
(1978) 01 AHC CK 0059
In the Allahabad High Court
Case No : Second Appeal No. 2585 of 1966

The Municipal Board, Jaunpur	Vs	APPELLANT
Brahm Kishore and Another		RESPONDENT

Date of Decision : 13-01-1978

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 223

Citation : (1978) ACJ 205 : AIR 1978 All 168

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : J.N. Agrawal, for the Appellant; Naveen Sinha and S.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This second appeal arises out of a suit for damages which was filed by the plaintiff-respondent against the defendant-appellant and also against the defendant-respondent No. 2. The trial court decreed the suit against the defendant-appellant alone. The lower appellate court affirmed the decree of the trial court and now the defendant No. 1 has come up in the instant appeal and in support and opposition thereof, I have heard learned counsel for the parties.

2. The brief facts are these : The plaintiff was posted at Jaunpur as a Munsif on 6th December, 1964 which happened to be a Sunday. He used to go to a club which was known as the English Club, Jaunpur, of which he happened to be a member. On the said date, while returning from the said club, he fell in a ditch at about 6.-15 P. M. The ditch had been dug out the same day in the road which vested in and was managed by the defendant-appellant. The digging was done for the purpose of repair of a culvert. This ditch was about 1 foot deep and about 2 to 3 feet wide. It had been dug across the entire width of the road. The plaintiff alleged that there were no light, no danger signal, no caution notice, no barricade or other precaution in respect of the said ditch. The plaintiff had no prior knowledge of the existence of the said ditch at the time of the incident. The

plaintiff was riding a cycle at the time and being unaware of the fact that the road had been cut by the employees of the defendant No. 1, he fell down and sustained injuries in his forehead, left eye brow, left eye lid and other parts of his face. There was profuse bleeding and he also received severe nervous and mental shock apart from the physical injuries which were caused to him by the fall. The plaintiff was admitted in the District Hospital, Jaunpur and his injuries were attended to the same day. He remained in the Hospital till 18th December, 1964 when he was discharged but he was advised not to join his service till the end of the month of December. His wounds were stitched. As a result he got an ugly scar and deformity in the face. The plaintiff's allegation was that the defendants failed to carry out their statutory duties under the U. P. Municipalities Act and they were otherwise also grossly negligent. They created a public nuisance on a public road and as a result of the said negligence, the plaintiff was caused the aforesaid injuries. The plaintiff claimed a sum of Rs. 1050/- as compensation and damages for the acute bodily and physical pain and a sum of Rs. 1050/- as compensation and damages for the severe mental and nervous shock suffered by him due to the aforesaid incident,

3. It may be stated that the defendant No. 1 is the Municipal Board of Jaunpur and the defendant No. 2 was the Executive Officer.

4. The defendants filed a joint written statement and contested the suit. They denied that there was any negligence on their part. It was denied that the Municipal Board failed to carry out its statutory duty. It was denied that the injuries were caused to the plaintiff due to the negligence of the defendants. It was alleged that there was a mound of earth on one side of the cutting and there was a log of wood placed on the other side of the cutting. It was also claimed that there was sufficient light on the spot from an electric post situated at a few paces and there was also such light on the gate of the tube-well colony and also light in a tea stall situated nearby. It was further contended that the plaintiff was guilty of contributory negligence as he was riding the cycle in a fast manner and that he had no lamp which he was bound to have. It was also alleged that the cycle was not licensed. The notice u/s 326 of the Municipalities Act was alleged to be bad in law. The amount of damages was alleged to be excessive. Pleas of mis-joinder and non-joinder of necessary parties were also taken.

5. The trial court framed the necessary issues and after trial of the suit decreed the same for the entire amount claimed. As stated above, the lower appellate court also affirmed the decree of the trial court.

6. Sri J. N. Agrawal, learned counsel for the appellant, contended that the appellant was saved by the doctrine of contributory negligence which was applicable to the facts of the instant case. He strenuously contended that it was the minimum requirement in the facts of the instant case that the plaintiff should have had a lamp when he was riding the cycle in the evening at about 6.15 P. M. It was a winter evening and there was undoubtedly darkness at the said point of time. The courts below, in my opinion, were right in not granting the benefit of

the doctrine of contributory negligence to the defendant. Firstly, it has to be emphasised that both the courts below have held the appellant Board to have been guilty of having failed to carry out its statutory duties as laid down in Section 223 of the U. P. Municipalities Act. This part of the finding cannot be assailed as it is based on the own admission of the witnesses who appeared on behalf of the defendant-appellant. No bars or chains were fixed as laid down in Clause (b) of the said section. Findings of facts have been recorded by the courts below that the Board had failed to carry out these duties as laid down in the said provision of law. Mr. Naveen Sinha, appearing for the plaintiff-respondent, has rightly pointed out that an ordinary lamp in a bicycle does not radiate light to any considerable distance. One can hardly see through such light a few paces ahead. A finding of fact has been returned by both the courts below that the plaintiff used to daily ride his cycle through the road in question for the purpose of visiting the club. He had no prior knowledge of the fact that the road had been cut in the said manner when he was returning from the club. He was entitled to presume that the road, as in the past, was well maintained and, therefore, there was no reason why he should have been extra cautious on the said evening. In the normal course of driving the cycle, if a cyclist comes across a ditch a few paces ahead of him, then I do not think that an ordinary lamp will always protect the cyclist from falling down. May be a lamp of extraordinary intensity might prove sufficiently effective in such a situation but ordinary lamps which use kerosene oil for fuel are not likely to be of much help in such a situation. It is well known that most of the cyclists in this country use kerosene lamps and not lamps operated with a dynamo. It has not been suggested that it is the requirement of Road Traffic Rules that a cyclist must use a lamp to be operated by dynamo. The lower appellate Court has referred to bye law No. 15 framed by the Jaunpur Municipal Board wherein the requirement is that it should be a bright light fixed to the front of the bicycle. This, however, cannot be equated with the requirement that the lamp should be operated by a dynamo. The Courts below, in my opinion, were right in refusing the benefit of doctrine of contributory negligence to the Board.

7. Sri Agrawal, next pointed out that the plaintiff was not entitled to claim separately for physical and mental pain. It cannot be denied that the plaintiff was entitled to claim damages for physical and mental pain which undoubtedly were caused to him. It might not have been necessary for the plaintiff to have separately claimed for physical injury and for mental pain. However, that in no way affects the decision of the case. A total sum of Rs. 2,100/- was claimed by the plaintiff for physical and mental pain and looking to the nature of injuries sustained by him, in my opinion, the amount claimed is modest and not excessive.

8. Therefore, nothing turns on the alleged division of the amounts between physical and mental pain, as no special damages have been claimed by way of expenses for medical attendance etc.

9. In the result, this appeal fails and is dismissed with costs.