

(1960) 05 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No. 108 of 1950

Governor-General of India in Council representing the Great Indian Peninsula Railway Administration APPELLANT

Vs

Smt. Bhanwari Devi RESPONDENT

Date of Decision : 20-05-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 101, 102, 103, 104, 32
Fatal Accidents Act, 1855 — Section 1, 2, 3

Citation : AIR 1961 All 14

Hon'ble Judges : V.G. Oak, J;S.N. Dwivedi, J

Bench : Division Bench

Advocate : Brij Lal Gupta, for the Appellant; Ambika Prasad, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Oak, J.—This is a defendant's appeal arising out of a suit for compensation, Srimati Bhanwari Devi Jain brought the suit against the governor-General of India in Council representing the Great Indian Peninsular Railway Administration in the year 1947, on the following allegations.

2. Srimati Bhanwari Devi plaintiff is the widow of one Tara Chand Jain, who was resident of Jaipur. One night he was travelling by a passenger train from Gwalior to Sonagir with his parents and neighbours. The train reached Sonagir station at about 2-20 A.M. during the night between the 6th and the 7th of February 1946, and stopped there for a short while. Tara Chand Jain alighted from the train, stopped on the platform, and was taking out his luggage from the train.

At this stage the train suddenly started without any signal or warning. As a result of the starting of the train without a warning, Tara Chand fell down. He was run over by the train. He sustained serious injuries including avulsion of the skin of the left foot, The railway authorities took Tara Chand Jain by the same train to Jhansi, There was no ambulance or Doctor present at the station, when the train

reached Jhansi at about 4 A.M. The railway Doctor failed to administer any injection to Tara Chand as protection against tetanus or septic conditions setting in. Tara Chand was discharged from the hospital within an hour, although his condition was critical.

In spite of good medical aid given to him subsequently, Tara Chand developed tetanus. He died of tetanus on 2-3-46 in the State Hospital at Jaipur. His death was the direct consequence of the negligence of the railway staff. Being Tara Chand's widow, the plaintiff is entitled to get compensation from the railway administration for causing -her husband's death by a negligent act. The plaintiff estimated the amount of compensation at Rs. 1,59,600/-. The relief claimed in the plaint was a sum of Rs. 100,000.

3. The plaintiff's claim was resisted by the defendant. It was conceded that Tara Chand Jain was one of the passengers travelling that night from Gwalior to Sonagir by the passenger train. But the defendant challenged the plaintiffs version of the railway accident at Sonagir station. The defendant denied that the train started suddenly without any warning, and halted again after moving a few feet, as alleged by the plaintiff. The defendant's version of the accident is that Tara Chand Jain tried to get down from the train, while the train was entering Sonagir station.

He was warned not to get down from the train before it came to a halt. But ignoring this warning, Tara Chand Jain alighted from the train, while it was still in motion. He lost his balance, fell down, and slipped between the carriage and the platform. His left foot came under the carriage wheels. That was how he got hurt. According to the defendant, First aid was immediately given by the guard. Later on the Doctor on duty at Jhansi Railway Nursing Home attended to Tara Chand Jain's injuries. Arrangement was made for sending Tara Chand Jain to the Civil Hospital, Jhansi.

But instead of going to the Civil Hospital, Tara Chand Jain wanted to go to a private hospital for treatment. The defendant pleaded ignorance about the circumstances under which Tara Chand died. It was denied that his death was the direct or proximate result of the injuries received by him. The defendant questioned the service of notice u/s 80 C. P. C. It was also pleaded by the defendant that parents of Tara Chand Jain are alive. They are his representatives. The suit is therefore bad for non-joinder of the necessary parties. Lastly, it was pleaded that the damages claimed by the plaintiff were exorbitant.

