

(1980) 04 KAR CK 0013
In the Karnataka High Court
Case No : M.F.A. No. 939 of 1978

Mangal and Others

APPELLANT

Vs

Snbhadrabai and Another

RESPONDENT

Date of Decision : 11-04-1980

Acts Referred:

Citation : (1981) ACJ 156

Hon'ble Judges : N.R. Kudoor, J;M.S. Patil, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy, for the Appellant; G. Maheswara, for N. Santhosh Hedge, for the Respondent

Final Decision : Dismissed

Judgement

N.R. Kudoor, J.—This appeal by the claimants, arises out of the judgment and award dated 30.3.1978 of the Motor Accidents Claims Tribunal and II Addl. District Judge, Dharwar (hereinafter referred to as the "Claims Tribunal") in M.C. (MVC) 55/1974 dismissing their claim for compensation of Rs. 2 lakhs on account of the death of one Sudhir Vasant Shivalkar (hereinafter referred to as "Sudhir") due to the motor accident that took place on 19.5.1974 at about 11-30 a.m. on the Dharwar-Belgaum Road near a village called Kotur.

2. For the sake of convenience, we shall refer to the parties as "Petitioners" and "Respondents" as they were referred to by the Claims Tribunal.

3. The 1st Petitioner is the wife, the second Petitioner is the son, the third Petitioner is the mother and the fourth Petitioner is the father of Sudhir, the deceased in the case. They claimed a compensation of Rs. 2 lakhs for the death of Sudhir. According to the Petitioners, Sudhir was traveling in his car bearing registration No. MEL 1267 from Dharwar to Belgaum on the date of the accident. One Abhaya Patravali (for short "Patravali") a friend of Sudhir was also in the car. Both of them left Dharwar at about 10-45 a.m. They were proceeding to Belgaum at a quite normal speed keeping the car on the left side of the road. At

about 11-30 a.m. when they reached near Kotur village, a truck bearing registration number MYW 7209 belonging to the 1st Respondent Subhadra Bai and driven by one Fajalu Hasansab Munwalli (for short "Fajalu") came from the opposite direction loaded with sanitary pipes with enormous speed driven in a rash and negligent manner and dashed against the car driven by Sudhir, on the wrong side of the road from the direction in which the truck was coming, causing heavy damage to the car and also serious injuries to Sudhir. After dashing against the car, the truck went forward, dashed against a tamarind tree and then came to a halt. Fajalu, the driver of the truck died instantaneously.... Sudhir, who was seriously injured, was taken to the Civil Hospital at Dharwar by Patravali and then to the K.M.C. Hospital at Hubli on the advice of the doctors of the Civil Hospital, Dharwar, where he succumbed to the injuries at about 10 a.m. on the following day, i.e., 20.5.1974. According to the Petitioners, the accident was entirely due to the rash and negligent driving of the truck by its driver Fajalu. It is further their case that deceased Sudhir was quite a young, able-bodied and brilliant person doing engineering business. He was a partner of M/s. Sudhir Constructions, Belgaum and his annual income ranged from Rs. 30,000/- to Rs. 50,000/-. He was the chief earning member in his family. Thus, they claimed a total sum of Rs. 2 lakhs as compensation.

4. The 1st Respondent-owner resisted the claim inter alia contending that the accident was not due to rash and negligent driving of the truck by its driver, that the truck which was loaded, was proceeding towards Dharwar in the normal speed along the left side of the road, that when the truck came near the motor car, the tyre of the front off side wheel of the truck suddenly burst and, consequently the driver of the truck could not control the vehicle, that the driver could not foresee this difficulty or the trouble, that no rashness or negligence can be attributed to the driver of the truck, since the accident was entirely due to the sudden bursting of the tyre. The 2nd Respondent-insurer, filed objections reiterating the objections taken by the 1st Respondent and in addition contended that in any case, the 2nd Respondent is not liable for the claim, in law and under the policy, since the driver of the truck was not holding a valid licence to drive the vehicle and at any rate, the liability of the 2nd Respondent under the policy is limited to a sum of Rs. 50,000/-.

