
(1981) 02 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeals No's. 22 and 23 of 1972

Radha Devi and Another

APPELLANT

Vs

Aalumal Gyanchand and Others

RESPONDENT

Date of Decision : 19-02-1981

Acts Referred:

Citation : (1982) ACJ 69 : (1981) RLW 297

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; M.M. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—These two appeals against rejection of claims by the Motor Accidents Claims Tribunal Bhilwara, arise out of the same accident. It is convenient to dispose them of together, so they are being disposed of by this common judgment.

2. The facts of the two cases lie in narrow compass. Smt. Radha Devi in claim case No. 10 of 1969 and Shri Mohandass a minor, in claim case No. 11 of 1969 were travelling in bus No. RJE 686. The bus was plying from Vijainagar to Shahpura via Devalia Arwar and both the claimants were going to Shahpura. Though the road was a metalled road, but at a distance of about 5 miles from Shahpura, the road was not good. There were pot-holes in the road and even the soiling of the road pebbles were only pressed. The condition of the road was not such on which the vehicle could be driven fast, still the driver of the bus Chandra Singh drove the bus with great speed and rashly so much so that the bus went out of control and the bus went off the road on the left side. It crossed a deep pit and also a mount and thereafter it stopped. As a result of sudden fall in the pit and jerks and jolts, the claimants sustained injuries. Four teeth and three molars of Radha Devi fell and some teeth of Mohandas also fell. Both of them sustained the following injuries:

Injuries of Smt. Radha Devi

- (1) Fractures-cum-dislocation of the right lower incisor tooth.
- (2) Fracture-cum-dislocation of the left lower incisor tooth.
- (3) Fracture-cum-dislocation of the last lower pre-molar tooth.
- (4) Contusion 1 1/2" X 1" on the right side of the chin.
- (5) Contusion 1" X 1/2" on the left side of the chin.
- (6) Abrasion-cum-contusion 3 1/2" X 2" on the anterior side upper part of the right leg.
- (7) Contusion 2" X 1" on the anterior side mid part of the left leg.
- (8) Abrasion-cum-contusion on the sole of the left foot.

Injuries of Mohandass

- (1) Fracture-cum-dislocation of the upper right incisor tooth.
- (2) Fracture cum-dislocation of the upper right canine tooth.
- (3) Contusion 1 1/2" X 1" on the left side of the forehead.

Smt. Radha Devi claimed Rs. 300/- by way of special damages and Rs. 10,000/- as general damages and Mohandass claimed Rs. 15/- as special damages and Rs. 5,000/- as general damages. The claims were filed against the owners of the bus and the insurance company.

3. The owners of the bus non-Applicant No. 1, 2 and 3 submitted their joint reply, in which the averments of the applications were denied and it was stated that there was no rashness or negligence on the part of the driver. The bus was not driven with speed. The road, where the accident took place, was such that the bus could not be driven with speed. The road was under construction. It was also stated that there is possibility of the accident on account of bad condition of the road. In the additional pleas it was stated that the accident occurred due to breaking of the king-pin. As the accident did not occur on account of rashness and negligence on the part of the driver, so the claimants are not entitled to any damages.

The insurer as well filed the reply on the same line and further stated that the liability of the insurer is only upto Rs. 2,000/- in each case.

4. Necessary issues were framed in both the claim cases. The Tribunal recorded the evidence in both the cases. Issue No. 1 in both the cases related to driving of the bus rashly and negligently by the driver. This issue was decided by the Claims Tribunal against the Applicant and it was observed that looking to the nature of the accident, the bus went out of control due to some mechanical defect beyond the control of the driver. However, in Radha Devi's case the

general damages were assessed at Rs. 2,000/-and, in Mohandass's case they were assessed at Rs. 3,000/- and so far as the liability of the insurer is concerned, in both the case the liability was determined to the extent of Rs. 2,000/-. However, in view of finding on issue No. 1, the applications were dismissed. Both the claimants have come up in appeal against the order of rejection of their claim applications.

