Union Of India vs Prabhakaran Vijaya Kumar & Ors on 5 May, 2008

Author: Markandey Katju

Bench: H. K. Sema, Markandey Katju

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           CASE NO.:
Appeal (civil)  6898 of 2002

PETITIONER:
Union of India

RESPONDENT:
Prabhakaran Vijaya Kumar & Ors.

DATE OF JUDGMENT: 05/05/2008

BENCH:
H. K. Sema & Markandey Katju

JUDGMENT:
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J U D G M E N T REPORTABLE MARKANDEY KATJU, J.

1. This appeal by special leave has been filed against the impugned judgment of a Division Bench of the Kerala High Court dated 25.6.2001 passed in MFA No. 1080 of 1998-B.

2. Heard learned counsel for the parties and perused the record.

3. The facts of the case are that a claim petition was filed before the Railway Claims Tribunal, Ernakulam Bench (hereinafter referred to as the 'Tribunal') by the husband, mother and minor son of one Smt. Abja who died on 23.5.1996 in a train accident at Varkala Railway station. The Claims Tribunal disallowed the claim, but the appeal against the said decision was allowed by the Kerala High Court by the impugned judgment dated 25.6.2001 and compensation of Rs. 2 lacs with interest @ 12% from the date of the petition till the date of payment was granted. Aggrieved, this appeal has been filed by the appellant.

4. There is no dispute that Smt. Abja was a bona fide passenger holding a second class season ticket and an identity card issued by the Southern Railway. As per the forensic report the cause of death was due to multiple injuries due to the accident. The deceased fell on to the railway track and was run over by train No.6349 Parasuram Express.

5. The Tribunal found that Smt. Abja was a bona fide passenger traveling by the train.

6. Before the Tribunal PW-2, K. Rajan, deposed that while he was at Varkala railway station he found one passenger falling from the Parasuram Express and that the train had stopped. He further stated in his evidence that he went to the north side of the platform and saw the injured lying on the platform. He further stated that the person falling down was the lady who died on the spot. He also stated that the deceased fell down from the compartment of the train when the train was moving.

7. The Tribunal strangely enough held that PW-2 was an interested witness because if he was present on the spot he would have definitely helped the Station Master in removing the dead body from the railway track. Further, the police would have definitely recorded his evidence. For this reason, the Tribunal disbelieved the evidence of PW-2. We are, however, of the opinion that there was no good reason to disbelieve PW-2 because there is nothing to show that he had any motive to give false evidence, or that he was an interested witness. Further, his evidence could not have been discarded merely because he did not go to the spot and help removing the dead body from the railway track. Moreover, merely because the police did not record his statement does not mean that he was not present or gave false evidence. It is common knowledge that in our country often there is a large crowd on railway platforms, and it is simply not possible for the police to take the statement of everyone there.

8. However, the evidence of DW-1, D. Sajjan, who was the Station Master at the railway station corroborates the evidence of PW-2. DW-1 had deposed that he saw one girl running towards the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not an accidental falling of a passenger from a train carrying passengers.

9. In appeal, the Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression 'accidental falling of a passenger from a train carrying passengers' which is an 'untoward incident', as defined in Section 123(c) of the Railways Act, 1989.

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one.

Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

13. In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:

> "In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:
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> The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court we had occasion to say:
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> "Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

> "A purposive construction of an enactment is one which gives effect to the legislative purpose by-
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> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
>
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

> "Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -
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> ...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

(emphasis supplied)

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways

Act with which we are concerned states :

> "124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:
>
> Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -
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> (a) suicide or attempted suicide by him;
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> (b) self-inflicted injury;
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> (c) his own criminal act;
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> (d) any act committed by him in a state of intoxication or insanity;
>
> (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation - For the purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".

(emphasis supplied)

16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.

18. The theory of strict liability for hazardous activities can be said to have originated from the historic judgment of Blackburn, J. of the British High Court in Rylands v. Fletcher 1866 LRI Ex 265.

