

(2003) 11 DEL CK 0092
In the Delhi High Court

Rakesh Saini and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Citation : (2006) 1 ACC 603

Hon'ble Judges : Usha Mehra, J;A.K. Sikri, J

Bench : Division Bench

Judgement

A.K. Sikri, J.—Roshni Devi, wife of appellant No. 1 and mother of appellant Nos. 2 and 3 died along with three others in a train accident occurred on 18.12.1995 at Azadpur Railway Station alleging that it was due to negligence of respondent Northern Railway. The appellant first approached the Railway Claims Tribunal, Delhi for compensation. However, the said claim was dismissed on the ground that Tribunal had no jurisdiction to entertain such a claim and remedy for the appellants was to file civil proceedings. In these circumstances, appellants filed Civil Suit No. 626 of 2001 in the Court of Additional District Judge, Delhi claiming compensation of Rs. 5,00,000 under tortious liability. This suit has been dismissed by judgment and decree dated 29.4.2002 passed by the learned Additional District Judge, Delhi. Present appeal is preferred against the aforesaid judgment and decree.

2. Version of the appellants as to the circumstances under which accident took place on 18.12.1995 is as follows:

That on 18.12.1995 at about 5.30 p.m. the deceased Roshni Devi reached at Azadpur Railway Station to board the passenger train coming from New Delhi Railway Station for Narela. There are tracks--one for the incoming trains from Ambala side and the other for outgoing trains towards Ambala. The passenger train coming from New Delhi reached Old Azadpur Railway Station at about 5.40 p.m. At Azadpur Railway Station, for boarding train going towards Ambala side, there is no platform. All the passengers standing on the platform on the right side of the train have to cross the railway track meant for incoming train from

Ambala side and after crossing the side track, the passengers can board the train going towards Ambala side.

That there is no platform on the left side of the said track and it is full of dirt and not even a single passenger can stand on the left side of the track. Moreover, there is no over bridge or subway to approach the train which are coming from New Delhi side and going towards Ambala side. There was a total failure of electricity at the Old Azadpur Railway Station at about 5.40 p.m. All the passengers standing on the platform were compelled to cross the railway track meant for the incoming train, so as to board the train standing on the outgoing track meant for Ambala side. As soon as the passengers were boarding the train after crossing the railway track, an Inspection Electric Locomotive and SLR Coach came from Ambala side at a speed of 140 kmph with its headlight off and no whistling. The number of passengers were hit by the said train and four passengers died on the spot including Roshni Devi.

3. The appellants have claimed that the tragedy occurred due to negligence, of the respondent for not providing over bridge or subway to approach the Old Azadpur Station for boarding trains from New Delhi side and going towards Ambala side. It is also their allegation that there was no platform on the left side of the railway track which was full of dirt and not even a single passenger could stand thereon. Further, on the fateful day there was total failure of electricity on the Old Azadpur Railway Station.

4. The respondent herein contested the suit on various grounds. Apart from taking certain preliminary objections about the locus standi of the appellants, limitation, jurisdiction of the Court to try the suit, etc., on merits allegations in the plaint were denied. It was denied that there was no platform on the left side of the track or it as full of dirt. According to respondents, train reached at 5.30 p.m. and the accident took place at 5.45 p.m. There was no train at the spot and the deceased herself was late in coming and was negligent. It was also denied that all of a sudden an inspection train carrying electric locomotive and SLR coach from Ambala side came at a speed of 140 kmph with its headlight off and without signal or whistle.

5. On the basis of pleadings the Trial Court framed the following issues:

- (1) Whether the plaintiffs are entitled to recover Rs. 5,00,000 with interest against the defendant, as alleged?--OPP
- (2) Whether the plaintiffs have no locus standi to file the present suit?--OPD
- (3) Whether the plaintiffs have no cause of action to file the present suit?--OPD
- (4) Whether the suit is within time?--OPP
- (5) Whether this Court has no jurisdiction to try the present suit?--OPD
- (6) Relief.