5. The Claims Tribunal raised the following issues for decision:

(1) Whether Sudhir Vasant Shivalkar died as a result of the motor accident that occurred on 19.5.1974 at about 11-30 a.m. on Dharwar-Belgaum Road, near Kotur village ?

(2) Whether the said accident was due to the rash and negligent driving of the truck bearing registration No. MYW 7209 by its driver ?

(3) Whether for the reasons alleged in para 17 of the objection statement Respondent No. 2 is not liable to pay compensation to the Petitioner ?

(4) Whether under the policy of insurance, the liability of Respondent-2 is limited

to Rs. 50,000/- ?

(5) To what compensation, if any, are the Petitioners entitled, and from whom?

6. The parties led both oral and documentary evidence in support of their respective contentions. The Claims Tribunal on issue No. 1 held that the death of Sudhir was due to the motor accident that occurred at about 11-30 a.m. on 19.5.1974 in which the car belonging to the deceased Sudhir as well as the truck belonging to the 1st Respondent were involved. So far as issue No. 2 is concerned, the Tribunal held that the accident was an inevitable one as it had occurred due to the sudden bursting of the tyre of the truck which the driver could not have discovered, or foreseen even if he had taken reasonable care and as such, there was no rash and negligent act on the part of the driver in driving the truck. In view of the finding on issue No. 2, the Claims Tribunal did not record the findings on other issues and dismissed the claim petition. Hence this appeal by the Petitioners.

7. The point for decision will be whether the finding of the Claims Tribunal that the accident was not due to the rash and negligent driving of the truck is correct and sustainable.

8. There is also dispute before us that Sudhir the deceased in the case, met with his death due to the motor accident that occurred on 19.5.1974 at about 11-30 a.m. on Dharwar-Belgaum road near Kotur village in which the motor car belonging to Sudhir and the truck belonging to the 1st Respondent were involved. The cause of the accident is the main point for determination, whether it was due to the rash and negligent act of the driver of the truck as contended by Shri S.G. Sundaraswamy, learned Counsel for the Petitioners or that it was an inevitable accident and the same cannot be characterized as rash and negligent driving by the driver of the truck as contended by Shri Om Prakash, learned Counsel for the Respondents.

9. This case is not one, in which there is no direct evidence as to the actual incident. In fact, the parties have led evidence of eye witnesses to the incident. The Petitioners have examined Patravali as P.W. 2, who was an occupant of the car of the deceased Sudhir at the time of the incident. P.W. 2 has stated in his evidence that he and Sudhir left Dharwar at about 10-45 a.m. on 19.5.1974 in the car driven by Sudhir. He was sitting by the side of Sudhir. After they covered a distance of about 9 miles from Dharwar on Bangalore-Poona Road, a truck came from the opposite direction. Sudhir took the car to the extreme left of the road. He was driving the car at a speed of 30 miles per hour. The truck which was coming from the opposite direction was loaded with sanitary pipes. The truck came at high speed. The offside body of the truck struck against the off-side front door of the car. After the truck had dashed against the car, the car went to further left and stopped. The truck went forward to a distance of about 10-15 feet, dashed against a tree which was on the off-side of the road as one proceeds from Belgaum side towards Dharwar, uprooted it and then dashed against

another tree and stopped. In his cross-examination, it was brought out that he did not actually see whether the sanitary pipes had been loaded in the truck, by using packing material or not, that he knows car-driving, that he could not say the speed of the truck even approximately in terms of miles per hour, that the truck loaded with sanitary pipes ought to go slowly for the safety of the sanitary pipes, that he did not exactly remember whether any wheel of the car came on the kacha road when Sudhir took the car to the extreme left side of the road on seeing the truck coming from the opposite direction, that the car did not dash against any tree after the truck struck against the car, that the truck dashed against the complete offside portion of the body of the car, that the car had only two doors, that the off-side rear portion of the truck dashed against the car, that after the truck dashed against the car, the car had gone to a further distance of 10 feet and stopped, that the truck was standing at a distance between 15 and 30 feet from the place of collision and that he did not know whether one of the front tyres of the truck had burst before the accident. He denied the suggestion that the car was going at a high speed. He had also stated that he could not say whether the car went to a distance of 96 feet after the collision and then stopped. He denied that he lodged the first information report before the police and that the car was going on the wrong side of the road.

