
(1957) 04 MP CK 0027
In the Madhya Pradesh High Court
Case No : C.F.A. No. 68 of 1953

Harakchand Patni

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-04-1957

Acts Referred:

Railways Act, 1890 — Section 13, 13(1)

Citation : (1957) JLJ 939

Hon'ble Judges : V.R. Sen, J;T.C. Shrivastava, J

Bench : Division Bench

Advocate : P.K. Tare, for the Appellant; P.N. Rudra, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a first appeal filed by the Plaintiff against the judgment of Civil Judge, Class I, Chhindwara in civil suit No. 5-B of 1950 dismissing the suit.
2. The Plaintiff owned a truck which he had let out on hire to Shri D.K. Patni of Chhindwara for the year 1949. While the truck was being driven by Bipat Singh (P.W. 5) on the mid-night of 14th June 1949, it met with an accident on the level crossing between Barkuhi and Khirsadoh railway stations. A goods train was coming from Barkuhi to Khirsadoh, hit the truck while it was crossing the railway line. The suit was for recovery of damages thus caused to the truck. Another suit was filed by Bipat Singh driver for compensation for injuries sustained by him, Both these suits were tried together and have been dismissed by the lower court. Bipat Singh has not filed any appeal against the dismissal of his suit.
3. From the spot inspection-report Ex. P-4, recorded by the lower court and the sketch map Ex. C-1, it appears that as the train proceeds from Barkuhi to Khirsadoh on mile No. 800, it passes through a cutting about 3 furlongs in length. The place where the cart-track crosses the railway line is 87 feet from the mouth of the cutting. The level crossing is unmanned and there is no gate there. The cart-track crosses the railway line at right angles. There are shops on either

side of the cart-track. The last shop is 31 feet from the crossing. Thus, as one proceeds from south to north on the cart-track to wards the level crossing, it is possible to see the train coming out of the cutting until one passes the last shop, that is when he is about 31 feet from the level crossing. Similarly the driver of the railway train coming out of the cutting would not be able to see the level crossing until he is out of the cutting, that is, when he is about 87 feet from the level crossing.

4. On the mid-night of 13/14th of June 1949, Bipat Singh (P.W. 5) was driving his truck from the south to the north and was on the level crossing when the accident occurred. The train which came from Barkuhi had passed the cutting, and though the driver of the train applied brakes, the train could not be stopped. It touched the front of the truck, causing the accident. The train stopped at a distance of 50 feet from the place of accident. The occupants of the truck received minor injuries and the truck was damaged.

5. The findings of the lower court are:

(1) That the driver of the railway train was not negligent and did his best to prevent the accident.

(2) The driver of the truck, Bipat Singh was drunk and was negligent in not looking ahead for the train.

Thus, the lower court found that the entire responsibility for the accident lay on the driver of the truck Bipat Singh.

6. D.W. 3 Mathura Prasad, was driving the train on that night. He has stated that he blew the whistle before entering the crossing as required by a whistle-board which is fixed 50 feet away from the entrance of the crossing. He says that he was driving the train at the speed of 10 miles an hour and the head-light of the engine was on. When he got out of the cutting, he saw the truck coming on to the level crossing and applied the brakes when he was about 50 feet from the spot of accident. The lower court has believed his statement and the learned Counsel for the appellant has not disputed the findings of the lower court before us. He concedes that the driver of the railway train was cautious and there was no negligence on his part. From the fact that the train was on a down gradient and was stopped within 150 feet after applying the brakes, it is apparent that its speed could not be more than 10 miles an hour. The driver had done all that was in his power to stop the train. On the evidence therefore, the finding that the engine driver was not negligent, cannot be disputed.

7. Bipat Singh driver of the truck (P.W. 5), has stated that he was driving the truck at a speed of 5 to 6 miles an hour. He states as follows:

I knew the road well and had been working on it even during, night time. When I came on the railway track at the crossing, I did not turn my face both towards the left and towards the right to see if any train was approaching.

It is apparent from this statement that the driver of the truck did not care to have a look to the right or to the left to see if any train was approaching. He had plied the trucks several times, across the railway line and should have known that some care is needed at the spot before driving the truck across the railway crossing. He could have easily seen the train approaching when he was some feet away from the railway line, and if his truck was moving at a slow pace of five miles an hour, he could have almost instantly stopped it, if there was any danger in sight. The fact that only a small length of the front of the truck had reached the railway line when the train collided shows that the driver of the railway train had started applying the brakes while the truck was a few feet away from the railway line. If the truck driver had acted in the same way, the truck would have stopped before reaching the railway line. The accident occurred because the truck driver was inattentive and careless. Though Bipat Singh has denied that he was intoxicated, Dr. Tembhekar, P.W. 3, who had examined him at 3 A.M. found that he was smelling of liquor and that his pupils were dilated. This shows that at the time of the accident, which occurred 3 hours before the doctor saw him, he must have been intoxicated. After going carefully through the evidence and considering the probabilities of the case, we agree with the findings of the lower court that the accident took place on account of the negligence of the truck driver.

8. The learned Counsel for the appellant has argued that the negligence of the truck driver does not affect his case as owner of the truck. His contention is that the Plaintiff did not stand in relationship of a master, so far as the driver is concerned. The truck-driver was engaged by Shri Patni who had hired the truck and was entirely responsible for it. It is true that the relationship of master and servant did not exist between the Plaintiff and the truck driver in these circumstances. But if the reasoning is pushed to its logical extreme, the Plaintiff would have no cause of action at all in this case against the railway company. His rights would be only against D.K. Patni who had hired the truck. However, the correct legal position is that, as property belonging to him has been damaged by an alleged tort committed by the Defendant, he will have a cause of action against the Defendant subject to the limitation that his rights would be the same as the rights which D.K. Patni has in respect of the alleged tort. Under the circumstances, there is no substance in the argument that the negligence of the driver is irrelevant to the Plaintiff's claim.