6. Issues of the maintainability of the suit, namely, issue Nos. 2,4 and 5 were decided against the respondents. However, learned Trial Court after analysing the evidence produced on record discussed issue Nos. 1 and 3 and held that there was no negligence on the part of the respondents herein and, in fact, death of the deceased took place because of her negligence and, thus, decided these issues against the appellants. Resultantly, no relief was granted and the suit was dismissed.

7. We may state at this stage that the appellant No. 1 examined himself as PW 1. He proved the receipt for taking the body as Exh. PW 1/18, certified copy of the judgment of the Railway Claims Tribunal, Exh. PW 1/19 and legal notice given to respondents as Exh. PW 1/20. He was not an eyewitness to the accident. In his cross-examination he admitted that no F.I.R. was lodged. Another witness examined by appellants was Ramphal, PW 2, who claimed that he was present at the time of accident and was an eyewitness. He deposed that he was posted as Superintendent in the Kendriya Vidyalaya, Shalimar Bagh, Delhi and he was having a rail way pass issued in December, 1995 from Bhodwal to Azadpur Railway Station. This witness has also deposed that he reached the station at 5.30 p.m. and he was going to Ambala. There was only one platform on Azadpur Railway Station which was meant for the trains which come from Ambala side but there was no platform for trains going to Ambala side. He deposed that at 5.30 p.m. Misro Devi and Roshni Devi were also standing there when he reached the railway Station. One train came from Subzi Mandi side which was to go to Ambala and oh seeing that train all the passengers including him and the deceased Roshni ran to catch the train and when they were boarding the train, in the meanwhile another train consisting of engine and compartment came from Ambala side on the other track without giving any whistle and hit about 4 persons including two ladies. There was no light at the platform. He deposed that at Old Azadpur Railway Station, passengers generally used to wait at the platform and cannot stand on the other side of the other track where there was no platform and also there was foul smell. He deposed that accident could have been avoided if there was light on the platform or headlight of the train was on or had the train whistled. In the cross-examination he stated that he made statement before S.H.O. while taking the body of Misro as she belonged to his village. He came to know about Roshni Devi when he appeared in the Railway Claims Tribunal and he told the plaintiff about the incident. He deposed that he could not know if in the inquest report there is any mention of his statement and denied the suggestion that he was not present at the site and had deposed for the first time before the Court. He also denied that the deceased died because of her own negligence as the incident occurred while she suddenly ran to catch the train without ensuring that the way was clear. He admitted that the train which was to be boarded by the deceased was stationary and that he was not having watch at the time of accident and the time was 5.50 p.m. or 6 p.m.

8. Respondents examined one Laxman Prasad Meena, Station Superintendent, New Azadpur Railway Station as DW 1. He deposed that a train No. 1-D1 which

starts from Delhi Junction to reach Ambala, as the TSR the arrival time of which is 6.17 p.m. at New Azadpur Railway Station and at Delhi Azadpur is 5.51 p.m. There is stoppage of two minutes at Old Azadpur halt station and departure time from the said halt station is after 2 minutes at 6.19 p.m. and these were the timings prevailing on 18.12.1995. He deposed that at that time one inspection car running through pass Delhi Azadpur halt station at 5.57 p.m. The headlight of this train was properly functioning at New Azadpur and the whistle was continuously blowing. The speed of all trains passing through is restricted to 60 kmph as per the restriction and working Time Table. There is complete electricity at the halt station since the construction of the halt. There was no negligence of the railway authorities. The accident took place because the passengers did not pay any attention to the arrival of the incoming inspection car and rushed towards the passenger train to board it which was stationing on the uptrack. He proved the photocopy of the TSR Register of 18.12.1995 as Exh. DW-1/1 He admitted in cross-examination that on 18.12.1995 he was posted at New Azadpur and his duty was to supervise New Azadpur Station as well as the halt station at Old Azadpur Station. There is a distance of 1.5 km. between the halt station and the New Azadpur Station. He was not present personally at the halt station at Old Azadpur Station, on 18.12.1995 at about 6 p.m. since he was posted at New Azadpur Station. At that time, the inspection train did not stop at New Azadpur Station and he had given a pass through to the inspection train coming from Ambala side on the down track. He deposed that he did not have any documentary proof to show that the headlight of the inspection train was on or it was whistling while passing through New Azadpur Station. He deposed that there was sufficient visibility at the time when the train passed through New Azadpur Station. He deposed that he had personal knowledge that at New Azadpur Station the inspection train had given whistle. He denied the suggestion that there was no platform in December, 1995 for the trains going to Ambala. He however admitted that there is dirt at the platform. He denied the suggestion that there was complete darkness at 6 p.m. on 18.12.1995 at Old Azadpur Railway Halt Station. He also denied that the inspection train was running at a speed of 140 km. and deposed that the inspection train was there only to ensure the alertness of the staff posted at the various stations and it was not testing train for the track.