10. As against this, Rajesab (R.W. 2) the cleaner of the truck was examined on behalf of the Respondents. R.W. 2 has stated in his evidence that in the month of May 1974, he was working as a cleaner of goods truck bearing registration No. MYW 7209, that on 19.5.1974 the truck was coming with a load of ceramic pipes from Khanapur to Dharwar, that it met with an accident near Kotur cross at about 11 a.m. when Fajalu was driving the truck, that he was sitting in the cabin at the time of the accident, that the truck was coming on the left side of the road, that it was driven at a low speed, that when the truck was at a distances of about 15 feet from the spot of the accident its off-side front tyre burst as a result of which, the vehicle swerved to the right, that a car was coming from the opposite direction, that when the car went past the front side of the truck, there was some collision on the rear side, that the truck in turn collided with a road-side tree standing on the right side of the road, that the driver of truck died on the spot, that he had also sustained some injuries in the accident, that he was treated for his injuries in the civil hospital, Dharwar, that the car that had collided with the truck came at a high speed, and the road had a sharp curve at the spot of the accident. In his cross-examination, it was brought out that at the spot of the accident, the curve in the road was to his left. He denied the suggestion that the truck was driven at a high speed and on the wrong side of the road at the time of the accident, that the car was coming at a low speed, that there was a head-on-collision of the two vehicles, that he was not the cleaner of the truck and that he was a hired witness in the case.

11. The other witnesses examined in the case whose evidence would throw light on the question of accident were, R.W. 3 Satyanarayana Setty, Insurance Surveyor of Hubli and R.W. 4 Narayan, Head Constable then working in the

Dharwar suburban Police Station.

12. The evidence of R.W. 3 is that he was working as an Insurance Surveyor since November 1969, that he holds a diploma in mechanical engineering, that he is an Associate Member of the Institute of Insurance surveyors and Adjusters, that he is an independent surveyor, that he carried out a survey of the truck involved in the accident on 19.5.1974 on the Poona-Bangalore Road near Kotur cross at the request of the 2nd Respondent-insurer, that he inspected the truck bearing No. MYW 7209, that he took the photographs regarding the position and condition of the vehicles involved in the accident, that Exts. D-3 and D-4 are the two photographs taken by him, that the truck had collided with a tree, that the offside front wheel of the truck had burst, that from the condition of the body of the car, he concluded that the truck had an impact on the side of the car.

13. R.W. 4 Narayan has stated in his evidence that he was working in the Dharwar-Suburban Police Station as Head Constable, that on 19.5.1974 he went to the Civil Hospital, Dharwar, on an intimation received from the hospital authorities and recorded the statement of Patravali (P.W. 2), as per Ex. D-I who was one of the injured in the incident in question and on the basis of Ex. D-I, he registered a case and transferred the same to the Garag Police Station. In his cross-examination he denied the suggestion that P.W. 2 Patravali was not in a position to speak, that P.W. 2 did not make the statement as per Ex. D-I, that the signature on Ex. D-I was not that of P.W. 2 that the first information report in the case was lodged by the driver of the KSRTC bus, that he has given false evidence in the case and that he has burked the real first information report in the case and manipulated in its place a convenient report.

