
(2018) 08 MP CK 0225
In the Madhya Pradesh High Court
Case No : Second Appeal No.139 Of 2001

Girish Vyas alias Damodar Vyas

APPELLANT

Vs

H.K.Kshtriya, and others

RESPONDENT

Date of Decision : 28-08-2018

Acts Referred:

Code Of Civil Procedure, 1973 — Section 80, 100
Indian Contract Act, 1872 — Section 151, 152
Evidence Act, 1872 — Section 101

Citation : (2018) 08 MP CK 0225

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : V.K.Jain, Vaibhav Jain, Pankaj Wadhwani

Final Decision : Dismissed

Judgement

Rohit Arya, J

This appeal by plaintiff under section 100 CPC is directed against the reversing judgment and decree dated 30/11/2000 by 1st Additional District

Judge, Mandsaur in civil appeal No.5B/2000 setting aside the judgment and decree dated 18/02/2000 in civil suit No.4B/1997.

2. The general outlined facts are in narrow compass: The plaintiff running the business of tent house in the name and style; 'Girish Tent House' filed

the suit for damages to the tune of Rs.20,050/- from the defendants No.1 and 2, the Principal & Professor of Government Post Graduate College,

Mandsaur respectively and the State of Madhya Pradesh through the Collector, Mandsaur, on the premise that on the oral orders of the defendants

No.1 and 2, tent and other accessories were installed in the College premises on 02/01/1995 for two days in connection with the college function.

After first day of the function, i.e., on 02/01/1995 in the intervening night of 02/01/1995 and 03/01/1995, the entire tent and other accessories had burnt for some reasons as pleaded in paragraph 4 of the plaint. For want of due care and negligence on the part of the defendants No.1 and 2, loss has been caused to the plaintiff. Hence, prayed for damages referred to above.

3. The defendants filed written statement and denied plaint averments inter alia contending that the plaintiff was required to remove the tent and other accessories in the evening of the first day's function held on 02/01/1995. He did not do so. As such, there was carelessness on his part in that behalf.

The alleged incident appears to have been occurred due to electric short circuit and sparking of live electric line â?" a natural act for which defendants

cannot be held responsible. The defendants have taken due care as a chokwidar was deputed to look after the college and the belongings therein.

Hence, there was no negligence on the part of the defendants to safeguard the goods of the plaintiff. No sooner, the fire was broken, the chokwidar

had immediately informed the defendants and the police station. The defendants immediately rushed to the college and the spot was inspected by the

Sub Divisional Officer and a panchanama was prepared. In any case, the quality of material allegedly burnt was old and withered, hence denied the

amount of compensation claimed by the plaintiff. The plaintiff nowhere pleaded or proved that the loss was caused because of bailee's negligence or

absence of their diligence instead, in the plaint it is specifically pleaded that his goods were damaged due to unknown reasons. Besides, the rental for

the tent and accessories, Rs.3,900/- was paid on 07/01/1995. The Collector, Mandsaur has also paid compensation of Rs.2,200/- to the plaintiff. With

the aforesaid submissions, the suit was prayed to be dismissed.

4. Both the parties led evidence. The trial Court has decreed the suit on the premise that the tent and other accessories since were installed by the

plaintiff in the college and loss was caused due to fire, the defendants No.1 and 2 are liable to make good the loss in the form of damages.

On appeal, the first appellate Court has critically evaluated the entire evidence placed on record and reached the conclusion that the plaintiff since has

not placed on record material attributing negligence on the part of the defendants, there is no reason to disbelieve the stand of the defendants that fire appears to have broken out due to short circuit and spark of the live electric

wire, a natural calamity for which the defendants cannot be held responsible.