I have heard Shri N.P. Gupta, learned Counsel for the Appellants and Shri M.M. Singhvi, learned Counsel for the Respondents.

5. The main question, which needs consideration in these appeals, is as to whether the owners of the bus can be held responsible for the accident as a result of which the claimants sustained injuries in their respective jaw. Shri Gupta, learned Counsel for the Appellants, urged that in these cases the facts speak for themselves. The bus left the road, crossed the pit and thereafter a mount and then bus stopped at a distance of about 30 paces. The pit was about 3" deep and 5" wide. If the vehicle would not have been driven with speed, it would have come to stop in the pit itself and would not have jumped the pit and crossed the mount. It was also pointed out that if brakes would have been applied, the bus would have stopped, but it appears that the brakes were not applied. Thus, according to Shri Gupta, the claimants discharged their onus by proving the aforesaid manner in which the occurrence took place and it was for the non-Applicants to rebut and prove that in fact there was some latent defect as a result of which the accident occurred. There is no evidence worth the name from the side of non-Applicants, except the evidence to the effect that king-pin broke down, as a result of which the bus left the road and it went out of control. Shri Gupta submitted that the non-Applicants have not adduced any evidence that the periodical checking was made of the vehicle and that the king-pin was in order and was properly greased and that the brakes could not work when king-pin broke. In the absence of such evidence the non-Applicants cannot be absolved from the liability to pay compensation arising from the accident. Shri Gupta referred to some case law.

6. Shri M.M. Singhvi learned Counsel for the Respondent on the other hand, urged that the Tribunal has rightly found that the bus went out of control due to some mechanical defect beyond the control of the driver. The evidence of the driver Shri Chandra Singh, the owner of the bus Shri Aalumal and conductor Shri Premchand is sufficient to prove that the king-pin was broken as a result of which the bus went out of control. There is a clear statement of the driver Chandra Singh that if the pin breaks, the vehicle goes out of control. He applied brakes, still the vehicle fell in the pit. Shri Singhvi urged that when the cause of accident is known, then in that circumstance the burden to prove rashness and negligence does not shift to the non-Applicant and the principle of onus to prove *res ipsa loquitur* cannot be pressed into service and has no application. In support of his contention, he also cited some cases.

7. Before dealing with the evidence in these cases and before considering the

arguments advanced by the learned Counsel for the parties, it would be proper to advert to the relevant law relating to the onus of proof and the liability of the owner of the vehicle on account of any mechanical defect in the vehicle.

8. In *Gobald Motor Service Ltd. and Anr. v. R.M.K. Veluswami and Ors.* 1958 A.C.J. 179 (S.C.), their Lordships of the Supreme Court took into account the clear picture of the topography and the physical condition of the locality where the accident took place. The road passed over a culvert and then took a sharp bend with a downward gradient. To the east of the road was a drain and that was marked by 5 stones 2 feet high. At a distance of 20 or 25 feet from the stones, there were trees. The bus after crossing the culvert crashed against the 5th stone with so much force that the latter was uprooted and broken. It next attacked at tamarine tree which was stated to be at a distance of 20 or 25 feet from the stone, and its bark was peeled off and it travelled some more distance before it finally came to rest. The evidence disclosed that some of the passengers were knocked and thrown down within the bus itself and sustained injuries and one passenger Rajaratan was thrown out of the bus into the ditch at a place 16 1/2 feet south of the tamarine tree. It was observed that it must be self evident from the said picture of the accident that the bus must have been driven at a high speed. The High Court, on the basis of the evidence and on broad probabilities, held that the speed at which the bus was driven was excessive and the Supreme Court observed that the said finding was justified on the material. Apart from the positive evidence, their lordship, on the basis of facts, raised a presumption that the accident was caused by negligence of the driver. Their Lordships quoted the following passage from *Barkway v. South Wales Transport* (1948) 2 All E.R. 460, on the principles applicable as to onus of proof:

(i) If the Defendant's omnibus leaves the road and fell down an embankment, and this without more is proved, then *res ipsa loquitur*, there is 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, (ii) 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 a tyre-burst per se is a neutral even 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. Raglan Building Co.* (1942) 1 K.B. 152 where not a tyre burst but a skid was involved, (iii) To displace the presumption, the Defendants must go further and prove for it must emerge from the evidence as a whole, whether (a) that the burst itself was due to 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.