4. The suit was tried by the learned Civil Judge of Jansi. He held that the plaintiff was entitled to sue, and that a notice u/s 80 C. P. C. was served upon the defendant. The learned judge accepted the plaintiffs version of the accident, and held that Tara Chand Jain had the accident due to the sudden movement of the train after stop. He received injuries due to the negligence of the railway staff. The court also found that the railway staff was negligent in giving first aid and

treatment to Tara Chand Jain deceased.

It was therefore held that the defendant was liable to pay the plaintiff compensation. The amount of compensation was fixed at Rs. 24,960/-. The court, therefore, passed in plaintiff's favour a decree for Rs. 24,980/- with proportionate costs.

5. The defendant (now the Union of India) appeals against the decree passed by the trial court. The plaintiff has filed a cross-objection claiming an additional sum of Rs. 4,680/- as compensation.

6. Firstly, I shall take up the question of notice u/s 80 C. P. C. Tara Chand P.W. (to be distinguished from Tara Chand Jain deceased) is the plaintiff's father, He stated that under instructions from the plaintiff, he issued three notices to the Governor-General through the Secretary, Railway Department, Delhi, and the General Manager of G. I. P. Railway, Bombay, Exs. XIX to XXI are the postal receipts for the three notices. He received only one postal acknowledgment.

It is Ex. XXIII. It appears from Ex. XXIII that the notice was addressed to ""The Governor-General of India in Council through the Secretary to the Government of India, Railway Department (Railway Board), New Delhi. "It further appears, from Ex. XXIII that the notice was accepted by some official of the Railway Board, New Delhi. The question is whether this was a valid notice u/s 80 C. P. C. The defendant's denial of the notice was halting. In paragraph 23 of the written statement it was stated:

"no notice u/s 80 C. P. C. appears to have been served upon the defendant".

I therefore take it that the notice addressed as mentioned above in Ex. XXIII was received by an official of the Railway Board. Ex. XXVI is the draft plaint.

7. A notice u/s 80 C. P. C. was issued on behalf of the plaintiff in February 1947. According to Section 80 C. P. C. (as it stood in 1947), the notice had to be sent to a Secretary of the Central Government in the case of a suit against the Central Government. The fact that the claim was against the Railway Administration made no difference. The notice should have been therefore issued to the Secretary to Government of India (Railway Department). That was the address mentioned in Ex. 23. But the words "Railway Board" were also there.

It appears that in 1947, the Secretary to Government of India in the Railway Department and the Secretary of the Railway Board were different officers. In Ex. XXIII it was assumed that the same officer was Secretary to the Government of India in the Railway Department, and also represented the Railway Board. That assumption was not correct.

8. In " Sandhya Trading Co. Vs. Governor-General, Dominion of India, , the notice was addressed to the Secretary, Railway Board instead of the General Manager of the Railway concerned. It was held that it was not a good notice in law.

9. Similarly, in *Dwarka Das Vs. The Union of India (UOI) and Others*, the notice u/s 80 C. P. C. was addressed to the Governor-General-in-Council of India through the Secretary, Railway Board. It was held that the Secretary of the Railway Board was not a secretary of the Central Government, and the notice was not valid.

10. In those cases the notice was sent to the Secretary of the Railway Board, In the present case the notice was primarily addressed to the Secretary to the Government of India in the Railway Department. That was in accordance with Section 80 C. P. C, It was by the way that the words "Railway Board" were mentioned. So the facts of the present case are somewhat different from the facts of the cases before the Calcutta High Court and the Punjab High Court.

11. Ex. 25 is a letter sent by the Deputy Director, Railway Board to the plaintiff's advocate. In that letter the Deputy Director wrote thus;

" In reply to his communication, the undersigned is directed to inform. ...Advocate that it has been forwarded for disposal to the General Manager, G. I. P. Railway who is the competent authority to deal with the matter and to whom all further references on the subject should be made".

This letter Ex. 25 contains two admissions. Firstly, the letter received by the Railway Board from the plaintiff's Advocate had been forwarded to the General Manager of the Railway concerned for necessary action. Secondly, the General Manager is the competent authority to deal with the matter.

