Before Mr. Justice Thom

EMPEROR *v.* BHAGWAN DAS*

1936
August, 19

Railways Act (IX of 1890), section 101—Endangering human life by disobeying any rule—Accident—Proximate cause—Accident not caused by breach of rule per se*—Negligence—Station master relying upon "all right" signal given by pointsman on duty.*

The station master of a wayside station allowed, contrary to the rules, a goods train to run through the station on the loop line when the main line was clear. No accident, however, would have happened if point No. 2 on the loop line had been set on to the main line, instead of which it was set on to a blind siding, with the result that the train collided with some trucks standing on the siding and some persons on the train were injured. According to the rules it was the duty of the station master to be satisfied that certain points were correctly set before he could allow the train to enter on the loop line; and a system of disc signals was prescribed for being exhibited by the pointsmen on duty to show that the points were correctly set. It was found on the evidence that the station master did receive signals which entitled him to conclude that all the points had been correctly set and so he allowed the train on to the loop line, though as a matter of fact point No. 2 was wrongly set:

Held that the station master could not be convicted under section 101 of the Railways Act. Although he disobeyed the rules in running the train on to the loop line when the main line was free, yet the mere act of switching the train on to the loop line did not of itself endanger the safety of any person; it was not the proximate cause of the accident, which resulted from point No. 2 not being properly set. It was not the duty of the station master himself to go and examine the points and see for himself that they were correctly set before allowing the train to go on to the loop line; he had to trust to the pointsmen and to rely upon the signals exhibited by them. As the signals received by him justified his conclusion that the points were correctly set, he was not guilty of any act or omission which endangered the safety of any person.

Dr. *K. N. Katju* and Mr. *Saila Nath Mukerji*, for the applicant.

*Criminal Revision No. 284 of 1936, from an order of Tufail Ahmad, Sessions Judge of Banda, dated the 21st of March, 1936.

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The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

THOM, J.:—Bhagwan Das, station master of a wayside station of the East Indian Railway, has been convicted under section 101(*a*) and (*b*) of the Railways Act of 1890 and sentenced to six months' simple imprisonment and a fine of Rs.50. In default of payment of the fine a further period of one month's simple imprisonment is added.

The charge against him is that on the 16th of June, 1935, he endangered the safety of certain persons by allowing a goods train to run on the loop line at a wayside station and by failing to satisfy himself that point No. 2 on the loop line was properly set and by failing to have the keys of the point and the scotch block in his possession.

There is no doubt that Bhagwan Das committed a breach of the rules in allowing the goods train to run over the loop line. The main line was clear, and in these circumstances, according to the rules, the goods train ought to have run through the station on the main line. On the day in question, before the goods train was allowed to run on to the loop line point No. 2 on this line was not properly adjusted, with the result that the train ran into a blind siding and collided with two trucks there. As a result of the collision considerable damage was done and the driver and certain persons on the goods train sustained simple injuries.

It cannot be held, however, that in allowing the goods train on to the loop line the station master did anything to endanger the safety of any person. The loop line was clear, and although it was his duty to run the train on the main line through the station, the mere act of switching the train on to the loop line did not of itself endanger the life of any person either on the train or at the station. The switching of the train on to the loop line was not in short the proximate cause of the accident. The accident resulted from point No. 2

not being properly set. This point, it appears, was set towards the blind siding and not towards the main line. The only question therefore is: Was the applicant guilty of any act or omission in relation to the setting of point No. 2?

According to the rules the station master must be satisfied that the points are correctly set before he allows a train on to the loop line. This of course does not mean that it is the duty of the station master himself to go and examine the points and see for himself that they are correctly set before allowing the train to proceed on to the loop line. He has to trust to the pointsman, and the practice is to receive a signal from the pointsman that the points are all correctly set before allowing the train on to the loop line.

Now according to the rules and regulations point No. 1 should be set first, point No. 2 second and point No 3 last of all. If the station master receives signal from the pointsman at point No. 3 that the points have been correctly set then he is entitled to direct the lowering of the signals and to allow the train to proceed on to the loop line.

Now it is not in dispute that on the occasion in question point No. 2 was not correctly set. The station master in the report which he made immediately after the incident and in his evidence during the course of the trial stated that he did receive a signal from point No. 3. He deposed that he saw the white light from point No. 3 which according to the regulations is the signal which the pointsman at that point gives when the points have all been set and locked as directed. He further stated in the report and in his evidence that on emerging on to the station platform shortly before the goods train arrived he did not see a green light burning at point No. 2. He called to the pointsman Gaya Prasad and asked him why the green light was not burning. He then saw the green light at point No. 2. He had also received an "all right" signal from points

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Nos. 1 and 3. In these circumstances he considered himself at liberty to lower the signals and allow the goods train to proceed on to the loop line.

