
(2006) 06 SHI CK 0005
In the High Court Of Himachal Pradesh

Kaljang Dorje and Others

APPELLANT

Vs

Dorje Phunchok and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Citation : (2006) 2 ShimLC 334

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This order shall dispose of 15 appeals as they arise out of the same accident and can be disposed of by a single order.

2. Briefly stated, the facts of the case are that on 17.7.2003 accident of vehicle No. HP-02A-3047 took place near Chhota Dhara in District Lahaul and Spiti. The said vehicle rolled into the Chandra River and all the occupants of the vehicle died. Fifteen claim petitions were filed by the persons claiming to be the heirs of the victims, who had died in the accident in question. These petitions have been dismissed by the learned Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr by holding that the claimants have failed to prove that the accident in question occurred due to rash and negligent driving of the driver of the vehicle in question. Aggrieved against the said awards, the present appeals have been filed.

3. I have heard Ms. Ritta Goswami, learned Counsel for the appellant in all the appeals, Mr. B.C. Negi, learned Counsel for respondent No. 1-owner of the vehicle and Mr. K.D. Sood, learned Counsel for the respondent No. 2-Insurance Company. There is no dispute with regard to the fact that the vehicle in question went off the road and fell into the Chandra River. The vehicle as well as persons travel ling in it (the vehicle) were washed away in the strong current of the river. The two witnesses produced in all the cases to prove the factum of negligence are PW-2 Sunil Kumar and PW-3 Dorje Namgial.

4. According to PW-2, he was driving vehicle No. HP-02K-0109 on 17.7.2003 and was going ahead of the ill-fated vehicle. Both the vehicles were coming from Shri

Trilokinathji temple in Lauhal Tehsil and were going towards Kinnaur. This witness states that when they were at some distance from village Chhota Dhara he glanced into the side view mirror of his vehicle and saw vehicle No. HP-02A-3047 falling off the highway into the Chandra River. He stopped his vehicle and went back, but the ill-fated vehicle along with its occupants had been washed away in the strong current of the river. In cross-examination he states that there were 8-10 persons travelling in the ill-fated vehicle and he did not know the cause of accident. He reported the matter to the police at Chhatru, P.P. Koksar. According to him, the vehicles were going uphill and the vehicle could go up only in the first gear. He could not state whether the accident had occurred due to overloading.

5. PW-3, Dorje Namgial was also driving his vehicle from Mandir Triloknathj to Pin Valley. He was behind the ill-fated vehicle. He saw the accident. According to him, there was an incline at the place of accident. The ill-fated vehicle suddenly stopped and thereafter started moving backward and fell into the river. This witness states that one Tashi was driving the ill-Fated vehicle. He knew 10 occupants of the ill-fated vehicle and there were children and adults in the said vehicle. He has denied the suggestion that the accident occurred due to sudden mechanical breakdown. In cross-examination by the Insurance Company he states that the accident had taken place due to overloading of the vehicle and not due to any other cause. This witness was recalled for further examination and cross-examination, which is not relevant to decide the issue of negligence. No evidence was led by the respondents to show how the accident occurred.

6. The learned Tribunal by some very convoluted reasoning has come to the conclusion that the claimants have failed to prove that the accident occurred due to rash and negligent driving of the driver. He has held that the principal of *res ipsa loquitur* is not applicable to the facts of the present case.

7. The maxim of *res ipsa loquitur* is a well established legal principle. The words *res ipsa loquitur* translated into simple English meaning, "the facts speak for themselves. This principle has been applied frequently in Motor Accident Claims cases. The Apex Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, was dealing with a case where the truck went off the main road and struck against a tree 25 feet away with such a velocity that the bark of the tree was peeled off. The Apex Court applying the principle of *res ipsa loquitur* held in para 5 as under:

Apart from the positive evidence, in the present case the accident took place not on the main road, but on the off-side uprooting the stone at the drain and attacking tamarind tree 25 feet away from the said stone with such a velocity that its bark was peeled off and the bus could stop only after travelling some more distance from the said tree. The said facts give rise to presumption that the accident was caused by the negligence of the driver.

8. The Apex Court in *Pushpabai Purshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. and Anr.* 1977 ACJ 343, while explaining the principle of *res ipsa*

loquitur held as follows:

6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but it is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in which the accidents speak for itself so that it is sufficient for the plaintiff to prove the accidents and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence....

9. The Court of Appeal in *Barkway v. South Wales Transport Co. Ltd.* (1948) 2 ALLER 460, was dealing with the case where the bus went off the road on to the pavement and then crashed into some railings. It thereafter fell down an embankment killing some of the passengers. Lord Justice Asquith has pithily-summarized the law with regard to the onus of proof and the application of principle of *res ipsa loquitur* as follows:

The position as to onus of proof in this case seems to me to be fairly summarized in the following short propositions, (i) If the defendants' omnibus leaves the road and falls down an embankment, and this without more is proved, then *res ipsa loquitur*, there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendant can rebut this presumption....

