

(1927) 02 AHC CK 0015
In the Allahabad High Court

Secretary of State and Another	Vs	APPELLANT
Dwarka Prasad		RESPONDENT

Date of Decision : 03-02-1927

Acts Referred:

Citation : AIR 1927 All 349 : (1927) ILR (All) 559

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is an application to revise a judgment of the Court of Small Causes at Aligarh by which the respondent's suit for damages was decreed against the Secretary of State as represented by the Agent of the East Indian Railway.

2. The respondent's case is that his dhobi lived near the railway line. On the morning of the 27th of May 1925, two trains were running a race on the railway lines that ran by the dhobi's house. One of the trains was going to Delhi and the other to Bareilly and for a short distance the two trains ran parallel to each other. A spark from one of the engines burnt the thatched hut of the dhobi and along with the hut the plaintiff's clothes that had been given to the dhobi for being washed.

3. The Court below found that the two drivers were driving the two trains at a furious speed and the spark which caused the fire came out of one of the engines. It also found that no precaution had been taken to protect the flying of sparks from the engine.

4. In this Court it has been contended that the finding of the learned Judge on the question of race is perverse and that it had been established that the engines were fitted with spark protectors and the railway was not negligent.

5. On the first point: on the evidence it is difficult to believe that the two trains

were really running a race. The dhobi's hut was situated only a furlong off the railway station and the station master's evidence is to the effect that the two trains left within three minutes of each other. In the circumstances it is difficult to believe that the trains could raise up speed so as to run a race within a furlong of the station.

6. But the main question is whether there was negligence on the part of the railway, There can be no doubt that the fire was caused by a spark from an engine, so race or no race the railway would be liable, if it had failed to take all reasonable precaution to avoid emission of such sparks as are likely to destroy the adjoining property. Mr. Dillon, the learned Government Advocate, argued on the authority of a statement of law contained at p. 501 of Pollock's Law of Torts, 12th edition, that the burden of proof lay initially on the plaintiff to establish that proper precaution had not been taken by the defendant company. My reading of the book is that it has not been sufficiently established, by authority, that the burden of proof would be on the party injured. On the other hand the majority of authority is to the effect that the burden of proof is on the railway company. The provision of the Indian Evidence Act. Section 106, would also lead to the same conclusion, as nobody but the railway company would be in a position to show what was the precaution taken by them. In this case the Railway Administration did take up that burden and adduced evidence in the person of witnesses to show that the engines were fitted with "spark protectors." The lower Court has not believed that evidence. Two witnesses were examined on the point. Ram Lal was one of the engine drivers. According to him, his engine was fitted with a spark protector. But there does not seem to be any reason why the driver of the other engine was not examined. The guard was not in a position to give any definite evidence and therefore his evidence on the point is not useful. Some better authority than an engine driver could have been examined by the railway to show that at the date in question the spark protectors were used with all the engines. Ram Lal says that for some time when he was giving his evidence, the spark protectors had been removed from the engines. On the question of fact, therefore, I am not disposed to differ from the Court below. I hold therefore that the Court below was right in finding negligence on the part of the railway company. I accordingly, dismiss the application with costs.