
(1955) 04 MAD CK 0011
In the Madras High Court
Case No : C.S. No. 361 of 1953

S. Nagamani and another APPELLANT
Vs
Corporation of Madras RESPONDENT

Date of Decision : 15-04-1955

Acts Referred:

Citation : (1955) 04 MAD CK 0011

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : V. Thyagarajan, R. Venkatasubba Rao, K. Ramachandra Rao and K. Raghava Rao, for the Appellant; John and Row, V. Sri Ramamurthy and B. Padmanabha Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a suit which has been filed for the recovery of Rs. 60,540/- from the Corporation of Madras by way of damages.

2. The facts are; On 11-5-1953 at about 8 p.m. Ramachandra Rao Naidu, the husband of the first plaintiff and the father of the second plaintiff,

who was employed as Superintendent, Book and Budget Section, Accountant-General's Office, Madras and was drawing a salary of Rs. 290/-

plus allowances totalling Rs. 350/- and who had good prospects of promotion as Assistant Accounts Officer, was returning from his office to his

house at No. 37, Perianna Mudali Street, G.T. Madras.

On the way, while he was passing through the Portuguese Church Street Seven Wells and apparently by the side of a Corporation ventilator from

post on the pavement adjoining the Corporation play ground, it is stated to have fallen on him and caused him head injuries which brought about his

death that night.

Two persons who are said to have been in the Corporation play ground taking exercises viz., P.W. 4, Abdul Razack and his brother P.W. 5

Ahmed Siddick, on hearing the noise of the falling iron post ran there and found Ramachandra Rao Naidu fallen on the road with head injuries and

the from column stretched on the road.

It is their case that they did not see anything of what happened before. It is also their case that they did not then notice the condition of the post or

of the place in the payment where it had been fixed.

The injured man was rushed by them to the Stanley Hospital in a rickshaw and information was sent to the family. P.W. 2 the sister of the

deceased and P. W. 3, her husband by name Chalapathi Rao, a Sanitary Inspector of the Corporation rushed to the hospital and found the injured

man unconscious. In spite of the best medical attention Ramachandra Rao Naidu died before mid-night without regaining consciousness.

3. This accident was apparently reported from the Hospital to the Crime Branch and telephonic message of the same was sent to the Sub-

Inspector Jayaram Naidu, P. W. 6. The information sent to him, as a matter of fact, was wrong because it is stated that a street lamp post fell upon

this Ramachandra Rao Naidu. In fact what fell on him was a sewage ventilating post. On account of the death of the injured man shortly thereafter,

the Sub-Inspector made no further enquiries and held the inquest on 12-5-1953 in the afternoon between the hours between 5 and 6 at the

General Hospital.

The Sub-Inspector does not appear to have inspected the scene before holding the inquest because he frankly agrees that his record would not

show any such visit of the scene of accident and which if he had done would have been noted in the C. D. The Panchayatdars also did not visit the

scene and this is admitted by the Sub-Inspector.

In as much as there was not the slightest indication of foul play, the Sub-Inspector held the inquest without troubling himself about inspecting the

scene or making any enquiries in the locality. The Sub-Inspector examined at the inquest the deceased man's wife P. W. 1 who did not go to the

hospital and who did not also visit the scene at any time and whose evidence is purely formal about the husband's health and position in life and

