

(1964) 11 CAL CK 0011
In the Calcutta High Court
Case No : Suit No. 2958 of 1953

Mt. Sukhraj Bhuj

APPELLANT

Vs

Calcutta State Transport Corporation

RESPONDENT

Date of Decision : 19-11-1964

Acts Referred:

Evidence Act, 1872 — Section 138

Citation : AIR 1966 Cal 620

Hon'ble Judges : Bijayesh Mukherji, J

Bench : Single Bench

Advocate : Somnath Chatterjee and Sanjib Dutt, A.K. Sarkar, Solicitor, for the Appellant; M. Sen and N.C. Mitra, Solicitor, for the Respondent

Final Decision : Dismissed

Judgement

Bijayesh Mukherji, J.—This is a suit raised on August 22, 1953, by Sukhraj Bhuj or Bhunj (hereafter referred to, so far as possible, as Sukhraj) claiming Rs. 10,000 from the Calcutta State Transport Corporation, the sole defendant, for the pecuniary loss sustained by her for the death of her 14 year old son, Ramdeo, on his having been knocked down on June 23, 1952, at 2-30 p.m. or thereabouts along the eastern side of Government Place East by a motor omnibus WBS 345 of the defendant Corporation driven negligently.

2. A suit as this is resisted on the plea that the deceased Ramdeo jumped off a running tram-car, proceeding north to south, came in contact with the right rear wheel of the omnibus, also going north to south parallel to the tram-car, and thereby sustained the fatal injuries caused entirely by his own negligence. More, the point where he jumped so a little south of the junction of Waterloo street and Government Place East had no tram-stop. Nor did he care to look to the traffic coming From behind.

3. The issues struck at the trial are:

1. Was the driver of the omnibus bearing No. WBS 345 negligent on June 23,

1952 at or about 2-30 p.m. in the manner alleged in the 2nd paragraph of the plaint; or was the accident complained of caused entirely due to the negligence of the deceased, Ramdeo Bhuj, in jumping from a running tram-car at a place where there was no tram-stop and without looking at and paying heed to the traffic coming from behind, as alleged in the 2nd paragraph of the written statement?

2. Can the loss of the plaintiff be assessed at Rs. 10,000 as claimed?

3. What reliefs, if any, is the plaintiff entitled to?

4. On August 22, 1953, when the suit was instituted, the defendant Corporation had not come into being. But the State of West Bengal was there, owning the omnibus complained against and running the Transport Service in Calcutta So the State was sued as such. But after the Road Transport Corporation (West Bengal Amendment) Act, 28 of 1959, the defendant Corporation, then in existence, stood substituted by law in place of the State; vide Section 3 ibid inserting Section 47B In the Central Act, 64 of 1950: the Road Transport Corporation Act. By way of abundant caution, there has been substitution in fact too. There is therefore no difficulty that way. No difficulty is raised either at the Bar. Indeed, Mr. Chatterjee, opening the case for Sukhraj, has drawn my attention to the provisions just mentioned.

5. The real difficulty for the unfortunate mother, Sukhraj, bereft of her son, Ramdeo, who was working then as an office-boy under Messrs. Karamchand Thapar and Brothers Ltd. on Rs. 70 a month, lies in merits of her case. And this brings me to the first issue.

6. The onus of proving negligence is on Sukhraj as Mr. Sen appearing for the defendant Corporation rightly contends. That indeed is the ordinary rule in running down actions. It is therefore for Sukhraj to give affirmative proof of negligence on the part of the defendant Corporation's servant, the driver of the omnibus.

7. Sukhraj examines two witnesses and closes her case. One is Santosh Kumar Datta who has been working as a care-taker under Messrs Karamchand Thapar and Brothers Ltd. The other is the deceased man's full brother and necessarily Sukhraj's another son, Raja Ram, who knows nothing about the accident on June 23. 1952. He was not then there. So his evidence does not count, Santosh who was there right on the scene and just at the time of the heartrending occurrence, should have known a lot. But he too knows little:

Q. 41. Ct. Did you or did you not see the actual impact between the bus and the unfortunate boy? / No. I did not, my Lord.

