
(1923) 01 MAD CK 0023
In the Madras High Court

South Indian Industrials Ltd.

APPELLANT

Vs

Alamelu Ammal

RESPONDENT

Date of Decision : 24-01-1923

Acts Referred:

Citation : AIR 1923 Mad 565 : (1923) 17 LW 495 : (1923) 45 MLJ 53

Hon'ble Judges : Walter Salis Schwabe, J;Wallace, J

Bench : Full Bench

Judgement

Walter Salis Schwabe, K.C., C.J.—This is a quite hopeless appeal. The facts are that the defendants for the purposes of their own business

used a method of breaking up castiron which consisted of dropping a heavy weight on pieces of iron resting on a bed of iron with the intention that

these pieces should be broken into smaller pieces. The weight was dropped from a height of 35 feet with the inevitable result that pieces of iron

flew about. It is common ground that they habitually flew to distances of four or five yards from the pit.

2. If persons choose to carry on dangerous operations of that kind, it is their duty not only to the public but to their servants to take adequate

precautions that those pieces shall not cause injury. They ought to exercise, ordinary care, caution, and skill to prevent that. The mere fact that an

accident has happened is strong evidence in a case of that kind that they had not taken the ordinary care, caution, and skill required for preventing

the happening of the event. They knew that these pieces were being thrown out of the pit. They put up a screen which was obviously so inadequate

that, as I have said, pieces were habitually thrown out of the pit. They issued warnings to persons near, appreciating full well that they were

carrying on a dangerous operation. They did not trouble themselves to issue warnings to persons at a distance, but chose to allow their workmen at a distance to go on working at the risk of being hit. It is suggested that human foresight and skill could not have discovered that pieces of iron would go to a distance of some 70 to 90 feet, at which the deceased was standing at the time of the accident. I am not prepared to accept that view. Scientific knowledge has surely by this time reached the length of being able to tell with some accuracy what the effect of dropping a weight of a certain amount from a height of 35 feet upon pieces of iron will be and to what distances pieces of iron will or may be sent. I am quite satisfied that the learned Judge was right in holding that sufficient care was not taken and that, therefore, the defendants were guilty of negligence.

3. It has been suggested by the defendants' Engineer and Manager of the factory that no further precautions have been taken since the accident. I

hope that this evidence is not true, because that such a thing should have happened as happened in this case and that they should continue the

operation without taking further precaution against the recurrence of such accident is, to my mind, negligence of the grossest kind.

4. The defence is put forward that the deceased voluntarily undertook the risk of this happening to him. That is the defence which is expressed in

the maxim *Volenti non lit injuria*; but, for this to succeed, it is necessary for the other party to prove that the person injured knew of the danger,

appreciated it, and voluntarily took the risk. There is no evidence of any of these three things. The suggestion is that he had some knowledge of the

danger because another man working in the same place spoke to the fact that a short time before pieces of iron had flown from north to south as

far as the place at which that man was standing. That he appreciated the risk of pieces striking him is impossible to find in view of the fact that the

skilled European Manager, swore that he himself did not appreciate that there was any risk. Of course a man cannot voluntarily undertake a risk

the extent of which he does not appreciate.

5. This appeal will accordingly be dismissed.

6. There is a cross appeal against the amount of damages awarded. Under the Fatal Accidents Act, the widow or the person suing is entitled to

compensation for the financial loss sustained by the death. She is not entitled to

anything for pain or suffering or anything of the kind, but purely for the financial loss sustained. The learned Judge has awarded somewhere about one year's wages. He says that, in coming to that conclusion, he has taken into consideration that the accident was rather an extraordinary one, a consideration which, in my judgment, was wholly irrelevant. What he had to consider was the financial loss. Once he had found that the defendants were liable, the question was how much they were liable for and not whether it was unfortunate for him that he was struck, but, only what was the financial loss the plaintiff had sustained. The proper way of arriving at that is to form some estimate of what the value of the continued life of the deceased would have been to the plaintiff and how long it was probable that it would continue, i think that one year's wages is ridiculous in the absence of any evidence that the man was of ill-health or that his earning life was likely to be no more than a year. Giving the best consideration that I can to the facts of this case, I think, taking about Rs. 13 as the monthly wages and somewhere about three years as the right period, we can arrive at the correct figure if we increase the damages awarded by the lower Court to Rs. 500 and I accordingly fix the damages at Rs. 500.

7. The cross-appeal will therefore be allowed with costs on Rs. 500, the amount awarded; and the appeal will be dismissed with costs.

Wallace, J.

8. I agree. When it is admitted by D.W. 1 that, even with the existing fence of three feet, iron pieces were at times flying over the fence to a distance of 12 or 15 feet from the pit, it is clear, that it was within the knowledge and the experience of the defendant company that a fence, three feet high was not an adequate protection. In these circumstances, had the company taken "reasonable precaution," it would have raised the fence so as to prevent this intermittent scattering of iron pieces to a distance of 12 or 15 feet at least A mere warning to those working in the neighbourhood is not sufficient precaution as the defendant company itself recognised when it put up a fence to the height of 3 feet The defendant company has therefore failed to take reasonable precaution to avert even the danger of which it was admittedly aware, and not having adopted such reasonable precaution, it cannot be absolved from the charge of negligence and default or escape the legal consequences thereof.

9. As to the contention based on the maxim volenti non fit injuria, when the defendant company itself pleads that. it did not anticipate and could not have anticipated pieces flying over a distance of 90 feet, I do not see how they can plead that their deceased workman could possibly have anticipated it for himself, and thus the essential ingredient of that defence is lacking. As "to the contention that deceased must have known that ordinary care and caution were being exercised, and yet continued working, that defence also fails, as, in my view, such ordinary care was not exercised.

10. I agree with Chief Justice as to the amount of damages proposed by him, and with his order dismissing the appeal.