
(1940) 04 MAD CK 0035
In the Madras High Court

V.S. Narasimha Ayyar

APPELLANT

Vs

Allu Krishna Ayyar and Others

RESPONDENT

Date of Decision : 01-04-1940

Acts Referred:

Citation : (1940) 52 LW 189 : (1940) 2 MLJ 11

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The short point that arises in this appeal is whether there was negligence on the part of the appellant which caused the

fire on the 12th October, 1925 which burnt down in part the house belonging to the plaintiffs and in the occupation of the defendants. There can be

no doubt and the fact is indeed admitted that the house was being used as a dyeing factory and that large quantities of chemicals and mordanted

yarn, that is, yarn in the process of being dyed, were being stored in different parts of the building. It is clear from the evidence that these articles

are liable to spontaneous combustion, and in particular the mordanted yarn. The case of the defendants was that there were watchmen employed

to guard against fire and that the usual precautions were taken. The evidence, however, adduced in support of this contention was disbelieved by

the Court below and after going through the evidence we see no reason to come to a different conclusion. Only one of the two watchmen was

examined as a witness, namely, Krishna Ayyar, and he admits that for some time before the fire was observed, he and his fellow watchman were

dozing" near the gate. Secondly the evidence adduced as regards buckets of water being kept handy to extinguish fire is not worthy of credit and

it has been rejected by the Court below which heard it. In fact, the learned Subordinate Judge is not satisfied at all that any watchman was at the premises during the night in question. It is also clearly established that, beyond making a belated call for a fire engine, no real steps were taken by any one interested in the premises to put out the fire. It is certainly noteworthy that while the factory had insured its own goods against fire, it made no attempt to insure the building itself against fire. It must however be said that there is no satisfactory evidence in support of the suggestion that the fire was deliberately started. We might assume for the purpose of this case that the fire was accidental, but the question is whether the accident was due to negligence on the part of the defendant and his servants. On this point, having regard to the nature and quantity of the material stored in the premises, it was clearly the duty of the person in occupation to take special care and precaution against fire and it is clear that no such precautions were taken. It is admitted in the evidence that no attempt was made to rescue anything from the fire, and apparently no attempt was made even to get water from the well hard by. This is a case to which the maxim of *res ipsa loquitur* would apply, having regard to the circumstances of the case. The duty of the person in occupation was clear, having regard to the nature and quantity of the material stored in the premises, namely, to have efficient watchman to guard against spontaneous combustion and to have all reasonable fire equipment ready at hand.

In this particular case, there is very good reason to doubt whether any watchmen were actually guarding the premises that night; and even if they did, they were admittedly negligent in the sense that they were sleeping when they ought to have been awake. As regards fire extinguishing appliances, there is no satisfactory evidence that any of them were supplied or were at hand. Even the telephone which could have been used for summoning the fire brigade in time was in a room which was locked and the key was not with the watchmen. On the whole, therefore, we see no reason to differ from the finding of the Court below that the fire in question was due to negligence on the part of the person in occupation. There is no objection taken to the quantum of damages awarded by the Court below.

2. An attempt was made to argue that the amount of damages for use and occupation awarded for the period subsequent to the fire ought to be

reduced. But no such plea appears to have been raised in the Court below or in the grounds of appeal. We are, therefore, unable to allow it to be raised for the first time in appeal.

3. It follows that this appeal must fail and it is hereby dismissed with costs of respondents 1 to 4. The appellant must pay the court fee payable on the memorandum of appeal.