If such a one having so great an opportunity to become an excellent eye witness, had not seen the actual impact, it means that Sukhraj fails to give affirmative proof by direct evidence of negligence on the part of the driver of the vehicle. And the Court is deprived of what might have been telling testimony on

Sukhraji's behalf. Not that I am blaming Santosh. I have nothing like it in my mind. He cannot give evidence on more than what he had seen. Starting from Karamchand Thapar's office at 5 Royal Exchange Place, Santosh and Ramdeo took a tram-car from Dalhousie Square with the idea that they would get down at the "stoppage" at Great Eastern Hotel, their destination having been a branch office of their employer at 12 Government Place East, a little to the south of the said hotel. But there was no stoppage by Great Eastern Hotel. What they were banking upon was a red traffic signal to stop the tram-car at or about the junction of Waterloo Street and Government Place East so close to the hotel. In that they were belied. The green signal was on. And the tram-car did not stop at what Santosh would call "the usual stoppage", though it was no stoppage at all, and if an improvised stoppage, a most unusual and risky one. On a furore having been raised by some of the passengers, as Santosh says at one stage, the tram-car did stop for a short while a little south of the junction of Waterloo Street and Government Place East, Four or five passengers lighted. So did Santosh and Ramdeo. Santosh saw a bus coming at a great speed from his behind and that too without sounding its horn. At once he jumped to the eastern footpath of Government Place East which he had crossed, only to hear a terrific sound caused by the application of the brakes. And a commotion was mere too. Looking for Ramdeo, what he saw was the omnibus standing a little way off towards the south and Ramdeo lying on the road some 20 or 30 ft. behind the omnibus. (See qq. 12-17, 58, 117, 118 etc. to Santosh). If this is all that Santosh can speak about, I have before me no affirmative proof by direct evidence of negligence on the part of the driver of the vehicle. From such evidence I do not know which part of the omnibus the poor lad had collided against Santosh does not know it, as he frankly confesses q. 95). If he had struck against the rear wheel of the vehicle, as the defendant Corporation's case is, absence of negligence on the part of the driver is plain to be seen. What Santosh had seen immediately after the impact, the stationary omnibus ahead and Ramdeo lying on the road some 30 ft. behind, is as much consistent with the omnibus hitting the boy by its front as with the boy jumping off the tram-car and dashing against the right rear wheel of the vehicle. On such a thud accompanied by noise every driver would pull the brakes with all his might. So there appears to be nothing in the terrific sound which Santosh heard and which was caused by the application of the brakes. I therefore miss affirmative proof by direct evidence of the driver's negligence. And to that extent the onus which lies on Sukhraji remains undischarged. I find so as a fact.

18. Direct evidence failing and fail it must the circumstantial evidence has got to be looked into. And this is the next contention of Mr. Chatterji who cites *Jones v. Great Western Rly. Co.* (1930) 47 TLR 39, and submits, in the words of Lord Buckmaster's speech in the aforesaid decision of the House of Lords, that the real cause of the accident, though not proved by direct evidence, may be inferentially established by the pressure of facts too strong to be ignored. What are such facts here, according to Mr. Chatterjee? Four or five passengers had

alighted from the tram-car and presumably crossed over that much of the road (Government Place East), though there was no scheduled stop over there for the tram-car. Santosh had done just that too. All this was a good enough warning to the driver of the omnibus to have slowed down, no matter that no tram-stop was over there. People getting down where there is no stop is a phenomenon of everyday occurrence, as Mr. Chatterjee puts it. Only because they do so, coming on the edge of the rule of the road, that will hardly be a justification for the driver of the motor-omnibus to run them down. He still owes a duty to the pedestrians to avoid knocking them over. Here the driver drove the omnibus at a high rate of speed. Worse, he did not blow the horn.

9. To such an approach I return a twofold answer. In the first place, all the facts listed in the preceding paragraph cannot be taken for granted. In the second place, these facts, even taken at their face value, do not inferentially establish negligence. Indeed, they interentially establish the utter lack of it.

