Jewan Ram Khettry Vs E.I. RY. Co.

Court: Calcutta High Court

Date of Decision: March 17, 1924

Citation: AIR 1925 Cal 108 : (1924) ILR (Cal) 861 : 84 Ind. Cas. 102

Hon'ble Judges: Page, J

Bench: Single Bench

Judgement

Page, J.
At 1-45 A.M. on the 4th of April 1922, a terrible disaster befell the Punjab Up Mail. It was travelling at a speed of between 42

and 45 miles an hour round a curve about a quarter of a mile above Jainti Bridge, 173 miles from Calcutta, and 8 miles from Madhupur, when the

passengers became aware of a loud, grating noise; the lights went out, and a few moments later, the engine, tender and six carriages were

precipitated down an embankment 30 feet in depth. Eight persons were killed, and 25 were injured. The plaintiff was travelling with some

members of his family in the train, and this suit is brought to recover damages in respect of the alleged negligence of the defendant Company

causing damage to him. On the issue as to whether or not the defendant Company is liable in respect of negligence, this case is a test case, and the

determination of it will govern other cases. On the issue of liability a number of cases were cited to me, and I propose to state the principles of law

to be found therein. On this issue however, the facts are not in controversy, the contest between the parties being as to the true inference which

ought to be drawn from those facts. Now, although a Railway Company does not insure the safety of persons whom it undertakes to carry, the

duty which it owes to such persons is of a highly onerous nature. For a Railway Company must needs take all such steps as skill, prudence, and

foresight can devise to keep passengers free from personal injury while travelling on its system. It must take care that its employes are honest and

efficient, and that the material equipment of the line is of proper quality, and, so far as a skilful mechanic can detect, in good working order. If a

Railway Company neglects to take such steps, or to provide the best available apparatus to secure the safety of persons whom it has agreed to

carry, it fails to fulfil the obligation which is imposed upon it by the law, and becomes liable to compensate passengers travelling on its system in

respect of any personal injury which they may suffer by reason of such neglect. (Readhead v. The Midland Railway Co. (1869) L.R. 4 Q.B. 379,

Daniel v. Metropolitan Railway Co. (1871) L.R. 5 H. L, 45, 54, E.I. Ry. v. Kalidas Mukerji I.L.R (1901) Cal 401; [1901] A.C. 396 and

McDowall v. Great Western Ry. Co. [1903] 2 K.B. 331. In applying these simple and well-defined principles of law to the facts of particular

cases, however, difficulty sometimes arises, and the circumstances of the present case indicate, I think in an apposite manner, the care with which

the law relating to negligence is to be administered. For a Railway Company is under an obligation not only to protect passengers from dangers of

which the Railway Company is aware, but also to take steps to forestall the risk of personal injury from any other cause to which it ought to

anticipate that passengers may be exposed. The precautions taken must be commensurate with the anticipated risk, and exceptional measures may

be necessary to obviate abnormal dangers. In considering whether or not in any particular case a Railway Company has exercised due care to

preserve its passengers from personal injury, one must endeavour to view the circumstances prevailing at or shortly before the accident in their true

perspective. It is easy enough to be wise after the event. Subsequent investigation, specially if conducted by skilful persons, may bring to light a

number of untoward incidents which, coupled with the fact that the disaster took place, may tend to the conclusion that special precautions ought

to have been taken to prevent its occurrence. But the question to be determined is whether the same inference ought to have been drawn before

the accident occurred by the Railway Company, having regard to the information which was then at its disposal. In the present case I have

scrutinized with care the evidence which has been adduced before me on the issue of liability, and I have anxiously considered what my judgment

should be. I wish to add that my task has been in no small measure lightened by the skilful and scrupulously fair manner in which counsel on both

sides have presented their cases to the Court. The first fact of importance to which I need refer on the issue of liability is that the accident was due

to the train leaving the metals. Applying the principles which I have enunciated to this admitted fact the Railway Company is prima facie guilty of

negligence: Dawson v. Manchester, Sheffield and Linconshire Railway Company (1862) 5 L.T. (N.S.) 682. The defendant Company, therefore,

must satisfy me that they took all such steps as skilful, prudent and foresighted persons under the circumstances would have taken to avoid the

occurrence of this accident. Now, I find that on the night in question the Railway Company had equipped the Punjab Up Mail with an engine and

rolling stock in sound working order, and had provided a careful and competent driver. I also find that as late as 10-30 P.M. on the night of the