Findings of the lower Court:

9. On the basis of evidence on record learned Trial Court returned the finding to the effect that the passenger train which was to be boarded by the deceased was stationary on the track and on the platform where the passengers were to board the train. He accepted the version of DW 1 that there was platform on other side of tracks rejecting the appellant's contention that the platform was built on the left side after the accident as according to the learned Trial Court there was no evidence on record to prove this. He also accepted the version of the defendants that the special inspection train coming from Ambala side was given a through signal at New Azadpur Railway Station which was at a distance of 1 Vi km. from

Azadpur Railway Station and its headlight was on and the whistle was also blown by the driver. It was speeding at the rate of 60 kmph and not 140 kmph. The whistle being blown by this train from New Azadpur Railway Station reached and was heard by the passengers standing on Old Azadpur Railway Station after 5-6 seconds. The distance from New Azadpur Railway Station to Old Azadpur Railway Station could be covered by the train in about 2 minutes and these passengers had sufficient time of warning by listening to this whistle repeatedly. The learned Additional District Judge was also of the opinion that as all the passengers started running to catch the passenger train as soon as the train arrived at the station, it would show that if the deceased was standing at the platform she had to go down the platform to cross the railway lines and then to move to catch the train. However, as the stoppage time of a train to be boarded was two minutes there was no sufficient time for the passengers to board the train in the aforesaid manner, the passenger should have been on the platform where the train was to halt and not on the other platform. Even if passengers were standing on some other platform, they were supposed to reach the platform where the train was to stop well in advance so that they could board the train within two minutes of its arrival. However, by not doing so, the deceased was negligent. He also concluded that as there was no allegation that the special train violated any signal, no negligence could be attributed to the defendant. Photographs filed by the appellants were not given any credence on the ground that neither photographer was examined nor these photographs could be any guide to hold that there was no platform as the angle could be manipulated. In these circumstances holding an opinion that it was not the defendants but deceased who was negligent suit was dismissed.

10. On 9.12.2002 arguments in this appeal were heard in part and a suggestion was given to the learned Counsel for the respondent to consider paying reasonable compensation to the appellants. Matter was adjourned as the learned Counsel for the respondent wanted to take instructions on this suggestion. However, after taking few adjournments, the learned Counsel for the respondent informed that settlement was not possible. On 9.5.2003, while adjourning the matter respondents were directed to keep the original record ready on the next date. When the matter came on 19.9.2003 request was made on behalf of the Counsel for the respondent on the ground that he was busy in some other Court. Accordingly, acceding to his request case was adjourned to 31.10.2003 making it clear that no further adjournment would be given in future. However, even on 31.10.2003 request was made for adjournment by the respondent. Although there was no reason to give any indulgence, still in order to give one more opportunity to the respondent matter was adjourned to 7.11.2003. Even on 7.11.2003 when the matter was called out, nobody appeared on behalf of the respondent. In these circumstances, we had no option but to proceed with the matter. We heard learned Counsel for the appellant and judgment was reserved.

