

(1983) 09 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 68 of 1977

Bimla Devi and Others

APPELLANT

Vs

Pepsu Road Transport Corporation and Others

RESPONDENT

Date of Decision : 02-09-1983

Acts Referred:

Citation : (1983) 09 P&H CK 0024

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant;

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—Does the breaking of the main leaf of the bus causing it to get out of control and hit into a tree constitute an "inevitable accident" or is it called an "act of God" rendering the driver and owners thereof immune from liability for injuries caused to persons travelling therein ? Herein lies the controversy raised in this appeal.

2. On September 9, 1973 the Pepsu Road Transport Corporation bus PUP-2956, when it reached near village Jagatpura, about 7 miles from Phatwara, on its way to Hoshiarpur, suddenly went out of control and hit into a tree on the other side of the road. This accident resulted in injuries to some persons travelling in the bus, one of whom was Surinder Nath who succumbed to his injuries a few minutes thereafter.

3. A claim for compensation was put in by Mrs. Bimla Devi, the widow of Surinder Nath, deceased and their children. This was negatived on the ground that the bus driver could not be blamed for the accident as it had occurred due to the main leaf of the bus on the right side breaking, which it was said was a latent defect.

4. The claimants had examined a number of witnesses including some who

claimed that they were travelling in the bus when the accident took place, with a view to establish that the bus was being driven at a very fast speed despite the protests of the passengers and the accident had thus occurred due to the rash and negligent driving of the bus driver. The bus driver RW2 Hari Singh as also the conductor thereof RW 1 Mohinder Singh, on the other hand, deposed that the bus was being driven at a slow speed, that is, at a speed of 35 to 40 kilometers per hour and the accident occurred because of the breaking of the main leaf. They both deposed that the bus had been checked at the workshop at Ludhiana before it set off on its journey. As regards the breaking of the main leaf of the bus, this was also, accepted by most of the witnesses, who appeared for the claimants. It is indeed the common case of the parties that the accident occurred because the main leaf of the bus broke. The question, however, arises, does this absolve the driver from the blame.

5. The law is well settled that every mechanical defect or failure which causes or results in an accident cannot be attributed to an "act of God" or be termed as "inevitable accident". The law infact, is otherwise. Whenever, such a defence is raised it has to be established as a fact that despite reasonable care, the defect could not be detected.

6. In a happening like the present, where the bus suddenly goes on the wrong side of the road and hits into a tree, it attracts the maxim *res ipsa loquitur*. The position relating to this maxim has been well summed up in Halsbury's Laws of England, Halisham 2nd Edn., Vol. 23 at pages 671 and 672 as under:

An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the Plaintiff, occurs, wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the Defendant's negligence or where the event charged as negligence "tells its own story" of negligence on the part of the Defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the Defendant, which, if he is to succeed in the defence must be overcome by contrary evidence, the burden on the Defendant being to show how the act complained of could reasonably happen without negligence on his part. Where therefore, there is a duty on the Defendant to exercise care and circumstances in which the injury complained of happened are such that with the exercise of the requisite care, no risk would in the ordinary course of events ensue, the burden is, in the first instance, on the Defendant to disprove his liability. In such a case, if the injurious agency itself and the surrounding circumstances are all entirely within the Defendant's control, the inference is that the Defendant is liable and this inference is strengthened if the injurious agency is inanimate.

7. The defence of latent defect was raised before Tek Chand, J. in *Parmeshwari Das v. Soman Devi* 1958 A.C.J. 63 (Punjab), which provided the occasion to consider the relevant law in such cases. This was a case where the tierod of a

station wagon became loose causing it to go into a khud. It was observed:

There is imposed upon the owner of a vehicle the duty to take such steps as a prudent owner would take to keep his vehicle in proper state of repair. If he fails to take such care and allows the vehicle to become defective as when the steering of a motor car becomes so worn that the driver cannot control the car, that will be evidence of negligence on his part.

Further, it was observed:

The burden of proving inevitable accident is upon the Defendants. They must either show what was the cause of the accident and as a result of that cause, the accident was inevitable. They may even show all the possible causes one or the other of which produced the effect and must further prove with regard to every one of these possible causes that the result could not have been avoided.

8. In dealing with this aspect of the matter, it was stated that the Defendants need not ensure that the vehicle, in which the deceased was travelling, was in all respects perfect for its purpose and was free from all defects likely to cause peril, but a high degree of duty is owed by a carrier to the passenger. If, however, the defect was of such a character that no skill, care or foresight could have detected its existence, the Defendants would be free from blame.

