

(1940) 11 PAT CK 0024

In the Patna High Court

Rivers Steam Navigation Co., Ltd. and Another

APPELLANT

Vs

Bijoy Kumar and Another

RESPONDENT

Date of Decision : 25-11-1940

Acts Referred:

Citation : AIR 1941 Patna 250

Hon'ble Judges : Harries, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C.J.—This is a defendants" appeal free English vocabulary from a decree of the learned subordinate Judge of Chapra, decreeing the plaintiffs" claim for damages against them.

2. Plaintiff 1 is a minor and was the son of one Ujagir Lal of village Ghanti who met his death by drowning on 11th November 1935. Plaintiff 2 was the widow of the said Ujagir Lal. Defendant 1 was the Rivers Steam Navigation Co. Ltd., the owners of river steamers plying on the Ganges. Defendant 2 was the master of S.S "Cherra" owned by defendant 1. Defendants 3 and 4 were pro forma defendants being the brothers of Ujagir Lal deceased. According to the plaintiffs, Ujagir Lal had on 11th November 1935 gone to a mela and on the evening of that day embarked on the S.S "Cherra" at Maniar Ghat to return to his home. According to the plaint, a very large number of persons got on board at this Ghat and so big was the crowd that a number were left behind.

3. In this overcrowded fashion, it is said that the steamer called at Patar Ghat and then left for Darauli which was the destination of Ujagir Lal. About half an hour's journey from Darauli, it is said that the S.S "Cherra" foundered and sank and this was due to the overloading and overcrowding of the vessel and to the fact that the vessel was taking an unusual and dangerous course at the time, Ujagir Lal, it was said, either fell off or was thrown off the deck of the ship and as he was unable to swim he was drowned. The plaintiffs brought this suit alleging that the death was due to the negligence of defendants 1 and 2 and that they were entitled to damages as being dependent upon the deceased man.

4. The defendants denied that they were negligent in any way and denied that the S.S "Cherra" on the day in question was overloaded. They pleaded that the accident was due to the ship striking a submerged snag in the river the existence of which was unknown to the defendants and further that they could not have known of its existence with the exercise of all due and reasonable care. In short, they alleged that the accident was an act of God or an inevitable one and not due to negligence of any kind. The learned subordinate Judge accepted the case of the defendants that the sinking of the S.S "Cherra" was due directly to the vessel striking, a submerged snag or tree trunk in the bed of the river. He was satisfied that at the time of this accident the ship was being navigated in the, usual and proper channel. He was further satisfied that as the ship had proceeded safely for a number of hours the alleged overloading or overcrowding was not the cause of the vessel foundering. In short, he absolves the defendants from any liability for the actual collision between the vessel and this submerged snag or tree trunk in the river-bed.

5. The learned Judge, however, held that the defendants were liable because they had permitted the vessel to be overloaded and overcrowded and the result of such was increased panic, jostling and pushing on the decks immediately after the collision. He appears to have thought that Ujagir Lal was either pushed or thrown off the ship during this panic or jostling and that being so, that his death was due to the alleged overloading or overcrowding. In the result he found the defendants liable and awarded plaintiff 1 Rs. 2000 damages and plaintiff 2 a similar amount.

6. It has been strenuously argued before us by Mr. A.C. Chatterji on behalf of the defendants that there was no evidence in this case that Ujagir Lal's death was in any way due to the negligence of the defendants. Mr. Chatterji naturally accepts the finding of the learned Judge that the sinking of the vessel was due to colliding with a submerged snag the existence of which the company and the master could not reasonably be expected to have foreseen. He naturally accepts the finding that the vessel was being navigated in its proper channel and he has argued that these findings Conclude the matter.

7. He has, however, challenged the other finding of the learned Judge that Ujagir Lal's death resulted from the panic and jostling which followed the accident and which was increased by the alleged overcrowding. Mr. Chatterji has argued that there is no evidence at all that the overcrowding, if any led to any increased panic or to any jostling or rushing about and that in any event there is nothing to connect such with Ujagir Lal's death.

8. I am satisfied with the finding of the learned subordinate Judge that the collision between the vessel and the submerged snag was not due to the negligence of the defendants. The evidence shows that they were navigating in the usual and proper channel which had been swept fairly recently. There was evidence that after the monsoon, snags of this kind do appear in the bed of the river and that no person can tell with certainty whether or not the bed of the

river at any particular time is free of such obstacles. They may appear suddenly. No shipping company can be held liable merely on the ground that it was not aware of the existence of such an obstacle. These snags appear and disappear and colliding with them appears to be very much like colliding with some uncharted rock in the open sea.

