
CASE ANALYSIS: VICTORIAN RAILWAYS COMMISSION V COULTAS (1888)

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I. Introduction

Peril on the tracks: The case of the horse-drawn buggy and a rapidly approaching train also known as the Victorian railways commissioners v Coultas (1888) is one of the earliest cases that brought focus on the branch of Nervous shock under the Law of Torts. Though the Victorian Railways Case couldn't find itself the right remedy, it did give a push in the society to start thinking of Psychiatric Injury as in the ambit of the Law of Torts.

For a long time, there was no area of a tort, that was assigned with the task of providing liability in the case of nervous shock, for the victim claims based on psychiatric damage was served as it was said that nervous shock is a damage that was considered to be very or too remote for compensation.

Under medical terms, Nervous Shock is defined in the following terms, circulatory failure marked by a sudden fall of blood pressure and resulting in pallor, sweating, fast (but weak) pulse, and sometimes completes collapse. Its causes include disease, injury, and psychological trauma. In shock, the blood pressure falls below that necessary to supply the tissues of the body, especially the brain¹.

In the case *Lynch v knight*², another one of the oldest cases in the ambit of the Nervous Shock, though the remark, however, was *obiter dicta*, and the case featured a libel lawsuit. The court made the following comments, "Mental pain or anxiety the law cannot value and does not pretend to redress, when the unlawful act complained of causes that alone, though where a material damage occurs, where a material damage occurs, and is connected with it, it is impossible a jury, in estimating it, should altogether overlook the feelings of the party interested." Through this judgment, the court made it abundantly clear, how only material or

¹ Encyclopedia by Farlex

² *Lynch v Knight* (1861) 11 ER 854; 9 HLC 577

tangible damages like bodily injuries are taken into notice unlike the intangible damages in the given case.

But there was slow and definite change in the court's and the society's approach and attitude towards the subject of Nervous Shock as per damage under Torts and the case which becomes the actual starting point for all the case laws in the context of Nervous shock is the case of *Victorian Railways Commissioners v. Coultas*, the case that will be further analysed in the following paper.

II. Facts of the Case

The Case of *Victorian Railways' Commissioners V. Coultas* was set in the year 1886, May. Mr. and Mrs. James Coultas with Mrs. Coultas's brother, John were riding together in a horse-drawn buggy between Melbourne and Hawthorn on a dark and rainy night, and the unaware trio of travellers were soon to be placed in a position of imminent peril. A part of their journey had a railway line crossing in it. Another point to keep in mind about this case is that during this trip, Mrs. Coultas was also pregnant with her and Mr. Coultas's Child.

Patrick McDonough, the gatekeeper in charge of checking the railway crossing for oncoming trains opened the railway gate for the trio as the buggy approached a level crossing in East Richmond. But the problem with that was, that he didn't check the railways line properly. And unfortunately, there was indeed a train coming in the way of the trio as they were crossing the line.

"For God's sake, go back, the train is approaching!" Patrick exclaimed as he realized his mistake of judgment. But James, who was also the one that was leading the buggy, decided to go against the advice of the gatekeeper and kept going forward and asked Partick to open the opposite gate as soon as possible. With a few seconds to spare, the buggy and the trio were safely on the other side of the line without any physical injury to anyone one of them, but the consequences of this incident left a permanent mark on them for years to come.

Due to the negligent behaviour of the gatekeeper where he had evidently not seen the incoming train, which fortunately missed the buggy by mere seconds as the horse bolted across the railway line, led to Mrs. Coultas fainting and suffering severe nervous shock. This resulted in impaired memory and eyesight for Mrs. Coultas and also led to her miscarriage due to the fright she suffered during the incident.

Mary and her husband, James filed a lawsuit against the gatekeeper's employer, alleging that they were responsible for Mary's injuries and miscarriage, as it was the result of Patrick's negligence that led to the consequences they suffered.

The defendant argued that the alleged damage resulting from Mary's shock was too remote because neither the plaintiffs nor their property was hit by the train, meaning, as none of them suffered physical damage due to the negligence of the gatekeeper, their lawsuit was not maintainable under the Court of Law.

The Supreme Court of Victoria granted £400 to Mary, while her husband was given around £342 for the loss of his wife's losses by the bench, but when the defendants approached the Privy Council, this compensation was refused by the judges on the grounds of Nervous Shock, being unaccompanied by any physical injury, was way too remote consequence of a negligent accident to be considered as damage or paid compensation for.

