

(1961) 07 AHC CK 0011
In the Allahabad High Court
Case No : Second Appeal No. 2290 of 1951

The Municipal Board

APPELLANT

Vs

Gopi Nath

RESPONDENT

Date of Decision : 22-07-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Uttar Pradesh Municipal Rules — Rule 41A
Uttar Pradesh Municipalities Act, 1916 — Section 228, 326

Citation : AIR 1962 All 211 : (1961) 31 AWR 731

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : R.K. Dave, Kazi Masud Hasan, G.P. Bhargava and A.N. Bhargava, for the Appellant; S.N. Katju, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a second appeal by the Municipal Board Mathura against the concurrent decisions of courts below decreeing the suit of Sri Gopinath, plaintiff-respondent, for recovery of Rs. 1500/- as compensation for damages to his house caused by the negligence of the Municipal Board. The facts are these: The plaintiff Gopinath is the owner-occupant of a three storied house in a locality known as mohalla Ratna Kund in the city of Mathura. He filed the present suit on the following allegations:

2. The Municipal Board maintains a water-supply system in the city and has laid a network of pipelines below the ground for this purpose. Two pipelines, one a main and the other a branch, run close to the plaintiff's house. The branch feeds a Municipal water-tap at the end of the street in which the plaintiff's house is situated and which is a blind alley. Other pipelines connect the private houses in the street with the main. All these pipelines are underground.

3. Some time in October, 1946 there was a breach in the Municipal pipe-line in the street at two places and leakages in some other lines in the street as a result

of which the level of the street near the plaintiff's house subsided. According to the plaintiff, the Municipal Board was under a duty to investigate the cause of this subsidence but it did not take any effective steps to repair the breaches in the pipe line.

Later the branch pipe-line broke at two places and the escaping water spread and percolated into the foundations and the subsoil of the adjoining houses including that of the plaintiff. This caused deep and extensive cracks all over the plaintiff's house which was so damaged as to become unfit and unsafe for human habitation. It required reconstruction in many parts. The plaintiff also received a notice from the Municipal Board requiring him either to pull the house down or repair it within 24 hours. The notice was accompanied by a threat that in case of default the Board would demolish the house.

4. The plaintiff alleged that the damage to his house was caused by the wanton carelessness and negligence of the Municipal Board and he was entitled to recover from it Rs. 1500/- as the probable cost of re-construction and repairs. The plaintiff had asked the Board to pay compensation but the Board had ignored his demand, hence the suit, The Municipal Board contested the suit and denied all liability. It was however, admitted in the written statement that a complaint was received by the Chairman of the Board on Or about 13-11-46 that certain houses in Mohalla Ratna Kund were developing cracks, but it was pleaded that the Waterworks staff of the Board promptly went to the locality to investigate the cause of the damage. They dug up about 40 feet of the street pavement and examined all the communication pipes including the one leading up to the Municipal tap at the end of the street. It was discovered that the private communicating pipeline belonging to one resident was leaking and his water supply was immediately cut off.

All the other communication lines were found to be intact. In due course the leaking pipe was replaced by the house owner through a private contractor and then the pavement was repaired and covered up by the Board. On the 1st February, 1947 the Water Works Superintendent again examined the Municipal mains and found them to be in running order and the street water tap supplying water as usual. But on the 4th of February it was reported to the Board that the water tap was no longer discharging water. The Board alleged that this was due to the deliberate mischief of the inhabitants of the locality who had damaged the pipe lines which were lying exposed during the period of inspection and repairs, (This allegation was never proved during the trial.) However, on the receipt of this complaint, the portion of the street near the main pipeline was opened up and all the communicating taps examined. It was then found that the pipeline connecting with the house of another inhabitant was also leaking. Thereupon the entire street was disconnected.