12. The object of issuing a notice u/s 80 C. P. C. is to enable the Government to settle the claim out of court, if possible. The Government can prepare its defence, if it is proposed to resist the claim in court. That object has been achieved in the present case by the notice issued on behalf of the plaintiff. The address given in Ex. 23 was substantially that prescribed by Section 80 C. P. C. The notice was received by the Railway Board. The Railway Board forwarded the communication to the General Manager, G. I. P. Railway, for necessary action. In my opinion, the notice sent by the plaintiff to the defendant u/s 80 C. P. C. was valid.

13. The next question for consideration is whether the suit is defective on account of non-joinder of necessary parties and whether the plaintiff alone is entitled to sue. The present claim by the plaintiff-respondent is based on the provisions of the Indian Fatal Accidents Act, XIII of 1855 (hereinafter referred to as the Act). Section 1 of the Act provides for a suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong. Section 1 runs thus:-

"(1) Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action of the executor, administrator, or representative of the

person injured,.....

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased;"

Section 2 of the Act states:-

"Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint"

Section 3 runs thus:-

"The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought,"

14. It was made clear in the plaintiff's case that, the suit was brought for the benefit of the plaintiff. It was urged for the defendant that the plaintiff alone could not sue for her benefit only. It was pointed out that Tara Chand Jain's parents are alive. Tara Chand Jain's father, Gendi Lal appeared before the commissioner as P.W.10. u/s 1 of the Indian Fatal Accidents Act, the wife and parents of Tara Chand Jain deceased were entitled to get compensation. Leaving aside Tara Chand Jain's mother for the present it is obvious that Tara Chand's Jain's father was entitled to obtain compensation u/s 1 of the Act. But the plaintiff made no reference to any compensation for Tara Chand's father.

15. Upon an examination of Sections 1, 2, and 3 of the Act, it becomes clear that only one suit for compensation is maintainable. The suit must be for the benefit of all the persons, who are entitled to get compensation u/s 1 of the Act. So, in the present case the suit should have been brought for the benefit of the plaintiff as well as the father of Tara Chand Jain deceased. The frame of the suit was therefore defective. The question is whether the defect is fatal to the maintainability of the suit.

16. In *Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another*, it was held that the plaintiff in a suit u/s 1 of the Fatal Accidents Act must give full particulars of all the persons for whose benefit the suit is filed. In that case the widow and children of the deceased brought a suit under the Act without mentioning the father among the beneficiaries. The father was fairly well off and not dependent upon the son. It was held that, there was no disadvantage to the defendant by reason of the omission to mention the father among the beneficiaries and the omission was not a good reason for dismissing the suit at the appellate stage.

17. In "*Suraj Prasad Vs. Moolchand and Others*", it was held that an application in forma pauperis should be rejected if the plaintiff does not contain the particulars of all the persons for whose benefit the suit was to be brought.

18. In the present case, there is no question of an application in forma pauperis. The question is whether the suit itself should have been dismissed by the trial court on the ground that the frame of the suit was defective as explained above. The plaintiff should have mentioned in the plaint that the father of Tara Chand Jain was also a beneficiary u/s 1 of the Fatal Accidents Act. That was not done. Tara Chand's father came forward to support the plaintiff's case. Tara Chand's father, Gendi Lal appears to be a well-to-do person. Apparently, he does not wish to get any compensation for himself on account of his son's death.

The defendant was in no way prejudiced on the ground that the plaintiff brought this suit for her benefit only. The defect under consideration is not fatal to the suit. I agree with the learned Civil Judge that, the plaintiff's suit is maintainable.

19.-37. The main question for consideration in this appeal is whether the cause of the accident at Sonagir Railway station was as mentioned in the plaint, or as described in the written statement. (After discussing evidence produced on behalf of the plaintiff and the defendant His Lordship proceeded).

