
(1977) 12 AHC CK 0027
In the Allahabad High Court
Case No : First Appeal No. 231 of 1961

Mata Prasad and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-12-1977

Acts Referred:

Citation : AIR 1978 All 303

Hon'ble Judges : B.N. Saprú, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Saprú, J.—This first appeal arises out of a suit instituted by the plaintiff appellants against the Union of India through the General Manager of the Central Railway, Bombay. The plaintiffs Nos. 1 to 8 carried on business in the name of a firm styled as Messrs Ganga Prasad Mata Prasad which was located at Attara. The firm deals in groceries, apices and vegetable products. Plaintiff No. 9, carried on a grocery shop a Karvi, district Banda and also dealt in vegetable products. Plaintiffs Nos. 1 to 8 through plaintiff No. 1, and plaintiff No. 9. engaged a public carrier No. UPC 4782 owned by one Smt Ram Janki Devi, to transport their goods from Allahabad to Attara and Karvi respectively by the Allahabad Chakghat route. This highway crosses the Allahabad Jabalpur Railway Line near about mile stone No. 8, roughly one mile away from the Railway Station of Iradatganj. The level crossing is numbered as 430. In the course of its journey the public carrier reached the level crossing at about 9.45 p. m. and finding the gates open entered the level crossing. At that time the engine of the Itarsi passenger No. 390 up going to Iradatganj reached the level crossing, and according to the plaintiff, hit the truck. The entire contents were thrown away and among the dead persons was the cleaner of the truck and several others were seriously injured. According to the plaintiff the accident was caused entirely due to the

negligence of the defendants,

2. The plaintiffs instituted a suit for damages against the Railways, Their case was that the carrier was driving at a slow speed and shortly before the vehicle reached the level crossing another public carrier had preceded it across the level crossing and the driver of the public carrier in which the goods were being transported followed the other vehicle as he found that the gates were open. According to the plaintiffs' case no gateman was present on duty, and the railway engine had no headlights, and was being driven at an excessive speed. It also did not give any whistle before it reached the level crossing. The plaintiffs' case further was that there were no proper signs to indicate that the level crossing lay ahead, and as such, the Railway were entirely responsible for the accident.

3. The Railway Administration contested the suit. The case of the defendant was that the engine had a headlight which was on, that it gave a whistle when it reached the crossing and that the gateman was on duty. It was further the case of the Railway Administration that the road on which the public carrier was coming ran parallel to the railway track for a considerable length and the driver of the public carrier must have seen that a passenger train was also going in the same direction that he was travelling, It is necessary to mention that the railway track is about ten feet higher than the road level and shortly before the level crossing the road rises to the level of the railway track in order to cross at the level crossing.

4. According to the defendants the level crossing has two gates, The gate-man when he learnt that the train was coming first went to close the gate at the Rewa side. He then realised that a truck had entered the railway level crossing, and was in danger from the on coming train. So he opened the gate again and let that public carrier cross. Thereafter he closed that gate and was going to close the gate at the Allahabad side of the level crossing but before he reached that gate the public carrier carrying the [plaintiff's goods entered the level crossing. The gateman tried to get that vehicle to go back, but the vehicle did not go "back, and as a result thereof, the accident took place. In these circumstances,, the Railway Administration claim that it was not liable in damages to the plaintiffs. Various other pleas were also taken.

5. The trial court dismissed the suit. It found that the engine had lights that it had given a whistle before it reached the level crossing; that the train was not travelling at an excessive speed and that the driver of the truck in which the plaintiffs' goods were being transported should have seen the train and not entered the level crossing. It further found that the gateman was on duty and the Railways' version as to how the accident took place was correct.

6. In this appeal, the question is whether the plaintiffs have succeeded in proving negligence on the part of the Railway Administration.

7. Railway level crossings have been provided with gates, so that they may be

shut when, trains are crossing. The admitted position in the present case is that one of the gates viz., the gate on the Allahabad side was open and a truck entered the level crossing when the accident took place. The fact that the gate was open is prima facie evidence of negligence on the part of the Railway Administration. In the case of the North Eastern Rly, Co v. Wanless (1874) 7 HL 12 what had happened was that the plaintiff brought an action for compensation and damages for the injury inflicted on him on the ground of the negligence of the Company's servants. The plaintiff alleged that he was going through a level crossing when the gates were open, and train came and injured him. The matter went up in appeal to the House of Lords. This is what the Lord Chancellor said in his judgment,

"My Lords, the very able counsel who has opened this appeal before your Lordships is one from whom your Lordships are always in the habit of hearing everything which can fairly and properly be urged in support of any case in which he appears as advocate; but it is not within the power of learned Counsel to present a case with a stress which the case itself does not possess? and I myself am not surprised that he has found it impossible to urge this case more strongly than he has been able to do. In point of fact, my Lords, I must express my surprise at the Appellants here finding it to be for their interest, or thinking it desirable, in any way to bring this case before your Lordships" consideration. The stake involved in the case itself is very small--probably of no importance as compared with the costs of the litigation. As regards the general effect of the bearing of your Lordships" decision upon the conduct of railway companies in future, I cannot conceive that the effect of the decision can be otherwise than wholesome; for it can only lead, as has been remarked in the course of the argument, to their properly performing the duty which the law has already cast upon them, namely, keeping closed the gates of the railway at level crossings at those times at which It would be dangerous to allow the public to cross the line.