14. This is the oral evidence in the case as regards the cause of the accident.

15. The earliest version of the incident as given by P.W. 2 is found in Ex. D-I, his statement recorded by R.W. 4. In Ex. D-I P.W. 2 has stated that at about 11-45 a.m. on the date of the incident when their car had traveled a little beyond Kotur towards Belgaum, a goods truck came from the opposite direction, that as a result of the bursting of the tyre of the off-side front wheel of the truck, the truck came all of a sudden towards the car, that the car was taken to its side, that the driver's side of the goods truck hit against the car and the car went forward and stopped close to a tree, that the goods truck went forward and dashed against a tree and stopped and that as a result of the truck hitting against the car, both Sudhir and he (P.W. 2) sustained injuries.

16. The contents of Ex. D-I fully supports the case of the Respondents. It is true that P.W. 2 had denied in his evidence that he made a statement as per Ex D-I. However, it is proved satisfactorily by the evidence of R.W. 4 that Ex. D-I was the statement made by P.W. 2 and recorded by him and on the basis of which a case was registered and transferred to the Garag Police Station for further investigation. In the face of the contents of Ex. D-I the evidence given by P.W. 2 before the Claims Tribunal as to the cause of the incident cannot be accepted. He

completely changed his version of the incident given in Ex. D-I and gave evidence in the course of the enquiry to support the case of the Petitioners that while the deceased Sudhir was driving his car on the left side of the road in a normal speed, the truck belonging to the 1st Respondent driven by Fajalu came from the opposite direction at an enormous speed and in a rash and negligent manner, that the truck could not have been controlled by its driver and that it came on the wrong side of the road and first dashed against the car and then against a tamarind tree as a result of which the driver of the truck died on the spot and the car driven by Sudhir was heavily damaged causing injuries both to Sudhir as well as to him (P.W. 2) and Sudhir died as a result of the said injuries later in the hospital.

17. There is no whisper in Ex. D-I as to the manner in which the truck was driven by its driver as spoken to by P.W. 2 in his evidence. On the other hand, what we find in Ex. D-I is that the accident in question occurred solely due to the bursting of the tyre of the off-side front wheel of the truck which is also the evidence of R. W. 2 the cleaner of the truck. As regards the alleged speed in which the truck was driven by the driver, P.W. 2 in his cross-examination has clearly stated that he could not give the speed of the truck even approximately in terms of miles per hour though he knew driving, and that the truck, loaded with sanitary pipes ought to go slowly for the safety of the sanitary pipes. He further went to the extent of saying that he did not know whether one of the front tyres of the truck was burst before the accident. This was quite contrary to what he had stated in his statement Ex. D-I.

18. R. W. 2 has stated in his evidence that when the truck was at a distance of about 15 feet from the spot of the accident, its off-side front tyre burst, as a result of it the truck swerved to the right and when the car which was coming from the opposite direction went past the front side of the truck, there was some collision on the rear side.

19. R. W. 3 has also stated in his evidence that when he carried out a survey of the truck involved in the accident on 19.5.1974, he found that the tyre of the off-side front wheel had burst.

20. It is also seen from Ex. C-I, the motor Vehicle Inspector's report that the tyre of the off-side front wheel of the truck had burst and the incident might be due to the sudden bursting of the tyre of the truck which was loaded with stone pipes.

21. The panchanama Ex. P-2 regarding the scene of occurrence also clearly mentions that the off-side tyre of the truck was burst, that to a distance of 176 feet from the place of accident to the west on the tar-road and the kacha-road there were marks of tyre and at some places there were marks of the rim of the wheel having brushed on the road.

