

Trains

Pablo Salvador Coderch and Carlos Gómez Ligüerre

Summary

I. Run Over by a Train: In Search of a Normative Standard

- “Stop, look and listen!”
- Bell and Whistle
- Urban Tracks and Level Crossings: An Example of the Comparative Negligence Doctrine
- Children and Teenagers
- Gross Negligence and the Danger of the Railway
- Proposal of a Standard: Strict Liability Limited to Death or Personal Injury. Exception of Suicide.

II. Trains and Causation

- *Palsgraf v. Long Island Railway Co. (1928, 248 N. Y. 339, 162 N. E. 99)*
- *Decision of the First Court of the Supreme Court of 3.4.1998 (Joaquín C. versus RENFE)*
- Labor Accidents and Compensation for Damages and Loss
- Problems of Jurisdiction
- *Sentences of the First Court of the Supreme Court*

I

Run Over by a Train: In Search of a Normative Standard

- ***“Stop, look and listen!”***

It is common sense that one has to approach train tracks with precaution. But how much caution is necessary? What is the legal distribution of the costs of a train accident? And the legal rule?

Today in Spain, the majority of the costs of a train accident that takes place on the train tracks and results in death or personal injuries, are borne by the victims. The victim, or if the accident was fatal, his or her relatives, receive a small compensation of between 24,000 and 100,000 euros. This is the situation in Spain for several reasons. First, compensations for any type of harm are generally very low. Second, particularly in the case of train accidents, the victims often contribute to the injury.

The arithmetic mean of compensations awarded in the cases involving fatal accidents, decided by the Spanish Supreme Court between 1996 and 1998, is 52,155.2 euros per victim.

Is it still the case then, that before crossing the tracks, one has to “Stop, look and listen?” This rule was passed by Judge Oliver Wendell Holmes (1841-1935), in *Baltimore & Ohio Railway v. Goodman* (1927, 275 U. S., 66, 48 S. Ct. 24, 72 L. Ed. 167), a case decided by the U.S. Supreme Court in 1927.

The rule was asserted by the Spanish Supreme Court on at least one occasion, seventy years later (SC 20.9.1997). The case involved a convoy of goods that advanced at 50 km an hour in a straight line, at a distance of 700 meters from a level crossing. The engine driver saw a tractor towing a combine-harvester approaching the crossing. At this point, the engine driver reduced the speed of the train and rang the warning signal. The tractor driver initially braked but then unexpectedly began to maneuver over the crossing. As a result, the combine-harvester was run over by the train. The level crossing was not a required stop for the convoy. The tractor driver’s widow and the owner of the combine-harvester sued RENFE (Spanish publicly-owned railway company). The Supreme Court reversed the Court of Appeals liability verdict and replaced it with the First Instance Court’s verdict of not guilty: “[T]he negligence of the victim took on such a form ... that the causal link is broken” (F.J. 1).

- ***Bell and Whistle***

Nevertheless, Holmes’s attempt to immediately create a general rule failed. In 1934, another great judge, Benjamin Nathan Cardozo (1870-1938) wrote that, “Standards of prudent conduct are declared at times by courts, but they are taken over from the facts of life.” In *Pokora v. Wabash Railway Co.* (292 U. S. 98, 54 S. Ct. 580, 78 L. Ed. 1149), Pokora’s truck was run over at a train crossing at which the visibility of an oncoming train was limited to when one was positioned directly on the crossing itself. Seven years earlier, Holmes wrote that, “He knows that he must stop for the train, not the train stop for him.” Cardozo replied that in this case, the train approaching the crossing should always ring its bell or whistle.

The Spanish case of the SC 20.9.1997, described above, can otherwise appear exceptional or simply anachronistic. Also in the SC 23.6.1998, a case of an accident that caused two fatalities, the Supreme Court held the victims as solely responsible. Adults cross the train tracks at their own risk. This applies in particular to cases that occur in uninhabited places, at night, and on stretches of perfect visibility. One does not need to be a specialist in cost-benefit analysis to conclude that it cannot be required that all tracks in the country be buried or enclosed (12,294 km).