11. It was submitted by Mr. Deepak Khadaria, learned Counsel appearing for the appellant, that the entire matter was examined by the learned Trial Court from a

wrong perspective which resulted in miscarriage of justice. According to him, the issue of negligence was to be seen in the given facts and circumstances of the case, not from a common standard of a highly qualified person. He further submitted that the learned Trial Court did not appreciate the evidence in the right perspective as negligence of respondent was writ large. He submitted that admittedly there was no over bridge to approach and board the trains going towards Ambala side and the passengers had to cross the railway track of the incoming trains to board the train standing on the outgoing track. According to him, this fact was sufficient to hold Railways responsible for the negligence. He also submitted that the deposition of DW 1 could not at all be relied upon as he was posted at New Azadpur Railway Station and not Old Azadpur Railway Station where accident occurred. Further as per his own deposition he had not got any documentary proof to show that the headlight of the inspection train was on or it was whistling while passing through Old Azadpur Station. The Trial Court also failed to take into consideration that on 18.12.1995, viz., in the thick, of winter, at about 6 p.m. there would not be visibility. He also submitted that the appellants had produced photographs on record to demonstrate that there was no platform on the left side of the track to board the train going towards Ambala side. He further submitted that this platform was constructed only after the accident and it was for the respondents to show that the platform was built before the date of accident as onus to prove issue No. 3 was on them.

12. The case of the appellants is that the tragedy occurred due to negligence of the respondents for:

(i) Not providing the overhead bridge or subway to approach the train at Old Azadpur Railway Station for boarding the trains coming from New Delhi side and going towards Ambala side.

(ii) Not providing the platform for the passengers for boarding trains at Old Azadpur Railway Station going towards Ambala side.

(iii) No care/precautions were taken by the driver of the inspection train consisting of Electric Locomotive and SLR coach coming from Ambala side for either giving any whistle or putting its headlight on.

(iv) No electricity was provided by the respondent at Old Azadpur Railway Station in the evening of 18.12.1995.

13. Undisputedly no overhead bridge or subway to approach the train at Old Azadpur Railway Station for boarding the train coming from New Delhi side and going towards Ambala side was provided. Thus the passengers for boarding the said train had to cross the railway tracks. It is itself hazardous and would amount to negligence on the part of the respondents. It defeats the contention of the Court as to how the respondents could act in such a negligence by exposing the passengers to a grave risk in forcing them to cross the railway track meant for incoming trains from Ambala side for boarding the trains which were to go towards Ambala. This fact alone is sufficient to fasten the respondents with the

liability. There has to be safe passage in the form of over bridge or subway for reaching the other side and not by means of crossing the railway track which itself is dangerous. The Apex Court in the case of Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, , made following pertinent observations fastening the respondents with "strict liability":

Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under Law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known in law as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way, i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But, such consideration is not relevant in cases of strict liability where the defendant is held liable, irrespective of whether he could have avoided the particular harm by taking precautions.

14. It is because the course of action required to be taken by the passengers boarding the train coming from New Delhi Railway Station and going towards Ambala side would depend on this crucial fact. If such a platform was in existence then passengers are supposed to wait on this platform for boarding the train going towards Ambala and what is suggested by the Trial Court may be correct. On the other hand, if there was no such platform then the only possible course to catch such a train was to cross railway track meant for incoming train from Ambala side and board the train towards Ambala side after crossing the track, particularly when admittedly there is no over bridge or subway for reaching the other side.

15. That apart the other question to be determined is as to whether respondents had provided any platform for the passengers for boarding trains at Old Azadpur Railway Station going towards Ambala side.