emoluments, the sister of the deceased, P. W. 2 who also did not visit the scene

but only went to the hospital accompanied by her husband,
Chalapathi Rao P. W. 3 the husband of P. W. 2 who, though he now pretends to have gone to the scene before going to the hospital, has not made any mention of the same at the inquest report and whose testimony on this point has got to be disbelieved and the two Muslims.
P.W. 4, Abdul Razack and P. W. 5, Ahme Siddick who rushed the injured man to the hospital without making any inspection of the scene and who are stated to have seen ventilating column and the place in which it was fixed only the next morning and of whom only Abdul Razack has mentioned at the inquest that the post had become rusty at the bottom and not Ahmed Siddick who apparently has not inspected the column or the place at which it was fixed which he now asserts is the case and which cannot be believed, and, another Selvraj who has not been examined before me, and, who seems to have merely corroborated the two Muslims.
The Panchayatdars returned a verdict that the deceased met with his death on account of the head injuries caused to him by an accidental fall of a broken sewage ventilator iron post while walking along Portuguese Church Street at 8 p.m. on 11-5-1953 and that no foul play was suspected.
4. The post mortem in this case was held by P. W, 7, Dr. C. B. Gopalakrishnan and he has found that the death was brought about by the head injuries caused to the deceased by the fall of the iron post and that the deceased had otherwise no organic disease of any kind to account for his death.
5. On 1-6-1953, the plaintiffs gave a lawyer's notice to the Corporation that the death of the deceased was brought about by the gross carelessness and negligence of the Corporation in allowing this ventilator post to exist in a dangerous condition and without taking adequate precautions and that the plaintiffs were entitled to damages of Rs. 1,45,920/-. The gravamen of the accusation was:
This is one of the cases where the maxim ""res ipsa loquitur"" ""the thing speaks for itself"" would clearly apply & having regard to the length the girth and the weight of the post, the post would have broken and fallen on his head because of the thoroughly rusty and insecure position at the base so that any moment it would drop down without any extraneous push or impact.
There was absolutely no support at the base and the iron post was allowed to

rest entirely upon its strength at its base. My clients state that the Corporation quite clearly failed in its duty of taking adequate precautions and seeing that it is in any dangerous condition. The gross carelessness and negligence of the authority responsible for pro per maintenance of the post is far too clear on the facts and Corporation cannot exonerate itself from liability for the consequence arising from the condition of the iron post on any ground.

6. The Advocate for the Corporation Dr. John acknowledged this notice and stated.

We are taking instructions from our clients and will be sending our detailed reply in due course. We are only writing this letter to acknowledge

receipt of your letter written on behalf of your clients and also point out that our clients emphatically deny their liability in the matter. If before the

receipt of our detailed reply your clients choose to institute proceedings, they will be doing so at their own risk as to costs and consequences.

7. Before this promised reply notice was sent, the suit had been filed limiting the damages to Rs. 60,540/- and basing their claim upon the principle

res ipsa loquitur"" ""the thing speaks for itself"" grounded on the accusations set out above.

8. The Corporation denied its liability and refuted the allegations in the following manner:

The defendants emphatically deny the allegations in paragraph 5 of the plaint to the effect that the defendants were guilty of negligence in the

discharge of their duties and in the maintenance of the ventilating column which is alleged to have fallen on the deceased Ramchandra Rao Naidu

on 11th May 1953. The defendants state that in the exercise of their statutory powers they have constructed sewers and drains in the City of

Madras and ventilating columns are provided at regular intervals for such sewers and drains, one such ventilating column being the one which fell

on 11th May 1953 in Portuguese Church street.

The defendants slate that the ventilating column in question was well imbedded in a cast iron base to depth of more than three feet and concreted

all found as is done in the case of other ventilating columns in other parts of the City. The column is made of steel and its minimum life is fifty years,

and this ventilating column in particular was erected only about thirty years ago.

The defendants state that there has been no negligence in the construction of the ventilating column or in its maintenance. The column was properly, secured to its base and the defendants deny all allegations to the contrary that its base was insecure and unsupported and that it has been insufficiently protected.

The defendants state that in the circumstances no greater precautions could have been taken by the defendants in the erection of the ventilating column or in its maintenance.

The defendants further state that they have been properly maintaining all ventilating columns in the City of Madras. These ventilating columns are periodically inspected by the Divisional staff and in the case of this ventilating column in particular the last inspection was made on 14th April 1933 when it was found in a sound condition and the defendants had no knowledge and had no reason to suspect that there was any defect in the ventilating column and in fact these defendants deny that the fall of the ventilating column was due to any negligence on the part of the defendants in its maintenance.

