

**(1954) 02 PAT CK 0010**  
**In the Patna High Court**  
**Case No : Civil Revision NO. 218 of 1951**

Union of India (UOI)

APPELLANT

Vs

Shri Nivas Mal Bairogiya

RESPONDENT

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**Date of Decision :** 10-02-1954

**Acts Referred:**

Contract Act, 1872 — Section 73  
Railways Act, 1890 — Section 27

**Citation :** AIR 1955 Patna 282

**Hon'ble Judges :** Imam, C.J.; Das, J

**Bench :** Division Bench

**Advocate :** N.C. Ghosh and P.K. Bose, for the Appellant; Rameshwar Misra, for the Respondent

**Final Decision :** Allowed

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## Judgement

Das, J.—This is an application u/s 25, Provincial Small Cause Courts Act and is directed against the decision of the learned Munsif of Darbhanga, exercising small cause court powers, dated 1-12-1950. The learned Small Cause Court Judge has decreed the suit of the opposite party who claimed damages to the extent of Rs. 50/- for what he alleged to be "trouble and inconvenience", in travelling from Darbhanga to Howrah on 19-6-1949, in a second class compartment by the 46 Down train. The defendants were the Union of India and one Sri K.M. Das said to be a travelling ticket examiner on the railway in question. The allegation of the opposite party was that there was great overcrowding which resulted in trouble and inconvenience to him. The defence was a denial of overcrowding, or any consequent inconvenience or damage to the opposite party. On behalf of the Union of India, it was also pleaded that the only duty which the railway owed was the duty of giving reasonable accommodation to the opposite party in the circumstances existing at the time of the contract of carriage, and such reasonable accommodation having been provided, the defendants were not liable for any damages.

2. The learned Small Cause Court Judge negatived the defence pleas and gave a decree to the opposite party. Mr. N.C. Ghosh appearing for the petitioners has urged the following points. He has firstly contended that the learned Small Cause Court Judge has not given the necessary findings which would justify a decree in favour of the opposite party. He has, secondly, contended that the railway as a carrier of persons owed no other duty to the opposite party except the duty to provide reasonable accommodation in the circumstances then existing, for the journey which the opposite party had to perform. It is submitted that the opposite party failed to prove that such reasonable accommodation had not been given to him; therefore, the learned Small Cause Court Judge was wrong in passing a decree in favour of the opposite party. Thirdly, it is contended that there is no finding that the opposite party had suffered any injury or damage, and in the absence of such a finding, the decision of the Small Cause Court Judge is erroneous in law.

3. "In my opinion, all the three points urged by Mr. N.C. Ghosh are of substance and should be accepted. All that the learned Small Cause Court Judge clearly found was that the opposite party got into the train in question at a station named Darbhanga. At the next station Laheriasarai, some six or seven military men entered into the second class compartment in which the opposite party was travelling. Those were the days when there was no Intermediate Class. The opposite party complained to the travelling ticket examiner and asked the latter to check the ticket of the military men. The travelling ticket examiner, however, did not check the tickets of those six or seven military men. These are the only facts which the learned Small Cause Court Judge has clearly found, and on these facts it is manifest that no claim for damages can be founded. Learned Counsel for the parties has placed part of the evidence before us. It appears that there was conflicting evidence as to the seating capacity of the compartment in question; the plaintiff opposite party said that there were seats for about twelve people and when he got into the compartment at Darbhanga, there were already thirteen or fourteen people in it.

The travelling ticket examiner said, however, that there were fifteen seats in the compartment. He further said that six or seven men could stand in the compartment without causing any serious discomfort to the passengers. I have already said that the learned Small Cause Court Judge has come to no clear finding about overcrowding or the extent of the overcrowding, if any.

4. We have also been addressed on the question if overcrowding by itself amounts to actionable negligence. That will depend on the duty arising out of the contract and must depend upon the ordinary facts known to the contracting parties at the time of the contract. Assuming that, overcrowding in certain circumstances may amount to actionable negligence, the plaintiff opposite party has still to prove that the negligence resulted in some damage or injury to him. Learned Counsel for the opposite party has frankly conceded that there is no evidence of any damage or injury to the plaintiff opposite party except what is

conveyed by the vague expression "inconvenience". In the absence of a finding that any damage or injury was caused to the plaintiff opposite party by the overcrowding it is difficult to see how any damage can be awarded to him.

