

(1955) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : First Appeal No. 51 of 1952

Gwalior and Northern India Transport Co. Ltd. and another	APPELLANT
Vs	
Dinkar Durga Shankar Joshi and another	RESPONDENT

Date of Decision : 11-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 82

Citation : AIR 1955 MP 214

Hon'ble Judges : Shinde, C.J.;Dixit, J

Bench : Division Bench

Advocate : P.R. Sharma, Govt. for the State of M.B. and S.D. Sanghi, for the Appellant; A.A. Peerbhoy, S.R. Joshi, R.R. Joshi and S.B. Joshi for Dinkar Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—This appeal is from a judgment of the District Judge, Indore, by which he found the appellants and the respondent Brij Gopai liable for negligence in causing injuries to the plaintiff-respondent Dinkar Joshi, and awarded to the plaintiff Rs. 37.500/- as damages besides costs and interest.

2. The case of the plaintiff Dinkar Joshi was that appellant Gwalior and Northern India Transport Company Ltd., was a transport company and was at the material time running an omnibus service from Mhow to Indore. On the morning of 12-7-1946 at about 11-30 A. M. an omnibus belonging to the company left Mhow for Indore with full load of passengers, twenty-six in number, of whom the plaintiff was one.

It was driven by the respondent Brij Gopal. After it had travelled about two miles, the bus stopped running due to some engine trouble. It was, however, set right in about twenty minutes and put in motion again. It then proceeded and covered a distance of two miles and again came to a stop on account of further engine trouble. This was also put right and it restarted after being pushed.

After it had thus travelled about twelve miles from Mhow and when it came on to a bridge across the Garbari river, the bus swerved to the right, tore down some iron railings of the bridge, fell over the bridge and rested on the bed of a river eighteen to twenty feet below. In consequence of this accident the plaintiff was seriously injured.

The plaintiff stated that his cervical and first lumbar vertebra were fractured; that he had a lump over his shoulder and was disabled; that on account of these injuries he suffered extreme pain and inconvenience for over six months and that during all this period he could not stand sit, sleep or take his food properly, and that his endurance for work had been lowered, his earning capacity diminished and the expectation of life shortened.

As to the circumstances in which the accident occurred the plaintiff's allegation in para 3 of the plaint is:

At a place about three miles distant from Indore there is a bridge which crosses the Garbari river. At some distance before the bridge is reached, there is a wooden sign-post which, bears upon it the words "Speed not to exceed 10 miles per hour" and on the parapet wall of the bridge itself there is a stone slab affixed which states "Speed 5 miles per hour".

The bridge is curved. Notwithstanding the warnings, the driver proceeded over the bridge at a speed of about 25 to 30 miles per hour. After having proceeded a certain distance on the bridge, the bus swerved to the right, crashed through the iron railings of the bridge and fell down into the bed of the river about 18 to 20 feet below.

He also averred in para 8 of the plaint that:

The plaintiff submits that the injuries sustained by him were due to the negligence of the defendants. The 1st defendant failed to provide safe, strong, sufficient and roadworthy vehicle suitable for safe transportation of passengers from Mhow to Indore; the said 1st defendant also failed to subject the said vehicle to periodical examination and to ascertain defects from time to time and to remove them; the said 1st defendant also failed to provide careful, cautious and skilled driver with ability, experience and forethought who was well-acquainted with the road he undertook to drive.

The driver did not drive the bus with care, caution and skill and did not use ability, experience and forethought in driving or otherwise managing the bus. The driver was also guilty of negligence in disobeying traffic regulations and failing to slow down at the approach of the bridge as required by the sign-post and the stone tablet referred to above.

The plaintiff says that the driver drove the bus rashly, recklessly and negligently at a fast and furious speed at the bend of the bridge and on the bridge itself without maintaining a proper lookout. The driver also acted negligently, in failing to observe all the rules and regulations of the Indore Motor Vehicles Act (No. III

of 1940) together with its schedules and in failing to pull up in time and in failing to take a proper turn when the bus was in heavy speed.

The driver was also negligent in failing to apply the brakes and bring the bus to a standstill, when it began to swerve to the right and go out of control.

3. On these allegations the plaintiff claimed damages against the Gwalior Northern India Transport Company Ltd., and Brij Gopal. He also made the Gwalior and Central India Transport Company, a state concern of the former Gwalior State, a party to the suit and claimed damages from the concern alleging that according to a letter dated 10-2-1847 addressed by the G. C. I. T. to him the G. C. I. T. claimed to be the owner of the bus in question, and that there was some doubt as to whether the Gwalior Northern India Company Ltd., or the Gwalior and Central India Transport Services were the owners of the bus at the time of the accident. The plaintiff claimed under various heads a total amount of Rs. 95,500/- as damages.

4. The Gwalior Northern India Transport Company Ltd., did not file any written statement and the case proceeded ex parte against the company. The Gwalior and Central India Transport Services and Brij Gopal contested the suit on identical grounds. They admitted the accident, as also the fact that the plaintiff received some injuries in the accident.

They, however, denied that the plaintiff's injuries were serious, and put the plaintiff to strict proof of the injuries alleged to have been received by him. They denied that the accident, was caused on account of their negligence or want of care and sought to explain the accident by the following pleading:

The said bus was properly maintained and looked after and was in an absolutely road-worthy condition at all material times. The third defendant drove the said bus at all times on the proper side of the road and with due care, caution and control and with a proper and adequate lookout and with a proper and adequate consideration for the configuration and layout of the road.

The third defendant drove at a cautious, proper and moderate speed which was duly lowered in conformity with road regulations and as required from time to time by the conditions of the road. When he approached the said bridge, the third defendant, who was not going fast at any time, reduced the speed still further.