10. I proceed to develop these answers one by one. That the tram-car did not stop at the junction of Waterloo Street and Government Place East in front of the Great Eastern Hotel buildings is manifest from the evidence-in-chief of Santosh (Q. 13). Indeed, why should it when the green traffic signal was on? This much of Santosh's evidence I believe. But I disbelieve him when he says that other passengers raised a future and that that made the tram-car stop after it had crossed the Waterloo Street junction. Why should other passengers go off their heads and make a pother to force the tram-car stopping at a place where it was not scheduled to stop is more than what I can understand. Santosh seems to have little regard for truth. In his evidence-in-chief he is definite that "the tram-car did not stop at the usual stoppage since the green traffic signal had been given. (Q. 13). It was no stoppage at all, as noticed in paragraph 7 ante. Be that as it may, a little later, when his cross-examination is going on, he says, in answer to Court (Q. 71), that "when the tram reached the Great Eastern Hotel, there was red signal already", which means that the car had stopped. And the passengers started getting down. Soon thereafter the green signal was given. Santosh is improving upon his earlier evidence (Q. 13) that the tram-car was proceeding non-stop when it had reached the hotel, because of the green signal. All this has produced disbelief in my mind. The story he says of certain passengers making a noise, when they had no reason to make any, does not appear to be credible. Nor does the driver yielding to such a noisy importunity. Then, that the tram-car did not, in tact, stop is admitted by Santosh himself in his cross-examination. No doubt, he is out to minimise the effect of this admission by such statements as: the tram-car did not totally stop; it was moving very slowly, so slowly that it cannot be said that the car was moving (QQ. 97-99). This is really playing with words. "In your evidence-in-chief you say that the car had stopped (qq. 13 and 14). But, in your cross-examination, you say, it had not totally stopped and it was moving so slowly that it was not really moving (qq. 98 and 99). It is therefore not right to say, as Mr. Chatterjee does, that four or five passengers alighting from the tram-car come to a dead stop has

not been challenged in cross-examination, with the result that the defendant Corporation must be taken to have accepted Santosh's statement to that end. Cross-examination there has been. And Santosh has been made to contradict his own evidence-in-chief that the tram-car had stopped. Perhaps, cross-examination might have been better, if I may say so, with respect, with a clear suggestion that four or five passengers had not alighted at all. But that is another matter. Then, failure to cross-examine will not always amount to an acceptance of the witness's testimony. For example, when the story the witness tells "is itself of an incredible or romancing character". See Phipson on Evidence, Tenth Edition, paragraph 1542 at pages 594 and 595. That is just so here. As indicated earlier, I cannot bring myself to believe that, when no passenger had had a fall or when nothing untoward had happened, some amongst the passengers would raise a hue and cry and compel the driver of the tram-car to stop the car at a point where it was not scheduled to stop. Nothing abnormal was there in the tram-car running as usual with the line clear, because of the green traffic signal at or about the junction of Waterloo Street and Government Place East. The story itself is incredible, cross-examination or no cross-examination. A.E.G. Carapiet Vs. A.Y. Derderian, , Mr. Chatterjee refers me to, reiterates the general principle that if a party does not put to each of his opponent's witnesses his own case as concerns that particular witness, he will generally be taken to accept the witness's account. It was a litigation for the probate of a will. On the side of the propounder was "the overwhelming mass of evidence of doctors and nurses" that the testator had the testamentary capacity when he made the will. On the side of the caveator was the evidence of a Reverend Venkata Ramiah "sprung as the last dramatic witness" that the testator was not even in a fit condition to receive the sacrament and had not therefore the requisite sound physical and mental condition to make the will. But the fact that this clergyman found the testator in such a sorry state was put neither to the propounder nor to the doctors and nurses when in the witness-box. In the circumstances, "failure to put the important and crucial part of the case to the witnesses coming to prove testamentary capacity" was held against the caveator. The proposition of law this decision contains cannot be translated to the litigation in hand where the defendant Corporation's case is that the deceased lad had jumped off a running tram-car and collided against the right rear wheel of the bus proceeding in the same direction. That is "the important and crucial part" of the defendant Corporation's case which was in a manner put to the witness Santosh (qq. 69, 92, 93, 95, 98, 99 etc. read with the Court's question No. 97). Only cross-examination could not proceed further, Santosh having not seen the impact (q. 41)). I am therefore unable to find as a fact that the tram-car did come to a stop a little to the south of the junction of Waterloo Street and Government Place East enabling four or five passengers to get down there. All I find is that Santosh and the deceased lad had alighted from a running tram-car.

11. Santosh saying that the bus on his left was coming at a great speed (q. 94) does not necessarily mean the speed to have been a reckless one. Once it is

borne in mind that a motor-omnibus is a motor-omnibus, and not a bullock cart, there is nothing to be surprised at the bus moving speedily enough with no traffic signal to hold it up right from Dalhousie Square and with no tram-stop, south of the Waterloo Street junction with Government Place East, and north of Government Place East and Esplanade junction. In any case, what Santosh speaks of as "great speed" is too "liquid" an evidence for a finding of rashness coupling with negligence to rest upon.

