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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

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Role of Foreseeability as a factor **in proving Negligence**

Authored By- Boudhayan Mohapatra

Introduction:

Foreseeability is present in all parts of Torts law and is a requisite element of tort law. Foreseeability is the primary element that should be established to move forward with negligence cases. “ Although jurists have lamented foreseeability as an elusive and frequently manipulated concept, the doctrine plays important conceptual and doctrinal roles in negligence law, and is considered the dominant test of proximate cause”¹ Foreseeability, being a very prominent aspect of tort law has always attracted lots of critique attention and has been accepted as a concept that has been elusive in nature many times and has also been frequently manipulated by the judiciary. “ Foreseeability of an event is not necessarily a reflection of its objective probability. Rather, it is a reflection of what a reasonable person would foresee under the circumstances.”² One of the most prominent judging parameter that comes into discussion while discussing foreseeability is the proximate cause. “Proximate causation is a question of law. The entire doctrine assumes that a defendant is not necessarily held responsible for all the consequences of his acts”³ “ Proximate cause addresses the question of whether in fairness and policy an actor should be held accountable in tort for a person's harm that in some manner is "remote" from the actor's breach of duty. “Proximate cause is the actual cause that is also legally sufficient to support liability⁴” Foreseeability has to always be determined before issue of causation is looked upon as a plaintiff will only be able to recover damages in situations where the damage is proved to be foreseeable consequence of breach of duty of the defendant.

¹ MICHAEL S. MOORE, PLACING BLAME: A THEORY OF THE CRIMINAL LAW 363 (Clarendon Press 1997)

² De Villiers, M. (2015). Foreseeability Decoded. *Minn. JL Sci. & Tech.*, 16, 343

³ McLaughlin, J. A. (1925). Proximate cause. *Harvard law review*, 39(2), 149-199.

⁴ Cornell Law council, 2015

RESEARCH OBJECTIVE:

To critically assess the importance of foreseeability and its effect on establishing a duty of care in negligence law. The researcher has taken judgement of few cases with similar facts and aims to study the judgements of the case to critically assess how application of foreseeability as a factor in establishing Negligence in law has evolved.

RESEARCH METHODOLOGY:

The research is an interpretation of the already available organised legal data and has adopted the secondary research method, where the researcher has limited the scope of the study to that of already available data on the subject. The researcher has mainly relied on Law Journals, Reports and various articles relevant to the subject.

CHAPTER I

Mata Prasad And Ors. vs Union Of India (Uoi) on 7

December, 1977⁵ Source: Indian Kanoon

Plaintiff(s) case: The plaintiff in this case (1-8) (Messrs Ganga Prasad Mata Prasad) located at Attara, dealt in groceries and vegetable products. The plaintiff in this case (9) owned a grocery store at Karvi, also dealt in vegetables. The plaintiff (9) engaged a delivery truck number UP C 4782, which is owned by Smt Ram Janki Devi to deliver their goods from Allahabad to Attara and Karvi. The delivery truck had travelled via highway and was supposed to cross the Allahabad-Jabalpur Railway line, located around 1 kilometre from Iradganj Railway station. During the course of the journey, the carrier reached the crossing around 9:45 pm, and attempted to cross the line considering the gates were visibly open.

At the same time, engine of Itarsi passenger number 390 reached the line and collided with the delivery truck. Loss of contents carried by the truck, few deaths, and serious injuries were reported. According to the plaintiff(s) the collision was solely due to negligence on the part of the defendants (Indian Railways). According to the plaintiff(s) there was no physical presence of a gateman during the course of time when the delivery truck was crossing the railways

⁵ B Sapru AIR 1978 All 303 (Indian Kanoon)

line. The plaintiff(S) case further implied that engine of Itarsi passenger 390 was overspeeding, travelling without headlights and that it did not honk while approaching the railway line. The plaintiff(s) case solely held the Indian Railways (Defendant) liable for the collision and sought for Damages.