The railway is held responsible if the accident takes place in an inhabited area or gathering place, if a path is at a level that requires crossing the tracks, or if the victims are minors.

- ***Urban Tracks and Level Crossings: An Example of the Comparative Negligence Doctrine***

For the cases of accidents at level crossings, the Spanish courts tend to apply a moderate version of the comparative negligence doctrine. The right of the victim to compensation for the injury suffered is reduced proportionally based on the victim’s personal contribution to its occurrence.

The preceding lawsuit exemplifies the doctrine of comparative negligence (SC 22.9.1997). The victim usually passed by the place of the accident four times a day. On one fatal occasion, the victim crossed the tracks even though the crossing gate was lowered. The bells, lights, and whistles were all operating. The widow received a small compensation of 43,750 euros. The court stated that the construction of an elevated crossing “would have exceeded the diligence required” (F.J. 2). Level crossings are considered inherently dangerous in Spain. Many are neglected, poorly marked, or situated at sections of abominable visibility. There is almost always reason to condemn the railway, regardless of how imprudent the victim was.

There are many cases that reflect this point of view. In the last three years, the following cases ended with a judgment against the railway company. In the SC 22.1.1996, RENFE was held liable for the death of a motorist who crossed a poorly marked level crossing without heeding the proximity of an oncoming train. The same conclusion was reached in the case of the SC 14.6.1996. A woman was run over by a locomotive that traveled at 75 km an hour. She improperly crossed the rails because she was distracted as she said goodbye to a friend. The Supreme Court applied the doctrine of comparative negligence and asserted that the victim contributed to the accident by 60%. The train traveled at an excessive speed and the claimants and victims’ relatives were granted 24,040.4 euros. In the SC 4.7.1996, the guard of a level crossing did not stop the claimant’s truck from crossing. The truck was totaled and the goods were destroyed. The owner of the truck and claimant received a compensation of 180,303.6 euros.

- ***Children and Teenagers***

With only one inexplicable exception (SC 24.4.1997), **children and teenagers** are always protected, no matter how imprudent their conduct could be considered. However, the awards are very small.

A case that represents this point is the SC 31.12.1997. The Supreme Court required trains to reduce their speed and even to stop at a crossing known to be frequented by **teenagers** who play Russian roulette by lying down on the tracks while drunk:

During the local celebrations at Manzanares, some youths played to test who could withstand lying on the tracks the longest while a train approached. RENFE had repeatedly denounced the events to the City Council. The City Council responded by requiring that the area be patrolled during a few hours of the day. Groups of boys returned to the area to talk, laugh, drink, and play with their lives. On July 21, 1990, Miguel Ángel C. and José Gabriel P., both fifteen-years-old, were standing on the tracks as an express train ran over them at 130 km an hour. Both died. The former had 0.92 grams of alcohol per liter of blood in his system. The victims’ parents claimed a compensation of 150,253 euros from the City Council of Manzanares, RENFE, and the train driver. The lower courts only condemned RENFE and the City Council to pay 36,061 euros “to each of the claimants” and acquitted the train driver. The SC rejected the appeal lodged by the railway company: “... [T]he managers of RENFE should have alerted the train drivers of all the trains that passed on the line that the youth used for their game, to reduce their speed and even to stop” (F.J. 5).

Many other cases also illustrate the privilege of **minors**:

The clearest case is the SC 17.2.1997. The children of the plaintiffs, ages 12 and 10, were

fatally injured when run over by a train. They were playing on tracks that ran parallel to the beach of Santa Susana (Arenys de Mar). The Supreme Court upheld the judgment requiring the train company to provide a compensation of 72,121 euros to the parents.