As the said bus was being driven over the bridge there was a sudden and totally unexpected breakage in the steering gear with the result that the bus immediately swerved to the right and crashed over the railings or parapet wall of the said bridge. The third defendant, in the circumstances, could do nothing at all to prevent the said accident. This defendant submits that in the circumstances this was a purely inevitable accident for which nobody could be responsible or to blame.

5. The defendants further pleaded that in the event of the Court holding that the

steering gear broke on account of some defect or fault therein, then the said defect or fault was a latent one, which could not be detected or anticipated by them in the ordinary course. The defendants also disputed the amount of damages claimed by the plaintiff.

6. The learned District Judge has decreed the plaintiff's claim to the extent of Rs. 37,500/- holding that this was a case of *res ipsa loquitur*; that it was, therefore, for the defendants to give an adequate explanation of the cause of the accident and to rebut the presumption by showing that the accident may have happened without any negligence on their part; that the defendants had not discharged the onus.

The learned District Judge rejected the theory of the breaking of the steering gear as the cause of the accident, and accepted the plaintiff's version that the omnibus met with an accident, owing to the excessive speed at which it was driven over the road and with which it approached the bridge itself. It is against this decree that the Gwalior Northern India Transport Company Ltd., and the State of Madhya Bharat, as the successor-in-interest of the Gwalior and Central India Transport Services, a concern of the former Gwalior State, have filed this appeal disputing their liability, as also the amount awarded as damages, as being excessive.

The plaintiff has also filed cross-objections on the insufficiency of the damages awarded. He claims an additional amount of Rs. 55,000/- as general damages.

7. Mr. Sharma, learned counsel for the State of Madhya Bharat, first contended that this was a case where the principle of *res ipsa loquitur* did not apply, as the plaintiff himself had assigned the cause of accident; that the plaintiff should have, therefore, affirmatively proved that the accident was due to the negligence of the appellants and of their employee the respondent Brij Gopal; that the plaintiff could not succeed merely because the defendants had failed to explain the accident that even if the doctrine applied, the onus that lay on the defendants was not an onus of disproving negligence but that it was sufficient for them to give a reasonable explanation of the way in which the accident may have happened, without any negligence on their part; this they had done by showing that the steering gear broke and thereby the vehicle swerved to the right; that this was a pure accident arising from a latent defect; and that it was not due to any want of reasonable care and inspection, examination or otherwise that the defect was not discovered.

This contention makes it necessary for me to examine the meaning and the scope of the doctrine of *res ipsa loquitur*. The expression *res ipsa loquitur* only means that "the thing speaks for itself." When used in connection with cases of negligence, it connotes that the circumstances attendant upon an accident are of themselves sufficient and of such a character as to justify an inference of negligence as the cause of that accident. As was said by Erie C. J., in -- "*Scott v. London Dock Co.*", (1865) 3 H and C 596 (A) :

Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management used proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

8. The doctrine thus depends on the absence of explanation and is merely a rule of evidence affecting onus. It imports that the plaintiff has made out a prima facie case without any direct proof of actionable negligence and this is enough to shift the burden of proof on to the defendant of giving an adequate explanation of the cause of accident, if he desires to protect himself.

Since "Scott's case (A)" there have been several cases where the question of the "explanation" required of defendant has been discussed. It is not necessary to examine those cases. One view is that the principle of *res ipsa loquitur* is a rule creating a legal presumption of negligence, and to displace this presumption the defendant's explanation must exclude negligence and his evidence must disprove negligence.

The case of -- "Woods v. Duncan", (1946) AC 401 (B) is sometimes regarded as an authority for this view. The presumption of negligence theory was also advanced by Asquith L. J., in the Court of Appeal in the case of -- "Barkway v. South Wales Transport Co.", 1948-2 All ER 460 (C). Another view is that the principle is only a rule of evidence in the sense of shifting the onus on to the defendant, leaving the ultimate burden of proving negligence on the plaintiff, and that for discharging his onus it is sufficient for the defendant to give reasonable explanation falling short of disproof of negligence.

In -- "McGowan v. Scott", (1923) 99 LJ (KB) 357 n (D) Lord Atkin treated the principle as equivalent to a statement that on facts in evidence, the plaintiff has satisfied the burden of proof enough to shift it on to the defendant. When the case of "Barkway v. South Wales Transport Company" went up in appeal to House of Lords, 1950-1 All ER 392 (E) Lord Normand said that

the maxim is no more than a rule of evidence affecting onus. It is based on commonsense, and its purpose is to enable justice to be done when the facts bearing on causation and the care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant.

Lord Radcliff regarded the maxim as nothing more than a rule of evidence

of which the essence is that an event which in the ordinary course of things is more likely than not to have been caused by negligence is by itself evidence of negligence.

He also made the observation that

the true question is not whether the appellant adduced some evidence of

negligence but whether on all the evidence she proved that the respondents had been guilty of negligence in a relevant particular.

On the whole, it seems to me that the balance of authority is in favour of the view that the maxim *res ipsa loquitur* when applied to an action for negligence is merely a rule of evidence affecting onus. It does not alter the general rule that the burden of proof of the alleged negligence rests upon the plaintiff. It means that the *res* or the facts and circumstances of the accident proved by the plaintiff are by themselves, without any direct proof of negligence, sufficient *prima facie* evidence from which an inference of negligence may reasonably be drawn.

The inference may be rebutted by the defendant by proving some specific cause of the accident for which he was not responsible or by proving that he was, in fact, not negligent, or by giving a reasonable explanation and proving it, that the happening of the accident was as consistent with the absence of negligence as it was with the presence of negligence. When the defendant has done this, the burden is shifted back to the plaintiff.