Defendant's Case: The Defendant in this case (Indian Railways) contested against the same. According to the defendant's case, The engine of Itarsi passenger number 390 had a light which was visible to delivery truck number UP C 4782, The engine honked loud enough whilst it approach the crossing to be heard by the delivery truck. The Defendant's case also stated that the gateman was on the duty. According to the defendant, the railway crossing line has two entry/exit points. When it came to gateman's conscious mind that the train was approaching, the gateman attempted to close the gate at the exit point, but as soon as the gateman realised that the truck entered the railway line crossing, the gateman opened the gates as he was aware of the fact by now that the truck entered the railway crossing line and was in danger from Itarsi passenger number 390. The gateman tried his best in his capacity to push the vehicle back, but the truck did not go back, hence the accident took place. The defendant's claim was that it was not liable for damages to the plaintiff.

The Judgement : Considering all valid evidence, (Evidence implied that Engine had lights, it did honk before it reached the crossing, The engine was not travelling at an excessive speed and that the driver of the truck should have been aware of the engine passing the railway line and that it should not have entered the crossing. It also found out that the gateman was on duty.

Discussion: As per the judgement passed by the court, it can be clearly observed that the Court did take into consideration of the "foreseeability factor" while establishing it with negligence. The fact that the passing of engine of Itarsi passenger 390 was clearly visible to the driver, and that the engine had its lights on, travelled at ordinary speed and honked, implied that it was an foreseeable happening that the engine was approaching and that driver should have reversed its vehicle, which it did not do despite a strong signal from the gateman. However, it was determined in the Allahabad case of *Daya Shanker v. B.B&C.I Railway* (AIR 1931 All 744) that a person who discovers a level crossing's gates open and is subsequently misled into believing the line is safe for crossing is not required to exercise minute caution and that the company must compensate him if he is run over by a train, even though he did not use his

faculties as clearly as he might have under other circumstances. But in this instance, human discretion and foreseeability are not considered as factors leading to negligence.

CHAPTER II

Daya Shankar vs B.B and C.J. Ry .Co, 24 April, 1931

Facts of the case: The plaintiff was in route to Cawnpore after leaving a fair held at Bithur in the Cawnpore district. Within a short distance of the Bithur Railway Station, the plaintiff was required to cross the railroad tracks. There was a set of open gates that allowed the plaintiff to cross the railroad line. As the plaintiff approached the tracks at a reasonable pace of approximately 7 miles per hour, a train engine coming from the direction of the railway station at Bithur struck and broke his bike.

Initial Judgement: After hearing the defendant's defence, the judge ruled that the plaintiff was guilty of contributory negligence, as it was the plaintiff's responsibility to exercise caution when approaching the gate and to check to see if a train or engine was passing.

Second appeal: The plaintiff demanded 1,300 Rupees in damages from the Bombay, Baroda, and Central India Railway Company. In the initial appeal, the plaintiff demanded 1200 rupees but as the initial plea got dismissed, the plaintiff demanded 1300.

Contention by the plaintiff: It had been argued in this court that the learned Subordinate Judge formed an incorrect conclusion from the evidence and that there was no contributory negligence. The plaintiff further contested that one cannot just carelessly damage others without consequence, nor can they put them in a worse situation than what they presently are. One also shouldn't put a man in a situation where they face risk or loss on all sides and then claim that their miscalculation caused the man problems. One also cannot claim that the man failed to anticipate and guard against the defendant's carelessness.

The Judgement: The court was in favour of the plaintiff as the court found out that the case did not quite fulfil the criteria for a contributory negligence case and that the subordinate judge Subordinate Judge had drawn a wrong inference from the facts and were in favour of the principle laid down by the plaintiff. The plaintiff was awarded 1300 rupees as compensation.