The first appellate Court in that connection referred to exhibit P/1 dated 12/01/1995 application filed by the plaintiff for compensation addressed to the Collector, Mandsaur wherein he has specifically stated as under:

â??...PARANTU DURBAGYAVAS AGYAT KARAN VASH ON 02/01/1995 KO AYOJIT KARYAKRAM SHTHAL ME AAG LAG JANE

SE PRARTHI KA PURA SAMAN PURNATYA JAL KAR NASTH HO GAYA â?|..â??

without alleging any lapse and negligence on the part of the defendants No.1 and 2.

Besides, there was no agreement between the parties containing indemnity clause specifying the rights and obligations of either party. As such, the

defendants cannot be held liable for damages claimed. The plaintiff has already been paid the entire rental for the tent and accessories on 07/10/1995

and the compensation to the tune of Rs.2,200/- has also been paid by the Collector, Mandsaur. Accordingly, dismissed the suit.

5. This Court while admitting the appeal on 19/04/2002 has framed the following substantial questions of law:

(i) whether lower appellate Court was justified in reversing the judgment and decree of the trial Court which had decreed the suit?

(ii) Whether finding of the lower appellate Court holding defendants to be not negligent in a cause of fire which broke out is legally sustainable? and

(iii) Whether finding of the lower appellate Court that it was necessary for the plaintiff to have proved negligence of the defendants so as to claim a

decree for damages caused to him on account of fire that broke out is legally justified?

6. As the first two questions are dependent upon the third question, therefore, the answer to the said question shall govern disposal of the appeal.

7. Admittedly, the case of the plaintiff since beginning has been that due to unknown reasons the fire had broken out in the premises of the College

where tent and other accessories were installed resulting into damage to his property. The consistency of the stand of the plaintiff in that behalf is well

evident from the application dated 12/01/1995 addressed to the Collector (exhibit P/1), relevant extract quoted above, notice under section 80 CPC

[exhibit P/2 â?" paragraph 5], paragraph 4 of the plaint and paragraph 15 of his

deposition. As such, the plaintiff neither pleaded nor proved the factum of negligence on the part of the defendants No.1 and 2. On the contrary, the defendants denied the plaintiff's allegations and have categorically stated that the fire appears to have broken out due to short circuit and sparking in the live electric line for which they cannot be held to have not taken due care or attribute negligence to saddle them with the liability of damages. It has also come in evidence of Dr. Ganchandra Khemsara [D.W.2. (paragraphs 4 & 5)] that the fire had broken at 9.00 pm. No sooner, he received the information, he reached the site and also informed the Collector about the incident on phone. Thereafter, the S.D.M., and A.D.M., have also reached the spot who have assessed the damages as well as paid the compensation. The plaintiff had the knowledge that the fire had broken out due to short circuit of the electric line and satisfied with the compensation paid to him.

There was also an averment and evidence to the effect that the plaintiff was required to remove the tent and other accessories in the evening of first day after the function. He chose not to remove the same. There was no requirement of full tent and other accessories on the following day as only chairs were required [paragraph 1 of the statement of Dr. Ganchandra Khemsara D.W.2.]. Under such circumstances, if the damage has been caused as alleged, the plaintiff is responsible.

8. Before addressing upon the third question of law, it is expedient to quote sections 151 and 152 of the Contract Act (for short 'the Act').

151. Care to be taken by bailee. "In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. Bailee when not liable for loss, etc., of thing bailed. "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

9. In a case reported in A.I.R. 1917 Privy Council 173, Dwarka Nath Pai Mohan Chaudhuri and another Vs. Rivers Steam Navigation Co., Ltd., the

Privy Council while interpreting section 151 of the Act read with section 101 of the Evidence Act (burden of proof) has laid down as under:

It is true that under the Evidence Act of 1872, S. 106, when any fact is especially within the knowledge of any person, the burden of proving that fact is on him; and it was therefore right that the defendant Company should call the material witnesses who were on the spot, as it seems to have done. But this provision of the law of evidence does not discharge the plaintiffs from proving the want of due diligence, or (expressing it otherwise) the negligence, of the servants of the defendant Company.

