
(1942) 08 AHC CK 0016
In the Allahabad High Court

District Board

APPELLANT

Vs

Sri Nawas

RESPONDENT

Date of Decision : 31-08-1942

Acts Referred:

Citation : AIR 1943 All 10 : (1942) 12 AWR 346

Hon'ble Judges : Dar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dar, J.—This is an appeal and a cross-objection against a judgment and decree, dated 20th April 1936, of the Subordinate Judge of Budaun, in a suit for recovery of money as damages. The plaintiff, Sri Nawas, is the owner of certain buses which ply for hire in the district of Budaun. The defendant the District Board, Budaun, is a statutory body in which the public highways in the district of Budaun are vested and which manages them. On 26th November 1984, one of the buses of the plaintiff left Budaun station for Asafpur. As it reached the spot between miles Nos. 20 and 21 close to the village Kamalpur, it met with an accident and was burnt. The bus had a capacity of 29 seats. It was driven by a driver named Azhar Husain. At the place where the accident occurred, the road is partly metalled and partly kachcha. The central portion of the road which is about 12 feet wide is metalled. On both sides of the metalled road, there are patris and these patris vary in width at various places. On the spot where the accident occurred the width of the kachcha patri on the northern side was five feet and on the southern side was about nine feet. The accident occurred at about 9 P. M. on a dark and foggy night. At the time of the accident, there was good deal of dust on the road partly coming from the village abadi and partly thrown up by another bus which had preceded this bus. At the time of the accident among the passengers in the bus there were two constables, Yaqub Ahmad Khan and Jafar Nazar.

2. Soon after the accident the constable Yaqub Ahmad Khan lodged a report in

the police station of Bisauli and as a result a case for rash driving was started against the driver Azhar Husain which resulted in his conviction and a fine of Rs. 100. In the accident a number of persons had received injuries, but the injuries were not serious. After serving a statutory notice, the plaintiff, Sri Nawas, on 26th July 1935, raised an action in the Court of the Subordinate Judge of Budaun against the District Board of Budaun for recovery of a sum of Rs. 5010 as damages for the loss of bus caused by the negligence of the defendant. The plaintiff's case shortly stated was that he had purchased the bus in 1930 for a sum of about Rs. 7000, that the bus had made a journey of about 30,000 miles when it met with the accident and was burnt and that the cause of the accident was the bad condition of the road which the District Board was under obligation to keep in good repair. The plaintiff, therefore, alleged that as the District Board did not keep the road in good repair which was the cause of the accident they were liable to pay him the damages claimed. The cause of the accident according to the plaintiff was that between miles 20 and 21 while the bus was running at a speed of 20 to 21 miles per hour it found that from the opposite side certain bullock-carts were coming in the middle of the road and in order to save an accident the driver of the bus swerved towards the left. At the place where the bus swerved towards the left the road had sloped towards a pond which was close-by, and as between the pond and the kachcha patri of the road on account of the action of the rain the road had received a depression, the bus in swerving was caught up in the depression and finally fell into the pond and got upset and, later on, by the action of the engine got burnt.

3. The defendant denied that the road at the place where the accident occurred was in a bad condition. The defendant further denied that any bullock-carts were coming from the opposite direction which necessitated the swerving of the bus towards the left. The defendant pleaded that the driver Azbar Husain was trying to outstrip the other bus which was going ahead and in doing so it had to swerve to the left and met with an accident on account of rash and negligent driving. The trial Court found that on the spot where the accident occurred the road was in bad repairs. It further found that though there might be some truth in the allegation that the driver was trying to outstrip the other bus, yet the main reason of swerving the bus on the left was that bullock-carts were coming from the opposite side. The trial Court further found that the road being in bad repair it was obligatory on the District Board to keep it in proper condition and not having done so they were liable to pay damages to the plaintiff. These damages were assessed by the trial Court at a sum of Rs. 3847 for which a decree was granted in favour of the plaintiff. Against this decree the defendant has preferred this appeal and the plaintiff has filed cross-objection.