10. Salmond in his treatise on the Law of Torts states that "the maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused".

11. In Halsbury's Laws of English, 3rd Edition Vol. 28, the position is stated in the following terms:

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 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 part of the defendant, the story so told being clear and unambiguous.

12. The principle of *res ipsa loquitur* may be summarized in simple language to mean that the thing or fact speaks for itself. Once the plaintiff proves that the accident occurred when the vehicle was in the exclusive control of the defendant and such an accident was not one which could have happened in the absence of negligence, then a presumption or inference that the defendant was negligent

can be raised. *Res ipsa loquitur* is a rule of evidence whereby the negligence of the alleged wrong-doer can be inferred from the manner in which the accident happened provided the facts proved and the circumstances attending lead to a reasonable belief that in the absence of negligence the accident could not have happened.

13. Applying the aforesaid principle this Court has to decide whether the principle of *res ipsa loquitur* is applicable in the present case or not. A motor vehicle is supposed to remain on the road. It is at that time in the exclusive control of the driver. It is not supposed to go off the road. If it goes off the road, then a presumption can reasonably be drawn that there has been some negligence on the part of the driver. It is then for the respondent (s) i.e., driver and owner to rebut this evidence.

14. In the present case it stands proved that an accident has taken place and the vehicle fell into the river. The vehicle was moving uphill and suddenly stalled and then rolled backward into the river. The question which arises is why did the vehicle stop on the incline then move back and roll into the river? The answer to this question lies in the stand of the owner himself. According to him, the accident occurred as the vehicle was heavily overloaded. Therefore, it could not move up the incline and came to a halt. Things did not end there. The vehicle moved backward and rolled down into the river. It is obvious that the vehicle stalled because it was overloaded and it is further clear that the driver could not apply the brakes within time and the vehicle started moving backward and rolled into the river.

15. From the aforesaid facts it is clear that the principle of *res ipsa loquitur* applies in the present case and presumption could be raised that the accident occurred due to the negligence of the driver. Applying the said principle the onus shifted upon the respondent(s) to prove that the accident did not occur due to the negligence of the driver. They led no evidence on the issue of negligence and therefore drawing an adverse inference against the respondents. It can easily be held that the accident occurred due to the negligence of the driver.

16. Even if the principle of *res ipsa loquitur* is not applied and presumption of negligence is not raised, in my opinion, in the present case there is sufficient material on record to hold that the accident occurred due to the negligence of the driver.

17. Admittedly the accident took place due to overloading. Then also the fault lies squarely upon the driver. He should have insured that his vehicle is not overloaded and should not have carried so many passengers in his vehicle. The rustic villagers and children who were in the vehicle would not have known what is the capacity of the vehicle. The driver of the vehicle was the best person to have known the capacity of the vehicle. Therefore, the act of the driver in overloading the vehicle especially in a mountainous terrain itself amounts to a serious act of negligence. Further when the vehicle stalled due to overloading he

could not apply the brakes and control the backward movement of the vehicle, which also shows that there was negligence on his part while driving the vehicle. Therefore, negligence of the driver is writ large.

18. In view of above discussion, I am of the considered view that the claimants have proved that the accident in question occurred due to the rash and negligent driving of the driver of the vehicle. The impugned awards of the learned Tribunal are accordingly set aside.

19. The learned Tribunal did not give his findings on issue Nos. 2 to 6 framed by him since he held that the accident occurred on account of overloading of the vehicle and not due to rash and negligent driving on the part of the driver. In my opinion, the learned Tribunal did not follow the proper procedure. Order 14 of the CPC lays down that notwithstanding that a case maybe disposed of on a preliminary issue, the Court shall subject to the provisions of Sub-rule (2), pronounce judgment on all issues. Thus, the learned Tribunal was required to give its findings on all the issues even if the petition was being dismissed on one of the issues. In case the learned Tribunal had decided all the issues, then the appeals could have been disposed of on merits by this Court itself. Since, this has not been done by the learned Tribunal, there is no other option but to remand the cases back to the learned Tribunal below for decision on the remaining issues.

20. In view of the aforesaid discussion, all the aforesaid appeals are allowed. The awards of the learned Tribunal in all the cases are set aside and the matters are remanded back to the learned Tribunal to give its findings on the other issues. The learned Tribunal shall restore all the cases to their original numbers. Since no fresh evidence is to be recorded, the learned Tribunal shall endeavour to decide all the cases as early as possible as and in any event not later than 31st December, 2006. The parties through their learned Counsel are directed to appear before the learned Tribunal below on 21.8.2006 at Reckong Peo. The Registry shall ensure that the records reach the learned Tribunal by that date.

21. No costs.