9. In such circumstances, it cannot be said that the master of a vessel which collides with such an obstacle, is guilty of negligence and neither can it be said that the owners are guilty of negligence. There is nothing on the record to suggest that the defendants ought to have known about this snag and therefore ought to have been able to avoid it. The existence of the snag in the navigable and proper channel being unknown and unexpected colliding with it is not in itself an act of negligence. It has been held previously that such a collision is in the nature of an act of God or inevitable accident.

10. Mr. B.N. Mitter, on the other hand, has endeavoured to uphold the decision of the learned subordinate Judge by challenging his finding on this issue. Mr. Mitter has argued that the evidence shows that the cause of the S.S "Cherra" striking the snag was overloading or overcrowding or both. He has asked us to find that by reason of this overloading and overcrowding the S.S "Cherra" was much lower in the water than she should have been: but there is no evidence at all of this. The evidence of overcrowding is the evidence of a number of witnesses who stated that there were anything from seven hundred to twelve hundred people on board this vessel.

11. The defendants, on the other hand, strenuously denied that any such crowd could possibly have been on board, and their case was that only about one hundred and fifty people had got on board at Maniar Ghat, whereas, according to the plaintiffs' case, seven hundred to eight hundred people embarked at that Ghat. There is material which suggests that these river steamers can only carry a certain number on a voyage of over six hours, whereas on a shorter voyage they can carry double the number. What determines the number of passengers is the area of deck space and the length of the journey. It may be, though the defendants do not admit it in this case, that there were more people on board this vessel than there should have been: but there is nothing to show that as a result this vessel was drawing more water than she would have normally been doing. That being so, I cannot possibly hold that this vessel struck the submerged snag by reason of the overcrowding. Mr. Mitter has asked the Court to accept the evidence of a number of witnesses who stated that the vessel sank as a result of overloading; but it is impossible to accept the evidence of these witnesses. [After considering evidence his Lordship concluded.] I am perfectly satisfied that the overcrowding, or overloading, if any, had nothing whatsoever to do with the vessel striking the submerged snag. The evidence of the plaintiffs that she sank as a result of overloading cannot possibly be accepted in the light of the known and admitted facts.

12. The matter, however, does not rest there, because the learned Judge found

that after the vessel had struck this snag the overcrowding on board had led to increased panic and rushing and jostling which caused the death of Ujagir Lal In my view there is no evidence whatsoever to support this finding of the learned Judge which is based purely on conjecture. [His Lordship-then examined evidence and then proceeded further.

13. In the evidence of these witnesses, there is nothing to suggest that Ujagir fell overboard or was pushed overboard as the result of any panic or as the result of overcrowding and jostling and pushing, which would result from such overcrowding. There is not a word in the evidence of any of the witnesses which would suggest that overcrowding had anything whatsoever to do with the death of Ujagir Lal. From the evidence of these witnesses, three causes of Ujagir's death appear possible. He either jumped from the upper deck or fell or jumped as he was climbing from the upper deck to the roof or fell over the railings as he and Dhari Ahir were leaning over to see what had happened. Either of these three explanations are possible. But the evidence does not in any way suggest that Ujagir Lal was pushed or hustled or jostled so that he fell over the railings around the upper deck. In my view, the finding of the learned subordinate Judge that Ujagir Lal fell over the railings or through the railings as the result of overcrowding is not supported by any evidence at all.

14. The result therefore is that the plaintiffs have failed to show that the collision with the submerged snag was due to the defendants' negligence or breach of statutory duty or that the falling of Ujagir Lal from the vessel into the water was due to either of those causes. It was for the plaintiffs to establish that the death of this man was due to the negligence of the defendants or breach of statutory duty on their part, and this they have failed to do. Even if it be accepted that the vessel was overcrowded, which is denied and which I do not think it is necessary to determine, such was not the direct or indirect cause of the death of Ujagir Lal. That being so, the plaintiffs' claim in this case was bound to fail and should have been dismissed.

15. In the result therefore I would allow this appeal, set aside the decree of the Court below and dismiss the plaintiffs' claim as against the defendant-appellants. The appellants were made to pay the whole of the court-fee in the Court below as the suit was brought by the plaintiffs in forma pauperis. The appellants, having succeeded in this Court, are entitled to the return of that court-fee. Counsel for the appellants does not press for costs other than the refund of the court-fee. I would therefore make no order as to costs.

Manohar Lall J.

I agree.