In the SC 25.3.1996, an adult died and a minor was injured, while they traversed a railway tunnel along a very narrow walking path. The court found the path to be too narrow and RENFE paid 48,080 euros for the death of the adult and 74,040.6 euros for the injuries suffered by the minor. The SC 26.9.1997 sentenced RENFE to pay 27,767 euros to the parents of a fifteen-year-old boy who was run over by a train while crossing the tracks where he was not supposed to. However, many others tended to cross at the same place. It was “easier to reach and the neighbors commonly used the path to avoid crossing at the appropriate place, although not much further away, and the existence of the path was fairly well-known”. The court concluded that RENFE should have marked the path as an official crossing. The SC 5.11.1997 sentenced FEVE (a smaller railway company) to pay a compensation of 6,010 euros to the parents of a nine-year-old minor, who was fatally run over by a train while crossing at a level path without crossing gates or guards, and with poor visibility. In the SC 25.11.1997, the parents of a thirteen-year-old minor, who crossed the tracks instead of using the underground path, received 45,075 euros from RENFE and the City Council of Pineda de Mar for their child’s death.

The privilege given to minors is reasonable. Children and teenagers do not inherit the experience of adults, they acquire it. But they can only accomplish this if they can move about with a certain amount of liberty. It is the adults who have to keep watch over them.

Due to the high number of cases involving children and teenagers who die on train tracks, steps urgently need to be taken to prevent similar accidents in the future. Usually the parents sue in the case of death, in spite of the principle that parents are responsible for watching over the children. As a result, the doctrine of comparative negligence produces perverse effects. In theory, the railway sued does not benefit from the reduced compensation because this only corresponds to the quota of responsibility placed on the parents as claimants. The parents are excused from making any payments despite their probable negligence. They receive a compensation for the pain-and-suffering caused by the child’s death. Although the loss of a child acts as a significant incentive to prevent this type of accident in the future, the legal system does not seem to have focused on prevention in such cases.

The most notable exception in our three year period is the SC 24.4.1997. A 13-year-old was sitting with a friend on the railing of a railway bridge. He fell on top of the overhead power cable and was electrocuted. Both arms had to be amputated. The parents sued RENFE for a compensation of 601,012.1 euros. The SC upheld the sentence of the Court of Appeals and rejected the suit.

- **Gross Negligence and the Danger of the Railway**

Apart from the privilege of minors, the Spanish legal system allows the majority of train accident victims to receive a small compensation, regardless of how imprudent the victim was.

In SC 6.5.1997, the Supreme Court sentenced the railway to pay compensation even though the victim got onto a railway bridge that was not designed for the passage of pedestrians. The victim decided to cross the train tracks instead of going a few steps

further to cross the pedestrian bridge, ignoring whistles from the train and shouts from the guards. (SC 7.7.1997).

There are exceptions, at least on one occasion (SC 4.2.1997). The Supreme Court refused to award any compensation to the widow and daughter of someone who recklessly threw himself in front of an oncoming train and was run over.

- **Proposal of a Standard: Strict liability Limited to Death or Personal Injury. Exception of Suicide.**

Some patterns emerge from the preceding text. In the majority of the cases of accidents resulting in either death or personal injury, the Supreme Court upholds or grants a small compensation, usually after five years of litigation. However, there is never compensation in the strictest sense. Children and teenagers do not even tend to be subjected to a standard of gross negligence. Finally, there are also inexplicable deviations among the decided cases.

A rule of strict liability that forces the railway to pay a lump sum as compensation for fatal accidents would help to standardize decisions and to avoid the high transaction costs of the legal system. Tort law could thus be advantageously substituted by **compulsory liability insurance**. This proposal allows the potential defendant to anticipate the extent of his liability. During a period of three years, RENFE was involved in 24 of the 26 related sentences, along with only two or three other defendants. It would also guarantee a compensation for the victim and reduce the transaction costs of the entire legal system.

The preceding proposal should be understood with one exception in mind, namely that the railway company should be able to avoid paying compensation in the cases of suicide. An insurance that favors the relatives of a suicidal person could become an incentive for this form of suicide.

II Trains and Causation

- ***Palsgraf v. Long Island Railroad Co. (1928, 248 N. Y. 339, 162 N. E. 99)***

The steam engine train is the symbol of the Industrial Revolution and the railway is its apotheosis. Today, railway accident cases play a prevalent role in the realm of civil law, especially as related to causation and strict liability. Perhaps the most famous case is *Palsgraf v. Long Island Railroad Co.* Cardozo relates the case:

“Plaintiff was standing on a platform of defendant’s railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks,

but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform many feet away. The scales struck the plaintiff, causing injuries for which she sues.”