9. Their Lordships further quoted the following passage from the Halsbury's

Laws of England, Vol. 23, at p. 671, paragraph 956:

An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the Plaintiff occurs where ever 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 Defendants 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.

10. In that case their lordships of the Supreme Court applied the above principles and on facts agreed with the finding of the High Court that it was not possible to hold that the accident was caused by the breaking of the bolt. In that case the plea was that the accident was due to the rear central bolt of the bus suddenly giving way.

11. In *Shyam Sunder and Ors. v. The State of Rajasthan* 1974 A.C.J. 296 (S.C.), in connection with the maxim "*res ipsa loquitur*", their Lordships of the Supreme Court observed that "the maxim is only a convenient label to apply to a set of circumstances in which the Plaintiff proves a case so as to call for a rebuttal from the Defendant, without having to allege and prove any specific act or omission on the part of the Defendant. The principal function of the maxim is to prevent injustice which would result if a Plaintiff were invariably compelled to prove the precise cause of the accident and the Defendant is responsible for it, even when the facts bearing on the matter are at the outset unknown to him and often within the knowledge of the Defendant. In that case the engine of the truck caught fire. As soon as the fire was seen, the driver cautioned the occupants to jump out of the truck. Consequently, Navneetlal and other persons jumped out of the truck. While doing so, Navneetlal struck against a stone lying by the side of the road and died instantaneously. Their Lordship applied the maxim, as normally a motor vehicle would not catch fire if its mechanism is in order. There were evidence to the effect that the radiator was getting heated frequently and that the driver was pouring water in the radiator after every 6 or 7 miles of the journey.

12. In *Krishna Bus Service Ltd. v. Smt. Mangli and Ors.* 1976 A.C.J. 183 (S.C.),

the bus was overloaded. The road was wet and slippery. It was observed that the speed of the bus 25 to 30 miles per hour, at the turn of the road would be imprudently excessive. It was further observed that had the bus been properly maintained in a sound road-worthy condition, and used with due care and driven with due caution, the tie-rod should not have broken loose by the fall of the wheel in a pit hardly six inches deep, while it was negotiating a turn. It was held that the driver could have with ordinary care and diligence avoided the accident and the breaking of the tie-rod was at best a neutral circumstance.

13. In *Minu B. Mehta and Anr. v. Balkrishna Ramachandra Nayan and Anr.* 1977 A.C.J. 118 (S.C.), it was observed that in order to sustain a plea that the accident was due to the mechanical defect, the owner must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. Their Lordships referred to a decision of the House of Lords in *Henderson v. Henry E. Jenkins and Sons and Anr.* 1970 A.C.J. 198 (H.L., England) and dealt with that case as under:

In that case its lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to a latent defect not discoverable by reasonable care on driver's part. It was found that the lorry was five years old and had done at least 1,50,000/-miles. The brakes were hydraulically operated. It was also found after the accident that the brake failure was due to a steel pipe bursting due to corrosion from 7mm to 1 mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed that it was not a normal precaution to do this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind such as exposure to salt from the roads in winter or on journeys near the sea. The House of Lords.held that the burden of proof which lay on the Defendants to show that they had taken all reasonable care had been discharged. The defect remained undiscovered despite due care. As the evidence had shown that something unusual had happened to cause this corrosion it was necessary for the Defendants to show that they neither knew nor ought to have known of any unusual occurrence to cause the breakdown.