Bengal Provincial Railway Co. vs Gopi Mohan

Singh on 9 July, 1913

This case is a follow up case in reference to the Gopi Mohan Singh vs Bengal Provincial Railway where the plaintiff, Gopi Mohan Singh was awarded damages when he attempted to cross a railway crossing when the gates were open and a train while passing the gate caused damage to the Gopi Mohan's cart. The defendant (Bengal Provincial Railway Co) attempted to prove that there was contributory negligence on the part of the plaintiff and the defendant both and that that should be taken into account while deciding on awarding damages and the loss of property not only on the side of the plaintiff is to be considered but also of the defendant. However the court dismissed this plea on the grounds that the court found that there was a gate at the level-crossing where the accident occurred, and it was left open. Thus, there was an invitation to all comers to cross the line, as well as an indication that it could be crossed safely. As a result, there is ample evidence against the defendant Company's negligence finding, which cannot be overturned. The court also stated that the level of proven negligence to the satisfaction of the lower Appellate Court that justify that finding are enough to substantiate the point of this case not being a case of contributory negligence from the point of fault of the plaintiff to the satisfaction of that Court.

Discussion

Evolution of Foreseeability

There has been different instances in how foreseeability is perceived in negligence law with respect to the Indian Judicial system, this can be substantiated with the reference of the two case laws discussed above, Daya Shankar vs B.B and C.J. Ry .Co, 24 April, 1931 and Mata Prasad And Ors. vs Union Of India (Uoi) on 7 December, 1977. It can be observed that in the former case of Daya Shankar vs B.B and C.J. Ry .Co dated 24 April 1931, ruled out the possibility of contributory negligence based on some parameters like one cannot question the plaintiff on the ground of why did they not anticipate the defendant's action and take action. The court also took note that the degree of a negligence being such high which causes injury cannot be directly linked to the action of the plaintiff of entering the railway crossing which was open, and term it to be contributory in nature. Even in the case of Bengal Provincial

Railway Co vs. Gopi Mohan Singh (1913) it is observed how the court rejected the defendant's plea of holding the plaintiff accountable too and to get away from paying damages to the plaintiff on the grounds of contributory negligence. However some years down the line in the case of Mata Prasad And Ors. vs Union Of India (Uoi) on 7 December, 1977 it can be noted that even though the facts of the case being quite similar, and despite some important facts like presence of gatemen, gates being opened, the plaintiffs were not awarded damages as the court was of the opinion that the train was travelling at a reasonably slow speed for the plaintiff's to see the slow train passing and that train honked before reaching the crossing point, and implied that this event was a very much foreseeable one and that the driver should have reversed the vehicle to avoid the accident. It is interesting to note how the court did not consider the factor which was considered in the case of Daya Shankar vs B.B and C.J. Ry .Co dated 24 April 1931 being the high degree of negligence which could have been given more importance which caused loss of lives and that One cannot claim that the man failed to anticipate and guard against the defendant's carelessness. The prior notion of foreseeability in the cases was to hold the defendant liable even if the plaintiff crossed the railway line seeing the gate open as it invited them to believe that the line was crossable at that time. However in the later case of 1977, the court believed that the accident could have been avoided if the plaintiff would not have crossed the line considering factors like honking of the train, slow speed of the train. But however this adds on to a totally different angle too. The angle of "Master being held liable for wrongdoing of their servant" can be considered as evidence proved that there was a gateman present, who eventually opened the gates in thinking that the vehicle maybe able to cross the railway line, however it could not. If it was foreseeable to the gateman that the train is arriving why did he open the gates to the vehicle? The researcher believes that there has been a shift in application of foreseeability over the years in negligence law as in the earlier cases, there was more focus on the wrongdoings of the defendant and that the mistake of the plaintiff was not to be held liable as the magnitude of the negligence on the part of the defendant was far more. However in the case of 1977, The court came to a conclusion that it was negligence on the part of the plaintiff for not anticipating the accident. This thus can be concluded that there has been a shift when it comes to application of foreseeability in negligence law or it can be argued that the case of 1977 was just an exception.