19. Before this decision the accepted legal position in England was that fault, whether by an intentional act or negligence, was the basis of all liability (see Salmond on 'Tort', 6th Edn p.12) and this principle was in consonance with the then prevailing Laissez Faire Theory.

20. With the advance of industrialization the Laissez Faire Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to sociological jurisprudence.

21. It was realized that there are certain activities in industrial society which though lawful are so fraught with possibility of harm to others that the law has to treat them as allowable only on the term of insuring the public against injury irrespective of who was at fault. The principle of strict liability (also called no fault liability) was thus evolved, which was an exception to the general principle in the law of torts that there is no liability without fault, (vide American Jurisprudence, 2nd Edn Vol 74 p. 632). As stated above, the origin of this concept of liability without fault can be traced back to Blackburn, J's historic decision in Rylands vs. Fletcher (supra).

22. The facts in that case were that the defendant, who owned a mill, constructed a reservoir to supply water to the mill. This reservoir was constructed over old coal mines, and the mill owner had no reason to suspect that these old diggings led to an operating colliery. The water in the reservoir ran down the old shafts and flooded the colliery. Blackburn J. held the mill owner to be liable, on the principle that "The person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape". On appeal this principle of liability without fault was affirmed by the House of Lords (per Cairns, J.) but restricted to non- natural users vide (1868) LR 3 HL 330.

23. Rylands vs. Fletcher (supra) in fact created a new legal principle (the principle of strict liability in the case of hazardous activities), though professing to be based on analogies drawn from existing law. The judgment is noteworthy because it is an outstanding example of a creative generalization. As Wigmore writes, this epoch making judgment owes much of its strength to 'the broad scope of the principle announced, the strength of conviction of its expounder, and the clarity of his exposition'.

24. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on 'Torts' 6th Edn p. 302).

25. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

26. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide 'Torts' by Michael Jones 4th Edn p. 267).

27. As pointed out by Clerk and Lindsell (see 'Torts', 14th Edn) "The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrong doing, which not only has the tendency to make tort overlap with criminal law, but also and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation".

28. Many jurists applaud liability without fault as a method for imposing losses on superior risk bearers. Their argument is that one who should know that his activity, even though carefully prosecuted, may harm others, and should treat this harm as a cost of his activity. This cost item will influence pricing, and will be passed on to consumers spread so widely that no one will be seriously effected (vide Article by Prof. Clarence Morris entitled 'Hazardous Enterprises and Risk Bearing Capacity' published in Yale Law Journal, 1952 p. 1172).

29. The rule in Rylands vs. Fletcher (supra) was subsequently interpreted to cover a variety of things likely to do mischief on escape, irrespective of whether they were dangerous per se e.g. water, electricity, explosions, oil, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc (see 'Winfield and Jolowicz on 'Tort", 13th Edn p 425) vide National Telephone Co. vs. Baker (1893) 2 Ch 186, Eastern and South African Telegraph Co. Ltd. vs. Cape Town Tramways Co. Ltd. (1902) AC 381, Hillier vs. Air Ministry (1962) CLY 2084, etc. In America the rule was adapted and expressed in the following words " one who carried on an ultra hazardous activity is liable to another whose person, land or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultra hazardous, although the utmost care is exercised to prevent the harm" (vide Restatement of the Law of Torts, vol 3, p. 41).

30. Rylands vs. Fletcher (supra) gave English Law one of its most creative generalizations which, for a long time, looked destined to have a successful future. Yet, after a welcome start given to it by Victorian Judges the rule was progressively emasculated, until subsequently it almost became obsolete in England. According to Dias and Markesins (see 'Tort Law' 2nd Edn p. 355) one reason for this may well be that as a generalization justifying a shift from fault to strict liability it may have come prematurely. The 19th Century had not yet fully got over laissez faire, and it was only in the 20th Century that the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established.