(See Bingham's Motor Claims Cases Seventh Edn., p. 219)

In *Minu B. Mehta's* case² all that was pleaded in the written statement was that the axle brake ring of the lorry came out and the driver lost control of the vehicle and that the defect can be developed in a running vehicle resulting in the driver losing control of the steering wheel, though it was stated that all precautions were taken to keep the lorry in a road worthy condition. It was not specifically pleaded that the defect, that is, axle brake ring, coming out is a latent defect and could not have been discovered by the use of reasonable care. Thus, on account

of lack of plea as well as the lack of evidence, the defence set up, was rejected.

14. In *Perumal and Ors. v. G. Ellusamy Reddiar and Anr.* 1974 A.C.J. 182 (Mad), the Tribunal held that the accident was a result of mechanical defect and not due to any negligence or rashness. This finding was reversed by the High Court. In that case the lorry went out off the road, jumped over pavement and attacked the deceased, who was actually standing on the steps of a tea stall. The doctrine of *res ipsa loquitur* was applied. The learned Judges assumed that the coming off of the left front wheel was not due to the impact itself but because of the stub axle nuts breaking or slipping all of a sudden. The learned Judges further observed that the Respondent cannot escape liability by merely showing that the accident was a result of a mechanical defect. He should further show that he took reasonable care to avoid such mechanical defect and that the defect could not be detected inspite of exercise of a reasonable care. It was also observed that in the case of mechanical breakdown unless the Defendant satisfies the court that he arranged periodical check up and carried out necessary repairs regularly and that he did everything in his power to eliminate mechanical unsoundness, the breakdown would be only a neutral factor and not a valid defence, and it was found that the first Respondent has not discharged his burden of rebutting the presumption arising from the doctrine of *res ipsa loquitur*.

15. In *Muniammal v. G. Mohan and Ors.* 1975 A.C.J. 81 (Mad), the vehicle knocked against the hand-cart, ran over the cart-man and thereafter struck against another cart and stopped short after travelling a further distance of 20 feet. The learned Judge in the light of the evidence of the motor vehicle inspector, accepted the theory that the driver had lost control of vehicle because of the sudden failure of brakes, but observed that the further question arises whether by merely invoking the suddenness of the brake failure, the owner of the vehicle can be said to have discharged the burden that the law throws upon his shoulders. The learned Judge observed that if there was sudden brake failure and if it was due to a latent defect which was not ordinarily visible on external inspection, has the driver or his master shown that he had been properly maintaining and inspecting the internal parts of the lorry periodically ? The learned Judge further observed that one would expect the lorry owner to have examined some automobile engineer who had previously inspected the internal parts of the lorry or the engineer who had replaced the internal parts if they had been found to be worn out. The evidence of the motor vehicle inspector in this case is that the failure of the wheel cylinder might be due to the part being worn out. In that case the lorry was of Fargo make of 1950 model and the accident took place in 1969, so the questions were posed what did the owner of the lorry do during these 19 years. Did he get the internal brake cylinder inspected or replaced at any time by any engineer ? Did he ever have the lorry serviced and kept in good repair ? It was observed that these questions remained unanswered by the evidence adduced on the side of the Respondents, which is the duty of the Respondents to answer to the satisfaction of the court.

16. Shri Gupta also placed reliance on *Hayat Bi and Ors. v. Nissar Ahmed and Ors.* 1979 A.C.J. 351 (Kant.), and *Kumari Swaranlata Kapoor and Ors. v. Joginderpal and Ors.* 1970 A.C.J. 71 (M.P.). These cases too have laid down the same principles.

