Privy Council Appeal No. 45 of 1918.

Montreal Tramways Company - - - - - *Appellants*

v.

Roméo Savignac - - - - - - - *Respondent*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER, 1919.

Present at the Hearing:
VISCOUNT FINLAY.
VISCOUNT CAVE.
LORD SUMNER.
LORD PARMOOR.

[*Delivered by* VISCOUNT CAVE.]

This is an appeal from a judgment of the Court of King's Bench of Quebec affirming with a modification the judgment of Mr. Justice Tellier in an action for compensation under the Workmen's Compensation Act of Quebec (Quebec R.S. 1909, Articles 7321 ff.)

The Act in question provides (by Article 7321) hat accidents happening by reason of or in the course of their work to workmen, apprentices and employees engaged in certain occupations (including the repairing or maintenance of railways or tramways) shall entitle the person injured or his representatives to compensation ascertained in accordance with the Act. Article 7322 declares that the person injured is to be entitled to a rent (or annuity) the amount of which is fixed with reference to the degree of incapacity produced by the accident and to the wages of the person injured; but it provides that the capital of the grant or annuity to which the person injured is to be entitled shall not in

any case, except in the case mentioned in Article 7325, exceed $2,000. Article 7325 is as follows :—

> "No compensation shall be granted if the accident was brought about intentionally by the person injured. The Court may reduce the compensation if the accident was due to the inexcusable fault of the workman or increase it if it was due to the inexcusable fault of the employer."

The question to be determined in this appeal is whether on the facts of this case the power given to the Court by Article 7325 to increase the compensation beyond $2,000 arose.

The facts of this case are shortly as follows :—The appellants, the Montreal Tramways Company, own and work the tramways in the city of Montreal, and the respondent, Roméo Savignac, was a plumber in their employ. At about nine o'clock in the evening of the 3rd May, 1916, in consequence of a call to repair a broken electric cable at the corner of Ontario and Amherst Streets, an emergency wagon with the necessary materials was despatched from the appellants' premises. The wagon was of considerable weight, and was drawn by two horses. The driver of the wagon was a servant of the Company named Pettigrew. One of the Company's foremen, named Morin, sat by his side, and the respondent, who was to carry out the actual repairs required, had a seat at the back of the wagon. The wagon was driven at full speed, and apparently at a gallop, warning of its approach being given by means of a bell which was fixed near the driver, and was rung at intervals by Morin. It was a rainy evening, and the streets were slippery. In order to reach its objective it was necessary for the wagon to be driven eastwards down Dorchester Street, and across St. Denis Street. Dorchester Street is about twenty-one feet in width and, at the point where it approaches St. Denis Street from the west, has a slight incline. St. Denis Street is a wide and frequented thoroughfare, running on an incline from north to south, and carrying considerable traffic, including two lines of tramways belonging to the Company. Pettigrew, when approaching the point where Dorchester Street crosses St. Denis Street, made no attempt to check the pace of the wagon, but endeavoured to drive his horses at full speed across that thoroughfare. It is not surprising to find that his attempt resulted in a serious accident. At the moment when Pettigrew's wagon reached the junction of the two streets, a tramcar belonging to the appellant Company, and driven by one Lalonde, was approaching the same point from the north. The evidence as to the speed at which this tramcar was travelling is conflicting, but it was found by both the Canadian Courts that it was being driven at an excessive speed, and certainly at a speed above the maximum of eight miles an hour allowed by law. Dorchester Street being a narrow street and the buildings at its junction with St. Denis Street being high, neither driver saw the other vehicle or had notice of its approach until it was too late (having regard to the speed at which they were travelling) to avoid a collision. The tramcar ran into the rear part of the wagon with such violence that the latter was driven a distance

of 33 feet to the pavement on the east side of St. Denis Street. The car was stopped at a distance of about 20 feet from the point of contact. As a result of the collision, the respondent was thrown to the ground, fell under the wheels of the tramcar and suffered most serious injuries, both his legs having to be amputated.

These proceedings were thereupon brought by the respondent, claiming $15,000 as compensation, and in the result, Mr. Justice Tellier found that the driver of the emergency wagon had been guilty of "inexcusable fault," within the meaning of Article 7325, and increased the compensation to $14,192.50. On appeal to the Court of King's Bench that Court, by a majority (Cross, J., dissenting) confirmed the decision but for reasons different to those which commended themselves to Mr. Justice Tellier, but reduced the compensation to $9,000. The majority of the Court of Appeal appear to have thought that the great speed at which the emergency wagon was driven was in the special circumstances of the case excusable, owing to the fact that the broken cable was dangerous to life, and that it was usual in such cases to proceed at great speed to repair the damage. They therefore acquitted Pettigrew of "inexcusable fault," but they held that Lalonde, the driver of the tramcar, who was also a servant of the Company, had been guilty of "inexcusable fault" in driving at an excessive speed, and accordingly that the Company was liable for the damage. Against this decision the present appeal is brought. There is no cross-appeal in respect of the reduction of the amount of compensation, and nothing turns in this appeal on such reduction.