38. Although parties produced a large number of witnesses, none of them is altogether independent and reliable. The plaintiff produced several witnesses from Jaipur. Tara Chand deceased was also a resident of Jaipur. These men were going together to Sonagir on pilgrimage. The plaintiffs witnesses are therefore likely to be biased in favour of Tara Chand deceased and his widow, Srimati Bhanwari Devi. On the other hand, most of the defence witnesses are railway employees. They are likely to be interested in supporting a version, which will not fasten any responsibility on the railway administration for the accident.

It is true that the burden of proving negligence lay upon the plaintiff. But when both the parties have produced evidence about the cause of the accident, the question of burden of proof loses much of its importance. The evidence produced by the parties is fairly balanced. Several witnesses were examined before the Commissioner. But a number of witnesses appeared before the trial Judge. So we must give due weight to the estimate of the evidence made by the trial court.

As already explained, the nature of the injuries I throws little light on the exact nature of the accident. I accept the plaintiff's version of the accident. When the train initially stopped at Sonagir Railway Station, Tara Chand Jain got down on the platform. He stood on the platform, and tried to take out luggage from the train. At this stage the train suddenly started without a whistle or any other warning. As a result of the sudden starting of the train, Tara Chand Jain received a push or Jerk. Consequently, he fell down in the gap between the train and the platform. He received a number of Injuries, as his body came in contact with the moving train.

39. The Guard conceded that once a train stops, the driver cannot move a train without a signal from the Guard and without a whistle. That is also laid down in Rule 137 of the Rules framed under the Indian Railways Act. Rule 137 runs thus:

"When a train carrying passengers has been brought to a stand at a station, whether alongside, beyond, or short of the platform, the Driver shall not move it except under orders of the Guard in charge of the train or to avert an accident".

The driver denied altogether that he started the train after stopping it for a couple of minutes. The plaintiff's witnesses have proved that the train started without a whistle or any other warning. This was in contravention of Rule 137 quoted above. The plaintiff has succeeded in establishing that Tara Chand received injuries due to the negligence of the engine driver in starting the train without a whistle or any other warning.

40.-43. The next question for consideration is whether the railway staff was negligent in giving first aid and medical treatment to Tara Chand deceased. (After discussing further evidence His Lordship proceeded).

44. I think the railway authorities gave Tara Chand Jain all the necessary medical treatment on discovering that he had sustained injuries as a result of the accident. I am unable to accept the trial Court's finding on issue No. 3 that the railway staff was negligent in giving first aid and treatment to Tara Chand Jain deceased.

44A. Now, we have to consider whether Tara Chand Jain's death was due to the injuries received by him during the accident at Sonagir. Dr. Sen stated that the cause of death was tetanus. Tetanus is a disease due to bacillus tenant infection. Infection enters the body through an open wound received from dusty and dirty soil, where this bacillus usually thrives. These multiply in the body, and produce tetanus. Dr. Sen further stated that he found symptoms of tetanus in the patient, when he was admitted on 24-2-46. He had developed tetanus four days before he joined the hospital.

Thus according to Dr. Sen's opinion, tetanus developed about 20-2-1946. On the other hand, Dr. Kanai stated that Tara Chand developed signs of tetanus on 13-2-1946. We thus find that a few days after the accident, Tara Chand developed tetanus in spite of anti-tetanus serum injection.

45. Mr. Brij Lal Gupta appearing for the appellant contended that the appearance of tetanus long after the accident indicates that the injuries were not responsible for tetanus. For this contention he relied upon an article on tetanus in the Encyclopedia Britannica 14th Edition Volume 21 at page 979. It is mentioned there that as a result of preventive inoculation the incidence of tetanus is very low. However, towards the end of the article, it is mentioned that 26.9% of the inoculated are attacked during the first fortnight. It therefore appears that the preventive injection does not give complete immunity.