If the defendant fails to give any such evidence, the plaintiff succeeds not because the burden of disproof of negligence is on the defendant, but because by reason of the *res* or the facts and circumstances of the accident proved, he has discharged the onus of establishing his case of negligence. From what has been stated above, it is clear that there is no room for the operation of the doctrine of *res ipsa loquitur* when all the facts are known and the cause of the accident has been ascertained. As was said by Lord Porter in 1950 All ER 392 at p. 393 (E)

if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established negligence is to be inferred or not.

But in my view, it is not correct to say that the principle of *res ipsa loquitur* ceases to apply if the plaintiff assigns a possible cause of the accident and tenders evidence which does not completely explain the accident. If the mere fact of the occurrence is *prima facie* evidence of negligence, and *res ipsa loquitur* is only a rule for inferring negligence from the *res* or circumstances of the accident proved, then it is easy to see that the effect of the plaintiff's assigning a cause for the accident and leading some evidence to explain it can only be to strengthen or weaken the inference of *prima facie* negligence resulting from the fact of the accident itself.

In such a case, it is the weight and the cogency of the evidence as a whole that will determine the inference of negligence. It is difficult to see how the cogency of the fact of the accident by itself would disappear by the mere fact of the plaintiff assigning a cause for the accident and by offering evidence that may or may not completely explain the accident.

That cogency can disappear or be (sic) or weakened only on an evaluation of the evidence tendered by the plaintiff. But this is quite different from saying that *res*

ipsa loquitur is excluded when the plaintiff assigns a cause and offers evidence.

9. This being the legal position, the question to be considered is whether on the evidence taken as a whole, negligence on the part of the defendants can or cannot be deduced. It is common ground that when the bus came on to the bridge it swerved to the right, broke through the iron railings and fell over the bridge. The plaintiff maintained that the bus was negligently driven at an excessive speed at the material time and that the excessive speed caused the accident in one or both of two ways, first by making it difficult for the driver to negotiate the curve just before reaching the bridge, and, secondly, by disabling the driver from controlling the bus and bringing it to a stop before it went over the bridge.

The plaintiff also relied on the fact that there was negligence in the maintenance of the mechanical efficiency of the bus. The defendants suggested that the bus swerved because the steering gear broke. The point for determination, therefore is the cause of the vehicle's change of direction. Now, on the evidence on record, it is amply established that the bridge where the bus met with the accident has a sigmoid curve; that at some distance from the bridge, there was a wooden sign-post prescribing safe speed limit as ten miles an hour and on the parapet wall of the bridge itself there was a stone slab indicating safe limit as five miles an hour; that the bridge is 26 feet wide, the road surface itself being of 18 feet width; that the distance between the curve before the bridge reached and the spot where the bus knocked down a pillar of the bridge and tore down the railings was 175 feet; that there were tyre marks on the bridge for 13 feet 9 inches from the place where the bus started to swerve to the place from where it fell down, a distance of 15 feet 4 inches; and that after leaving Mhow and before the accident the bus had to stop twice on account of some engine trouble.

As to the speed at the moment when the accident took place, the plaintiff Dinkar Joshi deposed that when the bus started after the second break-down, it proceeded at a speed of 25 to 50 miles per hour; that when it approached the bridge the driver did not slow down and after travelling a distance of 25 to 30 paces over the bridge, it suddenly swerved to the right and broke through the railings and fell down the bridge.

Asaram P. W. 9 who was a passenger in the bus estimated the speed at 20 to 25 miles per hour and said it was possibly more. Mohasanali P. W. 8 another passenger put down the speed at 40 to 45 miles per hour. This witness had in the prosecution of the defendant Brij Gopal for negligent driving, previously made a statement to the same effect. The defendants' witnesses Sitaram D. W. 1 and Shankar D. W. 2 also stated that after leaving Rau the bus gained a speed of 25 to 30 miles per hour but they said that the speed was lowered to 10 to 15 miles when the bus approached the bridge.

Sitaram also made a very significant statement that at the place, where the bus turned for the bridge and which was at a distance of 150 to 152 paces from the

bridge itself, the driver Lethe respondent Brij Gopal, became nervous and before the bus fell down he turned the steering wheel "this side and that side."

It is noteworthy that Sitaram did not say that when the driver turned the steering wheel, the wheels of the bus did not answer. The driver who could best explain the accident, did not enter the witness box. The appellant G. C. I. T., who contested the suit also made no efforts to tender him in evidence. There is no evidence to support the belief of the defendants that a break in the steering gear was the cause of the swerving of the vehicle.

Laxman D. W. 3, who did not impress the trial Judge as an experienced and competent mechanic said that he had examined the bus soon after the accident and had noted down in his note book the result of his examination. The witness did not produce this note book. He simply spoke of "names", by which according to him, the various parts of the vehicle, produced in the Court were known and said that the steering gear was broken.

He first said that fast speed or breaking through the railings or even falling over the bridge could not cause the fracture of the steering gear. On being questioned by the Court he said that the steering gear could break after impact with a ditch in the road or on account of a fall from the bridge. It must be noted that no witness has spoken that a wheel of the vehicle met an obstruction or ran over any ditch.

The evidence of Mr. Mukerjea D. W. 3 does not carry the matter any further. The witness was the manager of the G. C. I. T. services at Indore. He admitted that he did not go to the scene of the occurrence and examine the bus. He did not ascertain the cause of the accident. He deposed to the details of the inspection and examination, which ought to be made before a vehicle starts on a journey.

According to him the parts of the steering gear and "spindle", which were shown to him in the Court, were well-lubricated and that they did not break because of any lack of care in the maintenance of the vehicle. The witness did not say anything as to whether the steering gear broke before or after the bus fell down the bridge. He did not even say whether the steering gear and "arm" were capable of being fractured by metal fatigue and that the fracture in the metal was consistent with metal fatigue.