17. Shri Singhvi, learned Counsel for the Respondents, strongly placed reliance on a Division Bench decision of the Madhya Pradesh High Court in *Ram Dulare Shukla v. Madhya Pradesh State Road Transport Corporation and Ors.* 1970 A.C.J. 127 (M.P.). In that case the shackle pin on the wheel of a bus slipped and that was held to be contributory cause of the accident and was considered to be a latent defect in the vehicle and the driver was not found negligent in driving the bus at an uncontrollable speed. While dealing with the doctrine of *res ipsa loquitur* it was observed that if the facts are sufficiently known, the question ceases to be whether the facts speak for themselves, and the only question is whether on the facts as established, negligence is to be inferred or not. The doctrine of *res ipsa loquitur* does not, therefore, apply when the cause of the accident is known. On the facts of the case the learned Judge A.P. Sen (as he then was), held that the doctrine of *res ipsa loquitur* does not apply. The claimant was, therefore, not entitled to judgment by proving the fact of the accident. The learned Judge further observed that even otherwise, the inference of negligence if any, on the plea of *res ipsa loquitur* stands sufficiently rebutted by the corporation and it is, therefore, exonerated from liability.

16. Shri Singhvi also referred to *Tan Chye Choo and Ors. v. Chong Kew Moi* 1970 A.C.J. 325 (P.C., England). In that case, the vehicle suddenly verred across the road and struck another vehicle. Examination revealed a complete failure of the steering and braking system as a result of a sudden rupture in the steering mechanism. In that case there was evidence of servicing of the taxi and of periodical inspection and a finding was reached that there had been no failure to take proper steps to service and maintaining the car. Thus, on facts the owner and the driver were not held liable.

19. The next case, which Shri Singhvi cited, is *Mandi Kulu Road Transport Corporation v. Janak Raj Singh and Ors.* 1968 A.C.J. 363 (Del). In this case the stub axle of a bus brokedown and the bus fell in a ditch. In connection with the stub axle, it was observed that it is a part which cannot be seen and does not require any greasing or any other particular maintenance. If it develops a crack, it would be on account of imperfect workmanship on the part of the manufacturers. This defect cannot be discovered by any amount of diligence on the part of the owner. It was held to be a latent defect for which the owner cannot be held responsible. It was observed that there was no duty on the part of the owner of the vehicle to take off the brake drum and the bearings from the stub axle and to examine microscopically for the discovery of a crack. Further such a crack in a stub axle and its breakage is a very rare case. The court can take judicial notice of these scientific facts.

20. In the light of the principles enunciated in the above case law, it is to be seen

as to whether on the facts of the present case the maxim *res ipsa loquitur* applies and if applies, it is further to be seen whether the presumption of negligence has been rebutted by the owners of the bus. Can they be exonerated on the ground that they have proved the specific cause of the accident as breakage of the king pin and the breakage was on account of latent defect for which the owners cannot be held liable.

21. As regards the applicability of the doctrine of *res ipsa loquitur* I am clearly and firmly of the view that this applies to the facts of the present case. It is so clear, patent and obvious that the claimants, who were travelling in the bus could not know as to why the bus has left the road and why the same could not be stopped and continued to travel till it came to rest at a distance of 30 paces. No such knowledge can be attributed to the claimants that the king pin had broken and the breakage of the king pin led to the bus leaving the road and that it further could not be stopped despite application of brakes, for an ordinary traveller it is not possible to hold that he is aware that breakage of king pin can be the cause of accident. The principle enunciated in the Madhya Pradesh case 1970 A.C.J. 127 (M.P.) cannot thus be applied to the facts of the present case and in my view having regard to the evidence in the present case the maxim fully applies. When once it is found that the maxim applies, heavy burden lay on the non-Applicants not only to explain, but to prove that the breakage of the king pin resulted into the accident, for which they are not responsible or that they took all reasonable care and caution in the service and maintenance of the vehicle and the defect was so latent that it could not be discovered. In the present case from the side of the owners no such evidence has been led to show that the king pin was subjected to periodical inspection, service and maintenance. There is no evidence to this effect as to when the king pin was last greased, and what is its normal life, when timely greased and otherwise. The king pin has not been produced to make out a case that it was not worn out. The vehicle was ten years old. There is no evidence to the effect that in these ten years whether the king pin was ever replaced or serviced. The king pin requires to be greased after every 1,000 kms run, as would appear from Tata Diesel Vehicles Operator's Hand Book p. 79 Shri Singhvi, learned Counsel for the Respondent's brought the king pin in court for demonstration. The king pin appears to be a solid, thick pin not liable to be easily broken and appears to have a very long life, but still it requires greasing after every 1,000 kms. It is not known as to whether there were covers to the king pin on both the sides, so as to prevent its fall. There is no evidence worth the name as to how the king pin was broken and fell down. There appears only the bald statement of the driver to the effect that the pin is fixed in the spring and if the pin breaks the vehicle goes out of control. He has not explained as to how the king pin fell down and he has also not explained whether application of brakes would be possible, in case of breaking of the king pin. No expert has been examined by the owners of the vehicle. It is true that the king pin is not open to inspection from outside, but still it is the duty of the owners to prove by positive evidence that it was properly