12. I accept Santosh's evidence that the driver of the omnibus blew no hourn, evidence which is not challenged in cross-examination and which by itself has not the slur of incredibility put upon it.

13. Let it now be assumed that all the facts Mr. Chatterjee enumerates are proved. Four or five passengers had got down the tram-car moving slowly. They were followed by Santosh and the deceased lad. All, but the poor boy who was run down by the omnibus driving at a great speed and without sounding its horn, reached the pavement and safety. On these facts can it be said that negligence on the part of the driver, the defendant Corporation's servant, has been proved?

14. Negligence is the breach of a duty. And what is the duty of one driving an omnibus? Mr. Sen submits that the duty of such a one is to take care. I accept this submission, but not without adding: his duty is merely to take reasonable care not to do harm to others by the manner in which he drives the omnibus, Applying this test do I see any breach of a duty even on the foot of facts I have assumed? Here was an omnibus which got a clear road to proceed along, even ahead of the junction of Waterloo Street and Government Place East. It did no more. Crossing the aforesaid junction, it proceeded south and still more south, fully conscious of the fact that there was no tram-stop ahead of the junction of Esplanade and Government Place East, and that no passenger was to alight in between. It was about to overtake the tram-car running on its right, and north to south too. That an omnibus would overtake a tram-car, as it does every hour, has little in it; certainly no negligence, rashness and the like. If omnibuses cannot do that much even, it is time they are taken off the streets. When the omnibus neared the running tram-car, some five or six passengers including Santosh got down the tram-car in motion and reached the eastern pavement. The last to get down was the deceased lad who could not do so was run over. The driver did apply the brakes making a terrific sound (which Santosh could hear), but in vain. The deceased was caught and dashed.

15. Where, I ask, is the negligence of the driver? If certain passengers took into their head to jump off a running tram-car where there was no stop, how the driver of an omnibus, a faster vehicle, running in the same direction and parallel to the tram-car, anticipate that? Instead he would take for granted just the reverse: no one was getting down here. Five or six of the wrong-headed passengers of the tram-car escaped. The one the last of them to get down did not. Mr. Chatterji argues, could not the driver of the omnibus have avoided the impact by the exercise of ordinary care and diligence when he had seen five or

six men cross over, no matter that the deceased lad had contributed to the accident? The answer is, no; he could not have. Even with the best cure in the world, people are killed and injured on the road. That appears to have been the case here. The time between five or six men crossing over and the deceased closely following them and trying to do so would not be even a minute, if that. Within such a short time, how far could the omnibus be from the place of the accident? Not very. If somebody would swoop down all on a sudden in front of a fast vehicle like an omnibus without anything like a warning to the driver, it would hardly be fair to accuse the driver of negligence. In that predicament, where could he get the time and opportunity to blow the horn? In pulling the brakes with all his might, a fact Santosh testifies to, he did all he could in the circumstances and took reasonable care not to do harm to others by the manner of his driving. As has been well said: "People must guard against reasonable probabilities but they are not to guard against fantastic possibilities". Great speed? I remind myself again, a motor-omnibus is a motor-omnibus; it is no bullock cart. I see nothing before me on which I can hold that the great speed Santosh speaks of is a rash or reckless speed. This being the position, *Radley v. L. and N. W. Ry. Co.* (1876) 1 A. C. 754, Mr. Chatterjee cites, can do Sukhraj little good. Indeed, in *Radley's* case (1876) 1 AC 754 the engine driver whose engine was pushing many a truck, felt the resistance when the joint height of the two trucks amounting to eleven feet would not pass through a bridge eight feet high from the ground. Instead of looking round what was up, he increased the power of the engine pushing all the trucks. Result: the two trucks struck the bridge and broke it down. Thus, even though the adversary of the defendant railway company was negligent in raising the height of the two trucks to eleven feet, three feet more than the height of the bridge, the defendant company's servant, the engine driver, could, by the exercise of ordinary care and diligence, have avoided the mischief which happened. This can hardly be said of the omnibus driver before me. *Davies v. Mann*, (1842) 10 M and W 546, another case Mr. Chatterjee refers me to, shows negligence on the part of the plaintiff in leaving his donkey on the public highway fettered in the forefeet and thus disabling the animal to get out of the way of the defendant's "waggon" and horses going at a smartish place along the same highway. Still the defendant was bound to go along the road at such a place as would be likely to prevent the mischief which had happened: the "waggon" and the horses struck against the ass with great violence and thereby wounded, crushed and killed the animal. The mere fact of putting the ass on the road would not, it was held, deprive the plaintiff of his action. In the case in hand, if the deceased lad had put himself on the road long or some time before the omnibus had reached the point where he was, the driver would have been negligent. But when he put himself on the road all on a sudden, as I find upon "the whole of the evidence led on behalf of Sukhraj, it beats me how the driver can have the stigma of negligence put upon him.