In the course of his judgment the learned Sessions Judge observes: "The station master did not see a white light at point No. 3 or at point No. 2 and he allowed the signals to be lowered. According to the rules he ought not to have been satisfied if he saw or understood to have seen a green light from the disc indicator at point No. 2. He ought to have seen two lights, one green from the disc indicator and one white from the pointsman."

Now the station master's own statement is that he did see both these lights before he allowed the train to proceed. There is no evidence to show that the white light was not visible at point No. 3. So far as point No. 2 is concerned there is this in favour of the applicant that the driver of the goods train in his statement to the police and in the course of the trial alleged that he saw a green light at point No. 2. The fireman on the train in his statement to the police stated that there was a green light at point No. 2. In the course of the trial however he went back upon that statement and stated that he did not see a green light at point No. 2. It appears that the guard of the train did not see a green light at point No. 2. The evidence of the fireman cannot be relied upon in view of his statement to the police that he did see a green light at point No. 2. The guard of the train stated that he did not see a green light. Negative evidence of this sort is not as important as the positive evidence of the driver of the train, who certainly was on the look out and in a better position than the guard to observe, that he did see a green light at point No. 2.

The evidence does show that the station master failed to comply with a number of the regulations. For this dereliction of duty he has been punished by the railway who have reduced his salary. So far as the present

proceedings are concerned, however, before he can be held guilty of an offence under section 101 of the Railways Act it must be proved that he endangered human life by failure to comply with the rules and regulations of the railway. Now it may be that human life was endangered by the goods train being allowed on to the loop line before point No. 2 was correctly set. Some one was undoubtedly guilty of the breach of the regulations. The question in the present case is: Was it the station master? The evidence shows in my judgment that the station master took reasonable steps to satisfy himself that all the points were correctly set. He received signals which entitled him to conclude that this was so. If point No. 2 was not correctly set then the fault was the fault of the person whose duty it was to set the point and signal to the station master that the point had been set. Undoubtedly the failure to set point No. 2 towards the main line was the direct cause of the accident. It was this failure that endangered the safety of the persons upon the train. If the station master is entitled to rely upon the signals of his pointsman then quite clearly he has been guilty of no offence under section 101 of the Railways Act, as the pointsman had signalled the point set. There is no doubt in my opinion that it was never intended that the station master should himself visit the points to see if they are correctly set before allowing the signal on to the loop line to be lowered. In the discharge of his duty as station master he must rely upon the pointsman under him whose actual duty it is to set the points according to directions.

Upon the whole matter I am satisfied that the prosecution have failed to prove that by his act or omission and by his failure to comply with any of the rules and regulations the applicant did anything to endanger the safety of any person and that therefore he is not guilty of an offence under section 101 of the Railways Act.

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In the result the application is allowed and the conviction and sentence are set aside. The fine if paid will be refunded.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bajpai

1936 *August*, 20

KAN KUAR (DEFENDANT) *v.* ATAL BEHARI LAL AND OTHERS (PLAINTIFFS)*

Agra Tenancy Act (Local Act III of 1926), section 243—"Question of proprietary right between the parties claiming such right"—Mere denial of plaintiff's right not enough.

The words "proprietary right in issue between the parties claiming such right" in section 243 of the Agra Tenancy Act indicate that the dispute between the parties should be as regards their respective proprietary rights and that each party should be claiming such right. The mere fact that the defendant is denying the plaintiff's proprietary right without setting up any proprietary right in himself would not bring the case within the scope of the section.

Mr. *Baleshwari Prasad*, for the appellant.

Mr. *Krishna Murari Lal*, for the respondents.

SULAIMAN, C.J., and BAJPAI, J.:—This is a defendant's appeal arising out of a suit for recovery of rent. The defendant pleaded that the plaintiff was not the landholder and that the relationship of landholder and tenant did not exist between the parties. Both the revenue courts decreed the suit. The lower appellate court held that no appeal lay to his court, but has also gone on to decide the appeal on the merits. The third appeal filed in this Court has been dismissed on the ground that no appeal lay to the District Judge. It is contended before us that an appeal lies because a question of proprietary right was in issue between the parties in the first court and is in issue in appeal now. In support of this contention the learned advocate for the

*Appeal No. 66 of 1935, under section 10 of the Letters Patent.