5. The Board pleaded that the damage if any, was caused by the private communicating pipelines not having been replaced even after they had rusted and become worn out on account of age. The Board claimed that it had done all

it could to mitigate the loss or damage caused to the plaintiff's house and the other houses and put the blame on the whole neighbourhood which it alleged, "was hostile and unfriendly" and prompted by a desire to throw the entire responsibility on the Board. It also pleaded, in the alternative, that the plaintiff was guilty of contributory negligence as he did nothing to stop or minimize the damage which was aggravated by subsequent rains.

6. The trial court held that the Municipal Board had been guilty of negligence in not maintaining the pipelines in a proper condition so as to avoid the likelihood of leakage or breakdown. It also held that the damage to the plaintiff's house was caused by the overflowing of water from the leaking water taps. Holding that the plaintiff was entitled to compensation, it assessed the amount of damages at Rs. 1500/- at least and decreed the suit.

7. On appeal the learned Second Additional Civil Judge confirmed the findings of fact and the view of law taken by the court below. It held that the Municipal Board was under a statutory duty to keep the pipe-lines in a proper condition and had been negligent. He dismissed the appeal with costs. Aggrieved by these decisions the Municipal Board has come to this Court in Second Appeal.

8. The following points were urged in support of the appeal by Mr. A.N. Bhargava learned counsel for the appellant Board. First he contended that both the courts below had misinterpreted and misapplied the law of negligence applicable to a statutory corporation like a municipal board. Learned counsel submitted that, even after accepting all the findings of fact by the lower appellate court, no case of negligence was established against the Municipal Board. He argued that the mere fact that the plaintiff's house has been damaged by water escaping from the pipe-lines near the house did not make the Board liable in damages to him.

It was not enough for the plaintiff to prove that the lines had burst or sprung a leak and the escaping water had damaged his house; he must further establish that the Municipal Board had been negligent or had failed to perform any duty owing to the plaintiff. Learned counsel contended that the Municipal Board is a statutory corporation under a duty, u/s 228 of the U. P. Municipalities Act

"to maintain a system of water-supply, through pipes and to lay on water at a prescribed pressure and during prescribed hours and to supply any of the chief streets in which the mains have been laid, water to stand taps or pumps situated at such intervals as are prescribed".

This duty gave the Municipal Board the right to lay down a network of water pipes throughout the area of the Municipal Board. The defendant Board, according to the learned counsel, had done nothing more than the performance of this duty under the Act and it had not been shown that it had discharged its duty in a negligent manner. Mr. Bhargava submitted that the Board owed no duty to the plaintiff to repair the private pipe-lines through which water had leaked and spread to the plaintiff's house. In the alternative, the learned counsel urged that the plaintiff was guilty of contributory negligence which disentitled him to

claim any damages from the defendant Board.

9. In the beginning learned counsel sought to argue that the plaintiff's suit was incompetent in view of the mandatory provisions of Section 326 which enjoins in effect that no suit shall be instituted against a Board in respect of any act done or purporting to have been done in its official capacity until the expiration of two months after a notice has been served on the Board explicitly stating the cause of action. Learned counsel pointed out that in the notice which was admittedly served on the Board the cause of action was wrongly stated to have arisen in the beginning of November, 1949 whereas the plaintiff stated in his plaint that his house was damaged towards the end of November or the beginning of December, 1946.

10. On the other hand it was contended by Mr. S.N. Katju, learned counsel for the plaintiff that the Board was guilty of negligence. He argued that the very fact that water had leaked from the pipes raised a presumption of negligence, for water does not ordinarily escape from properly maintained pipes. If there was a leakage in this case, it must be presumed to have been caused by the defective condition of the pipes or the negligent manner in which they had been laid or subsequently maintained. Mr. Katju also submitted that it was the duty of the Board to inspect the pipes from time to time and thus ensure that they had not deteriorated. This the Board had failed to do. It had allowed the pipes to become old and rusty with the result that they were not able to stand the pressure of water. Mr. Katju also submitted that, in any case, the Board was negligent in repairing the pipes after it had received complaints that water was leaking and spreading over the locality.