4. The first question which arises for our consideration in the case is whether on the facts found or proved by the trial Court there is any cause of action against the defendant. On behalf of the defendant, it is contended that the defendant is a statutory body and the law is well settled both in England and in India that a statutory body is not liable for non-feasance and its liability only arises in case of

mis-feasance. It is further contended that law is also well settled both in England and in India that a public authority in charge of a highway is not responsible for any damage caused to any person using the highway on account of the neglect of repair of the highway and for this contention reliance is placed in the well-known case of the House of Lords, *Cowley v. New-market Local Board* (1892) 1892 A.C. 345 and in the well-known decision of the Judicial Committee *Municipality of Pictou v. Geldert* (1893) 1893 A.C. 524, in which Lord Hobhouse in delivering the judgment of the Judicial Committee observed as follows:

It must now be taken as settled law that a transfer to a public corporation of the obligation to repair does not of itself render such corporation liable to an action in respect of mere non-feasance. In order to establish such liability it must be shown that the Legislature has used language indicating an intention that this liability shall be imposed.

5. Further reliance is placed upon *Achratlal Harilal v. Ahmedabad Municipality* ("04) 28 Bom. 340, *Dholka Town Municipality v. Patel Desaibhai Kalidas* ("14) 1 AIR 1914 Bom. 198 and *Rahim Baksh Vs. Municipal Board of Bulandshahr*, . Mr. Banerji for the respondent, on the other hand, contends that the rule of the English law which lays down that a statutory body is not liable for damages for non-feasance and for neglect of repair of a highway is confined only to England and even in England to those statutory bodies which are regarded as the representative of parishioners of England; it is not applied to highways which are controlled by railway, Dock and Canal Companies and other corporate bodies. Mr. Banerji's contention is that the whole doctrine upon which immunity is granted to certain statutory bodies in charge of highways for neglect of repair is based upon a peculiar feature of English law which lays down that these authorities are successors of parishioners and as parishioners originally were not liable for damages for neglect of repair these statutory bodies to whom highways have been transferred are also not liable, and for this contention he relies upon a passage in *Salmond's Law of Torts*, Edn. 9, on p. 298 and upon two recent decisions of the Court of Appeal in England in *Swain v. Southern Railway Co.* (1939) 2 K.B. 560 and in *Nicholson v. Southern Rail-way and Sutton and Cheam Urban District Council* 1935) 1 K. B. 558. Mr. Banerji contends that as the District Boards in this province cannot be regarded as the successor of English parishioners, the immunity allowed by English law cannot apply to them.

6. In our opinion, it is not necessary to pronounce a final opinion upon the question whether the doctrine of English law which holds that statutory body is not liable for non-repair of a highway does or does not fully apply to this country. The plaintiff has got to show some basis for his action. The defendant admittedly is a statutory body and in order to impose any liability upon the defendant the plaintiff has got to show that under the terms of the statute any liability was imposed upon the District Board for the action which the plaintiff has raised. Even in England in cases where immunity is not applied and the railway companies, dock companies and other corporations have been held liable for

negligence caused by non-feasance of statutory duties, the question always has turned upon the interpretation of the particular statutory clause which was under consideration and whether any liability flowed from it or not. It becomes, therefore, necessary to examine the terms of the statute under which obligation is imposed upon the District Board in this case. It is not disputed that for certain purposes management and upkeep of highways is vested in the District Boards (see Sections 3(6) and 146, U. P. District Boards Act, 10 of 1922). It is again not necessary to go into the question whether the vesting clause in the statute makes the boards the owners of these roads, or their rights and duties are merely that of management, maintenance and repair. The two sections upon which reliance is placed on both sides and upon the true interpretation of which depends the determination of the controversy in this case are Sections 91 and 98, District Boards Act, and they are as under:

91. Every board shall make reasonable provision within the district for the following matters: (a) the construction, repair and maintenance of public roads and bridges, and generally the improvement of communications....

98. (1) The board shall, during the construction or repair of a public road or of any water channels, drains or premises vested in it, or whenever any public roads water channels, drains or premises vested in it have, for want of repairs or otherwise, become unsafe for use by the public, take all necessary precautions against accident by--(a) shoring up and protecting adjacent buildings ; (b) fixing bars, chains or posts across or in any road for the purpose of preventing or diverting traffic during such construction or repair, and (c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(2) Whoever, without the authority or consent of the board, in any way interferes with any arrangement or construction made by the board under Sub-section (1) for guarding against accident shall be liable on conviction to a fine which may extend to fifty rupees.

