
(1919) 03 AHC CK 0006
In the Allahabad High Court

Pandit Shiam Narain Tickoo and Others	APPELLANT
Vs	
The B.B. and C.I. Railway	RESPONDENT

Date of Decision : 03-03-1919

Acts Referred:

Citation : 50 Ind. Cas. 130

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

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought against the B.B. and C.I. Railway. There were four plaintiffs, one adult and three minors. The allegation is that the first plaintiff, his wife and three children (the other three minor plaintiffs) were travelling from Agra to Kuchaman Road and put chafed tickets at Agra. The party changed their carriage at Bandigai station and got into another train. It is alleged that in the course of this part of the journey the carriage door opened out through the neglect of the defendant Railway Company, either in not looking the door or in not seeing that it was properly fastened and plaintiff's wife fell out and subsequently died. One of his minor girls Rum Dulari, plaintiff No. 3, also fell out and was injured. Rupees 25,000 were claimed by the family as damages for the death of the wife of plaintiff No. 1 and Rs. 5,000 were claimed by Ram Dulari and Sham Dulari for injuries caused to them. Various pleas were raised by the defendant Company. They contended that the causes of action in respect of the death of the wife and the injuries to the daughters could not be joined. They also pleaded that the Agra Court had no jurisdiction as the cause of action did not arise in that District. There were of course also pleas denying neglect and liability. The Court below held that it had no jurisdiction to entertain the suit and directed the plaint to be returned for presentation in the proper Court. The plaintiffs have appealed.

2. It is quite clear that prima facie a Company should be sued at its principal place of business, which in this case is at Bombay. If, however, the plaintiffs could show that the cause of action wholly or in part arose at Agra, then the suit

could be instituted at that place. The contention on behalf of the plaintiffs is that the buying of a ticket by each member of the family was a contract between the individual and the Railway Company to carry that individual "safely" from Agra to the place of destination as set forth in the ticket and that the suit accordingly being based upon contract, the cause of action either wholly or in part arose at Agra. On the other hand the defendant Company contend that the alleged neglect about the carriage door was the cause of action and this occurred, if at all, outside the jurisdiction of the Agra Court.

3. In support of the contention of the plaintiffs certain English cases have been cited and amongst them the cases of *Austin v. G.W. Ry. Co.* (1867) 2 Q.B. 442 : 36 L.J.Q.B. 20 : 16 L.T. 820 : 15 W.R. 863 and *Foulkes v. Metropolitan District Railway Co.* (1879) 4 C.P.C. 267. In the earlier of these two case a mother sued for damages on the allegation that she accompanied by her infant child, who was under three years of age, was travelling on the defendant company's Railway when the accident happened whereby the child was injured. The Jury found in favour of the plaintiff. A question had arisen as to whether or not the child was more than three years old. If it was under three years the mother was entitled to take it without the payment of any fare For the purposes of argument it was assumed that the child was under three years of age, and on this assumption it was held that the verdict of the Jury awarding damages could not be disturbed. Three of the Judges state that the right was founded on the contract which arose when the lady purchased her ticket and that the contract was to carry "safely." Blackburn, J., put the obligation on a different ground, namely, the duty which the Company owed, quite irrespective of the contract. In the case of *East Indian Railway Co. v. Kalidas Mukerji* 28 C. 401 (P.C.) 38 I.A. 144 : 3 C.W.N. 449 : 3 Bom. L.R. 296 : 11 M.L.J. 156 : 8 Sar. P.C.J. 33, the very case which we have just mention " ed was referred to. In the case before their Lordships of the Privy Council the, plaintiff's son had taken a ticket at Howrah. In the course of the journey another a passenger entered the carriage having with t him a lot of fireworks. The fireworks exploded and the plaintiff's son was injured and subsequently died of the injuries I whereupon the plaintiff instituted the suit. The Indian Courts held that the defendant company was liable because there was a duty independently of any implied contract to carry the passenger "safely." It was argued before their Lordships of the Privy Council that the extent of the obligation of the Railway Company is to carry "safely." In short it was said that carry are common carriers of passengers. Their Lordships held that this was not the law. Their Lordships refer to the case of *Austin v. G.W. Ry. Co.* (1867) 2 Q.B. 442 : 36 L.J.Q.B. 20 : 16 L.T. 820 : 15 W.R. 863 and say at page 410 Page of 28 C.--Ed. of the report: "in the one case it was a child under three years of age between whom and the Railway Company of coarse there was no contract, and the other is a case of the same character. It is important perhaps to observe what runs through the judgments and to observe that Mr. Asquith naturally enough used the same phrase yesterday in his argument as enforcing the necessity of the Railway Company discharging themselves by inconceivable

evidence by saying that their contract was to carry safely. Their Lordships think it is desirable that the error should be plainly stated, because it may mislead others hereafter. It is enough to say that in their Lordship judgment there is no such obligation on the part of the Railway Company." It must be admitted at once that the facts in the present case and the facts of the case to which we have just now referred are by no means identical. In the case before us the allegation is an allegation of neglect connected with the keeping of the door shut. In the case before their Lordships of the Privy Council the allegation was neglect in allowing a passenger to bring fireworks into the compartment. We think, however, that the case has a very distinct bearing upon the question as to whether the liability of the Company in the present case is or is not founded upon contract. Even, however, if we assume that a person who purchases a ticket can sue the Company "ex contractu" for injuries suffered during the course of the journey, it is important to point out the foundation of the main claim put forward in this suit, that is, the claim for damages consequent upon the death of the wife of the plaintiff No. 1 is under the Fatal Accidents Act of 1855, The preamble of that Act is as follows:

Whereas no action or suit is now maintainable in any Court against a person who, by his wrongful Act, neglect, or default, may have caused the death of another person and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him...." The contract to carry the deceased lady was a contract to carry herself. There was no privity between the plaintiffs and the Company and no contract entered into by the Company with the plaintiffs to carry this lady, and a suit so far as relates to her death is a suit based upon tort and on the provisions of the Fatal Accidents Act of 1855, and cannot we think be said to be based on contract. After full consideration we have come to the conclusion that the decision of the Court below was correct. We accordingly dismiss the appeal with costs, including in this Court fees on the higher scale. The plaint will, of course, be returned for presentation to the proper Court as directed by the Court below.