He estimated the distance in which a vehicle travelling at five miles per hour could be pulled up at 5 feet and said that generally this distance is 1 foot for a speed of each mile. The defendants led no evidence whatsoever as to the periodical checking and examination of their buses and to prove that before the accident the bus in question was inspected and found or put in good order by mechanical experts and that all the nuts, bolts and clamps were securely fastened and screwed up.

10. Such being the state of evidence, I do not think it can be maintained with any degree of force that it weakens or displaces the inference of negligence

arising from the res or the facts and circumstances of the accident itself. Indeed the evidence led by the plaintiff far from negating or qualifying the inference, strengthens it. No doubt on the evidence on record the speed of the bus at the material time can be no more than a rough estimate ranging from 25 to 30 miles per hour.

But this much is clear that the bus was driven at such a speed exceeding the safe limit of ten miles per hour before reaching the bridge and five miles per hour on the bridge itself, that while taking the curve for approaching the bridge the driver Brij Gopal became nervous, lost control over the vehicle at the curve and when it came on to the bridge, and could not bring it to a stop within a distance of 13 feet 9 inches before it fell down the bridge.

If the bus had been travelling with a speed of five miles or ten miles per hour then according to the defendants' witness Mukherjea, it should have been possible for the driver to pull up the bus within a distance of 10 feet. There is not a particle of evidence tending to support the suggestion of the defendants that what caused the vehicle to swerve was a break in the steering gear.

The fact that the steering gear was found broken after the accident by itself proves nothing. It may have broken before or after the vehicle fell down the bridge. If the steering gear broke before the accident and caused the vehicle to swerve, the reason for its fracture would still need explaining. If there were no explanation, the mere fact that the steering gear broke and caused the accident would constitute sufficient evidence of negligence.

Such things do not commonly happen in the absence of some fault. There is no evidence that the steering gear broke through an innate or a developing weakness or metal fatigue or due to some sudden jolt. If the steering gear was broken and caused the vehicle to swerve, the respondent Brij Gopal who was driving the vehicle would have become aware of it instantly; he would have found the wheels just twisting round and also found the wheels not responding on the application of the brakes.

Brij Gopal alone could have deposed to these facts, explained how the steering gear broke and said that before the accident the vehicle was inspected, and that there was nothing to indicate that there was anything wrong with the steering or the wheel and that the breaking of the steering gear could not have been foreseen by the exercise of proper care and caution, and that from the time when the bus swerved he did all that he could do to prevent the accident.

The defendants' failure to examine Brij Gopal must, in the circumstances of the case, lead to an inference being drawn against them and is in my opinion, fatal to the defence that the accident was due to the breaking of the steering gear. I think, therefore, that on the evidence adduced in the case and from the facts and circumstances of the accident, it is proved that the bus was negligently driven at an unsafe speed at the material time and this caused the accident.

11. Coming now to the injuries received by the plaintiff the evidence given by him and accepted by the trial Judge is that when the bus fell over the bridge, overturned and rested on its roof on the bed of the revulet, the plaintiff had a concussion of brain and became unconscious. On regaining consciousness he managed to extricate himself from the bus, and when he stood up he felt intense pain in the back and the neck, and felt giddy.

He lay down for some time, and thereafter he was removed along with other injured passengers in another bus to the State hospital in Indore. The plaintiff, however, did not stay in the hospital. He immediately went in a tonga to his home and called Dr. Bhagwat, who was his family doctor. Dr. Bhagwat found that the right cleical bone had been fractured.

The plaintiff, therefore, returned to the hospital, got himself x-rayed and thereafter a plaster was put round his neck and chest by Dr. Khan. All this time he complained of severe pain in the back but the doctors who attended to his injuries on 12-7-1946 thought that the pain was possibly due to the fall in the bus and had shaking. The plaintiff then returned home.

The pain in the back became severe, and when on 16-7-1946 the plaintiff was again x-rayed and a second skiagram taken, it was found that the first lumber vertebra had collapsed. The plaintiff stated that he was advised to remain in bed on his back for six weeks, and that during all this period of six weeks and thereafter he suffered extreme pain and inconvenience, he could not stand, sit, sleep or take his food properly; for many days he had to sleep in a sitting position and that his life became miserable due to restricted diet, fomentation with hot water, hot bricks and massage.

On 17-8-1946 Dr. Rishi took another skiagram of the plaintiff's cleical and found some soft callus had formed there. This evidence of the plaintiff is supported by the statement of Dr. Bhagwat and Dr. Rishi and stands un rebutted. As Dr. Khan had migrated to Pakistan, the plaintiff could not examine him. In 1950 further skiagrams of the injured portion of the body were taken, and the plaintiff got himself examined by Dr. Ohri of Indore, a surgeon of acknowledged skill.

In his evidence Dr. Ohri said that he found a healed fracture of the right cleical which was slightly misunited and which according to him did not cause the plaintiff any disability but only a disfigurement. Dr. Ohri also noticed a healed fracture of first lumber vertebra. He stated that the vertebra had "bridged" with the upper and lower vertebrae causing immobilization of that part of the vertebral column and that this condition known as osteo arthritis could cause constriction and curvature of the spine, and that there was also a possibility of the legs and urinary bladder being paralysed.

According to Dr. Ohri the proper treatment for the injury to the vertebra was "immobilization in piaster jacket after correction with hyper extension" and that if the plaintiff had taken this treatment, there was a likelihood of his being cured

completely; but as it was, the plaintiff had achieved only 80 per cent recovery. Dr. Ohri further made the statement that the injury which the plaintiff sustained could lead to loss of concentration and inability to put in hard work.

