

(1931) 04 AHC CK 0020
In the Allahabad High Court

Daya Shankar

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 24-04-1931

Acts Referred:

Citation : (1931) 04 AHC CK 0020

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This is a second appeal by one who was the plaintiff in the Court; below. By this suit the plaintiff claimed against the Bombay, Baroda and Central India Railway Company a sum of Rupees 1,300 as damages. The Court of first instance allowed a sum of Rs. 1,200 as damages, but on appeal by the railway company the learned Subordinate Judge who heard the appeal dismissed the suit altogether.

2. The allegation in which the suit was founded and the facts which have been found established by the lower appellate Court are these. There was a fair at Bithur in the District of Cawnpore. The plaintiff was coming from the fair and was going towards Cawnpore. At a short distance from the Bithur Railway Station the plaintiff had to cross the railway line. There was a pair of gates which was open and permitted the plaintiff to cross the railway line. As the plaintiff arrived on the rails, travelling at a moderate speed of about 7 miles an hour, a railway engine coming from the direction of the railway station at Bithur collided against the plaintiff's ear and broke it. On these facts, the learned Subordinate Judge held that the plaintiff was guilty of contributory negligence, inasmuch as it was the duty of the plaintiff to be circumspect and, on arriving near the gate, to look on either side and to see if any train or engine was passing.

3. In this Court it has been contended that the learned Subordinate Judge drew a wrong inference from the facts found and that there was no contributory negligence.

4. There can be no doubt that the matter is concluded by English cases and there is at least one Indian case which is against the respondent. The Indian case is Bengal Provincial Railway Co. Vs. Gopi Mohan Singh,

5. There can be no doubt that where the plaintiff is guilty of contributory negligence he is not entitled to lay the whole of the blame on the negligence of the defendant and recover damages. But there is another rule of law which says that where the defendant's negligence is such as invites, as it were, the plaintiff to be less circumspect, the defendant cannot put the blame on the plaintiff, if he happened to be less circumspect than he would otherwise have been. This is put very clearly in Sir Frederick Pollock's Law of Torts, 13th Edn. at pp. 493 and 494, At p. 493 the learned author puts the proposition like this:

There are certain conditions under which the normal standard of a reasonable man's prudence is peculiarly difficult to apply, by reason of one party's choice of alternatives, or opportunities of judgment, being affected by the conduct of the other.

6. By way of illustration the learned author quotes the case of The Directors of North-East Railway Company v. Wanless [1874] 7 HL12 at p. 16, The case decided is put in the following language by the author:

A person who finds the gates of a level railway crossing open, and is thereby misled into thinking the line safe for crossing, is not bound to minute circumspection, and if he is run over by a train, the company may be liable to him although he did use his faculties so clearly as he might have done under other circumstances.

7. The learned author further at p. 494 puts the reason of the decision as follows:

One might generalize the rule in some such form as this: not only a man cannot with impunity harm others by his negligence, but his negligence cannot put them in a worse position with regard to the estimation of default. You shall not drive a man into a situation where there is loss or risk every way, and then say that he suffered by his own imprudence. Neither shall you complain that he did not foresee and provide against your negligence.

8. We are of opinion that the principle laid down in the cases decided and very clearly put by the learned author should be adopted as the basis of our decision, and we do adopt it. In the result we allow the appeal, set aside the decree of the lower appellate Court and restore the decree of: the Court of first instance. The plaintiff will have his entire costs throughout.