22. Regarding the allegation made against the driver that he drove the truck at an enormous speed, so rashly and negligently that he could not control the

vehicle, the vehicle came on the wrong side of the road and first dashed against the car driven by Sudhir and then a tamarind tree where it finally came to a halt, the evidence appears to us shaky and scanty. The only witness who speaks to this part of the claimant's case is P. W. 2. He has stated in his examination-in-chief that the truck came at a high speed, the off-side body of the truck struck against the off-side front door of the car and then the truck went forward to a distance of 10 to 15 feet dashed against a road-side tree which was on the off-side of the road from the direction in which the truck was coming. In his cross-examination, it is brought out that he could not say the speed of the truck even approximately in terms of miles per hour. He admitted that he knew car driving. There is no whisper in his statement made before R.W. 4 (vide Ex. D-I) that the truck was driven by its driver at high speed rashly and negligently. Per contra, there is the evidence of R. W. 2, the cleaner of the truck who has sworn in his evidence that the truck was driven along the left side of the road from the direction in which the truck was coming at a low speed and when the vehicle was at a distance of about 15 feet from the spot of the accident, its off-side front tyre burst as a result of which the vehicle swerved to the right and the car which was coming from the opposite direction went past the front side of the truck and there was some collision on the rear side. It is stated in Ex. P-2 that there were marks of the tyre and at some places marks of the rim of the wheel having brushed on the road both on the tar portion of the road as well as the kacha road to a distance of 176 feet to the west of the place of accident. The fact that the tyre marks and the marks of the rim having brushed on the road found started at the tar portion of the road and then on the kacha-road on the right side from the direction in which the truck was moving, would clearly indicate that the truck was coming on the tar portion of the road before the bursting of the tyre. Admittedly the truck was a loaded truck.

23. R.W. 1 in his evidence has stated that at the spot of the accident, the road was sloping towards Dharwar over a distance of about 200 feet, i.e., from the direction in which the lorry was moving. Since the truck was loaded and the road at the place of the accident was sloping in the direction in which the truck was moving, the fact that truck had covered some distance after the bursting of the tyre would not lead to the inference that the truck was driven at a high speed. The recitals in the panchanama Ex. P. 2 lend assurance to the evidence of R. W. 2 that the truck swerved to the right after the bursting of the offside front tyre of the truck. Thus, we are satisfied from the evidence on record that the accident was not due to the rash and reckless driving of the truck at a high speed but on the other hand the accident was due to the bursting of the front off-side tyre of the truck.

24. Shri S.G. Sundaraswamy, learned Advocate appearing for the Petitioners contended that on the facts of the case, the doctrine "*res ipsa loquitur*" applies and on that basis he contended that it must be held that the accident was due to the rash and negligent act on the part of the 1st Respondent or her driver.

25. The doctrine *res ipsa loquitur* is not a rule of law. It is merely a rule of evidence. It does not alter the general rule that the onus to prove negligence rests upon the claimant. It comes into play in cases where the exact cause of accident is not known and *res* can speak for itself so as to prove the inference of negligence or laches upon the Defendant. If on the facts of a case, the doctrine of *res ipsa loquitur* is brought into play then there is a presumption that the event is caused by negligence on the part of the Defendant and the Plaintiff would succeed unless the Defendant rebuts the presumption. Thus in such a case, the onus shifts to the Defendant to prove want of negligence on his part.

26. The principles underlying the maxim *res ipsa loquitur* are stated in Halsbury's Laws of England, 2nd Edn., Vol. 23 at page 671 paragraph 956 thus:

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 his 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 the 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.

Asquith L.J. in *Barkway v. South Wales Transport Co.* (1948) 2 All E.R. 460 at page 471 neatly summaries the principles applicable as to onus of proof in a case to which the maxim *res ipsa loquitur* applies in the following short proposition:

(1) If the Defendant's 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 Defendants can rebut this presumption.

(2) It is no rebuttal for the Defendants to show again without more, that the immediate cause of the omnibus leaving the road is a tyre burst, since tyre burst *per se* is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the Defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in *Laurie v.*

Ragdan Building Co. Ltd. (1942) 1 K.B. 152 where not a tyre burst but a skid was involved.

(3) To displace the presumption, the Defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to the specific cause which does not connote negligence on their part but points to its absence as more probable, or (b) if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres.

The above principles have been followed in India. (See Gobald Motor Service v. R.M.K. Veluswami 1958 A.C.J. 179 (S.C.) and The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others,

27. Against this background of the legal position as to the onus of proof in a case where the maxim *res ipsa loquitur* applies, we shall now proceed to deal with the contention advanced by Shri Sundaraswamy, learned Counsel for the Petitioners.