III. Issues Raised in the Case

The issue raised in this particular case where quite simple yet had a very complex nature to it. The issues that were addressed in this case are as follows:

1. Is Nervous shock a damage that one can be sued for?
2. Did the plaintiff (Mr. and Mrs. Coultas) deserve compensation for the damages they suffered, even if the damage was not tangible?

These issues, though not addressed rightly, as there was a lack of proper legislation or even awareness for the same, but they did open gates for people in the society for thinking in this direction. Which is why this particular case is considered to be the starting point for Nervous Shock or Psychiatric Injury to be considered as a branch in the ambit of Law of Torts.

IV. Judgment Passed in the Case

The Supreme Court of Victoria was first approached by Mr. and Mrs. Coultas to claim compensation for psychiatric damages that they sustained due to the negligence of the gatekeeper suffered by the couple. The bench sided with the plaintiff and passed the judgment in favour for the Coultas with the orders for compensation, which was a grant for £400 to Mary, while her husband was given around £342 for the loss of suffered by his wife.

After this judgment was passed, the defendants made an appeal to the The Privy Council against the order passed by the previously approached court. The Privy Council, declined the compensation granted to Coultas by the Court of Victoria on grounds of the damage being too remote and made the following remark,

“Damages arising from mere sudden terror unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their Lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their Lordships that it would be extending the liability for negligence much beyond what that liability has hitherto been held to be. (Sir Richard Couch)”.

The gist of the judgment given would be that nervous shock without physical injury was too remote of a consequence of a negligent event to be declared as damages. It could not have been called a natural consequence of the gatekeeper's carelessness, releasing him and the Victorian Railways Commissioners from the liability.

“In every case where an accident caused by negligence had given a person serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which now often exists in the case of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims.” Additionally, their Lordships thought that granting Mary's claim for nervous shock would result in a wide field being opened for imaginary or illusory claims.

V. Critical Analysis

In this case of Victorian Railways commissioners, in February 1888, the Judicial Committee of the Privy Council decided that the plaintiff was not entitled to recover damages for nervous shock induced by the negligence of the defendant in the absence of proof of actual impact, even though the shock resulted in serious physical injuries³. Irrespective of this judgment's righteousness, this judgment posed a question in front of the society if in actuality should the plaintiff be compensated for the intangible damage caused due to negligence of some other individual and why?

³ Throckmorton, Archibald H. “Damages for Fright.” *Harvard Law Review* 34, no. 3 (1921): 260–81. <https://doi.org/10.2307/1328160>.

The answer to this question is Yes, Individual rights are and should be protected and private wrongs are adjudicated under law of tort. It is a judicial proceeding governed by the rules of evidence that has been formed via case law or law, deals with civil wrongs for which compensation is provided by the law. It safeguards individual equity by compensating victims for their losses, allowing the parties to return to the status quo that existed previous to the harm.

The decision in *Coultas* has been identified as one of the prime example of tort law's failure to deal with the gendered harms suffered by women. Implicit in their Lordships judgment was a fear of women as 'hysterical victims', with nervous shock regarded as an irrational or imaginary condition for which compensation should not lie⁴. The lordship at the Privy council denoted the term "Nervous Shock" under a purely emotional occurrence unlike how the Supreme court viewed as a mental injury. This shows the clear bias shown not until towards Nervous shock as an injury but also women at large saying that they were just hysterical creatures making their grievance just an emotional blow rather than an injury.

This judgment given by the Privy Council attracted a lot of attention and also was greeted with sharp criticism, from the educated part of the society that pointed a lot of flaws with the logic provided behind refusal of compensation to Mary Coultas and her husband. The decision taken by the Privy Council has to be viewed under the light of the limited knowledge of mental illness in 1888⁵. During this period, the school of thought regarded mental health to be something that was a form of hysteria cause by personal characteristics rather than exposure to trauma⁶.

Another one of the issues with the privy council's decision was, their reliance on the policy base floodgate principle. The bench was worried that imposing liability for nervous shock caused by negligence would to lead to wide field for "imaginary claims". The council assumed that once a liability of this sort will be imposed, there would several claims where the majority of plaintiffs would be perceived as a fraud due to the lack of understanding and proper diagnosis of mental injury didn't exist till then.

