



QUANTUM OF DUTY TOWARDS THE BLIND†

Recently, the House of Lords in *Haley v. London Electricity Board*¹ decided an important point of law relating to the extent of duty towards blind persons. Since the decision ostensibly purports to impose a higher duty towards the blind, it has been found desirable to attempt a short comment upon the case.

The material facts are: The appellant Mr. Haley, was a blind person for many years. Nevertheless, he was employed as a telephonist by the London County Council. He lived in a street in south-east London and it was his habit to walk unaccompanied from his home for about one hundred yards along the pavement with the aid of white stick and later on to secure some aid of passer-by to cross the main road and catch bus therefrom for place of his service. He had learnt to avoid ordinary obstacles with the aid of the stick. On the morning of October 29, 1956, workmen of the respondent London Electricity Board, had excavated a trench on the pavement. They had put up the notice board in order to prevent the vehicles coming near the kerb as well as to enable the pedestrians to avoid the excavation. Besides, the workmen had fixed a pick and shovel on one end of the pavement and a punner on the other side of the pavement. This punner, which was like a broomstick to one end of which was attached a heavy weight, was fixed in such a manner that the heavy end was on the pavement near the kerb and the other end on to a railing, thus making it about two feet above the ground. The appellant, as usual, was passing on that pavement when his stick missed the punner handle. As a result, his leg caught the punner and he fell on it. He suffered an ear injury which caused him deafness.²

When the suit by the plaintiff for damages against the Board was brought, the trial judge dismissed the same on the ground that the defendant-Board gave adequate warning to ordinary people with normal eyesight³ and, therefore, there was no negligence on its part so as to entitle the plaintiff to recover damages for his misfortune.

The Court of Appeal, consisting of Lord Denning, M.R., Donovan and Danckwerts, L.JJ., also dismissed the Plaintiff's appeal⁴ against the decision of Marshall, J. Lord Denning, while sympathizing with the misfortune of the plaintiff-appellant, said that although the defendants must "have regard to all the many sorts and conditions of people who use" it they surely "do not have to cater for the man who

† *Haley v. London Electricity Board*, [1964] 3 All E.R. 185.

1. [1964] 3 All E.R. 185.

2. Facts are collected from Lord Reid's opinion. *Id.* at 186-87.

3. *Id.* at 187.

4. [1963] 3 All E.R. 1003.



walks with his head in the air and does not look where he is going.”⁵ According to the Master of Rolls, the defendant did “not have to provide for the blind, at any rate in places where they have no particular reason to expect blind persons to be.”⁶ Donovan, L.J., also held that “the extent of duty must be measured by the standard of the normal person.” The likewise was held by his colleague, Danckwerts, L.J., in the Court of Appeal.

However, when the plaintiff appealed to the House of Lords, the latter had a different theory to expound. The House of Lords held that the persons excavating a pavement owed a duty of protection towards all persons whose use was reasonably likely and thus reasonably foreseeable. Specifically, it held that such duty extended towards blind persons who were likely to use the pavement. The plaintiff-appellant was, therefore, held entitled to recover damages from the Electricity Board.

As Lord Morton of Henryton observed, it was the duty of the Board “to take reasonable care not to act in a way likely to endanger other persons who may reasonably be expected to walk along the pavement. That duty is owed to blind persons (also) if the operators foresee or ought to have foreseen that blind persons may walk along the pavement”⁸ His Lordship was of the opinion that everyone living in the city was familiar with one or the other blind person passing him on the pavement with a stick to feel his way through.⁹ In the circumstances, the walking of the blind man on the pavement in question could have been reasonably foreseen.¹⁰ The other Lordships reached the same conclusion in their respective opinions.

The decision of the House of Lords is the correct exposition of law which was laid down as early as in 1932 in the famous case of *Donoghue v. Stevenson*.¹¹ In that case, Lord Atkins had rightly said :

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour. The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.¹²

In the present case, evidence was led to the effect that one in five-hundred people was a blind man and that it was a common experience

5. *Id.* at 1005.