28. On the analysis of the evidence, we have reached the conclusion that the accident in question was not due to rash and reckless driving of the truck in high speed but as a result of the bursting of the front off-side tyre of the truck.

29. It is in evidence that the accident took place on the off-side of the road from the direction in which the truck was proceeding. The car driven by Sudhir was on its correct side. There was no head-on-collision. The hind portion of the offside of the truck struck against the off-side front door of the car. Thereafter, the truck proceeded to a distance of 15 to 30 feet, dashed against a tamarind tree and stopped. Thus, on the facts established in the case, it seems to us that the maxim *res ipsa loquitur* would apply, as contended by Shri Sundaraswamy, learned Counsel for the Petitioners.

30. The next question for consideration will be whether the 1st Respondent has discharged the onus of proving want of negligence either on her part or on the part of the driver of her truck. It is for the 1st Respondent to show that she and her driver had taken all reasonable care in the maintenance of the tyre, that the tyre was in good condition and that despite such care, the off-side front tyre had burst and no negligence can be attributed either to her or to her driver. In this case, the 1st Respondent, in her objection statement, has pleaded that the loaded truck was proceeding at normal speed along the left side of the road, that when the truck reached near the place of accident, the off-side right tyre, which was in very sound condition, suddenly burst and consequently the driver of the truck could not control his vehicle and that he (driver) could not foresee this difficulty or the trouble and as such the same cannot be characterized as rash and negligent driving.

31. In support of the above plea, this is what Sridhar (R W. 1) the son of the 1st Respondent has stated in his evidence.

The front tyre on the side of the driver had burst. The vehicle had a right hand

drive.

The truck was on its first trip after the engine had been rebored. All the six tyres of the vehicle were new. The truck was carrying ceramic pipes from Khanapur to Dharwar. The distance between the two places is 25 to 30 miles. A truck cannot be run at high speed when the engine is rebored until it has run at least 1,000 miles. No truck carrying a load of ceramic pipes can be run at high speed because of the damages to the pipes.

If a tyre is burst when the vehicle is in motion, the vehicle goes out of the driver's control. The vehicle moves only in the direction of the burst tyre.

Our goods truck had run only about 50 miles after the engine had been rebored."

In the cross-examination, it is brought out that he had got the engine of the truck rebored by M/s. S.T. Motors, Hubli, that he had got documents to show that he got the engine rebored in May 1974, that he had purchased the tyres of the truck from M/s. Desai and Co., opposite to the Corporation Office, Hubli, that he had got receipts for the payment of the price of the tyres, that it was true that the truck had many trips before the accident, but it was on its first trip after the engine was rebored, that he personally inspected the tyres of the truck and that the burst tyre was at a distance of one foot from the tree with which the vehicle had collided. The only suggestion thrown at this witness in his cross-examination was that it was not true that he had got the engine of the truck rebored. The evidence of R. W. 1 that all the six tyres of the truck were new, that he had personally, inspected the tyres of the truck, had not been challenged in the cross-examination.

All that the witness was asked about the tyres was, from where he had purchased the tyres and whether he had got receipts for payment of the price of the tyres. It was not suggested to R.W. 1 that the tyres were not new and that they were not in good condition. R. W. 1 has stated in his evidence that he was managing the business of the truck on behalf of his mother, the 1st Respondent.

32. There is other evidence in the case which, in our opinion, substantially corroborates the evidence of R. W. 1 regarding the condition of the tyres of the truck.

