

(1912) 01 AHC CK 0045
In the Allahabad High Court

Mrs. E.C. Blanchett

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 06-01-1912

Acts Referred:

Citation : 13 Ind. Cas. 417

Hon'ble Judges : Henry Richards, C.J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit brought by the plaintiff against the Secretary of State for India in Council as re. presenting the Oudh and Rohilkhand Railway. It appears that on the 6th of May 1908, a collision took place between Dasna and Ghaziabad Railway stations, with the result that the plaintiff's husband, who was an Engine Driver in the employment of the Oudh and Rohilkhand Railway, was killed. He was a man aged 38 years and his wages are stated to have averaged Rs. 280-4-0 a month, which evidently includes his remuneration for over-time work. Dasna is a station on the Oudh and Rohilkhand line which is a single line at that point. Ghaziabad is a station which is used both by the Oudh and Rohilkhand Railway and the East India Railway and other Railways, but the servants employed in Ghaziabad are not the direct servants of the Oudh and Rohilkhand Railway. Efforts had been made by inquiries and by prosecutions to arrive at some conclusion as to how the accident occurred. This much is common case, and beyond all question, namely that the immediate cause of the accident was the running of two trains in opposite directions between Ghaziabad and Dasna which unfortunately collided. There is no evidence to show whether the train from Ghaziabad started from that station before the train from Dasna started from Dasna or vice versa. The accident must have been caused by gross negligence on the part of an official at one station or the other at the time of the accident, the departures of trains from both Dasna and Ghaziabad stations were regulated by what is called Tyre's Patent Tablet Instrument. If this instrument is

used and the rules are observed by the Railway servants it would appear to be impossible that a train should leave Dasna after a train had already started from Ghaziabad to Dasna, or vice versa. The plaintiff in her plaint alleges that the defendant Railway appointed and maintained incompetent servants, namely, Mr. C. Collett White, Sunder Lal, and Jawahir Lal and further that they neglected to supply suitable and safe machinery and appliances for the working of the line. Mr. Collett White, Sunder Lal and Jawahir Lal are all admittedly servants of the Oudh and Rohilkhand Railway. It is to be noticed that the Oudh and Rohilkhand Railway alone are sought to be made liable in the present suit.

2. The defence was that the plaintiff had no cause of action against the Secretary of State for India, that the present suit was not maintainable under the provisions of Section 1 of Act XIII of 1855, and that Article 745 of (the Civil Service Regulations was a bar to the suit. It was also alleged that an offer was made to the plaintiff of Rs. 2, 160 being the equivalent of 11 months' substantive pay at Rs. 180 per mensem. The defence of Article 745 of the Civil Service Regulations has not been pressed in this Court.

3. It must be admitted that there was neglect somewhere as the cause of the accident which happened on the 6th of May 1908. There must have been neglect by the officials either at Dasna or at Ghaziabad, otherwise it is quite impossible that the two train would have been allowed to proceed on the same line in opposite directions at the same time. It is perfectly clear in this country where there is no Legislature analogous to the Employers Liability Act that a servant has no cause of action against his master for the neglect of another servant in the common employment of the same master and this notwithstanding the fact that the nature of the employment of the servant suffering the injury and the servant whose neglect causes the damage is very dissimilar. It was evidently for this reason that an allegation is made in the plaint that the defendant is liable on the ground that the Oudh and Rohilkhand Railway employed incompetent servants and neglected to supply suitable appliances for the carrying out of the work of the line. The evidence as to the incompetence of the servants Mr. Collett White, Sunder Lal and Jawahir Lal, is very unconvincing. We have no reason whatever for holding that Mr. Collett White was not a perfectly competent official of the Railway. Furthermore, there is nothing in the evidence to connect Mr. Collett White with the accident. Some evidence was given as to the incompetence of Sunder Lal, who is supposed to have used the Tablet Instrument on the day in question. Mr. Collett White was examined on behalf of the plaintiff so also was a gentleman of the name of Mr. Plunkett and another gentleman of the name of Mr. Cole. Mr. Plunkett stated that he found sometime before the accident that Sunder Lal had not learnt the beats of the Tablet Instrument by heart. It would appear that beats are transmitted by the instrument for the information of the official of the particular train which is awaiting to start or has been allowed to start from a station and the official is thereby enabled to know the number and description of the train, it was further stated that Sunder Lal had been suspended as the result of a report that he did not work the Tablet