Judge Cardozo sentenced the package carriers according to the doctrine of *proximate causation*. Judge William S. Andrews upheld the sentence by applying the criteria of comparative negligence.

- **Decision of the First Court of the Supreme Court of 3.4.1998 (Joaquín C. versus RENFE)**

The Spanish *pendant* of Palsgraf is SC of 3.4.1998:

On November 13, 1987, Joaquín C. arrived at the Murcia station in order to take the express train “Costa Cálida” in the direction of Albacete and Madrid. The train was delayed, so Joaquín C. went to the station’s snack bar. He expected the train’s departure to be announced over the loudspeaker, not realizing that on this particular day, the station’s loudspeaker was not working. The station manager ordered the train’s departure without noticing that several passengers had not boarded the train. Joaquín C. ran after the train and tried to step into a moving car. He lost his balance, fell onto the tracks, and was run over by the train. He survived but lost his left leg and a toe on his right foot, in addition to suffering other injuries. Years before, Joaquín C. had his right arm amputated. He sued RENFE for a compensation of 189,150.5 euros. He lost the case in the first instance but RENFE was sentenced to pay a compensation of 42,695.8 euros in the appeal. The SC upheld the sentence of the Court of Appeals.

The law evaluates a causal link according to the normative criteria of objective and subjective imputation. The criteria for an **adequate causation or adequacy** defines a cause as relevant in law if it does not seem highly improbable (“*wenn sie nicht sehr unwahrscheinlich ist*”). Günther Jakobs, *Strafrecht. Allgemeiner Teil*, 2 Aufl., Berlin De Gruyter, 1991 and *La imputación objetiva en Derecho Penal*, Madrid, Civitas, 1996.

However, adequacy is difficult to define. The acceptable degree of probability can be anywhere between 0 and 1. Supporters of adequacy also disagree as to whether a determination of probability is subjective and related to prevention (*Vermeidbarkeit*) of the result, or if it is objective in the sense that a knowledgeable person should have been able to predict the probability of the result.

Consider the following situation according to the doctrine of adequacy. The victim of a prior injury dies in a hospital fire where she is being treated. The defendant responsible for the victim’s initial injury is not liable for the subsequent accident that causes the victim’s death. The doctrine takes statistical probability and social value into account, but does not offer a clear guideline for imputation in individual cases.

German jurisprudence, writes Hein Kötz in his *Deliktsrecht* (8 Aufl., Berlin, Luchterhand, 1998) lacks clear criteria. In two famous cases, the defendants were found liable of the crippled condition of the plaintiffs. Many years later, the plaintiffs suffered a second accident as a result of their handicap. In the first case (RGZ 119, 204), twenty-two years after the first accident, the plaintiff fell in his home. In the second case (BGH NJW 1952, 1010), eight years later, the plaintiff’s handicap kept him from

reaching a refuge during a bombardment. In the first case, the defendant was held liable for the second accident. In the second case, the defendant was acquitted.

- ***Labor Accidents and Compensation for Damages and Loss***

The railway company is frequently sued by its own employees. In these cases, the railway company defends itself by placing all the blame on the victim.

In a case decided on 5.3.1996, the Spanish Supreme Court sentenced RENFE to pay 60,101.2 euros to a construction worker's family. The employee was fatally electrocuted by an overhead power cable while measuring the light in a railway tunnel. In SC 15.6.1996, an employee fell from the train that she was cleaning in the Bilbao station. The train suddenly began to move and she was run over. She lost her right leg and suffered various other injuries. The SC 23.4.1998 sentenced RENFE to pay 98,187.3 euros to the family of an employee who was fatally run over by a train while repairing tracks close to the Córdoba station.

RENFE accepts the new labor laws system of compensation. The victims will receive a pension for injuries suffered. They can also claim a civil compensation (in a civil or criminal trial) if the company has been negligent or if its conduct constitutes an offence. When the damage claim is based on negligence, worker's compensation benefits are not subtracted from the damage award.

