

LAHORE HIGH COURT

Secretary of State

Vs

Gokal Chand

(Shadi Lal, C.J.)

30.04.1925

JUDGMENT

Shadi Lal, C.J.

1. The facts of this case relevant to the question of law debated before us are simple and do not admit of any dispute. On the night between the 28th and 29th June 1919, one Bansl Lal, who was travelling la a train belonging to the North-Western Railway, sustained serious injuries in consequence of that train colliding with another train of the same railway administration; and the wounded man succumbed to his injuries shortly afterwards. His legal representatives have brought the present action for the recovery of damages for the pecuniary loss which resulted from his, death to the members of his family, and have also included in the action a claim for ₹ 1,300 on the ground that the deceased was carrying with him currency notes of that amount, and that the notes were lost by reason of the negligence of the railway administration,
2. The trial Judge has passed a decree in favor of the plaintiff, and the dispute in this appeal preferred by the railway administration is confined to the question as to whether the plaintiffs are entitled to recover ₹ 1,300, the value of the currency notes lost by the deceased.
3. Now, the Subordinate Judge finds, and his finding has not been impeached by the learned Government Advocate, that the deceased Bansl Lal had with him ₹ 1,300 in currency notes on the night in question, and that the notes were not mentioned in the list of the property found at the place of the accident- The evidence on the record gives no indication as to how the loss took place or whether any person stole the notes.
4. Now, the Fatal Accidents Act, XIII of 1885, is primarily intended to give the legal representatives of a person, whose death has been caused by the wrongful act, neglect or default of. another parson a right to recover compensation from the latter for the pecuniary loss resulting from the death to the deceased's children or other relatives enumerated in the first section of the

Act. The second section of the statute also allows the legal representatives to include in their action brought for the purpose mentioned above a claim for " any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default." The law contemplates two sorts of damages: the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and, when recovered, form part of the assets of the estate. The loss to the estate had accrued during the lifetime of the deceased and could have been recovered by him.

5. Now, the disappearance of the currency notes in the present case undoubtedly caused pecuniary loss to the estate of Bansilal; but the loss was not occasioned by any act, neglect or default of the defendant. The cardinal principle in cases of this character is whether the damage claimed is the natural and reasonable result of the defendant's act, and according to the rule repeatedly adopted by the English Courts a damage will assume this character if it can be shown to be such a consequence, as in the ordinary course of things, would flow from the act. The damage is held to be remote when, although arising out of the causa of action, it does not so immediately and necessarily flow from it, that the offending party can be made responsible for it.

6. Now, the loss of the notes is not a necessary consequence, not even a probable consequence, of a person being injured in a railway collision. There can be no doubt that, if any personal injury is caused to a passenger by the negligence of a railway company, not only the immediate pain and expense caused by the accident, but also any consequent incapacity to attend to business would be a natural consequence of the wrongful act. If any loss is caused to his business by reason of the injured person's incapacity to attend to it, it is obviously a loss to the estate and can be recovered, by the injured person if he is alive, and by his representatives if he dies. I do not think that Bansilal, had he been alive could have succeeded in an action against the railway for the loss of the currency notes. The loss of the notes was only a remote, and not an immediate, result of the accident; and damages can be awarded only for the immediate result of the defendant's wrongful act. Every cause leads to an infinite sequence of effects but the author of the initial cause cannot be made responsible, for all the effects in the series. He is liable only for those which immediately flow out of his wrongful act.

7. I will make my meaning clear by citing as an illustration, the facts of the English case, *Sharp v. Powell*¹ In that case the defendant in breach of a Police Act, washed a van in a public street and allowed the waste water to run down the gutter to a grating 'about 25 yards off from which, in the ordinary state of things, it would have drained into the sewer. In consequence of a hard frost the grating was obstructed by ice, and the water in consequence flowed over the pavement and froze. There was no evidence that the defendant knew of the grating being obstructed. The plaintiff's horse slipped on the ice and broke its leg.

8. It was sought to recover from the defendant the value of the horse, but it was held that the damage was too re-mote, not being one which he could fairly be expected to anticipate as likely to ensue from his act.

¹[1872] 7 C.P. 253

9. It must be remembered that the evidence in this case does not show who took away the notes. If some person stole them while the injured person was lying unconscious or dead, surely the railway cannot be held liable for the act of the thief. And it had been repeatedly held that the damage is too remote if it results from the wrongful act of a third party such as could not naturally be contemplated as likely to spring from the defendant's conduct.

10. The learned Counsel for the respondents invites our attention to the " occasioned " used by the legislature in respect of the loss caused to the estate, and contends that this expression is different from, and wider in scope than, the term " caused " which is used in the first section of the Statute in connexion with the death of the injured person. Now, I have two observations to make with respect to this argument. In the first place, I do not think that the legislature intended to draw any distinction between the two words and to alter the rule against the award of remote damages by the mere use of the term " occasioned." In the second place the Statute by enacting the rule allowing the legal representatives to include in their suit a claim for the loss to the estate does not create any fresh liability but merely recognizes what already existed under the common law and prescribes only the procedure for enforcing it.

11. I accordingly hold that the loss of the currency notes was only a remote consequence of the defendant's negligence, and that the plaintiffs are not entitled to recover from the defendant compensation for that loss. In this view of the defendant's liability I consider it unnecessary to pronounce any opinion on the question that Section 74 of the Indian Railways Act exempts the railway administration from responsibility for the loss of the notes because no railway servant had booked them and given a receipt therefor. The result is that I accept the appeal and reduce the amount awarded to the plaintiffs by ₹ 1,300. I would, however, leave the parties to bear their own costs in both the Courts in so far as this claim is concerned.

Le Rossignol, J.

12. I concur with the learned Chief Justice. The question whether a result is sufficiently proximate to the alleged cause is very often very difficult to resolve, but on the facts established in this case I hesitate to hold that the loss of the notes was a natural consequence of the collision. Had the direct connexion between the collision and the loss of the notes been established, I do not think that Section 74 of the Indian Railways Act would have operated to protect the appellant railway, regarded not as a carrier, but as a tort-feasor.