5. The question of the liability of a railway. company in circumstances more or less similar in nature has been considered in several English decisions. The clearest pronouncement of the liability of a railway company to its passengers is to be found in the observations of A.L. Smith, J. in --"Pounder v. North Eastern Rly. Co. (1892) 1 QB 385 . The observations are

"what is the duty of a railway company to its passengers? It arises out of the contract, and must be determined upon the facts known to the contracting parties at the time of the contract Ordinarily, it is the duty of a carrier of passengers arising out of the contract of carriage to carry the passenger upon the contracted journey with due care and diligence, and to afford him reasonable accommodation, in that behalf. If the carrier omits to perform, either of these duties, he is responsible for the ordinary consequences arising to the ordinary passenger therefrom."

Mathew J., expressed himself as follows in the same case

"It was agreed on all hands in the course of the argument what the obligation of a railway company in such a case is. The railway company are bound to take reasonable care for the safety of their passengers. The controversy was as to how that reasonable care was to be measured, and I am clearly of opinion that it can only be ascertained by reference to the ordinary incidents of a railway journey, and by reference to what must be taken to have been in the contemplation of the parties when the contract of carriage was entered into."

In -- "Metropolitan Rly. Co. v. J.J. Jackson (1877) 3 AC 193 it was observed that there was negligence in the company"s servants in allowing more passengers than the proper number to get in at a particular station but the plaintiff had to prove that the overcrowding had any effect on his movements--whether it had any effect on the particular portion of the carriage where he was sitting, if it made him less a master of his actions when he stood up, etc. In a such later case -- "Jones v. G.N. Rly. Co. (1918) 34 TLR 467 the question of overcrowding fell for consideration in certain peculiar circumstances. The plaintiff had taken a first class ticket and had got into a first class compartment. There were three seats on one side and two seats on the other. The plaintiff occupied a corner seat on the side on which there were three seats. At an intermediate station there was a large number of persons who wished to travel by the same train and several of these were third class passengers who got into the compartment in which the plaintiff was. The plaintiff said that he was subjected to inconvenience by being squeezed up in his seat and also by having persons standing in front of him. He claimed 4s 6d damages--the difference between the first and third class fares--on the ground that the company had broken its contract with him by not providing him with proper accommodation. One of the pleas taken on behalf of

the railway was that there was no obligation on the part of the railway company to give accommodation on the pre-war scale. Avory J. observed:

"The whole question was whether under the present conditions reasonable accommodations had been afforded to the plaintiff. The answer to Mr. Barrington-Ward's contention that the company's contractual obligation remained unaffected by the war was that what was reasonable accommodation under existing conditions was entirely different from what was reasonable accommodation in time of peace."

The subject of overcrowding in a railway compartment has been referred to by Disney in his *Carriage by Railway* (Eighth Edition, p. 184) in the following paragraph:

"The subject of overcrowding is one which has seldom been brought before the superior Courts; but it is clear, from the views expressed by some of the Lords in this case (referring to the case of -- *Cobb v. G.W. Ry. Co.* 1894 AC 419 that it may be actionable negligence on the part of a company to permit a carriage to become overcrowded, especially where any passenger, already in the carriage before it became overcrowded, raises any objection. In bringing an action, however, founded on such negligence, it would seldom be possible to prove any damage resulting from the negligence, as mere discomfort would probably not be sufficient."

6. In the case under our consideration, there is no clear finding as to the extent of overcrowding; secondly, there is no finding as to what injury or damage the opposite party suffered as a result of the overcrowding. The mere fact that the travelling ticket examiner failed to check the tickets of six or seven military men who got into the compartment at Laheriasarai, or the fact that those six or seven men entered into the compartment occupied by the opposite party in spite of his protest, does not prove that the opposite party was entitled to damages on the ground of negligence by the railway or the employees under the railway. I have already said that learned Counsel for the opposite party has admitted that there is no evidence to show if the opposite party remained seated in the same way as before when these six or seven men entered the compartment, or he had to get up or was squeezed or hurt in any way if the opposite party remained seated as before and had suffered no injury or damage, surely he cannot claim damages from the railway or the employees of the railway. In my opinion, the learned Small Cause Court Judge misdirected himself on the legal position as respects the duty of a carrier of persons, and did not correctly appreciate the extent of the liability of the railway as a carrier of persons. His decision is accordingly erroneous in law.

7. For the reasons given above, the application is allowed, the decision of the learned Small Cause Court Judge is set aside, and the suit of the plaintiff opposite party is dismissed. In the circumstances of this case, there will be no order for costs and the parties must bear their own costs of the Court below as

also of this Court.

Imam, C.J.

8. I agree.