3rd April the permanent way was intact and in sound condition, and that between 10-30 P.M. on the 3rd April and 1-45 A.M. on the 4th April

certain evilly disposed persons, acting not in the course of employment under the Railway Company but from malice, removed five rails from the

outer line, and thereby caused the train to be precipitated down the embankment. I further find that between those hours no gangs employed by the

defendant Company were working on the line in the sector in which the disaster took place, and that, nevertheless, it was clearly proved that the

rails were removed, not by accident but by design. Five rails of a total length of 170 feet were displaced, of which the first rail was found lying

inside a track with one undamaged foot plate and one bolt outside, and one undamaged fish plate and three bolts inside, the track. The threads of

the fish plates and bolts were in perfect condition, and the nuts were lying near to the bolts. Two of the rails which had been removed were found

still fished together lying across the Down line opposite the wrecked Up line. The scene of the disaster is the point where the Up and the Down

Punjab Mails usually pass each other, but on the night of the 3rd-4th April the Down Mail has passed this point without incident about 25 minutes

before the Up Mail train arrived there. It is an irresistible inference from the evidence, and I find as a fact, that these rails were deliberately

removed, and that the intention of the criminals who displaced them was to wreck both the Up and the Down Punjab Mail train.

2. Now, as it is admitted that the Railway Company took no special precautions to protect the persons travelling on this train from the effects of so

terrible an outrage, I must consider whether any precautions which the Railway Company could have adopted would have provided a safeguard

against its occurrence; for, if no precautionary measures could have availed to prevent it, the absence of such precautions could not have been an--

much less the--effective cause of the damage which the plaintiff thereby suffered. As Lord Esher pointed out in Engelhart v. Farrant & Co. [1897]

1 Q.B. 240, 243 ""if a stranger interferes it does not follow that the defendant is liable; but equally it does not follow that because a stranger

interferes the defendant is not liable, if the negligence of a servant of his is an effective cause of the accident."" Now, excluding the drastic measure

of closing the sector to traffic either during the night, or altogether--a course which at the trial it was not contended, and which I hold that it was

neither necessary nor reasonable in the public interest that the Railway Company should have adopted--it was urged that if the Railway Company

had taken any one of the following precautions, namely, (i) provided a searchlight for the engine, (ii) restricted the speed of the train to 10 miles an

hour, or (in) made use of a pilot engine, the accident would have been averted. In my opinion, a searchlight set on the engine of a train travelling at

a speed of 40-45 miles an hour, which was the rate of speed at which the Punjab Mail was moving at the time of the accident, would have proved

quite ineffective to prevent the disaster. Mr. Chaudhuri, on behalf of the plaintiff, urged post hoc propter hoc that because searchlights have been in

use on the defendant railway since, and as the result of, the enquiry into the cause of this accident, the Railway Company must have thought that

searchlights would have been effective to prevent an accident of this description But public bodies often adopt precautionary expedients in

deference to expert opinion in which they may have little faith in order to pacify the misgivings of the community at large, and the evidence which

was adduced on this matter at the trial was to the effect that experience had fortified the view which the Railway Company had previously held that

for the purpose of averting accidents similar to the one in question the provision of a searchlight was useless. I accept, and agree with, that opinion.

The beam of the searchlight now used on the engines of the defendant Company (the power and quality of which was not challenged) does not

extend beyond 500 ft., and a portion of the line from which a rail has been removed cannot be detected at a distance of more than 300 ft. ahead of

the train. Without taking into account the time which the driver would have required, after he had noticed that the track was out of order, to realize

the situation, and to make up his mind as to how he ought to act in such emergency,--a matter of no little importance when it is remembered that

the train would take less than 5 seconds to cover 300 ft.--it is obvious under the circumstances, and assuming that a searchlight had been set on

the engine, that the train moving at a speed of 40-45 miles an hour could not have been pulled up before it had reached that part of the line from

which the rail had been removed. For I am satisfied on the evidence that a train of nine carriages travelling at that speed could not have been

brought even approximately to a standstill in less than 1,600 ft. In my opinion, therefore, the provision of a searchlight as a precautionary measure