However, when people's scientific knowledge of how the human mind works developed, things were seen and regarded in a completely different light. The first hint of change was noticed in

⁴ Trackingthelaw.com. 2022. *Victorian Railways Commissioners v Coultas*. [online] Available at: <<https://trackingthelaw.com/cases/2021-10-27-victorian-railways-commissioners-v-coultas/#fnref:5>> [Accessed 3 June 2022].

⁵ *Id*

⁶ See, eg, Herbert W Page, *Injuries of the Spine and Spinal Cord Without Apparent Mechanical Lesion, and Nervous Shock, in Their Surgical and Medio-Legal Aspects* (J & A Churchill, 1883) 147, cited in Eric Michael Caplan, 'Trains, Brains, and Sprains: Railway Spine and the Origins of Psychoneuroses' (1995) 69(3) *Bulletin of the History of Medicine* 387, 395

the case of *Delieu v White*⁷, in this case the court gave compensation for nervous shock which was not caused due to physical injury. The concept of “impact theory” was coined and used in this case and for more cases in coming decades. It means that the plaintiff would be entitled to compensation for psychiatric illness if it was induced by a realistic risk of being physically injured as a result of the defendant's negligence.

Initially, the courts were hesitant and unresponsive to acknowledge psychiatric illness claims, fearing that it would draw dubious and false claims under the pretence of psychiatric illness since defining the precise bounds of culpability in this field would be difficult. But with time and decade's worth evolution, the law of nervous shock has progressed from entertaining limited claims only in relation to sudden shock to taking in a wider and more flexible perspective in handling claims while taking account of several eventualities.

On the other hand, behaviour of the Indian courts under nervous shock has been quite liberal regarding the cases of psychiatric damages. The Madras high court completely disregarded the ‘impact theory’ as a way to determine in cases of nervous shock, according to the court, the human body is controlled by the nervous system and even though there is no harm done to the party physically, the nervous system could be affected. In the case of *Halligua v Mohansundarum*⁸, the Madras High court held the preceding decision.

The generosity of Indian courts can also be seen in cases like *Lucknow Development Authority V. M.K Gupta*⁹, where damages were given to the plaintiff because of the harassment that Mr. Gupta, the plaintiff received from the Government officials. This decision was followed in many similar cases like *Ghaziabad Development Authority v. Balbir Singh*¹⁰ and *Spring Meadows Hospital v. Harjot Ahluwalia*¹¹.

VI. Conclusion

In the case of *Victorian railways commissioners v Coultas* (1888), it can easily be stated that the judgment passed by the privy council was nothing but a pretence of ignorance to avoid imposing liability for the obvious negligence of the gate keeper. This was due to the severe lack of knowledge about nervous shock or psychiatric injury as an injury under the scope of negligence and also using the excuse that women were hysterical creatures and prone to have

⁷ *Delieu v White*, (1901) 2 KB 699

⁸ *Halligua v Mohansundarum*, (1951) 2 MLJ 471

⁹ *Lucknow Development Authority V. M.K Gupta*, AIR 1994 SC 787

¹⁰ *Ghaziabad Development Authority v. Balbir Singh*, AIR 2004 SC 2141

¹¹ *Spring Meadows Hospital v. Harjot Ahluwalia*, 1998(2) SC 620

emotional blow-ups causing them harm to avoid having to impose negligence. The council was severely ignorant towards the severity of nervous shock and claimed that imposing liability over nervous shock under negligence would give rise to people with dubious claims which would be like opening the flood gates of claims which could not be judged with the lack of the right knowledge of mental injuries and the right awareness.

But this judgment was challenged and criticized in England and other countries as well, on various levels by various bench in years to come and was ultimately completely dismissed on the accounts of inaccurate precedent to be followed by other courts.

And now with time and numerous developments, in England the law regarding liability of nervous shock is seen to be by the Protection of Harassments Act, 1997. While in India Nervous Shock as a mental injury can be consulted in Mental Health Act, 1987 and few other statutes as per the circumstances of the case.

Though there has been a lot of development in the subject at hand over the years, but it is very noticeable that this law must be codified and be more advanced enough to take into account all possible scenarios and flexible enough as to pay compensatory damages to the victims in unforeseeable circumstances. It is also necessary to broaden the premise and scope on which the compensatory damages are awarded to suffering or suffered party. And there must be more awareness among the public about them.