

(1940) 04 MAD CK 0057
In the Madras High Court

Ivaturi Veera Subramanyam and Others	APPELLANT
Vs	
President, District Board	RESPONDENT

Date of Decision : 05-04-1940

Acts Referred:

Madras Local Boards Act, 1884 — Section 225

Citation : AIR 1941 Mad 733

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The plaintiffs, a father and his three minor children, have brought this suit for damages under the Fatal Accidents Act on account of an accident alleged to have been caused by the negligence of the defendants, which was responsible for the fall of a tree on a cart passing along the Narasapur Nidadavole Road, with the result that the wife and two small sons, aged three years and one year, of plaintiff 1 were killed. The amount of damages claimed was Rs. 6000. The Subordinate Judge of Ellore, who tried this suit, found that the District Board of West Godavari had been negligent in the sense that the attention of the Board had been drawn from time to time to the dangerous condition of some of the trees on this road and that they had taken no steps in spite of the complaints to cut down the trees. The District Board, which was the contesting defendant, set up a plea of vis major and contributory negligence, it being alleged that the accident occurred during a very heavy storm, and that the plaintiffs were negligent in travelling along the road while such a heavy storm was raging, knowing that trees were likely to fall. Both these issues were very rightly decided against the Board. The defendant, however, succeeded on three grounds. The first was that the Board was not liable for any act of mere nonfeasance; the second that the suit was barred by limitation, in that it had not been preferred within six months of the accident; and the third was that the plaintiff had not proved that he had sustained any damage of a pecuniary nature.

2. The question whether the defendant can avoid liability merely on the ground

that the failure to cut down the tree, which was an act of nonfeasance, is not actionable is a difficult one. We have been taken through a large number of English cases which deal with somewhat similar questions; and there seems to us little doubt that the present law in England is that the only exception in favour of a statutory body to the general principle that a person or body must so control the property under its control that it does not cause injury to others, is that a statutory body charged with the maintenance and upkeep of a highway is not liable for damages for not performing its duty of keeping the highway in proper repair. At one time it was considered that statutory bodies, with respect to common obligations, were in precisely the same position as private persons; but later, an exception was recognised, and Courts consistently held that a statutory body responsible for the repair of roads was not liable for damages if it did not do so. There can be no doubt that the principle of non-liability for non-feasance was extended to other omissions of a corporate body at one time; but the trend of decisions in England later narrowed the exceptions to the one case of non-repair of highways. Bevan, in his book on "Negligence," after discussing all the authorities on the question of liability of statutory bodies for breaches of common law obligations sums up by saying:

The liability to repair in the case of highways and bridges is an exception from the general law. At common law the remedy for want of repair of highways and bridges was not by suit against the surveyor or justices but by presentment or indictment against the county or against some individuals thereof for or in the name of all the rest.

3. There was thus a historic reason for making an exception in favour of corporate bodies in this connexion; because when roads were vested in the vestry or hundred or justices as the case may be, they were not made liable for an action for non repair, one of the reasons being the impracticability of making a large number of persons liable for acts of non-feasance. When later the repair of the roads became the duty of the surveyor and of local bodies, the legislation which introduced these changes imposed no liability either on the surveyor or on the local bodies. It was therefore held that as there was no right of action for non-repair of roads against the vestry or hundred or justices and the Legislature had not created any right of action by the legislation which introduced the changes, it must be assumed that even after the roads were vested in the surveyor or the corporate bodies, there was no right of action against either the surveyor or the local body.

4. There is no clear reason why this exception peculiar to the common law of England should be applied to India, where no such historic reason for the exemption of a local body from liability for negligence by non-feasance exists. Moreover, the public were not without a remedy in England; because they could proceed against those who had been guilty of negligence by "indictment" or "information," which remedy is not available to the public in India. However, it seems that not only has this one exception in favour of local bodies been

presumed to exist in India, but the extended principle enunciated in some of the earlier English decisions has been applied to India, the decisions placed before us suggesting that local bodies can never be proceeded against for acts of non-feasance; this is what in fact the learned advocate for the District Board contends. That seems also to have been the contention put forward in the lower Court and accepted by it. There is certainly authority for that position. In *Achralal v. Ahmedabad Municipality* 28 Bom. 340, the English authorities seem to have been cited in full during the course of arguments; but in a very short judgment of a few lines, the learned Judges said that as the plaintiff's case was one of non-feasance, there was no liability on the local body. In *Krishnamurthi Iyer v. Taluk Board of Mayavaram* AIR 1919 Mad. 477, the learned Judges who decided that appeal concluded, after discussing the English authorities, that

It must be taken now as well established that for mere non-feasance No. action for damages will lie against a public body.

5. On the other hand, the learned Counsel for the appellant has been unable to cite a single authority in which a local body has been made liable for an act of non-feasance of any kind. With very great respect for the view of the Indian authorities on this question, we still venture to doubt whether local bodies in India should be exempt from liability for such acts of negligence in the maintenance of their roads as cause loss or injury to persons using them.