11. At the outset, the preliminary objection against the maintainability of the suit can be disposed of. Learned counsel for the Board contended that the notice u/s 326 of the Municipalities Act was defective and invalidates the suit. I do not agree. There was substantial compliance with the provisions of that section the purpose of which is similar to that of Section 80, C. P. C. namely, to give an opportunity to the Municipal Board to examine its position and give it time to decide whether the matters should be settled out of court.

The notice correctly stated the facts on which the suit was subsequently based and the Board had ample notice of the nature of the plaintiff's claim. The allegation in the notice that the cause of action arose in the beginning of November 1946 was, as correctly observed by the learned Civil Judge, a mere slip or inaccuracy which does not go to the root of the suit. Learned counsel was not able to point out how the Municipal Board was prejudiced by this slip. He had to concede that the notice correctly stated the plaintiff's grievance against the Municipality. The preliminary objection, therefore, fails.

12. The allegation that the plaintiff was guilty of contributory negligence must fail too. As observed by the lower court, the Municipal Board has not shown how the plaintiff can be held accountable on the ground of contributory negligence.

Learned counsel stated that it was the duty of the plaintiff to have informed the Board as soon as he discovered the leakage in the pipes. He pointed out that it is not possible for a Municipal Board of a large city like Mathura to keep an eye on every section of the pipeline system so as to become aware of breakdown or leakage the moment it occurs. Ordinarily there must be some time between an incident and the receipt of information of its occurrence by the Board, and the inhabitants have a duty to inform the Board with the least possible delay.

There are two short answers to this argument. Firstly, there was no delay in making a complaint to the Board; secondly the damage to the plaintiffs house had already occurred when the leakage was discovered. I think the defendant has made out no case of contributory negligence on the part, of the plaintiff.

13. I shall now consider whether the Board has been guilty of such negligence as would render it liable to the plaintiff for the damage to his house. The general principles governing the law of negligence are well known and have been enunciated by the courts in India from time to time. *Pauline D'souza Vs. Cassamalli Jairajbhoy*, ; AIR 1943 140 (Oudh) . Before a plaintiff can succeed in his claim for damages on the ground of negligence, he must establish (1) that the defendant was under a duty towards him to take care to avoid the damage complained of, (2) that there was a breach of that duty by the defendant, and (3) that this breach was the direct and approximate cause of the damage. The onus of proving negligence is always on the plaintiff.

It is not enough for him to prove the incident which resulted in damage except in cases which are covered by the principle of *res ipsa loquitur*. There may be cases in which negligence can be presumed from the mere fact of having happened as for example, where a barrel rolled out from a top story and fell on a passer-by in the street below. But in most cases ordinarily the plaintiff must not only prove the accident and the damage but also that the accident was caused by the negligence of the defendant. He must produce evidence which will enable the court to conclude that the defendant was guilty of negligence towards him.

14. In the present case, the plaintiff has proved the following facts which are either admitted or held established by the concurrent findings of the courts below:

1. The plaintiff's house was damaged, and the damage was caused by water escaping from the underground pipelines near the plaintiff's house which either belonged to the Municipal Board or were under its control.
2. These pipelines were found immediately after the leakage to be in a condition which rendered them unfit for use, as they had become old, rusty and perforated.
3. There was delay on the part of the Board, after it had received complaints from the inhabitants, in digging up the entire pipeline to discover the source of the leakage of water.
4. Even after the complaints had reached the Board, in October, 1946, its water-

work staff did not dig up and inspect the entire pipeline in the locality but only 40 feet of it. Later there were further complaints of leakages and towards the end of November, or beginning of December, 1946 and the plaintiffs house was found to have been damaged by the escaping water. After this discovery the entire pipeline in the locality was dug up and further leakages were discovered and the pipes were found to be old, rusty, and perforated in several places.

5. The Board never took any steps, after the pipelines were laid in or before 1926, to replace those which became unfit for use.