Dr. Rishi also agreed with Dr. Ohri but said that as the healing process was complete, there was no likelihood of the plaintiff getting paralysis. Both these doctors were of the definite opinion that the plaintiff was suffering from osteoarthritis because of the collapse of the first lumbar vertebra caused by the accident and that this condition was not the result of any illness or malady contracted by the plaintiff before the accident.

The plaintiff has also stated that for six months he was unable to follow his profession and attend to his business, and since the accident, his health has deteriorated to such an extent that he is not capable of protracted effort; he cannot concentrate on his work as before; that he cannot bathe with cold water; that during the rains and the winter he has to be very careful about exposures, which cause him severe pain in the body and that he is now unable to lead a vigorous and energetic life.

The plaintiff says his power of resistance has been lowered. From this evidence it is plain that as a result of the accident the plaintiff's cleical bone was fractured and the first lumbar vertebra collapsed, and this caused considerable bodily pain, mental anguish and physical discomfort to the plaintiff and greatly impaired his general health. The effect of the evidence of Dr. Rishi and Dr. Ohri is that the state of health to which these injuries had brought the plaintiff was symptomatic of a shortened expectation of life, a reduced capacity for work and loss of prospect of an enjoyable, vigorous and happy old age.

The appellants did not dispute the injury to the cleical bone. It was argued on their behalf that the collapse of the first lumbar vertebra was not noticed on the date of the accident when the plaintiff was first x-rayed; that it was discovered only on 16-7-1946 and that, therefore, it could not be said that this injury was caused by the accident. It was further said that the plaintiff did not take proper treatment for the collapse of the first lumbar vertebra and that he, by his act of sitting up in bed aggravated the injury. This criticism does not impress me.

It is no doubt true that it was four days after the accident, i.e., on 16-7-1946 that the collapse of the first lumbar vertebra was noticed. But then, all along after the accident, the plaintiff complained of severe pain in the back and got himself x-rayed on the day of the accident itself. If on this day the doctors attending him did not take the pain in the back seriously and locate the cause of it by x-ray or otherwise, the plaintiff cannot be blamed for it.

There is nothing to suggest that between 12-7-1946 and 16-7-1946 the plaintiff met with another mishap or that he exerted himself in such a violent way that the first lumbar vertebra collapsed. Indeed the fact that during this period the plaintiff's neck and chest were in plaster and that he was in severe pain makes it altogether improbable, the plaintiff doing any such thing.

With regard to the criticism that the proper treatment of the injury to the first lumbar vertebra was "immobilization in plaster jacket after correction with hyper extension" and that the plaintiff did not take this treatment, we no doubt now know from Dr. Ohri that this was the proper treatment. But this is a long way from convincing me that the doctors who attended to the injury in 1946 had the wisdom and foresight of recommending that treatment to the plaintiff; that, in fact, they did so recommend, but the plaintiff refused to take that treatment.

I think it is a fair assumption to make that the plaintiff would have taken the treatment if he had been so advised. Mr. Sanghi learned counsel for G. N. I. T., referred us to Ex. P. 15 a certificate signed by Dr. Khan, containing the statement that the plaintiff took no treatment for the fractured spine in M. T. Hospital, Indore, as indicating that the plaintiff was asked to take the treatment of plaster jacket.

The certificate throws no light whatsoever on the treatment recommended for the fracture of the spine. It only says that the plaintiff did not take any treatment for that injury in M. T. Hospital. As to what that treatment was Dr. Khan alone could say. In the absence of his evidence, the plaintiff's statement that he was advised to lie in bed on his back for six weeks as a treatment for the injury to the first lumbar vertebra must be accepted.

There is, therefore, no ground for contending that the plaintiff did not act reasonably in not taking plaster jacket treatment and by his own act of sitting up in the bed aggravated the injury to the same. Indeed Dr. Ohri has categorically said that the condition in which he found the plaintiff could not be attributed to his sitting up in the bed.

The question of the injuries received by the plaintiff in the accident and of their consequences has been dealt with fully by the trial Judge and does not lend itself to a long discussion, I think it is sufficient to say that I agree with the finding of the learned District Judge that the plaintiff sustained a fracture of the cleical bone and the collapse of the first lumbar vertebra in the motor accident; that this necessitated his remaining in bed for three months and disabled him from following his profession for six months; that on account of these injuries he suffered considerable pain, discomfort and mental anxiety; and that the injuries have brought about a general deterioration of his health which was perfect before the accident, a shortened expectation of life and a reduced capacity for work.

12. This brings me to the question of quantum of damages awarded to the plaintiff. The trial Judge has allowed the plaintiff Rs. 1500/- for medical treatment. With regard to this item, the appellants have repeated the objections taken in the lower Court. It was said that the plaintiff did not produce any bill or voucher to support his claim for an expenditure of Rs. 1500/- in connection with medical treatment and that the plaintiff did not pay any fees to any doctor, whom he consulted.

The learned District Judge rejected these objections. He observed that "even in the absence of bills, I have no difficulty in accepting the plaintiff's statement that he spent the modest sum of Rs. 1500/-." He further held that the plaintiff was entitled to recover the fees payable to the doctors for medical attendance even though he has not paid them any amount.

For this he relied on the statement of law in para 1018 of Vol. 23. Halsbury's Law of England (Lord Hailsham Edition) and the observation in Charles-Worth's "Negligence" at page 561 (2nd Edition) that

the fact that payment has not actually been made in respect of liabilities incurred under any of the heads of damage is immaterial, as long as the liability is a genuine liability actually incurred.