16. The conclusion I have therefore come to, upon a review of the evidence led by Sukhraj, is that the charge of negligence is not brought home to the

defendant Corporation's servant, the driver of the omnibus. And this conclusion is strengthened so much the more when the evidence led on behalf of the defendant Corporation is taken into reckoning. Like Sukhraj the Corporation also examines two witnesses conductor Bankim Chandra Das and Professor Haripada Bharati. Das was the conductor of that ill-rated omnibus. With difficulty, he remembers that the bus of which he was the conductor met with an accident on June 23, 1952 (qq. 6, 7, 20, 35, 37, 38 etc.). He does not remember the number of that bus nor the name and number of the driver (qq. 5, 39 and 40). The records in the office of the defendant Corporation to show that Das was the conductor of the particular bus are not produced. (See question No. 16). But these are all minor matters. The major matters are how the accident had come to pass and what part of the bus had struck against the deceased boy. On that he cannot say anything, because he had not seen anything himself (qq. 10 and 12). His evidence is therefore valueless on the crucial part of this sad litigation.

17. Not so, however, is the telling evidence of Professor Bharati of Narsimha Datta College, Howrah. At 2-30 or 2-45 p.m. on June 23, 1952, this professor of philosophy was seated in the rear portion of the bus on the right side, as the vehicle was moving north to south from the junction of Waterloo Street and Government Place East (qq. 7, 12, 17, 18, 101 etc.). Just then "one non-Bengali young man jumped from a moving tram-car and fell under the rear wheel" of the State bus in which he was travelling. Though in motion, the tram-car was moving slowly (qq. 8, 41, 110 and 111). Having been seated in the rear of the bus and that too on the right, he was naturally a most competent witness to see what was happening on the right side of the bus and its rear too. He is therefore justified in saying: "The accident took place under my nose." : q. 18. If this evidence stands, the defendant Corporation's case proves itself. And the charge of negligence recedes never to be seen. Mr. Chatterjee, however, goes all out to convince me that the evidence of Professor Bharati cannot be acted upon. Not that Bharati is a witness of untruth, Mr. Chatterjee is good enough not to contend so. But his is an evidence Mr. Chatterjee submits, resting on a bona fide mistake so natural after the lapse of twelve years and a little more from June 1952 to November 1964. I proceed to examine this point and so many others either argued by Mr. Chatterjee or taken in cross-examination of Professor Bharati.

18. The broad outline of what it was the misfortune of this professor to see, one does not see every now and then, and one is not apt to forget in his lifetime. This was the only occasion when he had seen an accident (qq. 26 and 27). Mr. Chatterjee suggesting to him that his evidence is not based on correct recollection, he promptly answers: "My evidence is based on facts that I remember." : q. 92. In his answers to the preceding two questions (90 and 91), Professor Bharati exhibits a little chagrin, when he is told that he could have made a mistake. In that state of mind, he says: I do not know what I shall tell you. If you say that there might have been a mistake, there might have been a thousand and one mistakes. These are all questions of theorising etc. Too much cannot be made of this. His real evidence is that given in answer to question No.

92: he is speaking of facts he remembers. I see nothing like any mistake or incorrect recollection here.

19. The deceased boy jumped off the second class compartment of the tram-car when the front part of the bus had already crossed the second class exit (qq. 80-82). But the boy was neither insane nor out to commit suicide. So, Mr. Chatterjee asks, why should he jump then? An error of judgment is an error of judgment with an obvious miscalculation. No insanity nor an attempt to commit suicide can be spelt out therefrom. More, calculating it aright, after the incident based on a miscalculation is over, comes to reconstructing a thing in a manner in which it has not taken place, in fact. The gap between the tram-car and the omnibus, running side by side, was three to four feet, not so much as five feet (qq. 72-79). The boy apparently miscalculated and thought, he would be safe in between. But the momentum of his jump probably took him a little off and to his doom.