15. On these facts the courts below have held that a case of negligence has been established against the Board. I have to decide whether their view is correct.

16. The Municipal Board is a corporation created by a statute which empowers it to do many things which an ordinary citizen cannot. u/s 224 of the U. P. Municipalities Act it may construct waterworks and carry such works through, across, under or over any street or place. u/s 228 it is under a duty, if a water tax is imposed, to maintain throughout a prescribed area a system of water supply through pipes.

These powers and functions include all others which are incidental to and necessary for their fulfillment. For example, the Board has the power to dig up the streets for laying down pipelines--a right which obviously is not available to a private person, If as a result of the exercise of a statutory function by a corporation a citizen is inconvenienced or his property damaged, the Board will not be liable provided it does not carry out its functions in a negligent manner. For example, no railway is liable for nuisance because its locomotives create noise and belch out sparks and smoke as they race along the track.

17. But the proviso is vital. If the corporation is negligent in the manner of performance of any act authorised by the statute, it will be liable for any damage caused by it. By way of illustration, in this very case if the pipelines laid by the Municipal Board are of standard material and quality and according to proper specifications, it shall not be liable if the pipes burst as the result of extreme weather conditions which could not reasonably have been foreseen and water overflows into any inhabitant's house and damages it. There being no negligence in the manner of performance of its functions, it cannot be made responsible for any damage caused by such overflow.

18. But if the Board performs its job in a negligent manner it shall be liable. For example, if it uses pipes of very inferior quality or in a dilapidated condition which any reasonable man would have rejected as incapable of withstanding the estimated water pressure, or if after laying good pipes it continues to use them after the period of their normal age and does not replace them with new pipes with the result that the pipes being unable to withstand the water pressure give way and water overflows into the street or the adjoining houses, the Board will be liable, for any damage caused by the escaping water.

19. In this case the Board had the statutory right to lay down pipelines in the plaintiff's street. The plaintiff had to prove that the Board performed its functions in a negligent manner. He has proved that in 1946 the pipes were leaking and that the escaping water damaged the foundations of his house. These pipes were laid about 20 years before the accident--that is, in or about 1926 but there is no evidence of their condition or quality at the time when the pipe line was installed.

20. It is, however, proved that in November, 1946 the pipes were old, rusty and in a perforated condition. Thus whatever their original quality, it is beyond dispute that in the winter of 1946 the pipes were totally unfit for use for any system of water supply with reasonable safety. The question is whether the Board has been negligent in permitting the pipes to deteriorate to a point beyond the limit of safety. I think it has.

21. Before I give my own reasons, I must consider an argument advanced by Mr. S.N. Katju, that the Board was under a duty to inspect the pipes from time to time which they never did and this omission amounts to negligence. Counsel relied upon the observations of Upadhyaya, J. in Second Appeal No. 1873 of 1952, *Municipal Board of Mathura v. Pritam Chaubey*. This was a dispute between this very Board and another inhabitant of the street whose house had also been damaged from the same leakage of pipes. The plaintiff's suit for damages had been decreed by both the courts below and the Board appealed to the High Court as in the present case. Dismissing that appeal, Upadhyaya, J. observed *inter alia*:

"A periodical inspection of the pipelines maintained by the Municipal Board is absolutely essential and having regard to the facts and circumstances and the evidence produced the courts below have found that the Municipal Board was negligent in allowing old pipelines to remain in use with the result that they leaked and caused the damage" complained of".

22. Mr. Katju relied on the learned Judge's remark that "a periodical inspection of the pipelines is essential" in support of his argument that the Board is under a duty to maintain a system of inspection of the pipelines at regular intervals.