- ***Problems of Jurisdiction***

RENFE was created after the massive destruction of the Spanish Civil War (1936-1939) by the Basic Law of 24.1.1941. It actually, "takes on the personality of public law but works within the system of commercial firms, and ... is subject to the private legal order (..)" (article 175.1 of the Law 16/1987, July 30, *de Ordenación de los Transportes Terrestres*. BOE num. 182, July 31). And according to the Law 6/1997, April 14, of *Organización y Funcionamiento de la Administración General del Estado*, "the state commercial societies are governed entirely ... by private law, except in the areas related to budget, accounting, or financial and contractual control. At no time can they exercise public authority." They are subject to the jurisdiction of civil courts. (Additional Disposition 12).

- ***Sentences of the First Court of the Supreme Court (1996-1998)***

Date	Ar.	Ponente	Parties
22.1.1996	250	José Almagro Nosete	Gregorio M. and Victoria P. v. RENFE
5.3.1996	1876	Antonio Gullón Ballesteros	Violeta S., Avelino R. and Eugenio D. v. Tableros and Puentes, Alpen and RENFE.
25.3.1996	2440	José Almagro Nosete	María P. v. Telesforo G. Minero Siderúrgica of Ponferrada and RENFE
14.6.1996	4771	Pedro González Poveda	Manuel Francisco A. v. Francisco G. and RENFE
15.6.1996	4774	Francisco Morales Morales	Ana María A. v. Aplicaciones Cianhídricas and RENFE
4.7.1996	5558	Jesús Marina-Martínez Pardo	Nieves M. and. Echevarría, SA and FEVE
20.9.1996	6818	Eduardo Fernández-Cid de Temes	Rosalía R. v. FEVE
7.11.1996	7913	Ignacio Sierra Gil de la Cuesta	Santos of the A. v. Buques Alvargonzález, SA and RENFE

4.2.1997	677	Alfonso Barcalá and Trillo-Figueroa	María Angustias and Victoriana P. v. RENFE
17.2.1997	1426	José Luis Albácar López	Manuel S. and Teresa T. v. RENFE
24.4.1997	3399	Alfonso Barcalá and Trillo-Figueroa	Cristina V. v. RENFE
6.5.1997	3866	Jesús Marina Martínez-Pardo	Sigfredo P. v. Jesús María T. and RENFE
19.5.1997	3886	Alfonso Villagómez Rodil	Ramón N. and Pilar H. v. RENFE
7.7.1997	5508	José Almagro Nosete	Manuel Ángel and José Luis S. v. RENFE
24.7.1997	5766	Xavier O'Callaghan Muñoz	Mariana F. v. RENFE
20.9.1997	6608	Luis Martínez-Calcerrada and Gómez	Widow of Clemente L.G. v. RENFE
22.9.1997	6821	Román García Varela	Eladia P., Teresa, M ^a Angeles and Luisa M ^a V.P v. RENFE
26.9.1997	6708	Alfonso Barcalá and Trillo-Figueroa	María Lourdes Q. v. RENFE
5.11.1997	7884	Xavier O'Callaghan Muñoz	José Q.M. and M ^a Carmen C.G. v. FEVE
25.11.1997	8427	Román García Varela	Juan José Z. and Laura B. v. RENFE
31.12.1997	9195	Francisco Morales Morales	Ángel C.N. and Francisca N.C. v. Ayuntamiento of Manzanares, RENFE and Herminio J.J. (train driver)
3.4.1998	1873	Xavier O'Callaghan Muñoz	Joaquín C. v. RENFE
23.4.1998	2600	Alfonso Barcalá and Trillo-Figueroa	Amalia G. v. RENFE
23.6.1998	5070	José Luis Albácar López	Agueda L. and Francisca M ^a of Pilar P.F. v. RENFE
14.9.1998	6741	José Almagro Nosete	M ^a Teresa S.M. v. City Council of San Sebastián and the person responsible for the conservation and maintenance of the level crossing of the stop at Ategorrieta
7.10.1998	7388	Xavier O'Callaghan Muñoz	Carmen and Teresa G.D. v. RENFE