Instrument properly. With regard to this suspension it appears from the evidence of Mr. Collett White in cross-examination that an inquiry was made after Sunder Lal's suspension and that it was found that, he was not to blame in respect of the matters reported on and that, on the contrary, the blame for failure to work the instrument properly must be attributed to the officials at Ghaziabad. It is also proved in cross-examination (to which no exception was taken) that before the accident Sunder Lal was examined and found capable of working the instrument. There was also evidence that since the accident the Oadh and Rohilkhand Railway have discontinued the use of the Tyre's Patent Tablet Instrument. Dasna is not a junction: it is a station on a single line, and it is, therefore, probable that the working of the Tablet Instrument at that station is as simple as it can be at any station probably far more simple than the working of the same Instrument at Ghaziabad which is a junction used by a number of lines and into which a number of trains come. The failure to have learnt the beats by heart has been in no way connected by evidence with the accident; and according to the evidence of the plaintiff's own witness in cross-examination we find that Sunder Lal had been examined and found capable of working the Instrument before the accident occurred. The Instrument itself according to the evidence is an instrument which is largely used in India and in England. It is true that Mr. Cole in his evidence says that it is capable of being tampered with, and that it is possible to get the Tablets, which enable trains to start, out of (he drawer simultaneously at two different stations. The Oudh and Rohilkhand Railway according to the evidence had not adopted the Tyre's Patent Tablet Instrument throughout their line, and not much significance can be given to the fact that they have discontinued its use at the two stations where they had adopted it. It may well have been that they considered that the Instrument was not so perfect as to make it expedient for them to introduce it throughout their system. It is not shown at all that there was any defect in the Instrument, far less that the accident was due to any such defect. According to the evidence the Instruments were regularly tested after the accident and found quite perfect. Mr. Cole says "It is not known even now that the accident was due to any defect in the instrument." He says further: "So far as I know, there was no safer Tablet Instrument in existence than those in use on the Dasna-Ghaziabad section. Before the accident they were believed to be perfectly safe." This witness was produced on behalf of the plaintiff though, no doubt, he was in the employment of the defendant Railway. There is no doubt that while a master is not liable for the neglect of a servant which causes injury to another servant in the same employment it is his duty to employ competent servants and to provide proper appliances for the carrying out of the work. But we find it quite impossible in the present case and on the evidence before us, to find that the Oudh and Rohilkhand Railway neglected their duty by appointing Sunder Lal or by making use of the Tyre's Patent Tablet Instruments. Apart from this accident, Sunder Lal appears to have nothing against him. The result of the inquiry as to the complaint of failure to work the Tablet Instrument before the accident resulted in his favour, and, as we have stated, the instrument used at Dasna was in perfect working order and is an instrument generally recognized as

being safe and efficient.

4. Even if we were to assume for a moment that the accident was due to the neglect of Sunder Lal rather than the neglect of one of the officials at Ghaziabad, the neglect would be the neglect of a servant in common employment with the plaintiff and the defendant would not be liable.

5. It is next argued that there must have been neglect either at Ghaziabad or at Dasna and that in any event the defendant is liable. As against this argument, it must be mentioned that there is, first of all, no allegation of neglect at Ghaziabad, and secondly, that there is no evidence that the officials who worked the instruments at Ghaziabad are the servants of the Oudh and Rohilkhand Railway. The mere fact that work is done at Ghaziabad Station in which the defendant Railway is interested as well as the East Indian Railway is not sufficient and this is shown by the case of *Swainson v. North East Railway Co.* 3 ED 341 : 47 L.J. E 372 : 38 L.T. 201 : 26 W.K. 4. If we assume that the accident was due to the neglect of the officials at Ghaziabad the East Indian Railway Company and not the Oudh Railway would be liable in damages for the result. It is argued that the officials at Ghaziabad must be deemed to be the servants of the Oudh and Rohilkhand Railway because they are the servants of the East Indian Railway Company who must be considered the Agents of the Oudh Railway and that, therefore, the Oudh and Rohilkhand Railway are liable. It seems to us that if this argument were sound the Oudh and Rohilkhand Railway would not be liable because the husband of the plaintiff and the servants guilty of negligence would be in common employment.

6. Furthermore, there is again no evidence that, there was any neglect of duty by the East Indian Railway Company as representing the Oudh and Rohilkhand Railway to employ competent servants and to supply proper appliances.

7. In our opinion the decree of the lower Court must be upheld. We would strongly recommend the plaintiff to the consideration of the Railway Board. There is not the least doubt that through the neglect of some one the deceased met with his death and the plaintiff has been left with six destitute children to support. The case appears to us to be an extremely sad one and to well merit the kind consideration of the Railway Board. We dismiss the appeal and direct that each party do pay his own costs. We also direct that a copy of this judgment be sent to the Railway Board.