It may be for the Company to lay the materials before the Court; but it remains for the plaintiffs to satisfy the Court that the true inference from these materials is that the servants of the defendant Company have not shown due care, skill and nerve.

10. What the law requires under section 151 of the Act is that a bailee should take same care of the bailed property as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

10. Admittedly, there is no written contract between the parties as regards the responsibility, rights and obligations and indemnity, etc., The plaintiff

has installed the tent and other accessories on oral orders of the defendants No.1 and 2 on 02/01/1995. The first day function had come to an end in

the evening at 6.00 pm. Though there is some amount of dispute between the parties as regards requirement of uprooting the tent and other

accessories on the same day or the following day, nevertheless, the plaintiff has no where alleged negligence on the part of the defendants as he

himself has asserted that for unknown reasons the fire had broken out. Under such circumstances, the possibility of short circuit and sparking in the

electric line as stated by the defendants in the written statement and in evidence; a natural act or act of God, do not suggest negligence or want of due

care or caution on the part of the defendants in line of section 151 of the Act. Under section 151 of the Act, unless the plaintiff upon such material

placed on record is able to prove negligence on the part of the defendants, the burden shall not shift upon the defendants under section 101 of the

Evidence Act as held by the Privy Council in *Dwarka Nath Pai Mohan Chaudhuri and another (supra)*. Similar view has been reiterated

in *A.I.R.(39) 1952 Allahabad 205, Sunder Lal Vs. Ram Sarup and another*. The Madras High Court in the case of *Province of Madras Vs. I.S.*,

and C. Machado, AIR 1955 Mad 519, relying on the case reported in (1876) 1 CPD 423 Nugent Vs. Smith observed as under:

“the expression 'act of God' is a mere short way of expressing the proposition that a common bailee is not liable for any accident as to which he

can show that it is due to natural causes directly and exclusively, without human intervention, and that it could not have been prevented by any amount

of foresight and pains and care reasonably to be expected from the act of God”

Similar view has been reiterated in A.I.R. 1959 Patna 442 Baldeo Narain Singh and others Vs. State of Bihar.

11. The description of the words 'fire due to known reasons' shall not held bailee liable for damages to take as much as care the goods of the bailee as

a man of ordinary prudence.

In the opinion of this Court, the plaintiff must give affirmative evidence as regards the negligence on the part of the defendants then the burden shifts

upon the defendants to disprove want of due diligence or negligence or care. Plaintiff has not discharged the burden in that behalf.

Hence, the reasoning assigned by the first appellate Court while dismissing the suit find favour of this Court as the first appellate Court has rightly

applied the principle of law as laid down by the judicial precedents referred above (supra) in the context of sections 151 and 152 of the Act as well as

section 101 of the Evidence Act.

12. The principle underlying the judgments cited by learned senior counsel for the plaintiff/appellant, viz., AIR 1933 Oudh 518 J. Holloway Vs. J.

Holland, AIR 1959 MP 77 The Bilaspur Central Co-operative Bank Ltd., Vs. State of M.P., AIR 1983 SC 899 N.R.Srinivasa Iyer Vs. New India

Assurance Co. Ltd., Madras; AIR 1983 Kerala 154 Cochin Port Trust Vs. Associated Cotton Traders Limited and others; AIR 1991 SC 2104 Vania

Silk Mills (P) Ltd., Vs. Commissioner of Income-tax, Ahmedabad is beyond any doubt, nevertheless; before saddling bailee with the damages the

burden of proving want of due diligence or negligence is on the consignee to satisfy the Court that the material on record unequivocally reaches the to

the conclusion that the bailee had not shown due care and due diligence. Hence, distinguishable on facts and is of no assistance to the

appellant/plaintiff.

13. Consequently, the question No.(iii) is answered in affirmative and in favour of

defendants. Hence, the questions No.

(i) and (ii) are also answered in favour of the defendants and against the plaintiff/appellant.

14. The appeal sans merit and is hereby dismissed.