6. *Ibid.*

7. *Id.* at 1008.

8. [1964] 3 All E.R. 190 (parenthesis mine).

9. *Ibid.*

10. *Ibid.*

11. [1932] A.C. 562.

12. *Id.* at 580.



to witness blind person crossing, with the aid of white stick, the other pedestrian on the pavement. A reasonable person could have foreseen that there was likelihood of the blind person passing unaccompanied near the excavated pavement. Necessary precaution, therefore, should have been taken to guard against the falling of the blind person.

It is submitted that Lord Denning was not correct in his premise that the respondents did "not have to provide for the blind, at any rate in places where they have no particular reason to expect blind persons to be. It would be too great a tax on the ordinary business of life if special precautions had to be taken to protect the blind."¹³

There could be two-fold reasons to consider Lord Denning's remarks as fallacious, First, Lord Denning's conclusion that the respondents had no particular reason to expect the blind person in the neighbourhood of the excavated pavement is untenable? Any reasonable person could have foreseen that there was likelihood of a blind person passing near the excavation, particularly in view of the fact that evidence was led that there were as many as 258 blind persons registered within that given area.¹⁴

Also, any taking of due care towards blind persons does not necessarily impose a higher duty. It is just a reasonable man's duty which Lord Denning himself admitted when he said that the defendants must "have regard to all the many sorts and conditions of people who use the pavement."¹⁵ If that is so, how could the defendants avoid their duty towards the blind who would definitely be included in many sorts of people.

The courts have time and again held that immature and feeble persons, whether in mind or body, are entitled to "a measure of care appropriate to the inability or disability" of such persons if their presence could be reasonably foreseen.¹⁶ As late as in 1963, the House of Lords had held in *Hughes v. Lord Advocate*¹⁷ that what may be proper warning for a grown up person may not be so for a child. In these circumstances, the respondents' argument that they were only bound to safeguard normal persons, was fallacious. Lord Reid aptly said regarding the respondents' above argument :

If that is right, it means that a blind or infirm person who goes out alone goes at his peril. He may meet obstacles which are a danger to him, but not to those with good sight, because no one is under any obligation to remove or protect them ; and if such an obstacle causes him injury he must suffer the damage in silence.¹⁸

13. [1963] 3 All E.R. 1003, 1005.

14. [1964] 3 All E.R. 185.

15. [1963] 3 All E.R. 1005.

16. *Glasgow Corpn. v. Taylor*, [1922] 1 A.C. 44, 67.

17. [1963] A.C. 837.

18. [1964] 3 All E.R. 185, 187.



Therefore, it is clear that there is a duty upon a person, while undertaking any work, to see that he acts like a reasonable person by making adequate arrangement of safety for such persons who can be reasonably foreseen to be coming in contact with his job. If that has been done, the duty of due care is over.

It may, however, be admitted that the London Electricity Board was held liable because it had failed to take due care towards the safety of blind men who were likely to pass unaccompanied on the pavement. The question would have become different if the trench had been excavated in the middle of road. No reasonable person would foresee a blind person passing unaccompanied on the road, as distinguished from pavement. In those circumstances, perhaps, the London Electricity Board would not have been liable. This is impliedly hinted at by Lord Morton of Henryton when he said in his judgment that "there are many places to which one would not reasonably expect a blind person to go unaccompanied. . . ." ¹⁹ That seems to be the crux of the matter. On the pavement, blind person is reasonably expected to go unaccompanied; on the road, he cannot be reasonably expected to go without an escort. In the former case, the fiddler on the pavement must make it safe for the blind person to pass unaccompanied. On the road, the duty is lessened as he would normally be expected to be accompanied by someone.

*R. C. Hingorani**

19. *Id.* at 190.

* Professor of Law, Patna University, Patna.