I am not disposed to take a different view of the matter. It is true that the plaintiff did not produce any bill, receipt or voucher evidencing the amount paid by him for the purchase of medicines. But it cannot be denied that some amount must have been spent by the plaintiff for the medical treatment. Dr. Bhagwat deposed that the plaintiff was asked to take calcium gluconate powder, dedexone tablets and multi-vitamin tablets.

The plaintiff himself stated that besides these medicines he took "Chawanprash" and "Vasantimalti" as tonics and that he had to spend a considerable amount on special diet, servants and conveyance. Dr. Ohri's estimate of the costs of medicines required by the plaintiff was Rs. 50/- per month. As to the doctors' fees, the plaintiff was not aware of any payments made to Dr. Bhagwat and added that the other doctors did not charge him any fees.

Dr. Bhagwat, however, stated that he received from the plaintiff's brother fees at the rate of Rs. 3/- per visit but he did not state the total amount received by him as fees. I do not think the amount of Rs. 1500/- claimed by the plaintiff for six months' medical treatment, including doctors' fees is in any way excessive. The defendants cannot claim a reduction in the amount on the ground that the plaintiff did not pay any fees to any doctor.

After being injured by the defendants' negligence, the plaintiff had to seek medical advice; and by so doing he put himself under a liability to pay for the medical advice obtained by him. The fact that the doctors who treated the plaintiff, on account of their friendship with him or for some other reason, did not claim from him any fees, is a matter, which is completely collateral to damage.

If the plaintiff for reasons peculiar to him get the benefit of free medical advice, the defendants cannot appropriate the benefit to themselves, by saying that by their negligent act they have not inflicted any financial burden on the plaintiff in the shape of doctors' fees. The plaintiff is entitled to recover fees payable to the medical attendants even though he has not paid any because the liability incurred by him in obtaining the medical advice is a genuine liability.

It may be that on realising the amount of compensation, the plaintiff may not

retain the amount of fees for himself and may persuade the doctors who treated him to accept the amount. But it is really not the concern of the wrong-doer what the plaintiff does with the amount of compensation when he receives it. This view is amply supported by the decisions in -- "Liffen v. Watson", 1940-2 All ER 213 (F) and -- "Allen v. Waters and Co.", 1935-1 KB 200 (G).

In the former case the plaintiff, a domestic servant before the accident, had been paid by her employer a weekly wage of 1?, and furnished with board and lodging free. After the accident had precluded her from remaining in service, she went to live with her father, to whom she paid nothing in respect of board and lodging which he supplied. It was held that she had nonetheless lost, owing to the defendant's tort, the free board and lodging previously supplied by her employer, because she had acquired its equivalent aliunde and she could claim for it without deduction or set-off. It was observed that

what she does with compensation when she gets it is a matter for her and not for anybody else.

In "Allen v. Waters and Co. (G)", the plaintiff incurred liability to a hospital for attendance on his wife. He had not paid the amount. It was held that he could claim the amount of the liability from the negligent defendant although he had not paid the amount and it was unlikely that the hospital would enforce payment from him.

I think the learned District Judge was right in accepting the plaintiff's statement that he had spent Rs. 1500/- in connection with medical treatment, and in awarding special damages for the amount.

13. The plaintiff has also been awarded Rs. 6000/- as compensation for loss of income during the period of his six months illness. The trial Judge has assessed the amount at the rate of Rs. 1000/- per month. It was urged on behalf of the appellants, and I think with some justification, that the evidence as regards the plaintiff's earnings is not satisfactory. The plaintiff stated that he was an Advocate of the Bombay High Court and was also managing two joint family businesses, one at Bombay in the name and style of "Surajmal Master" and the other at Indore in the name of "Vishwanath Balkishna".

He added that his income from the legal profession was Rs. 500/- to 700/- per month and that he used to earn an equal amount from the joint family businesses. The trial Judge himself has said that the plaintiff did not produce his "passbooks" and accounts to prove the income earned by him as a lawyer; that he did not produce the accounts of the Surajmal Master; that the accounts of the firm of Vishwanath Balkishna, though produced by him in Court, were not tendered in evidence and that no attempt was made by the plaintiff to prove the average income of the joint family businesses.

The trial Judge also felt some difficulty in assessing the value of the plaintiff's work in the joint family businesses. There is no evidence to show that during the

period of the plaintiff's illness the joint family firms did not do any business whatsoever. In my view, in these circumstances the learned District Judge was not justified in holding that there was some loss of income from the joint family businesses, merely because the defendants made no use of the account books of the "Vishwanath Balkishna" produced by the plaintiff in cross-examining the plaintiff.

The trial Judge estimated the plaintiff's income at Rs. 1000/- per month. He did not indicate how much of this income was attributable to the plaintiff's legal profession and how much to the joint family businesses. If the plaintiff's statement that he used to earn Rs. 500/- per month as a lawyer is accepted, as I think it should be, then in the absence of any thing to show loss of earnings from the joint family businesses or the extent of it, the plaintiff can only get Rs. 3000/- as compensation for loss of income as a lawyer for the period of his six months' illness.

I would, therefore, make a reduction of Rs. 3000/- from Rs. 6000/- which the trial Judge allowed as compensation for loss of income.

14. The appellants also disputed, as being excessive, the amount of Rs. 10,000/- awarded by the trial Judge to the plaintiff on the score of pain and suffering and Rs. 20,000/- on the score of loss of enjoyment of life, loss of prospective income and a shortened expectation of life. To my mind, there is nothing to justify us in interfering with the damages allowed under these heads.

The matters that should be taken into account in the assessment of general damages are now well-established. These are (1) pain and suffering endured, past, present and future; (2) inconvenience and loss of enjoyment of life sustained, past, present and future and injury to health; (3) and a shortened expectation of life. It is no doubt difficult to make an exact and precise assessment of damages.