serviced and maintained. There is complete lack of evidence on this score, in the absence of which the owners cannot be absolved from liability. I, may also refer here that a reasonable inference on facts can be drawn regarding rashness on the part of the driver. Admittedly there were pot holes in the road and the condition of the road was bad. When the bus continued to run up to a distance of 30 paces even after leaving the road and it could even cross the pit three feet deep and five feet wide and then cross the mount, the conclusion, to my mind is irresistible that the vehicle must have been driven on the road at an unusual and excessive speed which was necessarily excessive looking to the condition of the road. The driver ought to have driven the vehicle with a very slow speed having regard to the bad condition of the road, lest the weaker part of the bus may break. Driving the bus at an excessive speed on a pot holed road and a bad and damaged road might have been the cause of breaking of the king pin. Had the driver avoided such speedy driving, he would have avoided the breakage of the king pin and the accident. Thus, the two conclusions are clear, first, that there was rashness on the part of the driver in driving the bus at an excessive speed and the second, that the owners of the bus have failed to prove that all care and caution was taken by them in maintaining the bus and they have* also failed to prove that the breakage of king pin resulted into going of the bus out of control and that the brakes could be ineffective and were ineffective on account of breakage of king pin.

21. In the light of the above discussion I am unable to agree with the finding of the learned Tribunal on issue No. 1 and I hold that the claimants sustained injuries on account of rash and negligent driving of the bus and the owners are liable for the same.

22. The next question is the determination of the quantum of compensation. The Tribunal has assessed the general damages to the extent of Rs. 2,000/- in the case of Radha Devi and Rs. 3,000/- in the case of Mohandas. Mohandas had fractures and dislocation of his upper right incisor teeth and upper right canine tooth and there was a contusion on his forehead. Dr. Chandralal has categorically stated that both his teeth had broken and were uprooted from jaw. Mohandas was a boy of 16 years at the time of the accident. Smt. Radha Devi was aged 40 years. Apart from fractures and dislocation of three teeth she sustained further five injuries. As the claimants have suffered breaking of teeth and injuries on face, compensation determined by the Tribunal appears to be fair and reasonable, but the insurer is liable only to the extent of Rs. 2,000/- in respect of each of the claimants.

Accordingly, both the appeals are allowed. The judgment of the Tribunal is set aside in both the cases. Smt. Radha Devi is awarded a sum of Rs. 2,000/- (two thousand rupees) and Mohandas is awarded a sum of Rs. 3,000/- (three thousand rupees) by way of compensation. They will further get interest @ 6% per annum from the date of their claim till realisation from the owners of the bus Respondents No. 1 to 3. The liability of insurer Respondent No. 4 shall be limited

to the tune of Rs. 2,000/- (rupees two thousand) in respect of each of the Appellants. The Appellants will further get the costs of the Tribunal as well as of this Court.