

(1938) 11 AHC CK 0033
In the Allahabad High Court

Rahim Baksh

APPELLANT

Vs

Municipal Board of Bulandshahr

RESPONDENT

Date of Decision : 28-11-1938

Acts Referred:

Citation : AIR 1939 All 213 : (1939) 9 AWR 126

Hon'ble Judges : Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Verma, J.—The suit which has given rise to this appeal was filed by the appellant for the recovery of a certain sum of money as damages on account of injuries sustained on account of an accident with which the plaintiff met. Both the Courts below have dismissed the suit. The case of the plaintiff was that he was a tenant of a house belonging to Sm. Ram Devi in a certain mohalla within the municipal limits of the town of Bulandshahr, that immediately to the south of that house there was a drain belonging to the Municipal Board, that to the south of that drain there was a road, also belonging to the Municipal Board, that the Municipal Board did not keep the road in proper condition, nor had made proper arrangements for lighting it, that on the night of 3rd June 1932 the plaintiff fell into the drain because the Municipal Board had not erected anything in the nature of a boundary wall or "munder" between the drain and the road and because there was insufficient light and also because the plaintiff's eyesight is weak, and sustained injuries which necessitated medical treatment and cessation of his business. When the plaintiff entered the witness-box he elaborated his allegations in the plaint by explaining that, on the night in question he felt thirsty about 1 A.M., that he was always in the habit of drinking water freshly drawn from the well, that therefore he started to go to a well which is situated in the south of the road in question, and that, on his way to the well he fell into the drain. The Municipal Board had contested the suit on various grounds. The trial Court, while holding that the plaintiff's story as to his fall into the drain and the

consequent injuries was true, held further that the plaintiff's statement that he had fallen into the drain from the road was untrue, and that the fact was that he had slipped while he was still on the culvert over the drain which connects the house occupied by the plaintiff with the road to the south of the drain, and had fallen into the drain. The plaintiff had made no mention of the culvert either in his plaint or in his statement in the witness-box.

2. The trial Court proceeded to consider the question as to whether the culvert or bridge belonged to the Municipal Board or to someone else and came to the conclusion that it had been built by the Municipal Board. It also held that there was no parapet or "rounder" between the road and the drain and that the light in the vicinity was insufficient. It however dismissed the suit on the ground that the plaintiff had been guilty of contributory negligence. The plaintiff appealed to the lower Appellate Court. That Court was of opinion that the plaintiff having never mentioned the culvert in the plaint or in his statement in the witness-box and the issue as to its ownership having never been raised it was not right for the trial Court to decide that point without giving an opportunity to the Municipal Board to lead evidence on the point. It accordingly framed an issue and remitted it to the trial Court under Order 41, Rule 25, Civil P.C., for a finding and directed that the parties should be allowed to adduce fresh evidence. The finding submitted by the trial Court on this issue was that the culvert or bridge in question had not been built by, and did not belong to the Municipal Board but that it had been constructed by one Barkat Ali, who was the predecessor, in-title of Shrimati Ram Devi, the owner of the house in which the plaintiff is living as a tenant. It was also found that there was no evidence on the record to show that the culvert in question was ever maintained by the Municipal Board in any manner. The lower Appellate Court then heard the appeal again and agreed with these findings of the Court of first instance. It also agreed with the trial Court in holding that the plaintiff's story that he had fallen into the drain while he was walking along the road was untrue and that the fact was that his foot had slipped and he had fallen into the drain while he was still on the culvert. On these findings the lower Appellate Court held that as the culvert was the private property of the owners of the house in which the plaintiff was living as a tenant and that the plaintiff had not met with any accident on the road, the plaintiff was not entitled to any decree against the Municipal Board. In this view of the matter the Court did not think it necessary to decide the question of contributory negligence.

3. It seems to us that on the findings of fact recorded by the Court below the plaintiff's suit has been rightly dismissed. It has been suggested by the learned Counsel for the plaintiff-appellant that it was the duty of the Municipal Board to make sufficient provision for lighting the culvert in question, and reference has been made to Section 7, U.P. Municipalities Act (2 of 1916). That Section lays down, among other things, that it shall be the duty of every Board to make reasonable provision within the Municipality for lighting public streets. The learned Counsel has entirely failed to show that the culvert in question can in any sense of the term be regarded as a "public street," or even as a "street," as

defined in the U.P. Municipalities Act.

4. It has been urged that if the Municipal Board had made adequate provision for lighting the road to the south of the drain the culvert in question would have been indirectly benefited and that the plaintiff might not have missed his footing and fallen into the drain. We are unable to accept this contention. As we have observed above, it is impossible to hold that it was the duty of the Municipal Board to make any provision for the lighting of the culvert in question. If the Municipal Board had made any provision for the lighting of the road that runs parallel to and to the south of the drain, it does not necessarily follow that the culvert would have been lighted by the lamps provided by the Municipal Board for the lighting of the road. It may also be pointed out that all that the statute requires is that a Municipal Board ought to make "reasonable provision" for the lighting of public streets. Nothing has been said to show what provision it was necessary for this Municipal Board to make for the lighting of this road in question in order to satisfy this requirement of the statute. It has been urged that the Municipal Board had provided no lights at all on this road. In the first place, the question as to whether the road is properly lighted or not is really irrelevant in view of the finding that the plaintiff fell down before he ever reached the road. In the second place, it is well settled that a highway authority is not liable for damages resulting from mere nonfeasance : vide Underhill's Law of Torts, Edn. 3, Article 15, p. 45, where the authorities are quoted. Reference may also be made to Halsbury's Laws of England, Hailsham Edition, Vol. 16, p. 332, Article 455. In our judgment, on the findings of fact recorded by the lower Appellate Court, the plaintiff never had any cause of action against the Municipal Board. For the reasons given above we dismiss this appeal with costs.