7. It is first necessary to examine Section 91. It will be observed that the obligation laid by Section 91 does not go any further than this that the boards are required to make reasonable provision within the district for the construction, repair and maintenance of public roads. Most of these District Boards have got long stretches of roads under their, control and management. Most of these District Boards have got only limited funds at their disposal to utilize for the object of repairing and construction of the roads. The statute enjoins that they will make reasonable provision for the repairs and maintenance of the roads. But it nowhere enjoins that this discretion will be subject of judicial scrutiny and will furnish a cause of action to any person who feels himself aggrieved by their not making proper arrangements for the maintenance, construction or repair of roads. It is not disputed that if this section had stood alone, it would have furnished no cause of action to any individual rate-payer or to any individual passer-by on a public highway within the District of Budaun to maintain an action for any accident with which he met and for any loss which was caused to him in

using the highway as a result of neglect of repair of the highway. But it is contended that if Section 91 be read with Section 98 it clearly indicates that there was a liability upon the District Board to repair the road. We have quoted above the terms of Section 98 and as we read the section we feel that the only obligation which is laid by Section 98 on the board is that in cases where a public road for want of repair has become unsafe for use by the public, they will take all necessary precautions against accident by providing one of the three things which are set out in Clauses (a), (b) and (c) of Section 98. Mr. Banerji's contention is that these clauses are only illustrative and not exhaustive. Mr. Khwaja's contention on the other hand is that having regard to the language of the statute they must be taken to be exhaustive. For the moment we may leave out this question whether these clauses are illustrative or exhaustive and examine the controversy from the point of view whether any obligation to repair is made out by Section 98 or not. It will be noticed that Section 98 nowhere lays down that the District Board would be under any obligation to make any repair and feeling the force of this objection Mr. Banerji has raised a fresh contention before us. His contention is that although there may be no obligation to repair, yet there is an obligation upon the board in cases where the road for want of repair has become unsafe for use to give a warning signal to the public and if they neglect to give a warning signal they become liable for damages. In our opinion, this is not the reasonable construction of the statute and it is another ground for holding that Clauses (a), (b) and (c) are exhaustive in Section 98. It is, therefore, manifest that neither u/s 91 nor u/s 98, singly or taken together, there is any obligation laid down upon the District Board to make repairs of the road, an obligation which would furnish a cause of action to a passer-by on the road in case he meets with an accident on account of the neglect of repair by the highway authority; and, this being so, it is clear from the facts found in this case that the plaintiff cannot sustain this action.

8. In an earlier portion of the judgment, we have set out the circumstances in which the accident occurred. The night was a dark winter night. The time of the accident was 9 P. M. The driver admittedly was driving the bus at a speed over 20 miles an hour. There is a controversy in this case whether the speed was proper or not. On behalf of the plaintiff, it is contended that his bus which admittedly had the capacity of 29 seats was a less than two ton lorry and under the Motor Vehicles Act and the rules made thereunder he was entitled to take the bus at a speed up to 25 miles per hour. On behalf of the defendant, it is contended that the bus was a two ton lorry and the speed should not have been more than 15 miles an hour. In our opinion, it is not necessary to determine this controversy. We will accept that the speed of the bus was permissible, still the fact remains that it was late hour when the bus was running and it was running close to a village abadi and it was running behind a bus which was throwing up dust. In a case like this, if the bus found itself under the necessity of swerving to the left and while swerving to the left it found that the kachcha road was not up the proper level of maintenance and had a depression in it and as a result of the

depression and swerving of the bus, the bus met with an accident, we cannot say that there is any obligation upon the District Board to pay damages to the plaintiff. After all it is not possible for the District Board to maintain all the kachcha patris of their roads up to a standard which will ensure a motor bus running at a fast speed without meeting some sort of accident. In our opinion, this is a clear case of non-feasance and under the terms of the statute there was no liability upon the District Board for non-feasance. In this view of the matter, it is not necessary to go into the other vexed questions of facts which have been raised in this case or to discuss the cross objection which has been filed by the plaintiff. We accordingly allow this appeal, set aside the decree of the Court below and dismiss the plaintiff's suit, but inasmuch as the defendant, the District Board of Budaun, raised various defences of facts which have been found to be untrue, we direct that the parties will bear their own costs both here and in Court below. The cross-objection is also dismissed.