16. The learned Trial Court has held that the appellants have not been able to prove that there was no such platform. No doubt there is a platform in existence today. Whether it was constructed before the date of accident or after the fateful accident was for the respondents to establish. Insofar appellants are concerned, their categorical case before the Trial Court was that there was no such platform in existence. PW 2, an eyewitness also deposed to this effect. The respondents could produce evidence, which was within the custody of respondents alone to show as to when this platform was constructed by producing relevant material in this behalf. This is more so when the onus to prove issue No. 3 was on the respondents. Further the appellants could not give any proof of the "negative", i.e., their assertion that there was no such platform in existence. When the

respondents were stating "affirmative" fact it was for them to produce evidence in support of their contention. When this aspect is examined in the context of the occurrence of accident on 18.12.1995, it would be clear that the platform on the left side was not in existence at the relevant time. It has come on record that as soon as train in question, for going to Ambala side came on platform the stop of which was only for two minutes, all the passengers rushed to catch the train by crossing the track. Thus it is not as if only the deceased persons with few others were crossing the track. When so many persons cross the track on the arrival of the train, one can infer that there was no platform on the other side and that is why passengers were waiting for the train on the other side. In fact we are not even required to examine this issue in detail as in the proceedings held on 27.9.2002, the learned Counsel for the respondent had admitted that there was no platform in existence as on the date of occurrence. We are, Therefore, of the opinion that learned Trial Court has not approached the issue in right perspective and we overturn this finding of the learned Trial Court. We are constrained to hold that there was no platform for the passengers for boarding trains at Old Azadpur Railway Station going for Ambala side. Once this finding is arrived at the entire reasoning of learned Trial Court falls flat and the irresistible conclusion would be that there was utter negligence on the part of the respondents.

17. In their book of "On Negligence" celebrated authors Charlesworth and Percy have defined "negligence" in the following manner (7th Edn., p. 15) : "Negligence is a tort which involves a person's breach of duty, that is imposed upon him, to take care, resulting in damage to the complainant". The essential components of modern tort of negligence propounded by Percy and Charlesworth are as follows-

- (a) the existence of a duty to take care, which is owed by the defendant to the complainant;
- (b) the failure to attain that state of care, prescribed by the law, thereby committing a breach of such duty; and
- (c) damage which is both casually connected with such breach and recognised by the law, has been occasioned to the complainant.

The law imposes a duty on everyone to conform to certain standards of conduct for protection of others. The need for existence of due care is illustrated by Lord Wright in well known judgment *Grant v. Australian Knitting Mills Ltd.* (1936) AC 85, in the following words:

All that is necessary as to step to establish the tort of actionable negligence is to define the precise relationship from which the duty to take care to be deducted. It is, however, essential in English Law that the duty should be established, the mere fact that a man is injured by another's act gives in itself no cause of action, if the act is deliberate, the party injured will have no claim in law even though the injury is intentional, so long as the other party is merely exercising a legal right; if the act involves lack of due care, again no case of actionable

negligence will arise unless the duty to be careful exists.

The word "duty" connotes the relationship between one party and another, imposing on the one an obligation for the benefit of that other to take reasonable care in the first instance. It was undoubtedly the duty of the respondents to provide for proper platform as well as over bridge/subway to conform to the standard of conduct for protection of passengers, having failed to discharge his duty the respondents acted negligently.

18. We now deal with the question whether it can be said that there was contributory negligence on the part of deceased. The answer in view of the finding of this case and law on the subject is emphatic "no". The learned Trial Court failed to appreciate that as per the evidence of PW 2, who is an eyewitness, it is not only that the deceased who rushed to catch the passenger train, but all passengers standing on the platform, which is on the right side of the track, rushed to catch the passenger train along with the deceased and it is at that moment of time, all of a sudden inspection train came at a very high speed and ran over number of passengers. It is a matter of fact that the evening of 18.12.1995 at about 5.40 p.m., it was dark and there was poor visibility as it was cold winter evening. We may state here that not much credence could have been given to the testimony of DW 1 who was the Station Superintendent of New Azadpur Railway Station which is 1.5 km. away from Old Azadpur Railway Station whereas the incident occurred at Old Azadpur Railway Station. He was not posted at the railway station where accident occurred and was not to supervise the Old Azadpur Railway Station.

