

(1913) 07 CAL CK 0037
In the Calcutta High Court

Bengal Provincial Railway Co.

APPELLANT

Vs

Gopi Mohan Singh

RESPONDENT

Date of Decision : 09-07-1913

Acts Referred:

Citation : AIR 1914 Cal 368 : (1914) ILR (Cal) 308

Hon'ble Judges : Jenkins, C.J;Mookerjee, J

Bench : Division Bench

Judgement

Jenkins, C.J.—This is an appeal under Clause 15 of the Letters Patent from a judgment of Mr. Justice Digambar Chatterjee confirming the decree of the lower Appellate Court.

2. The suit was one brought by the plaintiff against a Railway Company for damages. The cause of action alleged was that a train of the defendant Company ran into and damaged the plaintiff's carriage as it was crossing the defendant Company's line. The question therefore turns upon whether or not there was negligence on the part of defendant Company, and, if so, whether or not there was contributory negligence on the part of the plaintiff. As this case comes before the High Court by way of second appeal, we cannot disturb any finding of fact, if there was any evidence to support it. The Judge of the lower Appellate Court has come to the conclusion that the proximate cause of the damage to the plaintiff's carriage was the running of the train against the carriage, and he finds that there was negligence on the part of the defendant Company. The evidence shows that there was a gate at this level-crossing where the accident occurred, and that this gate was left open. There was thus an invitation to all comers to cross the line and an intimation that it could be crossed with safety. There is, therefore, ample evidence to support the finding of negligence against the defendant Company, and it cannot be disturbed.

3. Then, was there contributory negligence on the part of the plaintiff? There again we have the finding of the lower Appellate Court that there was not, for the learned Judge of that Court excludes the running of the carriage across the line,

as he terms it, as being a cause of the accident, and that expression in the context in which it appears amounts to a negation by the Court of any contributory negligence on the part of the plaintiff.

4. The result then is that we have negligence proved to the satisfaction of the lower Appellate Court on materials which justify that finding, and contributory negligence on the part of the plaintiff not proved to the satisfaction of that Court. The result is that the claim in the suit is established.

5 There remains to be seen whether damages are proved. The evidence in support of those damages has been criticised before us, and it has been suggested that there has been no damage. We have not gone through the evidence; nor is it necessary that we should do so, because we accept the finding of the lower Appellate Court that Rs. 316 has been proved to have been spent by the plaintiff in repairing his carriage. This clearly establishes damages resulting from the tort of the defendant Company.

6. This appeal, therefore, in my opinion, must be dismissed with costs.

Mookerjee J.

7. Concurred.