9. It has next been argued that the very fact that the Defendant railway company failed to provide a gate at the level crossing should be deemed to be negligence on their part and it should be assumed that the railway company is responsible for the accident in this case. The learned Counsel for the appellant has argued that the Defendant railway company was under a statutory liability to maintain gates at such crossings u/s 13 of the Indian Railways Act.

10. Section 13 of the Indian Railways Act reads as follows:

The Central Government may require that within a time to be specified in the requisition or within such further time as It may appoint in this behalf.--

(a)

(b)

(c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

(d) persons be employed by a railway administration, to open and shut such gates, chains or bars.

It will be observed that this section does not make it obligatory upon the railway administration to put up gates upon a railway crossing, unless such a demand is made by the Central Government. There would be a breach of the duty imposed by this section only if a demand has been made by the Central Government, The reason for such a provision is apparent. Railway lines run through several hundred of miles and are crossed by roads at numerous points. It is necessary to have gates only at points where the traffic justified it. The duty of determining where they should be put has been cast by the Act on the Central Government and in the absence of an order from them, the railway administration is not under any duty to put up a gate at least so far as the provisions in the Indian Railways Act are concerned.

11. It has also been contended by the learned Counsel for the appellant that in view of the particularly dangerous situation of this crossing, it was necessary for the railway to put up a gate to prevent accidents. The railway line has existed with the crossing at the spot from 1907. The road which crosses the railway line is a kuchcha road. It may be that on account of recent development, in mining operation in the locality, the traffic on the kuchcha road has increased, That does not necessarily mean that omission on the part of the railway administration at the level crossing would be negligence.

12. The point came up for consideration in a case reported in B.B. & C.I. Railway v. Dwarkanath ILR (1936) All. 771. The question involved in that case was whether the railway company was negligent in allowing grass to grow adjacent to the railway line upto the Plaintiff's land and thus could be held responsible for the fire, which burnt the Plaintiff's stacks of hay near the railway lands when the grass adjacent to the railway line, caught fire from engine sparks. After observing that in India (unlike England) the matter was governed by the Indian Railways Act, Bennet J. laid down the law thus:

The legislature is supreme and if it has enacted that a thing is lawful, such a thing cannot be made a fault or actionable wrong.

In the same case, Suleman C.J. took the following view;--

I do not take the enumerations of the precautions mentioned in Section 13 as in any way exhaustive. For instance, defects in the contrivance of an engine are not mentioned therein and it cannot be on the authorities urged that such a defect

would not make the railway company liable.....each case must depend on its own circumstances and the court has to decide on the evidence before it whether there has been such negligence as to make the company liable.

The learned judges, however, were unanimous in holding that the Plaintiff was himself negligent in not taking the precaution of leaving a fire-line in the vicinity of the railway fencing and the claim for damages was thus disallowed. The question of railway crossing has been specifically dealt with in Clauses (c) and (d) of Sub-section (1) of Sec 13 of the Indian Railways Act. Assuming that the enumeration of precautions given in that section is not exhaustive, the requirements of law as laid down therein should be considered complete on points specifically dealt with in that section. We are thus of the view that in matter of putting up gates at level crossings, the liability of the railway is limited only to the case where the Central Government has made requisition.

13. Even, if the railway administration was negligent in omitting to put up a gate, the railway administration would not be liable on the facts of the present case. The omission would be a very remote cause of the accident. As we have held above, the negligence of the truck driver was the real and proximate cause of the accident. If he had taken the normal care of having a look for the approaching train and stopping the truck before reaching the level crossing, the accident would not have occurred. He had ample opportunities to do so. The law on the point has been laid down in *Swadling v. Cooper*, 1931 A.C. 1, thus:

In order to succeed, the Plaintiff must establish that the Defendant was negligent and that negligence caused the collision of which he complains. If it is established.....that the Plaintiff could have avoided the collision by the exercise of reasonable care, then the Plaintiff fails, because his injury is due to his own negligence, in failing to take reasonable care. If, although the Plaintiff was negligent, the Defendant could have avoided the collision by the exercise of reasonable care. Then it is the Defendant's failure to take that reasonable care to which the resulting damage is due and the Plaintiff is entitled to recover.

In *B.B. & C.I. Railway v. Dwarkanath* ILR (1936) All. 771 which has been referred to earlier, Suleman C.J. observed:

It seems to me that the damage which has been caused to the Plaintiff was not caused so much by the fire being set to the grass on the railway track as by the circumstances that it spread on to Plaintiff's own grass-farm and then reached his hay stacks. If the Plaintiff had taken sufficient precaution to maintain a fire line or even if he had cut the grass from the vicinity of the railway fencing first, no damage would have been caused to him at all.

Appreciating the facts in the instant case, in the light of these observations, It is clear that the omission to put up a gate at the level crossing did not absolve the truck driver from taking normal precautions which he should have taken--especially in view of his knowledge about the nature of his crossing which he had from frequent use of the road.

14. As the accident was due entirely to the negligence of the truck driver, the appellant is not entitled to any relief. The appeal is dismissed with costs.