

(1979) 05 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Second Appeal No. 226 of 1969

Municipal Board

APPELLANT

Vs

Jammu Mal

RESPONDENT

Date of Decision : 10-05-1979

Acts Referred:

Citation : (1979) WLN 134

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—The respondent Jammu Mal had filed a suit in the court of Civil Judge, Pali, for the recovery of Rs. 1060/-, by way of compensation, against the appellant Municipal Board, Pali. Respondent No. 2 was the Chairman of that Municipal Board. It was alleged by the plaintiff that his shop was situated at Pali, at the vicinity of "Ghee-ka jhande". That in the year 1964, in the month of May, the Municipal Board, Pali excavated the land in front of the shop, in order to construct the road. The excavation was 7-8 feet deep With the result of that excavation, the foundations of the shop of the plaintiff were exposed and the shop was raised to the height of 9-10 feet from the road level With the result, that it became impossible to enter the shop. Despite repeated requests, the Municipal Board did not get the foundations of the shop of the plaintiff repaired That in the year 1965, there was heavy rainfall in Pali, the shop of one Kirat Mal situated on the west of the shop of the plaintiff, fell down, because the foundations of that shop had also been exposed due to the excavation of the road, done by the Municipality Because of the fall of the shop of Kirat Mal, the shop of Jammu Mal, the plaintiff, received a shock and got cracks, and it became useless. According to the plaintiff all this damage to the shop was due to the deliberate malicious act of the Municipality. Me, therefore, claimed Rs. 1000/- for getting the shop repaired, and Rs. 10/- per month for a period of six months till the filing of the suit and the similar amount till the realization The defendants, in

their written statement, came with a case that the work done by the Municipality was legal and the cause of the cracks of the shop of the plaintiff was the fall of the neighbouring shop of Kirat Mal, and not the excavation done by the Municipality. They denied the claim of the plaintiff to any damages or mean profits for the shop to have been useless on account of the cracks.

2. The learned Civil Judge struck out various issues, recorded the evidence & concluded that the Chairman, Municipality, had got the excavation work done in his official capacity and the work was bonafide. He, therefore, was not liable for any compensation. The Municipal Board was held liable to compensate the plaintiff on the ground that the damage caused to the shop of the plaintiff was the result of the excavation of the road by the Municipality, and its negligence, not to get the foundations repaired despite the requests of the plaintiff. A decree for Rs. 1060, with costs, was passed in favour of the plaintiff. He was also held entitled to a sum of Rs. 10 per month from the date of the filing of the suit.

3. Being aggrieved by that judgment and decree, the Municipal Board preferred an appeal in the court of District Judge, Pali. The learned Judge by his judgment dated 21.2.1969, affirmed the findings of the trial court, and dismissed the appeal with costs.

4. It is against the judgment of the learned District Judge that the Municipal Board has filed the second appeal in this Court. The learned Counsel for the appellant has strenuously contended that the excavation done by the Municipality was for the public good, and therefore, even if any loss is sustained by anybody, the Municipality is not liable to make good the loss. Another argument advanced by the learned Counsel to assail the findings of the courts below is that the damage even if any caused to the shop of Jammu Mal, was on account of the fall of the neighbouring shop of Kirat Mal, due to heavy rainfall, and was, in no way, connected with the excavation work. The learned Counsel stressed that in cases where the damage is not the direct result of the work done by the defendant, he cannot be held liable to compensate the person alleging sustaining any loss. The learned Counsel tried to substantiate his contention by citing certain authorities, which, I will just discuss. While trying to justify the finding of the courts below, it has been submitted by the learned Counsel for the respondent Jammu Mal that the fall of the shop of Kirat Mal was the excavation work, because the foundation of his shops was also exposed and the rainy water entered the foundation causing the cracks in the walls of the shop.