9. Next to note is the judgment of the Division Bench of the High Court of Madras in *Lakshmiammal and Others Vs. State of Tamil Nadu*, . Here the bus ran off its track, jumped over the pedestrian pavement and hit into a cyclist. A sudden failure of brakes due to oil leakage at the front left wheel cylinder was attributed as the cause of this accident. It was held that the maxim *res ipsa loquitur* applied in such a case and further that the sudden failure of the brakes was by itself not sufficient to hold that the accident was not due to negligence. In cases where latent defect was pleaded as a defence, it had to be shown that such latent defect was not discoverable in spite of reasonable care. In this behalf the observations of Lord Donovan reproduced hereunder in *Henderson v. Henry E. Jenkins and Sons* 1970 A.C.J. 198 (H.L., England) were quoted with approval:

The plea of "latent defect" made by the Respondent had to be made good by them, it was for them to show that they had taken all reasonable care and that despite this, the defect remained hidden.

10. The question now arises what is required to be proved in order to establish a defence of "inevitable accident" "act of God" or "latent defect" which in fact, all mean the same thing. It would be pertinent here to advert to *Mariyam Jusab and Others Vs. Hematlal Ratilal and Others*, , where in dealing with this matter, it was laid down that when mechanical failure is pleaded as a defence the onus is on the driver and the owner to satisfy the conscience of the Court that such mechanical failure had resulted despite due care and caution on their part which they exercised from time to time to keep the vehicle in a road worthy condition. In other words, it must be proved by evidence what care was taken of the

vehicle to make it roadworthy, how old the vehicle was, how much mileage it had covered and at what intervals it was checked and what was the last occasion it was found fit and proper and by whom. It was further observed that the bare uncorroborated testimony of the driver in this behalf cannot suffice. It would be pertinent to note here that this was a case of the accident occurring due to the breaking of the main spring of a tanker.

11. The law, thus, being as set out above, reference to the evidence on record cannot but lead to the conclusion that it falls far short, of establishing any such defence of latent defect or "inevitable accident" as could absolve the owners and driver of the bus from liability. The only evidence in this behalf being that of the conductor and driver of the bus to the effect that the bus had been checked at the workshop at Ludhiana before they started the journey. There is no further information or evidence with regard to this aspect of the matter. It is not even on record, who had checked the bus, what that person had checked, how old vehicle was and at what intervals it was being checked and for what purpose.

12. In the situation as emerges in the present case, it cannot, but, be held that the accident here was caused entirely due to the negligence of the bus driver and its owners. The finding of the Tribunal to the contrary is consequently hereby set aside.

13. The next question to be considered is with regard to the amount payable to the claimants as compensation. In this behalf, it would be relevant to note that Surinder Nath, deceased, was 59 years of age at the time of his death. He had recently retired as an octroi clerk and it is stated that he was now running a general merchant shop. It is significant to note, however, that even his widow Bimla Devi could not say where his shop was. It would mean, therefore, that if at all he was doing this business of general merchant, it was not from any fixed premises. Be that it may, however, the fact remains that the deceased died leaving behind his widow, Bimla Devi, aged 46 years and five unmarried children, whom the deceased alone was supporting. There is no suggestion that the deceased had any other source of livelihood or for that matter any of the claimants other than one son who was employed on a temporary basis as a chowkidar in the District Courts. In this state of evidence, it is no doubt difficult to estimate with precision the financial loss that the claimants must have suffered on account of the death of the deceased, but in the circumstances, it would be reasonable to assume that in his business, the deceased was earning about Rs. 300/- per month. Keeping in view the principles regarding computation of compensation as laid down by the Full Bench of this Court in *Lachman Singh v. Gurmit Kaur* 1979 A.C.J. 170 (P. and H.), 10 would clearly be the appropriate multiplier in this case. Taking the loss to the claimants to be at the rate of Rs. 200/- per month they must be held entitled to and are accordingly hereby awarded a sum of Rs. 24,000/- as compensation for the loss suffered by them on account of the death of the deceased. They shall in addition be entitled to 12 per cent interest thereon from the date of the application to the date of the payment

of the amount awarded. The entire amount awarded along with interest shall be payable to the widow Bimla Devi for herself and for also by her for the maintenance and up-keep of her children.

14. This appeal is consequently accepted with costs. Counsel's fee Rs. 500/-.