against such an accident as the one which I have to consider, would have been quite useless, and the absence of a searchlight did not in any way

affect the course of events. To what extent, if any, the imposition of a speed limit of ten miles would have been efficacious to avert the disaster is a

more difficult question, for the Punjab Up Mail on that night, travelling at 10 miles an hour, could have been pulled up within a distance which the

witnesses put at between 300 and 600 ft. While I share the doubt which the driver Tweedy and other witnesses expressed as to whether it would

have been possible to pick out the defective line even with the aid of a searchlight, I have formed the opinion that if the train had been travelling at a

speed of not more that 10 miles an hour the risk of personal injury would have been materially lessened, even if the disaster would not thereby

have been prevented altogether; and I think that it is a not unreasonable inference to draw from the evidence that if a searchlight had been provided

the risk would still further have been diminished. Again, the witnesses for the defendant. Company did not, I think, dispute the plaintiff''s contention

that if a pilot engine had preceded the mail the accident in all human probability would not have occurred. But it was urged by Mr. Robertson that

the provision of a pilot engine would seriously have interfered with the working of the traffic arrangements over the whole system, while counsel for

the defendant Company suggested that it would have involved the Railway Company in extraordinary additional expenditure. Assume it to be so,

the existence of such facts would not have availed to protect the Company from liability if it have been reasonable that a pilot engine should have

been provided as a precautionary measure against the risk of personal injury, for if it becomes impracticable for a Railway Company to carry

passengers without undue risk of injury befalling them, it is the duty of the Company to suspend its passenger service altogether. The question

therefore, arises whether before the night of the 3rd-4th April 1922 the Railway Company knew, or ought to have anticipated, that there was

danger of an attempt being made to wreck the train in the sector in which the accident occurred. Now, it is not contended that the responsible

servants of the Railway Company were not fully apprised during the material period of the state of unrest which was prevalent among their Indian

employes in the Asansol and adjoining areas. The trouble originated among the Railway Company''s Indian servants at the end of 1921 through a

strike at Jha Jha in connection with the death of an Indian fireman who had lost his life by falling from an engine. Although that strike quickly

subsided, another strike broke out on the 15th February 1922 and lasted until the 10th April 1922. It was a strike of unprecedented magnitude on

the defendant Company''s line, the whole system being more or less affected, while the main centre of unrest in the colliery district between Ondal

and Sitarampore was a hot-bed of disaffection. The strikers did not pretend that they had ceased to work in order to ventilate any particular or

definite grievance, and it seems doubtful whether anybody could have given an intelligible explanation of the cause of the trouble. There is no doubt

that political agitators sedulously fomented the disaffection--a fact which added considerably to the gravity of the situation. On the 13th March a

well-known agitator, at a meeting at Asansol, had urged the strikers to put out signal lights, to stop mail trains, to prevent coolies working in the

coal-fields and to boycott Europeans in the bazar. The result was what one would have expected. The strikers at Asansol on some occasions gave

way to violence; 300 wagons in the station yard were looted, loyal employes were assaulted, and the houses of the watchmen were burnt to the

ground. In the Asansol district over 5,500 employes had been affected, and at the date of the disaster over 3,000 men were still on strike.

Moreover, instances were reported to the Railway headquarters of direct interference with trains. On two occasions a chair, on another a large

stone, was found on the track. The lights on the signal posts were sometimes put out, presumably by strikers, and on the 25th March, within a few

hundred yards of Asansol station, the rails were greased, and a parcels express train was held up and looted. Now, the Railway Company, being

fully alive to the state of affairs, and anticipating that in the disaffected area between Ondal and Sitarampore serious attempts might be made to

interfere with the running of trains, not only obtained the assistance of some Punjabi infantry and armed police, but on the 17th February restricted

the speed of all trains from 8 P.M. till 5 A.M. to 10 miles an hour between those stations. This speed limit was subsequently increased to 15 miles

an hour, and on the 14th April to 20 miles an hour. No exceptional precautionary measures of any description, however, were taken in the

adjoining area between Sitarampore and Madhupur--in which sector the disaster took place--and in this sector the engine-drivers were instructed

to maintain a normal rate of speed. The question which I have to determine is whether the responsible agents of the defendant Company were

justified under the circumstances in adopting this policy of laissez faire. After giving anxious consideration to the evidence, and having regard to the

information which they had received, I am of opinion that they were. No serious attempt to wreck a train had been reported, and none had been

made, in the area where dissatisfaction was most deep-seated. Counsel for the plaintiff drew my attention to the fact that armed police at the date

of the accident had been detailed to guard the pumping station at Madhupur, 8 miles above the scene of the accident. But as every locomotive

which passed through Madhupur had to fill its tender at the pumping station, it was not unnatural that special steps should be taken during a strike

of this magnitude to protect the approaches of the pumping station against intruders. In the district between the outer signals of Sitarampore and

