, has been established and that the plaintiff was guilty of contributory negligence. It is said that the Railway Company has a statutory power of running locomotive engines on the Cawnpore-Farrukhabad line and therefore they are not responsible for the consequences of the fire because:

when the legislature has sanctioned the use of a particular means for a given

purpose the sanction carries with it the consequence that the use of the means itself for that purpose is not an act for which an action can lie.

3. This argument however was modified by the concession that in case of negligence the Railway Company would not be exonerated. The question therefore is whether the defendant was guilty of such negligence as to entitle the plaintiff to obtain damages. The lower appellate Court has found that

the plaintiff's oral evidence is worthy of being relied on.

4. It has also discussed the defendant's evidence and has come to the conclusion that

in face of the plaintiff's clear evidence no weight can be given to the defence evidence.

5. It is not possible in second appeal to come to a different conclusion on the question of the weight to be attached to the evidence adduced by the parties. It was however argued by Dr. Katju that the lower appellate Court has misread a portion of the evidence given by Ala Rakhu, a witness for the defendant, and that the finding is vitiated because the Court thinks that Ala Rakhu to a certain extent corroborates the plaintiff's evidence. Ala Rakhu in examination-in-chief supported the defence case, but in cross-examination stated that when he was about to start for Fatehgarh to report the matter to the Permanent-way Inspector the fire had already gone out of the Railway fencing (ag tar ke bahar pahunch chuki thi). The case of the defendant was that the fire did not have its origin within the Railway boundaries, but in the land belonging to the plaintiff caused by the negligence of some of the plaintiff's servants. The lower appellate Court therefore was justified in saying that the admission by Ala Rakhu to the effect that the fire had gone out of the Railway fencing suggests that the fire originated on the Railway banks. In my view there has been no misreading of the testimony of Ala Rakhu. After a review of the evidence produced by the parties the lower appellate Court records this finding:

There was grass on the defendants' land, between the fencing on either side of the railway line, 1 to 11/2 cubit high; that that grass caught fire, owing to sparks falling down from the railway engine; and that that fire spread on to the plaintiff's land and burnt his patel and trees.

6. It is then argued that even if this finding be accepted the plaintiff has no cause of action to maintain a suit: for damages. The contention is that, although it may be the duty of the Railway Company to take proper precaution for the avoidance of fire due to sparks from Railway engines yet an impossible duty should not be imposed and if the Railway Company were liable for damages caused to the plaintiff's land by reason of the sparks, from the engine falling on the grass on the Railway banks and then spreading-on to the plaintiff's land the task of the Railway Company would be an impossible one, because it would amount to asking them to keep the banks of their line "trimmed like a lawn or

altogether preventing visitation thereon." It is said that the imposition of such a liability was not intended by the Legislature which gave the Railway Company power and authority to run trains and locomotive engines.

7. It was held by Mukerji, J., in *Secy. Of State v. Dwarka Prasad* 1927 All. 349, in a plaintiff's suit for damages brought against a Railway Company on the allegation that his property adjoining the Railway line was destroyed by a spark from the engine of a running train the burden of proof as to whether proper precaution had been taken to avoid emission of such sparks lay on the Railway Company and the latter would be liable if it failed to take all reasonable precaution. Mr. Dey was examined in the present case by the Railway Company and he said that 10 feet of land near the Railway fencing is kept clean by the Railway Authorities and this-track is known as the fire line, then again a piece of land 2 feet in width near the Railway track itself is kept clean and that all these precautions were taken in 1930 also. This would go to show that the Railway Company itself did not consider it impossible to keep about 10 feet wide land near the fencing 1 and 2 feet wide land near the Railway track clean. It also appears in the evidence of the plaintiff and of Mr. Dey that the plaintiff had made several complaints to the Railway Authorities for damage caused to this property by the sparks from the engine and that several thekaders who had taken a theka of cutting grass, from the plaintiff's land had shown their disinclination to take the theka. The attention of the authorities was pointedly drawn to the duty of cutting-the tall grass inside the fencing in order to prevent damage to the plaintiff. The lower appellate Court has refused to believe Mr. Dey when the latter said that the precaution of cutting the grass had been taken in the year 1930. The learned Judge says:

neither his oral statement nor his reports can be worthy of being given any weight.

8. Under these circumstances I am of the opinion that the finding of the lower appellate Court that the defendant Railway Company was guilty of actionable negligence was sound in law.

9. Reliance however was placed by Dr. Katju on the case of *Halford v. The E.I.R. Co.* (1875) 14 Beng. L.R. 1. This case lays down that if every precaution which the nature of the case suggests has been observed then the Railway Company which has a statutory power of running locomotive engines will not be liable for damages caused to the plaintiff's property independent of negligence. Coming to the facts of that case it appears that they were entirely different from the facts of the present case. The learned Single Judge as well as the Judges who heard the Letters Patent appeal relied greatly upon the evidence tendered by the Railway Company which was to the effect that the grass on the Railway banks was not more than a foot high and that it was not to be expected that the Railway Company would trim the grass on the banks like a lawn. In the present case it is admitted by the Railway Company that the fire line and another two feet wide line near the Railway track has to be kept clean of grass, and the finding is that

the grass on the defendants' land between the fencing on either side of the Railway line was about 18 to 24 inches high. The case cited by the appellant therefore does not help the Railway Company. Next it, was contended that the plaintiff was guilty of contributory negligence inasmuch as some of his servants saw some live coal falling from the ash-pan of the Railway engine which ignited the grass on the Railway line and the fire in its turn by the westerly wind that was blowing spread on to the plaintiff's land. It is said that the plaintiff's servants could have managed to extinguish the fire if they had taken proper steps. According to the defendants' own witness Ala Rakhu the fire spread with great rapidity and the jungle was ablaze within a very short time, and therefore it was not possible for the, plaintiff's servants to have averted the damage by adopting such steps as were humanly possible.

10. For the reasons given above there is no force in this appeal and I dismiss it with costs. Dr. Katju has asked, for permission to file an appeal by way of Letters Patent saying that the question is of great, importance to the Railway Company and I give him leave.