The only question raised in the case for your Lordships" determination is, whether there was here evidence of negligence to go to the jury? What the jurors should do upon the evidence, or whether they should find any damages or not, was a question for the jury, and is not for this house now to consider.

My Lords, the facts of the case have been stated so recently that I do not think it necessary to repeat them, It appears to me that the circumstances that the gates at this level crossing were open at this particular time, amounted to a statement, and a notice to the public, that the line at that time was safe for crossing, and that any person who, under those circumstances went inside the gates, with the view of crossing the line, might very well have been supposed by a jury to have been influenced by the circumstance that the gates were open. Then, when inside the gates, the boy who in this case was injured, saw what was inconsistent with the gates being open, namely, he saw one train passing, and it may very possibly be the case that that circumstance embarrassed him, and that his eyes and attention toing fixed upon that particular train, when it passed out

of the way he failed to see the other train. He appears not to have seen it, but attempted to cross the line, and was knocked down and injured, It is quite clear he might have seen the other train -- there is no doubt about that -- but the result of the state of facts only comes to this that being brought upon the line through the circumstances of the gate being open, he was placed in a position which was more or less embarrassing, and he did not use his faculties so clearly as he might have done under other circumstances;

"My Lords, the question is, might not a jury fairly consider that his being there at all was owing to the negligence of the railway company? It appears to me that there was evidence to go to the jury to which weight might have been given, and from which the jurors might have been led to conclude that he was there in consequence of the circumstance I have referred to, viz, the gates being open; and that being the only point for the Court to consider, I certainly am of opinion that the Court could not do otherwise than hold that the question of negligence might upon this evidence rightfully be submitted to the consideration of the jury."

In the instant case, the maxim of *res ipsa loquitur* applies as Lord Simon said in *Woods v. Duncan* (1946 AC 401). "But to apply this principle" (*res ipsa loquitur*) is to do no more than to shift the burden of proof. A *prima facie* case is assumed to be made out which throws upon him" (the defendant) "the task of proving that he was not negligent". In the case of *Barkway v. South Wales Transport Co. Ltd.*, (1950) 1 A II ER 392, Lord Porter speaking on the maxim, of *res ipsa loquitur* said: ""The doctrine is dependent on the absence of explanation and although it is a duty of the defendant, if they desire to protect themselves to give an adequate explanation of the cause of accident, when, if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts established negligence is to be inferred or not,"

8. The Railway administration has given an explanation for the accident. The explanation is that the gateman Shri Mohan (D.W. 1) was present on duty and that, as mentioned earlier, he had closed one gate, but had to open it again in order to let the first carrier pass through the level crossing and to avoid that carrier to be run over. He was also going to close the second gate when the ill-fated public carrier carrying the plaintiff's goods entered the level crossing. Even accepting the truthfulness of the testimony of Mohan (D.W. 1) the question that remains is whether or not the defendant can be absolved of the liability for negligence. The fact that the Allahabad side gate was open amounted to a statement to the driver of the public carrier, in which the plaintiffs' goods were being transported, that it was safe to enter the level crossing, and no train was coming. The railways, must ensure that the gateman closes both the gates before a train passes through, and should not leave the gateman such little time that he cannot close both the gates before a train crosses a level crossing.

9. In the *Daya Shankar Vs. B.B. and C.I. Ry. Co.* it has been held that a person who finds the gates of a level crossing open and is thereby misled into thinking

the line safe for crossing is not bound to minute circumspection, and if he is run over by a train, the Company may be liable to him, although he did not use his faculties so clearly as he might have done under other circumstances.

10. The trial court held the defendant not to be liable in damages on the following finding:

"My finding, therefore, is that there was no obstruction to visibility from the road to the railway line near the level crossing, that the head light of the engine was on, that the train had whistled that the noise of the train could be heard by the driver of the truck that the driver of the truck was negligent in rushing behind the first truck simply seeing it passing the level crossing, without taking normal precautions and without looking to his left side that the train was coming, and that there was no negligence on the part of the gateman, and the accident took place due to the negligence of the driver of the truck. The driver of the truck was not misled because of the opening of the Allahabad side gate but because of his own judgment to pass out of the gate like the first truck without being detained there, for some time until the train had passed. In my opinion if the driver had used ordinary and reasonable care, he would have noticed the approaching train and the danger involved in it. He did not even look and see whether the way was clear beyond seeing that the gate was open and the first truck was passing out. So the plaintiffs are not entitled to recover any damages from the defendant railway."

The trial court's approach is vitiated by the fact that it considered it necessary that the driver of the truck was required as a matter of law to have taken precautions to ascertain whether a train was approaching, even though the gates were open. In a normal situation, the driver of a truck can assume from the fact that the gates are open, that there is no danger in crossing the railway track at a level crossing, if the gates are open. If the driver of the truck had seen that a train was so close that he could not cross the level crossing, he would not have entered it endangering his life and the safety of the truck.

11. As far as the quantum of damages was concerned, the trial court has assessed the same. Nothing has been shown on behalf of the respondents to show that the assessment of the damages was wrongly done by the trial court.

12. As I have held that the defendant is liable in damages to the plaintiff the appeal must be allowed and is accordingly allowed. The plaintiffs' suit for damages is decreed to the extent that plaintiffs Nos. 1 to 8 would be entitled to a decree for Rs. 4004.11 As, as against the defendant and the plaintiff No. 9, will set a decree for Rs. 3971. 15 As. The plaintiffs would also get interest at the rate of six per cent per annum on these amounts from the date of the suit to the date of payment. The plaintiff appellants are also entitled to their costs throughout.