31. As already mentioned above, the rule of strict liability laid down by Blackburn J. in Rylands vs. Fletcher (supra) was restricted in appeal by Lord Cairns to non-natural users, the word 'natural' meaning 'that which exists in or by nature, and is not artificial', and that was the sense in which it was used by Lord Cairns. However, later it acquired an entirely different meaning i.e. that which is ordinary and usual, even though it may be artificial' vide Rickards vs. Lothian (1913) AC 263 followed in Read vs. Lyons (1947) AC 156. Thus the expression 'non-natural' was later interpreted to mean 'abnormal', and since in an industrial society industries can certainly not be called 'abnormal' the rule in Rylands vs. Fletcher (supra) was totally emasculated in these subsequent rulings. Such an interpretation, as Prof. Newark writes, 'would have surprised Lord Cairns and astounded Blackburn, J' (see article entitled 'Non-natural User and Rylands vs. Fletcher,' published in Modern Law Review, 1961 vol 24, p

557).

32. In Read vs. Lyons (1947) AC 156) which was a case of injury due to a shell explosion in an ammunitions factory, Lord Macmillan while rejecting the claim of the plaintiff made further restrictions to the rule in Rylands vs. Fletcher (supra) by holding that the rule "derives from a conception of mutual duties of neighbouring landowners", and was therefore inapplicable to personal injuries. He also held that to make the defendant liable there should be escape from a place under the defendant's control and occupation to a place outside his occupation, and since the plaintiff was within the premises at the time of the accident the injury was not due to escape therefrom. In this way Read vs. Lyons (supra) destroyed the very spirit of the decision in Rylands vs. Fletcher (supra) by restricting its principle to the facts of that particular case, instead of seeing its underlying juristic philosophy.

33. Apart from the above, some other exceptions carved out to the rule in Rylands vs. Fletcher (supra) are (a) consent of the plaintiff; (b) common benefit; (c) Act of stranger; (d) Act of God; (e) Statutory authority; (f) default of plaintiff etc.

34. In Dunne vs. North Western Gas Boards (1964) 2 QB 806 Sellers L.J. asserted that the defendant's liability in Rylands vs. Fletcher (1868) LR 3 HC 330 "could simply have been placed on the defendants' failure of duty to take reasonable care", and it seems a logical inference from this that the Court of Appeals considered the rule to have no useful function in modern times. As Winfield remarks, the rule in Rylands vs. Fletcher (supra), by reason of its many limitations and exceptions, today seldom forms the basis of a successful claim in the Courts (see Winfield and Jolowicz on Tort, 13th Edn p. 442), and it seems that the rule "has hardly been taken seriously by modern English Courts", vide Att. Gen. vs. Geothermal Produce (N.Z.) Ltd., (1987) 2 NZ1R 348.

35. As Winfield remarks, because of the various limitations and exceptions to the rule "we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence" (see Winfield on Tort, 13th Edn p. 443).

36. This repudiation of the principle in Rylands vs. Fletcher (supra) is contrary to the modern judicial philosophy of social justice. The injustice may clearly be illustrated by the case of Pearson

vs. North Western Gas Board (1968) 2 All ER 669. In that case the plaintiff was seriously injured and her husband was killed by an explosion of gas, which also destroyed their home. Her action in Court failed, in view of the decision in Dunne vs. North Western Gas Board (1964) 2 QB 806. Thus the decline of the rule in Rylands vs. Fletcher (supra) left the individual injured by the activities of industrial society virtually without adequate protection.

37. However, we are now witnessing a swing once again in favour of the principle of strict liability. The Bhopal Gas Tragedy, the Chernobyl nuclear disaster, the crude oil spill in 1988 on to the Alaska coast line from the oil tanker Exxon Valdez, and other similar incidents have shocked the conscience of people all over the world and have aroused thinkers to the dangers in industrial and other activities, in modern society.

38. In England, the Pearson Committee recommended the introduction of strict liability in a number of circumstances (though none of these recommendations have so far been implemented, with the exception of that related to defective products).