33. R.W. 2 was the cleaner of the truck on the date of the accident. He has stated in his evidence that the tyre of the truck which was burst before the accident, was a new tyre. He denied the suggestion that the tyre which was burst was old and worn out. Similar is the evidence of R.W. 3, the Insurance Surveyor. He is an independent witness and holder of a diploma in mechanical engineering. It is his evidence that he carried out the survey of the truck on 19.5.1974 at the request of the 2nd Respondent and took photographs of the vehicles involved in the accident, of which Ex. D-3 and D-4 were the two photographs. He has sworn that the tyre of the truck, that was burst, was a brand new tyre. He too has denied the suggestion that the tyre that was burst, was not new. Nothing is

elicited in the cross-examination of these two witnesses to discredit their veracity. Further, it is pertinent to note that the suggestion that the tyre that was burst, was not new and it was a worn out one, was not thrown at R.W. 1 who spoke about the condition of all the tyres of the truck being new ones. His evidence that the tyres of the truck were new ones was not challenged. It was only when R. Ws. 2 and 3 came to be examined, such a suggestion was thrown at them and it appears to us that it was purely an after-thought.

34. There is another piece of material supporting the evidence of R. Ws. 1 to 3 regarding the condition of the tyre. Ex. C-I is the Motor Vehicles Inspector's report. According to his report, the tyre treads and the pressure of the tyres except the front which was burst, were in order and the treads of the tyres that was burst were also in order.

35. It is contended by Shri Sundaraswamy that the best evidence to show that the tyres of the truck were new, has not been placed by the 1st Respondent and as such an adverse inference shall have to be drawn. In support of this submission, he placed reliance on a ruling of the Supreme Court, in *Gopal Krishnaku v. Mohd. Haji Latif A.I.R. 1968 S.C. 1413*. The main question presented for determination by the Supreme Court in the said appeal was with regard to the ownership of survey plot No. 134 on which the "darga" was situated, whether it was the property of the darga or whether it belonged to the Appellant. The Appellant had admitted in his evidence that he had got record of the darga income and that account was kept separately. However, he had not produced either his own account or the account of the darga to show as to how the income from plot No. 134 was dealt with. An argument was canvassed before the Supreme Court by Mr. Gokhale, learned Counsel for the Appellant, that it was not part of the Appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the Respondents to prove the case and to show that the darga was the owner of plot No. 134. Rejecting the said argument, the Supreme Court observed thus:

We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party, the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.

In our opinion, the ratio of the above decision would not apply to the facts of the case on hand. According to Shri Sundaraswamy, the best evidence that was not produced by the 1st Respondent in this case was the receipts for payment of the price of the tyres. The receipts for payment of the price of the tyres would not describe the condition of the tyres except that they were new ones and the make of the tyres. On the question whether the tyres were new ones, the 1st Respondent produced in our opinion, abundant acceptable evidence including

from independent source, that is, the evidence of R.W. 3 and also the Motor Vehicle Inspector's report Exhibit C-I. Further, the evidence of R.W. 1 who was managing the business of the truck on behalf of the 1st Respondent, that all the tyres of the truck were new ones, was not challenged in his cross-examination. In that view of the matter, we are unable to accept the contention that the receipts for payment of the price of the tyres were the best evidence regarding the condition of the tyres and that the 1st Respondent wantonly withheld that piece of material so as to incur the risk of adverse inference to be drawn against her.

36. One other ground taken in the grounds of appeal which requires to be noticed is the admissibility of the motor vehicles inspector's report Exhibit C-I, on the ground that the motor vehicles inspector was not examined.