But the damages must give the plaintiff a reasonable compensation for the injuries sustained and the suffering entailed, Bramwell L. J, said in -- "Phillips v. L. & S. W. Rly.", (1879) 49 LJ QB 233 (H), that the proper direction to a Jury in such cases was:

You must give the plaintiff a compensation for his pecuniary loss, you must give him compensation for his pain and bodily suffering; of course it is almost impossible for you to give an injured man what can be strictly called a compensation but you must take a reasonable view of the case, and must consider under all the circumstances, what is a fair amount to be awarded to him.

15. With reference to the shortening of life as a consideration in assessing damages, Lord Wright observed in -- "Rose v. Ford", (1937) AC 826 (I):

I think he has a legal interest entitling him to complain if the integrity of his life is impaired by tortious acts not only in regard to pain, suffering and disability, but in regard to the continuance of life for its normal expectancy. A man has a

legal right that his life should not be shortened by the tortious act of another. The normal expectancy of life is a thing of temporal value, so that its impairment is something for which damages should be given.

16. The authorities also make it clear that in the assessment of damages it must be borne in mind that the plaintiff can sue for compensation only once; he can never sue again for it. He must, therefore, be awarded a full and fair compensation for that which he has suffered and that he may suffer in future. The learned trial Judge has referred to some cases to illustrate as to what is a fair and reasonable compensation.

Mr. Peerbhoy, learned counsel for the plaintiff-respondent also cited before us several cases on the question of assessment of damages. The quantum of damages to which a plaintiff is entitled depends on the facts and circumstances of each case. The cases cited, on behalf of the plaintiff are, therefore, distinguishable on facts. But it would be pertinent to point out that as far back as 1913, when the value of the rupee was high, a Division Bench of the Bombay High Court in -- Sorabji Hormusji Batlivala Vs. Jamshedji Merwanji Wadia, awarded to a plaintiff Rs. 30,000/- as general damages for injuries, consisting of fractures of the shin bone of the left leg, of the hip socket and of the pelvis and dislocation of the left thigh bone, received in a motor accident.

The plaintiff in that case was under treatment for over three months and was declared to be a cripple for life. He like the plaintiff in the present case belonged to "the upper middle class". Since 1913 the value of the rupee has considerably depreciated, and I do not think that Rs. 30,000/- awarded as general damages to the plaintiff-respondent is excessive or insufficient for the pain and suffering undergone by him, for the general impairment of his health, and for the resulting shortening of the expectation of life and a reduced capacity for work.

The appellants have not been able to show that in the assessment of general damages the learned District Judge acted on some wrong principle of law or that the amount awarded is so extremely large as to make it an entirely erroneous estimate of damage. There is also no reason to think that the amount awarded is wholly inadequate. There does not, therefore, appear to me any ground for disturbing the decision of the trial Judge on the question of the amount of general damages.

17. Mr. Sanghi learned counsel for the appellant G. N. I. T., further argued that, as before the accident the G. N. I. T. Company had transferred its interest to the G. C. I. T. Services and as on the material date the Gwalior Central India Transport Services, a concern of the Gwalior State, was the owner of the bus and as Brij Gopal was an employee of the G. C. I. T., services, and as the G. C. I. T., services had accepted liability for the accident, the G. N. I. T. Company could not be held responsible for the negligence of Brij Gopal.

I am unable to accede to this contention. The mere fact that the G. N. I. T., services have accepted liability for the accident cannot clearly relieve the G. N. I.

T. of any responsibility for the accident, when there is no evidence whatsoever of the fact that on the material date the G. N. I. T., had ceased to be the owner of the bus in Question. On the other hand the evidence of the plaintiff's witness Awadhuta shows that on the material date the bus stood in the name of the G. N. I. T., in the records of the Transport Authority for Central India and that till that date no steps had been taken by the G. N. I. T., for the transfer of the registration in favour of G. C. I. T., services.

The insurance certificate Ex. P. 97 in respect of the bus the issue of tickets in the name of G. N. X. T. and the fact that the bus was carried in the name of G. N. I. T., also point to the conclusion that on the date of the accident, G. N. I. T., was the owner of the bus. The defendants did not produce any evidence in rebuttal. Learned counsel urged that in order to hold G. N. I. T. responsible in damages for the negligence of Brij Gopal, it was necessary for the plaintiff to prove that Brij Gopal was an employee of the G. N. T. T.. and that the plaintiff led no evidence on the point.

As to this, it is sufficient to say that the fact that G. N. I. T. was the owner of the bus on the material date and that it was being driven by Brij Gopal is itself evidence of the fact that on that date Brij Gopal was their servant or agent. In Charlesworth "Negligence" it has been stated at page 65 that

the fact that the defendant is the owner of the motor car in question is evidence that it was being driven by him or his servant or agent at the material time. Such evidence, of course is not conclusive but may be rebutted by proving who was actually driving at the time.

The statement is based on the authority of -- Barnard v. Sully", (1931) 47 TLR 557 (K). The G. N. I. T.'s ownership of the bus as evidence of Brij Gopal being their servant or agent when he was driving the bus, has not been rebutted in the present case. That being so, the appellant G. N. I. T., must answer for the negligence of Brij Gopal.

18. In regard to the plaintiff's cross-objections for enhancement of the general damages to Rs. 75,000/-. I think they must be dismissed. I have already pointed out that the general damages awarded by the trial Judge are adequate. It was urged by the learned counsel for the plaintiff that exemplary damages should have been awarded. The plaintiff did not claim in the lower Court any exemplary damages and it was not his case that the bus met with an accident due to "wilful negligence" of the defendants.