It is possible to develop tetanus in spite of preventive injection. According to the plaintiffs version, it was Dr. Kanai. who gave ante-tetanus injection. On the other hand, the defence contention is that it was Dr. Mathur, who gave Tara Chand an ante-tetanus serum injection. Whichever version one may accept, it is clear that

a preventive injection was administered to Tara Chand Jain on the morning of 7-2-46, a few hours after the accident. Nonetheless the patient developed tetanus after a few days.

46. Mr. Brij Lal Gupta contended that some negligence in medical treatment subsequent to 7-2-46 must have been responsible for tetanus. Now, there is no evidence that either Dr. Kanai or Dr. Sen was negligent in his treatment. On the other hand, we, know that one of the injuries of Tara Chand deceased was full of dirt, when he arrived at the Railway hospital. The first injury noted in Ex. A was a lacerated wound 8"x 6" on left foot exposed and bones protruding and full of dirt. Dr. Sen has explained that tetanus infection enters a body through an open wound from dusty and dirty soil.

When the patient arrived at the railway hospital, there was already material for the entry of the Infection. It appears that infection entered the body, because Tara Chand had a lacerated wound on his left, foot and full of dirt.

47. The doctrine of "effective cause has been discussed in Halsbury's Laws of England third edition volume 28. In paragraph 25 on page 27 it is stated;

"Liability attaches only to negligence which is either the sole effective cause of an injury, is so connected with it as to be a cause materially contributing thereto. Although a plaintiff may be able to trace even a "consequential connection between an injury and the negligence of another, the law does not necessarily attach liability to the person who has been negligent. In other words, the plaintiff must prove both that the defendant" was negligent and that his negligence caused or materially contributed to the accident. Negligence is an effective cause of any injury which either is intended or, judged broadly and on common sense principles, is a direct consequence. When negligence has been established, liability follows" for all the consequences which are in fact the direct outcome of it, whether or not the damage is a consequence, that might reasonably be foreseen. A negligent act may be an effective cause of an injury though it is not proximate in time, if it forms part of a chain of events which has on fact led to the Injury....."

48. In *Sardara Singh v. Chanan Singh* AIR 11933 Lah 770, Chanan Singh struck Naranjan Singh on the head with a chavi on 18-3-24. Naranjan Singh was taken to hospital, but he died there on 25-4-24 on account of the severe injury having become septic. It was held that Charan Singh was liable to pay compensation u/s 1, Fatal Accidents Act. It is sufficient if a person by his wrongful act, neglect or default shall have caused the death of another person. These words do not mean that death must be the direct result of the injury caused.

49. The facts established in the present case are these. During the night between the 6th and the 7th of February 1946, Tara Chand Jain sustained injuries on account of negligent driving by the Rail way Driver. One of the wounds received by Tara Chand Jain was full of dirt. An anti-tetanus serum injection was administered. Nevertheless tetanus developed. He died of tetanus on 2-3-46. It

is true that Tara Chand's death was not the direct result of the driver's negligence. But Tara Chand's death due to tetanus must be attributed to the injuries received by him at Sonagir station. Tara Chand's death was due to the negligence of the engine driver.

The Driver was acting in the course of his employment. The master is therefore liable to pay compensation. The defendant pleaded in the written statement that, he was not liable for the tortious act committed by his servant. But issue No. 4 was not pressed on behalf of the defendant before the trial court. The defendant is liable to pay compensation u/s 1, Indian Fatal Accidents Act.

50. Now we have to fix the measure of damages or compensation. Sohan Lal (P.W.8) is the uncle of Tara Chand deceased. Sohan Lal gave evidence about the income of the family business. He consulted his Bahikhata, and gave figures for the income and expenditure for certain years. There is no good ground for not accepting Sohan Lal's statement about the income of the family business. The learned Civil Judge has calculated that the average net profit comes to Rs. 15,785-11-11. No mistake in the calculation was pointed out before us. Sohan Lal and Gaindi Lal are brothers.