The first question to be determined is whether there was "inexcusable fault" on the part of the driver of the emergency wagon. It is plain from all the evidence that the wagon was driven at full speed, not only along Dorchester Street, but also at the moment when it was approaching St. Denis Street, at right angles, in order to cross it. At that moment the wagon was travelling at such a pace that it was plainly impossible for the driver, in the event of any tramcar or other vehicle passing along St. Denis Street at the time when he reached it, to check his horses and so avoid a collision. He drove recklessly into and across this frequented thoroughfare and trusted to good fortune to escape a serious accident. It is suggested that his action was excusable because it was desirable, in order to protect the public from serious and perhaps fatal injury from the broken cable, that the wagon should reach the scene of the breakdown at the earliest possible moment, and that it was therefore allowable for the driver to disregard all precautions and travel at the highest possible speed. Their Lordships are unable to accept that view. It was no doubt desirable that the wagon should proceed at the highest possible speed consistent with the safety of the public and of the occupants of the wagon itself; but this fact by no means justified the driver in throwing aside all prudence and putting the lives of others in imminent peril. On the contrary, the exceptional nature of the call made it his duty to take proper precautions to avoid an accident to the wagon, as it was plain

that the result of such an accident might be to prevent him and his fellow workmen from going to the repair of the cable; and this is what, in fact, occurred. If Pettigrew had checked his wagon on approaching the crossing, so that he might be able, in the event of traffic approaching, to avoid a collision, he would have done his duty, and his journey would not have been delayed for more than a few seconds. It is unnecessary, and probably undesirable, to attempt a definition of the expression "inexcusable fault." Each case must be judged on its own facts, and their Lordships find no difficulty in saying that the conduct of Pettigrew in this instance fell within that description.

It has next to be determined whether the "inexcusable fault" of Pettigrew is to be attributed to the appellant Company as his employers so as to give occasion for an increase of the maximum compensation under Article 7325; or, in other words, whether, according to the maxim "*Respondeat superior*," the fault of a workman is, for the purpose of that article, to be attributed to the employer. This question was considered by the Quebec Court of Appeal in the recent case of *The Grand Trunk Railway Company* v. *Poulin* (1917, 27 K.B. 141), and was there decided in the affirmative. Their Lordships agree with that decision, and with the reasons given by the late Chief Justice, Sir Horace Archambeault. It is plain that the words "the employer," in Article 7325, cannot be confined to the employer personally; for in that case a company, which can only act through its agents, would escape altogether from the effects of the Article. Counsel for the appellant, recognising this difficulty, suggested that according to the true construction of the Article, the fault giving rise to an increase must be that of the employer or of some person or persons entrusted with the management of the concern. If this be the meaning of the Article, then its effect is similar to that of Article 20 of the French law of the 9th April, 1898, which empowers the Court to increase the compensation if the accident is due to the inexcusable fault of the employer "ou de ceux qu'il s'est substitués dans la direction." Their Lordships are unable to accept this construction. It appears to them that if (as is admitted) the Article must be read as extending to the act of some agents of the employer, there is no sufficient reason why the ordinary rule under which a principal is made responsible for the acts of all his agents acting within the scope of their employment should not be applied. This construction is supported by the form of the enactment of 1909, in which there is introduced at the head of the Article relating to Workmen's Compensation a reference to "Articles 1053 and following,"—Article 1054 including the following provision:—

> "He (*i.e.*, a person) is responsible, not only for damage caused by his own fault, but also for that caused by the fault of persons under his control, and by things which he has under his care.
>
> * * * * * * * * *
>
> "Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work in which they are employed."

Support is also given to the same conclusion (as pointed out by Archambeault, C.J., in the case above cited) by Article 7334 of the code, which provides that

> "the person injured or his representatives shali continue to have in addition to the recourse given by this sub-section the right to claim compensation under the common law from the persons responsible for the accident other than the employer, his servants or agents."

For this article appears to deprive the injured workman of his common law remedy against a servant or agent of the employer whose misconduct or gross negligence may have been chiefly responsible for the accident, and it would be a hardship if that remedy were taken away without substituting a special remedy against the owner of the concern.

The result is that their Lordships are satisfied that Pettigrew, an agent of the appellant Company, was guilty of an "inexcusable fault" giving rise to the accident, and that such fault is imputable to the appellant Company and justifies an increase, under Article 7325, of the compensation payable under the Act. This being so, it becomes unnecessary to consider the further question whether the driver of the tramcar was also guilty of an "inexcusable fault"; for if any one of the Company's servants was guilty of "inexcusable fault" giving rise to the accident, the liability of the Company is clear. It is also unnecessary to consider the question which was discussed by the Canadian Courts, whether in this case there was "inexcusable fault" on the part of those responsible for the management of the Company's affairs. For having regard to the view which their Lordships have taken of the law of Quebec, that question becomes irrelevant.

For the reasons already given their Lordships will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council.

MONTREAL TRAMWAYS COMPANY

v.

ROMÉO SAVIGNAC.

DELIVERED BY VISCOUNT CAVE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1919.