It was then said that the plaintiff should have been awarded compensatory costs. No such claim was made in the trial Court and none can be entertained here for the simple reason that the plaintiff has not claimed them in his cross-objections, nor paid the necessary Court-fees for the amount claimed.

19. Before concluding I must deal with the objection taken by the State of Madhya Bharat to an amendment made by the trial Judge in the decree. This

forms the subject matter of Civil Revision No. 324 of 1953 which was heard along with this appeal. It appears that after the appeal and the cross-objections had been filed in this Court, the plaintiff applied to the lower Court that the decree be so amended as to specify a time-limit within which it should be satisfied by the State of Madhya Bharat.

The appellant State objected to the amendment inter alia on the ground that the plaintiff's suit was not against the Government. The objection was overruled by the learned District Judge. He held that the plaintiff's suit as decreed was against the Government, and amended the decree by directing under S. 82, C. P. Code, that it should be satisfied by the State before 30-12-1953.

In the revision filed by the State against this order of amendment it was submitted that the finding of the lower Court that the plaintiff's suit was against the State was wrong. This contention is devoid of any substance. I think it is obvious enough that in proceedings under S. 152, C. P. Code, there can be no question of an adjudication on a fact in issue which has not been determined in the trial itself or of a review of that adjudication if it has been determined.

In proceedings for amendment of a decree the inquiry is confined only to seeing whether the decree correctly expresses what was really decided and intended by the Court. If, therefore, the State of Madhya Bharat was in any way aggrieved by any express or implied finding of the trial Court in the suit that the plaintiff's suit was against the Government, then the State should have objected to that finding in the appeal itself.

No such objection has been taken in the appeal. That finding cannot be challenged in a revision against an order amending the decree on the basis that the plaintiff's suit as tried and decreed was against the Government. There can be no doubt that the plaintiff's suit was against the Government and decreed as such against the G. C. I. T. services, a concern of the former Gwalior State.

The plaintiff averred in para 14 of the plaint that the G. C. I. T. services was a concern of the Gwalior State and that he had obtained the consent of the Government of His Highness the Maharaja Holkar under Ss. 86 and 87, Indore Code of Civil Procedure, for filing the suit against the Gwalior State. The G. C. I. T. services was a concern of the Gwalior State was not disputed in the written statement filed on behalf of the G. C. I. T. services.

On the other hand when during the trial the plaintiff took the objection that the written statement filed on behalf of the G. C. I. T. services had not been signed by the competent person, it was stated by Mr. Markan, General Manager of the G. C. I. T. services, that the Gwalior Government was the owner of the Services and that as a manager of the concern duly appointed by the Gwalior State, he had authority to file a written statement on behalf of the concern.

It was on the footing that the Gwalior Government was the owner of the services that the plaintiff's objection was determined and it was held by the trial Judge

on 12-4-1948 that the summonses served on the G. C. I. T. were according to law and the written statement filed by the manager was good in law. Again, after the formation of Madhya Bharat, the G. C. I. T. services themselves presented an application on 12-9-1949 praying that as G. C. I. T. was a concern of the former Gwalior State and as the interest of the Gwalior State had devolved on the State of Madhya Bharat, the State of Madhya Bharat be brought on record.

The plaintiff was asked to submit his reply to this application. But it appears from the record that the trial Judge did not pass any order on this application. It is plain that in the above circumstances, it is not now open to the appellant State to turn round and contend that the plaintiff's suit was not against the Government. The suit as against G. C. I. T. services was treated by both the parties and the Court as a suit against the Government and was in reality so and decreed as such.

The fact that the trial Judge omitted to pass an order bringing the State of Madhya Bharat on record in no way affects the liability of the State of Madhya Bharat on whom the interest of the G. C. I. T., qua a concern of the former Gwalior State devolved for the decree passed against the G. C. I. T. services. The State of Madhya Bharat is bound by the result of the litigation, and the decree passed is not a nullity against it.

In this connection it is sufficient to refer to the decision in -- "Raicharan Mandal v. Biswanath Mandal", AIR 1915 Cal 103 (L), where Sir Ashutosh Mookerjee has pointed out that even if a person on whom the interest of the plaintiff or the defendant devolves while the suit is pending, does not obtain leave of the Court under O. 22 R. 10 for the continuation of the suit by or against him, he would still be bound by the result of the litigation and by the decree made in the suit.

This decision has not been dissented so far and in my opinion its authority cannot be questioned. Indeed if the decree of the trial Court was not in effect a decree against the State of Madhya Bharat, it is difficult to see how the State of Madhya Bharat is competent to file an appeal challenging that decree. In this view of the matter I am of the opinion that the learned trial Judge rightly came to the conclusion that the plaintiff's suit as against the G. C. I. T. services was one against the Gwalior Government and as such against the Madhya Bharat Government on whom the interest of the Gwalior Government-devolved during the pendency of the suit.

I am constrained to say that I view with great disfavour the unbecoming attempt on the part of the State to rely on technicalities for escaping liability for a claim against a concern owned and managed by the State. In this connection I respectfully endorse the observations of the learned Chief Justice of the Bombay High Court in -- Firm Kaluram Sitaram Vs. The Dominion of India, that

when the State deals with the citizen it should not ordinarily rely on technicalities and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be opened to it, it must act, as has been said by eminent

Judges, as an honest person.

20. The result, therefore, is that the only alteration to be made in the decree is that the damages allowed to the plaintiff on the score of loss of income are to be Rs. 3000/- instead of Rs. 6000/-; in other respects the decree under appeal is affirmed. The plaintiff shall get proportionate costs of this appeal. His cross-objections are dismissed with costs. The revision petition filed by the State is also dismissed with costs. The decree shall be satisfied by the State of Madhya Bharat on or before 30-9-1955.

Shinde C. J. :

21. I agree.