Madhupur, however, there was no ground whatever for anticipating that acts of violence would be committed. With the exception of the

locomotive workers at Madhupur, who were out on strike from 20th February to 20th March, none of the Company''s employes either at

Madhupur, or in the district between Madhupur and Sitarampore, had given any trouble during the strike. The men employed on the permanent

way did not strike at all, and with the exception of the locomotive workmen the whole of the men employed in that district had remained loyally at

work. The distance between Sitarampore and Madhupur is 42 miles, and Mr. Williams, the permanent way inspector of that district, was called as

a witness. In the course of his evidence he stated that it was his duty to engage and to dismiss the men employed in his sector, and that within his

district not a single railway employe joined the strikers. His evidence was neither shaken by cross-examination, nor rebutted. With this information

before them, and in view of the consistently loyal attitude which the employes of the Railway had maintained in this sector, the responsible agents of

the defendant Company decided that it was unnecessary to treat that sector as being in an abnormal condition, inasmuch as it could not reasonably

be anticipated that between Sitarampore and Madhupur acts of violence would be committed. In my opinion, upon the materials before them the

agents of the Railway Company reached a sound and reasonable conclusion, and that in the public interest the defendant Company would not have

been justified in adopting any other course than that which in the circumstances they decided was the right one to take. The event has proved that

their prognostications were fallacious, and it is now apparent that the risk of sabotage all along existed. But the answer to the question as to

whether the agents of the Railway Company exercised due cafe must depend upon the information which was at their disposal before the accident

took place. What is required of responsible agents of a Railway Company is skill and prudence, not infallibility; and the Railway Company is not to

be mulcted in damages merely because the event has falsified the reasonable expectations of its agents. The disaster was caused by a criminal act

of sabotage, but the defendant Company, in the view which I take of the facts, had no control over the actions of the persons who committed it,

and no reason to anticipate that the miscreants intended to carry out their nefarious design in the sector in which the accident occurred. I find,

therefore that the disaster was not caused by the negligence of the defendant Company, or of its servants. Now, this finding is sufficient to

determine the suit in favour of the defendant Company. But it is desirable, I think, that I should state my opinion as to the damages which the

plaintiff has suffered. The plaintiff claims (1) Rs. 25,000 in respect of personal injury, and (2) Rs. 38,750 as being the value of a steel box alleged

to contain jewellery which the plaintiff stated that he had taken with him into the carriage in which he was travelling. In support of the claim for

damages for personal injury the plaintiff called a medical practitioner from Mattra Ramsarup by name. I was not favourably impressed by the

manner in which this witness gave his evidence, and I am unable to place any reliance upon it. He does not possess any medical degree, and he

was not in a position to produce his books, and I will only permit myself to add that I accept his naive admission that his medical certificates are

usually required for production in Courts of Law. The plaintiff in the course of his evidence stated that he received a cut on his right forearm, and a

cut on his right side, and in addition some bruises, but neither in the formal claim which he sent to the defendant Company on the 25th April, nor in

his plaint is any mention made of these injuries. On the other hand, I find that the plaintiff did not receive the injuries which are specifically set out in

these documents. He may, however, have suffered a certain amount of shock, and some minor injuries. In my opinion, Rs. 100 would amply

compensate him for any personal injury which he may have sustained in the disaster.

3. As regards the claim in respect of the loss of jewellery, I find as a matter of fact that the box which the plaintiff alleged contained jewellery was

not lost through the negligence of the defendant, but was lost (if at all), through the failure of the plaintiff to remove it at the time when other

property was taken by his servants out of the carriage in which he alleged that he placed this box. In my opinion, the defendant Company is under

no liability to pay him any compensation in respect of the second head of damages set out in the claim. The suit will be dismissed with costs on

scale No. 2.