6. With regard to trees growing on the margins of the roads we feel that the case of local bodies for exemption from the common law liability arising out of the failure to cut down trees in a dangerous condition is even weaker. In *Tregelles v. London County Council* (1898) 14 T.L.R. 55, a man travelling in a tram was struck by a branch overhanging from a tree in a public park and in consequence lost his eye. It is very doubtful, however, whether that decision is still good law; because the trees had no relation at all to a highway, and the decision seems to be based on a principle that was earlier accepted in one or two cases, that local bodies were never liable for non-feasance. If trees growing on the margins of roads were in olden days in the charge of the vestry or hundred or justices, as they presumably then were, the same historic reason which exempts local bodies from liability for not repairing the road would probably exempt them from liability for not cutting down dangerous trees. But this is not at all certain. Trees are not planted on the margins of roads in England as they are in India. There, people do not want trees which will shade them from the sun; on the contrary, they welcome the warming rays of the sun. No case has been brought to our notice dealing with the liability of local bodies in England to protect the users of road from injury by falling trees. The only authority in India is *Krishnamurthi Iyer v. Taluk Board of Mayavaram* AIR 6 1919 Mad. 477, where a suit for an injunction was brought by a private owner of property against a local body, requiring them to lop off certain branches from the trees overhanging the plaintiff's property; and it was held that he had no cause of action. That case could perhaps have been decided on other grounds; but the actual reasons given for dismissing, the

suit were, (1) that no negligence had been proved and (2) that in any event local bodies were not liable for acts of non-feasance. In *Municipal Council of Vizagapatam v. Foster* AIR 1918 Mad. 538 which was a case in which misfeasance had been committed by a local body, the learned Judges were invited to consider the law relating to the liability of local bodies for non-feasance; but Napier J. remarking that it was a difficult subject on which he would prefer not to express an opinion, declined to commit himself to any opinion on this question. He held that as there was a misfeasance in that case the local body was liable. We too feel that in view of the fact that the appellant has to fail on other grounds, it would be better if we do not express any opinion on this difficult question.

7. The plaintiffs alleged in their plaint that there was an act of misfeasance, in that the District Board had through its servants weakened the tree to such an extent by cutting away the roots that it had fallen during a storm on the night of the accident; but they made no attempt to prove this during the course of the evidence. It would have been necessary for them to prove, (1) that the District Board through its servants did actually cut the roots, (2) that the tree fell, and not merely, the branch as the defendant Board says, and (3) that the cutting of the roots contributed to the fall of the tree. None of these things has been proved. It is true that no issue was raised on this point; but the other issues in the case made it incumbent on the plaintiffs to let in evidence with regard to the nature of the negligence of which the Board had been guilty. We are not prepared to allow the plaintiffs an opportunity of repairing this omission by adducing further evidence.

8. The suit was filed exactly one year after the accident occurred, and it is filed under the Fatal Accidents Act for which the period of limitation is one year. If, however, the Local Boards Act requires a suit like the present one to be filed within a shorter period, then the mere fact that the plaintiffs had a cause of action under the Fatal Accidents Act would not save them from the bar of limitation. Section 225, Local Boards Act, deals with suits against local boards in respect of any acts done or purporting to be done in execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act. Section 225(2) lays down a period of six months within which such a suit must be brought. Roads and the trees on the margin of roads are vested in the local body in order that the local body may maintain the roads and trees for the benefit of the public using the roads. In *Uppalapati Suryanarayaneswara Jogi Jagannadharaju Garu and Another Vs. Taluk Board and Others*, the learned Judges were dealing with the question of the right to the usufruct of trees growing on the site of a punta situated in a zamindari. They pointed out that the punta and the trees were vested in the Taluk Board; but that did not mean that the Board had full proprietary rights over the soil of the puntas. They held,

that the property vested in the Board is such property, and such property only,

as is necessary for the control, protection and maintenance of the, punta for public use.

9. The Board would therefore have the right to cut down trees which interfered with the use by the public of the punta; but that did not give them a right to the fallen tree or to the fruit. It would therefore appear that such rights as the defendant in this suit had over the tree which caused the fatal accident were such that arose out of the Act itself, vesting this tree in the defendant. If therefore the defendant wrongfully neglected to cut down this tree which was a menace to persons passing along the road, it follows in the words of Section 225(1), that there was a neglect or default on the part of the defendant in the execution of the Act. The suit should therefore have been brought within six months and as this was not done, the suit had to fail.

10. It is quite clear, as the lower Court says, that the only damages for which the defendant can be liable are those arising out of any financial or pecuniary loss which the 1 plaintiffs have suffered on account of the death of the wife and children of plaintiff 1. The ages of the two little boys who were killed were three years and one year respectively; and it would be absurd to argue that any of the plaintiffs suffered any financial loss on account of their death. The possibility that these two little boys would, in some far distant time, be of some help to their father in his declining years is too speculative to be the basis of any calculation for damages. With regard to the death of plaintiff 1's wife, it is true that all the plaintiffs must be suffering some inconvenience by the loss of the services of the mother, who would presumably cook and look after them; but, on the other hand, she would have to be maintained and clothed. The only evidence let in by the plaintiffs on this question of damages arising out of the loss of services of plaintiff 1's wife is that she was a source of solace to him. This may be true; but that cannot be a ground for awarding damages. The lower Court therefore quite rightly dismissed the suit. We may point out, while dealing with this question of damages, that even if we had been disposed to decide the other points in favour of the plaintiffs and to have given them an opportunity of proving misfeasance or material damage, the fantastic claim for Rs. 6000 by way of damages would make it impossible for them to reap any advantage from the filing of the suit; for such directions as we would be compelled to make with regard to the payment of the court-fee due to Government would make it impossible for the plaintiff to meet the burden imposed on him by that order out of any amount that might be awarded to him by way of damages. Plaintiff 1 was presumably advised, because he had filed the suit in forma pauperis and was not called upon to pay any court-fee immediately, that he could put any fancy figure he pleased as the value of the suit; but, in doing so, he made it impossible to gain any benefit from the suit however it was decided. The appeal is dismissed with costs. The plaintiffs will be liable for the court-fee payable by them to the Government on the memorandum of appeal.