I have some difficulty in accepting this argument. The Municipalities Act prescribes no such duty. Moreover, in a big city like Mathura a periodic inspection of the entire network of pipelines at regular intervals cannot be done without causing tremendous inconvenience to the inhabitants or even throwing their normal life out of gear. To dig up crowded areas in the heart of the city at regular intervals for the purpose of inspecting the pipelines would be an extremely difficult and complicated operation and a nuisance to the residents of the locality. The same argument was advanced in an English case and rejected; *Snook v. Grand Junction Water Works Co. Ltd.* (1886) 2 TLR 308. In his charge to the jury Baron Huddleston observed :

"It had also been suggested that it was the negligence on the part of the defendants not to have some system for inspecting and testing their pipes. Can

water companies seriously be expected to do this? The defendant's pipes, it was proved; extended to some 300 or 400 miles in length. It was also proved that their inspection of the exterior of a pipe gave no reliable information as to strength or weakness. How often such inspection could be carried out was not suggested, but as tiling now were the frequent disturbance of the London streets--from various causes, was bad enough without aggravating the evil by establishing such a practice as was suggested."

23. These observations apply with equal force to the facts of the present case. I do not think that any periodical inspection of the pipes of the under-ground pipeline system in a large city like Mathura is practicable or even desirable.

24. But the Municipal Board is certainly under a duty not to use pipes which are unfit and not to retain them after they are no longer fit for use. How it fulfils this duty is its own concern. I am satisfied that it could be done without making any periodic inspection of the pipe-lines. The average age of a pipeline--that is, the period for which it can be used with reasonable safety--is ascertainable....as it depends upon the quality of the material of which the pipes are made, the effect of pressure of water under constant use, the corrosive effect of the soil and other calculable factors.

The Board can maintain a record indicating what pipes and in which section of the city have passed their normal period of use and require replacement. If in any section it continues to use pipes after they have become old, rusty, and unfit for use, it is negligent in the performance of its statutory function just as a railway administration would be if it does not replace sleepers or rails which have become too old to be used with reasonable safety. It is true that a railway tract runs above the earth's surface while water pipes are underground, but in each case it is possible to calculate the normal period beyond which it would be dangerous to continue to use the sleepers and rails, or the pipelines, as the case may be.

25. In the present case it has been established by the document filed by the Municipal Board itself that the underground pipes in the plaintiffs street had become old and rusty, and some of them were found to be perforated. It is thus obvious that the Municipal Board continued to use pipes even after they had become unfit for use. u/s 228 of the Municipalities Act, every Municipality in which a water tax is imposed is bound to maintain a system of water supply through pipes. The word "pipes" does not mean pipes in a dilapidated condition or unfit for use. The section implies that the Municipal Board shall maintain a system of water supply through pipes which are of reasonably good quality and in a condition which renders them fit for use.

If such a duty is not implied, the result would be that any municipal board can go on using with impunity old and dilapidated pipes even after these have become a source of danger or disease to the houses in the locality through which they pass. This it cannot do any more than a railway administration can run trains on

a track laid on rotten sleepers. Rule 41-A of the Municipal rules, relating to the maintenance of water supply, empowers the Board to repair any pipe which is defective.

Obviously the legislature intended that the Board in maintaining a water-supply system shall use reasonably good material and keep it in good repair. If it does not, it is negligent in the performance of its statutory function and shall be liable to any citizen for any damage or loss which is caused by the defective condition of the pipes, such as damage to the citizen's house from overflowing water or illness by drinking water which is infected by contact with the sub-soil. I agree respectfully with the observation of Upadhyaya, J. in the above mentioned case that a Municipal Board is negligent if it does not maintain the pipelines in a proper state of repair. I have already indicated that it should not be difficult for the Board to discharge this duty with the exercise of reasonable vigilance and care.

26. Moreover, it has been established that the Board was negligent in carrying out effective repairs even after it had received information that something had gone wrong with the pipes in the plaintiff's street I agree with the finding of the courts below that the leakage of water from the pipes was due to the negligence of the Municipal Board and the plaintiff's house was damaged in consequence. The plaintiff has thus brought home the charge of negligence against the Board and is entitled to damages. The suit was rightly decreed. The appeal fails and is dismissed with costs.

27. Leave to appeal is refused.