20. Both the tram-car and the bus running side by side, the front portion of the bus had already crossed the exit of the second class car when the deceased jumped (q. 82). The boy. Mr. Chatterjee suggests, would have then dashed against the body of the bus. Professor Bharati maintains that the boy did not dash so (qq. 83 and 86). And he does not remember what had exactly happened (q. 84). Not to remember exactly what had happened a little more than twelve years ago is only to be expected. By saying so, Professor Bharati only shows how straightforward he is. Then, there is an obvious fallacy in what Mr. Chatterjee suggests. Some time must have passed between the jump taken by the deceased boy and his colliding against the bus. By that time the omnibus, a moving one at its usual speed, would proceed further south off the exit of the second class car. And the boy falling under the right rear wheel has therefore little absurdity in it. Again, Professor Bharati also says, further questioned in cross-examination, that the boy jumped in front of the rear wheel of the bus while it was only three or four feet away (q. 111). It is idle to make a point of a few inches this way or that way in a fast moving vehicle like an omnibus. The broad fact that emerges upon evidence is that the deceased boy fell under the right rear wheel of the bus. Not that he was standing on the road and the omnibus knocked him down. Professor Bharati had no such illusion in front of him, as he says (q. 117).

21. Professor Bharati did not see the boy standing at the exit of the second class car. He did not mark him then (qq. 112 and 118). So what? Not marking him then and seeing him jump suddenly (qq. 113, 114, 119, 120 etc.) can stand together.

22. The failure on the part of Professor Bharati to recognize conductor Das or his inability to tell the Court how the driver looked like, though he and the driver conversed for sometime, (qq. 31-34), does not enable me to rate his evidence low. On the contrary, I would have been surprised and would not have thought much of this Professor if he could place either after twelve years and more.

23. The deceased boy was 14 or thereabouts. But this Professor guesses that he was a grown-up young man of 25 or 26 (qq. 36 and 37). It is however a guess and no more. And it is so difficult to guess one's age from appearance. No two guesses will agree. Then, he did not get down, but only peeped through the window of the bus (qq. 39 and 40). Naturally, the guess will be so much the weaker.

24. Professor Bharati says that the omnibus ran non-stop from Dalhousie Square till it was stopped by the accident, no red traffic signal having detained it at the junction of Waterloo Street and Government place East (qq. 175 and 176). Conductor Das says that the red signal did stop the bus at the aforesaid junction (qq. 17, 20, 35 etc.). Das struck me as a poor type, a dependable memory not being one of his strong points. I prefer the testimony of Professor Bharati. To hear him is to believe him.

25. It is futile to make a point of the omnibus about to overtake the train-car. An omnibus does so and will do so always, as long as a faster tram-car is not put on the streets. That by itself connotes neither negligence nor rashness. As Professor Bharati says more than once, the bus was not moving very fast- but a little faster than the train-car, as indeed it must (qq. 14. 52, 57).

26. There is little to doubt Professor Bharati's luck in getting a seal. He was coining from Howrah, the starting point of the route. It was 2-30 p.m. or thereabouts when the buses could not be overcrowded. Again, it was 1952 not 1964 (qq. 19, 22).

27. It has been elicited from care-taker Santosh in his cross-examination that he and the deceased boy were travelling first class in the tram-car (qq. 42, 44). But Professor Bharati's sworn testimony is that the boy jumped off the second class car. I prefer his evidence to that of the other. An office boy travelling second class looks more probable too. At all events, there can be no running away, as Mr. Sen rightly contends, from the ringing testimony of Professor Bharati that he had seen the deceased boy falling under the rear wheel of the State Bus he was in. I accept his evidence and find so as a fact. In this background, it matters little what the driver of the omnibus has given even for his non-examination. I view such an attitude with disfavour. Still in all facts and circumstances here, I find it impossible to presume that were he examined, he would not have supported the defendant Corporation's case, as Mr. Chatterjee asks me to.

28. In view of all that goes before, the finding on the first issue must necessarily be that the driver of the omnibus WBS 345 was not negligent and that the accident complained of was caused entirely by the negligence of the deceased boy himself.

29. Could I have found the first issue in favour of Sukhraj, I would have assessed her loss at Rs. 7,680 (16 times Rs 480 at the rate of Rs. 40 a month), governing myself by the principle laid down in a Bench decision of this Court; *Bir Singh v. Hashi Rashi* AIR 1956 Cal 355 a case Mr. Chatterjee cites and would have found

the second issue so.

30. In the result, the suit fails and is dismissed. In all circumstances here, I direct that each party to pay and bear its costs.

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