So, the share of profit for Gaindi Lal's branch, comes to Rs. 7,892-13-11 per annum. Gaindi Lal had four sons including Tara Chand deceased, So Tara Chand's share in the profit of the business would be 1/5th of the share falling in Gaindi Lal's branch. It was urged for the appellant that a share in the profit should be allotted to Tara Chand's mother also. It may be that Tara Chand's mother might be entitled to a share in the joint family property and would be entitled to maintenance. But in the present case we are not concerned with the question of maintenance or partition of property.

We are merely concerned with the earning capacity of Tara Chand deceased. The doth business must have been carried on by male members of the family. So Tara Chand's share was rightly fixed at 1/5th of the share falling in Gaindi Lal's branch. This calculation shows that Tara Chand's share comes to Rs. 1,578-9-0 annually or Rs. 131-8-9 per mensem. Roughly, the monthly income of Tara Chand was fixed at Rs. 130/- per mensem. There is no evidence about any children of Tara Chand deceased. So Tara Chand's income of Rs. 130/- per annum had to be divided between Tara Chand and his wife.

Since Tara Chand's father is alive, Tara Chand was not responsible for maintaining his mother. Tara Chand's wife's share was rightly fixed at Rs. 65/- per month. This is the monthly loss sustained by the plaintiff as a result of her husband's death.

51. The plaintiff's witnesses stated that Tara Chand was a healthy man of sober habits. Dr. Sen stated that the body was well nourished. He concluded that in the ordinary course, Tara Chand was likely to live up to 60 years.

52. Parties were not agreed about the age of Tara Chand at the time of his death.

According to the plaintiff, Tara Chand's age was only 22 years. On the other hand, according to the defence evidence Tara Chand's age was 28 years, The plaintiff's witnesses included a number of persons, who were related to the deceased, These relations were expected to know Tara Chand's age. The plaintiff stated that her husband was 22 years old, To the same effect were the statements of Tara Chand's father and Tara Chand's uncle. The defence witnesses did not claim previous acquaintance with the deceased.

In the bed-head-ticket it was noted that the age of the deceased was 28 years. But Dr. Sen explained before the court that the age was put down as mentioned by the patient. Dr. Sen did not examine him from the age point of view. The statement of the deceased to Dr. Sen on the question of his age is not admissible in evidence u/s 32, Indian Evidence Act, Malkhan Singh (D.W.8) stated that the injured man's age was about 28 years. Malkhan Singh does not claim to have been acquainted with the deceased. So Malkhan Singh's statement on the question of age does not carry weight.

The evidence of the plaintiffs witnesses on the question of age carries greater weight. Tara Chand's uncle, Sohan Lal stated that Tara Chand was born in Sambat 1981. Sohan Lal was not cross-examined on the point. We may therefore accept Sohan Lal's statement that Tara Chand was born in Sambat 1981. That corresponds to 1924 A.D. It means Tara Chand's age in 1946 was 22 years. I hold that Tara Chand's age at the time of his death was 22 years, and not 28 years as found by the learned Civil Judge.

53. The learned Civil Judge calculated compensation on the footing that the expectation of life was 33 years after the actual death by accident. I have found that the age at the time of death was 22 years, and not 28 years. So, the expectation of life has to be increased by six years, Tara Chand was expected to live for 38 years beyond the time of his accidental death. The amount of compensation will have therefore to be increased accordingly. The extra compensation to which the plaintiff is entitled, is Rs. 65 x 12 x 6: Rs. 4680/-. By adding Rs. 4680/- to Rs. 24960/- allowed by the trial court, the total compensation comes to Rs. 29,640/-.

54. In the result, I would dismiss the appeal with costs, and allow the cross-objection with costs. There will be a decree in plaintiffs favour for a sum of Rs. 29,640/- with proportionate costs.

Dwivedi, J.

55. I agree to the order proposed.

By The Court

56. We dismiss the appeal with costs, and allow the cross-objection with costs. We pass a decree in plaintiffs favour for a sum of Rs. 29,640/- with proportionate costs. The stay orders dated 6-9-1950 and 7-8-1951 are vacated.