5. The perusal of the record shows that it has been duly proved by the plaintiff that the excavation was 7-8 feet deep and the foundation of the shop of Jammu Mal was exposed. The foundation of the shop, of Kirat Mal was also exposed by that excavation. This is also on record that the plaintiff had filed an application to the Additional Collector, who had ordered to get for shop of the plaintiff and the neighbouring shops repaired. The authority of the Additional Collector to issue such an order had been challenged. I am not to enter into that controversy whether the Additional Collector had rightly issued the order or not because,

this is the admitted position that requests had been made to the Municipality itself, and the plaintiff was directed to get the shop repaired as other occupants of the neighbouring shops had done. The constriction of the road, according to the Municipality, was for the public good. The point for consideration is whether in such cases a private person suffering any loss due to the construction work is entitled to any compensation for loss sustained by him or not. The plaintiff was not asking the Municipality not to do a work for public good rather was asking for the foundation of the shop getting repaired, which was exposed and had rendered the shop useless. In my opinion, it was the duty of the Municipality to get the shop repaired and it was not just to shirk off the responsibility on the contention that the plaintiff should have done it himself as the occupants of the other shops of the vicinity had done.

6. It is not in all cases that compensation is to be claimed for the damage sustained, rather it is to be seen whether the damage was the direct or proximate result of the act of the party, from whom the damages are claimed. This is not in dispute that the excavation was done in the year 1964, and it was after one year, in the year 1965, that the shop of the plaintiff got cracks. This is also not in dispute that the cracks were on account of the fall of the shop of Kirat Mal. It is now to be seen whether the fall of Kirat Mal's shop was in any way connected with the excavation work done by the Municipality. It has come on record that the foundation of the shop of Jararnu Mal as well as Kirat Mal was exposed on account of the excavation done (or the construction of the road. It has also come in evidence that the rainy water entered the exposed foundation of the shop of Kirat Mal causing its fall. The foundation of the plaintiff's shop being exposed, the wall of his shop became weak, and therefore, when the supporting wall of Kirat Mal's shop fell down, there were cracks in the walls of the shop of the plaintiff. It is the heavy rain, which was the immediate cause of fall of the wall of Kirat Mal's shop, but it cannot be overlooked that but for the exposure of the foundations of the shops on account of the excavation work done by the Municipality, the rainy water could not have caused the fall of wall of Kirat Mal's shop. In view of this observation the authorities cited by the learned Counsel for the appellant do not help him. In the case of Overseas Tankship UK) Ltd. Appellants and Marts Dock & Engineering Co. Ltd. 1961 Appeal Cases 388, the question was about the foreseeability of consequences of the person from whom damages were claimed, and it was observed that the essential factor in determining liability for the consequence of act of negligence is whether the damage is of such a kind as reasonable man should have foreseen. In the case of Morris v. William Moss & Sons Ltd. 1954 All England Reports 324 one of the standards of the scaffolding erected on the building was out of the vertical, which was the breach by the defendant but the real cause of the accident that is the plaintiff's sustaining injury, was his own negligence in employing an unsuitable method of trying to correct the fault. It was in those circumstances that it was held that neither the breach of statutory duty nor the failure of the foreman to warn the plaintiff of the fault contributed to the accident, and therefore, the

defendants were not liable. In the case in hand, the circumstances are of altogether different nature. This stands well proved that the excavation work done by the Municipality has exposed the foundations of the plaintiff's shop as well as those of Kirat Mal. It was the flow of the rainy water in the foundations which had weakened the walls of Kirat Mal's shop. The rains being heavy that year, will not make any difference because if the foundations of "a building are well covered heavy rain does not ordinarily damage the building. It was the exposed foundation of the plaintiff's shop which weakened the wall and, therefore, on the supporting wall falling down, there were cracks.

7. I am, therefore, in perfect agreement with the two courts below that though the immediate and apparent cause of the damage of the shop of the plaintiff was fall of Kirat Mal's shop, the proximate and direct reason for that fall was the exposure of the foundation by the excavation work, done by the Municipality.

8 Hence, those findings, call for no interference. The appeal being devoid of force, is dismissed with costs.