19. In Ramesh Chandra Dutt Vs. Union of India(UOI), the High Court has held that where a railway line crosses a busy road at such a point that the incoming train is not visible until the passer is on the railway track, there is no question of contributory negligence, in case of accident, inasmuch as the first duty in such a case is cast on the railway authorities to arrange for the safety of the passers. In such a case it would be the obvious duty of the railway administration, whether as inviters or licensors, to take adequate steps either to fix there a gate or a chain or at least to post a man to warn the drivers of the vehicles of an approaching train.

20. It was found in that case that the railway line crossed a busy road near a railway junction and it was also a shunting area where trains would pass now and then without any one even knowing whether it was time for a train to pass. On both flanks of the road high heaps of construction material for the road were stacked and the driver of the lorry could not have a clear view of the railway crossing. At about the time that the truck was on the railway track shunting was going on and railway engine which was being shunted at the fast speed together with a break-van, collided with the truck without giving it any warning. The truck was badly damaged and the driver and the cleaner were killed instantaneously. In these circumstances, the Court held that the antecedent conduct of the railway administration is not making proper arrangement to forewarn passers

about approaching train where a busy road passed to cross the railway track, by way of signals or otherwise made the railway administration liable and all the more so because it was a shunting area. There could be no question of contributory negligence on the part of lorry driver inasmuch as it was the obvious duty of the railway administration to take adequate steps to warn the public at the approaching trains.

21. Similarly, in *Swaranlata Barua v. Union of India* 1958 ACJ 365, the railway company was held liable for negligence in the case where a railway line crossed a busy road at such a place that the coming train could not be seen due to a house and trees and shrubs near the road and the line and it was only when the members of the public using the road came on to the railway line that they could be in a position to know that a train was approaching. Holding that it was the obvious duty of the Railways to take adequate steps to warn the public of approaching trains so that accidents could be avoided, failure to do so amounted to clear negligence on the part of Railways, the Court rejected the defense based on contributory negligence.

22. In view of the aforesaid discussion, we are of the opinion that finding of Trial Court on issue Nos. 1 and 3 cannot be sustained. We hold that it is the defendants who were negligent. We also hold that it is not a case where there could be any contributory negligence on the part of deceased. Appellants, Therefore, shall be entitled to lay claim against the respondents.

23. The question, in these circumstances, that arises for consideration is as to how much amount is to be awarded to the appellants. PW 1 in his deposition has stated that the deceased was employed with Amazon Consultants and Engineers, Ring Road, Azadpur and that she was drawing a salary of Rs. 2,200 per month. It has also come in evidence that she was 27 years of age and was a qualified technician. He has also deposed that appellant Nos. 2 and 3 were solely depending on her.

24. The aforesaid facts are not denied. The deceased was working on technical post having technical qualification. Therefore, she had better prospects in future and her income would have increased with the passage of time. As on today even the minimum wages for technical persons are much more than Rs. 3,000. Applying the principle laid down in *Suresh Chandra Vs. State of U.P. and Another*, , average income can safely be treated as 13 times of the income at the relevant time, i.e., Rs. 3,300 per month. As the petitioner was of 27 years of age multiplier of 18 would be applicable and can safely be applied. On this reckoning the compensation would be Rs. 3,300 per month. If it is taken that 1/3rd of this income she would have spent on herself and contributed 2/3rd of income towards family, the appellants would have got on an average Rs. 2,200 p.m. which would be Rs. 26,400. Applying the multiplier of 18, compensation would come to Rs. 4,75,200.

25. The result of the aforesaid discussion is that the judgment and decree passed

by learned Trial Court is set aside. Suit is decreed in the sum of Rs. 4,75,200. This amount shall be divided in equal shares amongst the appellants. The share of the appellant Nos. 2 and 3 shall be kept in the form of fixed deposit receipt in a nationalised bank. The amount of interest accrued thereon and the principal shall be paid to them on their attaining the age of majority. The appellants shall also be entitled to interest at the rate of 6 per cent per annum from the date of death till the payment is made. The appellants shall also be entitled to proportionate costs. Decree be drawn accordingly.