37. We find from the lower court records that the entire records from the criminal Court relating to the accident case arising out of the accident with which we are concerned, were called for. Certain documents from that records were marked in this case. They were the post-mortem report, Exhibit P-1, the panchanama of the place of the accident Exhibit P-2, and the motor vehicles inspector's report Exhibit C-I. None of these documents was proved by examining any witness. There is a note in the order sheet at the initial stage of the enquiry that Exhibits P-1 and P-2 were marked by consent. However, we do not find a similar note in respect of Exhibit C-I, Exhibit C-I was freely referred to in the judgment of the Claims Tribunal. It was marked as a Court exhibit. From the Tribunal's judgment we find no objection appeared to have been taken to treat Exhibit C-I as a piece of evidence. We infer that Exhibit C-I was marked as Court document by consent ; otherwise there would have been some indication in the records of the case that there was opposition to bring that document on record as a piece of evidence. It seems to us that Exhibit C-I cannot be said to be an inadmissible piece of material on the score that the motor vehicle's inspector was not examined. A Division Bench of this Court in *Salamma v. K.V. Rama Chandra* ILR 1973 Kar. 339 has ruled that the Evidence Act has no application to enquiries conducted by the Tribunals even though they may be judicial in character and all that the law requires is that such Tribunals should observe the rules of natural justice in the conduct of the enquires and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with, that which obtains in a Court of law. Thus we find no force in this ground.

38. After a careful and close scrutiny of the evidence adduced in the case, we are satisfied that the 1st Respondent has placed proper and sufficient material before the Claims Tribunal to displace the presumption that the accident was caused by negligence on the part of the 1st Respondent and her driver arising under the doctrine of *res ipsa loquitur*. There is satisfactory and unimpeachable evidence on record to show that all the tyres of the truck including the tyre that was burst were brand new tyres. There is also evidence on record (vide Ex. C-I) that the

tyre treads and the pressure of all the tyres except the tyre that was burst were in order. There is also evidence to show that the treads of the tyre that was burst was also in order. There is no evidence on record to show that there was any defect in the tyre that was burst, either patent or latent. It is true that the 1st Respondent did not say that the tyre-burst was due to any specific cause which does not connote negligence on her part but points to its absence as more probable. However, we are satisfied from the evidence on record that the 1st Respondent and her driver used all reasonable care in and about the management of the tyres, used for the truck by showing that they were brand new tyres and the pressure of all the tyres except the off-side front tyre which was burst, were in order which gives rise to a reasonable inference that the pressure of the burst tyre was also in order before it had burst. Thus, we are of the opinion that the 1st Respondent by her evidence had displaced the presumption of negligence raised by the fact that the accident occurred due to the bursting of the tyre and further we agree with the finding of the Claims Tribunal that the accident in question was an inevitable one and not due to rash and negligent driving of the truck by its driver.

39. Before concluding the judgment, it is apposite to quote a passage from the judgment of the Calcutta High Court in Calcutta State Transport Corporation Vs. Kamal Prakash De, which reads thus:

Where the accident occurs due to bursting of tyre, as in the instant case, the duty of the injured or the heirs of the deceased is initially to allege and prove facts leading to negligence of the owner or driver of the vehicle. Then the duty of the driver and the owner arises to show whether there was absence of negligence and all possible care and precaution was taken to avert the accident. The plea of inevitable accident can certainly be raised. Bursting of tyres generally does not take place in new tyres. Old tyres beyond a maximum capacity should not be used and a driver should be vigilant when he runs the vehicle and see if any impediment is on the way. Every case requires the care of a prudent and reasonable man. Before starting, machinery has to be tested. \n owner guarantees the soundness of the vehicle to his passengers as in the case of trains. Thus, in all cases of enquiry before the Tribunal or the Court as the case may be, in investigating the matter of negligence the elements of principles of tort have to be invoked and the defence open in cases of tort is open in the case of negligence. What is negligence depends upon determination of various factors. There are three basic elements of tort (1) an act or omission on the part of the Defendant, (2) intention or negligence or the breach of a strict duty on the part of the Defendant, and (3) damages resulting to Plaintiff from the wrongful act of the Defendant which is not too remote. An act would mean doing of a positive act and omission means breach of duty. In each case it will be the duty of the Plaintiff to connect the wrongful act with the damages accruing and show that the Defendant was negligent. Inevitable accident is an accident such as that the Defendant could not have avoided by the use of the kind and degree of care necessary to the exigency and in the circumstances he was placed.

40. For all the reasons stated above, the appeal fails and the same is dismissed. However, in the circumstances of the case, we direct the parties to bear their own costs.