39. In India the landmark Constitution Bench decision of the Supreme Court in M.C. Mehta vs. Union of India AIR 1987 SC 1086 has gone much further than Rylands vs. Fletcher (supra) in imposing strict liability. The Court observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads". The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands vs. Fletcher (supra).

40. The decision in M.C. Mehta's case (supra) related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the railways), public corporations or local bodies which may be social utility undertakings not working for private profit.

41. It is true that attempts to apply the principle of Rylands vs. Fletcher (supra) against public bodies have not on the whole succeeded vide Administrative Law by P.P. Craig, 2nd Edn. p. 446, mainly because of the idea that a body which acts not for its own profit but for the benefit of the community should not be liable. However, in our opinion, this idea is based on a misconception. Strict liability has no element of moral censure. It is because such public bodies benefit the community that it is unfair to leave the result of a non-negligent accident to lie fortuitously on a particular individual rather than to spread it among the community generally.

42. In America the U.S. Supreme Court in Lairds vs. Nelms (1972) 406 US 797, following its earlier decision in Dalehite vs. U.S. (1953) 346 US 15, held that the U.S. was not liable for damages from supersonic booms caused by military planes as no negligence was shown. Schwartz regards this decision as unfortunate (see Schwartz ' Administrative Law', 1984). However, as regards private enterprises the American Courts award huge damages (often running into millions of dollars) for accidents due to hazardous activities or substances.

43. In France, the liability of the State is without fault, and the principle of strict liability applies (see C.J. Hanson "Government Liability in Tort in the English and French Legal Systems")

44. In India, Article 38(1) of the Constitution states "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life".

45. Thus, it is the duty of the State under our Constitution to function as a Welfare State, and look after the welfare of all its citizens.

46. In various social welfare statutes the principle of strict liability has been provided to give insurance to people against death and injuries, irrespective of fault.

47. Thus, Section 3 of the Workmen's Compensation Act 1923 provides for compensation for injuries arising out of and in the course of employment, and this compensation is not for negligence on the part of the employer but is a sort of insurance to workmen against certain risks of accidents.

48. Similarly, Section 124A of the Railways Act 1989, Sections 140 and 163A of the Motor Vehicles Act, 1988, the Public Liability Insurance Act, 1991 etc. incorporate the principle of strict liability.

49. However, apart from the principle of strict liability in Section 124A of the Railways Act and other statutes, we can and should develop the law of strict liability de hors statutory provisions in view of the Constitution Bench decision of this Court in M.C. Mehta's case (supra). In our opinion, we have to develop new principles for fixing liability in cases like the present one.

50. It is recognized that the Law of Torts is not stagnant but is growing. As stated by the American Restatement of Torts, Art 1; vide D. L. Lloyd:

> Jurisprudence:
>
> "The entire history of the development of the tort law shows a continuous tendency, which is naturally not uniform in all common law countries, to recognize as worthy of legal protection, interests which were previously not protected at all or were infrequently protected and it is unlikely that this tendency has ceased or is going to cease in future."

51. There are dicta both ancient and modern that the known categories of tort are not closed, and that novelty of a claim is not an absolute defence. Thus, in Jay Laxmi Salt works (P) Ltd. vs. The State of Gujarat. JT 1994 (3) SC 492 (vide para 7), the Supreme Court observed:

> "Law of torts being a developing law its frontiers are incapable of being strictly barricaded".

52. In Ashby vs. White (1703) 2 Ld. Raym 938, it was observed (vide Pratt C.J.):

> "Torts are infinitely various, not limited or confined".

53. In Donoghue vs. Stevenson (1932) AC 562 (619) (HL), it was observed by the House of Lords (per Macmillan, L.J.):

> "The conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life."

54. The above view was followed in Rookes vs. Barnard (1964) AC 1129 (1169) (HL) and Home Officer vs. Dorset Yacht Co. Ltd (1970) 2 All ER 294 (HL).

55. In view of the above, we are of the opinion that the submission of learned counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected.

56. Thus, there is no force in this appeal which is accordingly dismissed. There shall be no order as to costs.