The defendants state that the fall of the ventilating column was not due to any act of commission or omission on the part of the defendants but must have been due to the Act of God or that of the deceased himself or to any other reason for which the defendants are not liable.

9. On the pleadings the following issues were framed :

1. Is the suit not maintainable?
2. Did the defendants not maintain the ventilating column in a proper condition and without any defect as alleged in paragraph 5 of the plaint?
3. Did the deceased die as a result of the fall of the ventilating column on him?
4. Was the fall of the ventilating column due to any Act of God or any act of the deceased himself?
5. Whether the defendants are guilty only of an act of nonfeasance and are therefore not liable to the plaintiffs as alleged in paragraph 10 of the written statement?
6. To what reliefs, if any, are the plaintiffs entitled?
10. Before me the 1st plaintiff examined herself and six others already mentioned and one Veeralaghava Mudaliar P. W. 8 who is said to be

employed in the District Board Office, Chingleput, and who was living some houses away from the deceased. On behalf of the Corporation, Mr.

Bhaskaran, Special Engineer, Corporation of Madras and who at the material time was the Assistant Engineer in charge of this sewage works in

the area mentioned, was examined as D. W. 1 Exs. P-1 to P-5 were filed on behalf of the plaintiffs and Exs. D-1 to D-3 on behalf of the defendants.

11. Before proceeding to analyse the evidence in this case, I shall endeavour to examine the scope of the maxim "*Res Ipsa loquitur*" which forms

part of that branch of Law of Torts, viz., negligence in law entitles the injured party to recover damages.

12. The onus of proving negligence lies upon the party who alleges it and to establish a case he must prove the negligence charged affirmatively, by

adducing reasonable evidence of it. As a rule, the mere proof that an accident has happened, the cause of which is unknown, is not evidence of

negligence.

13. In special circumstances, however, the mere fact that an accident has happened may be "*prima facie*" evidence of negligence, casting upon the

party charged with it the onus of proving the contrary, for owing to the nature of the accident the thing itself speaks *res ipsa loquitur*".

14. The rule is not really a principle because it is more a means of shifting the burden of proof. Whether the expression "*res ipsa loquitur*" is

applicable or not depends upon whether, in the circumstances of the particular case, the mere fact of the occurrence which caused hurt or damage

is a piece of evidence relevant to infer negligence. In fact as Lord Shaw said:

Had it not been in Latin, nobody would have called it a principle.

The principle according to Dr. Winfield (Text-Book on the Law of Torts 3rd edition page 401) however appears as early as - "*Christie v. Griggs*",

(1809) 2 Camp. 79 (A); its Latin form is much later. But phrases like "*Res Loquitur Ipsa*" and "*Res Ipsa indicat*" occur in Cicero and other law

literature. The circumstances on the foot of which this rule "*res ipsa loquitur*" is erected may be briefly summarised.

The rule that it is for the plaintiff to prove negligence and not for the defendant to disprove is in some cases one of considerable hardship to the

plaintiff; because it may be that the true cause or the accident lies solely within

the knowledge of the defendant who caused it. The plaintiff can prove the accident, but he cannot prove how it happened so as to show its origin in the negligence of the defendant.

This hardship is avoided to a considerable extent by the rule of "res ipsa loquitur". There are many cases in which the accident speaks for itself, to that it is sufficient for the plaintiff to prove the accident and nothing more. He is then entitled to have the case submitted to the Jury, and it is for the defendant, if he can, to persuade the jury that the accident arose through no negligence of his. (Salmond on Torts, 11th Edition 1953: Page 516.).

The nature of circumstances is, where something happens which would not happen, if ordinary care and skill were used, the happening of that is

evidence on which a jury may find that there has been negligence on the part of the defendant provided that where the damage is caused by a

defect in some instrument, control must be retained by the defendant until the time of the injury (Clerk and Lindsell on Torts. 10th Edition, page

383.), or to put it in another way there must be reasonable, evidence of negligence and the mere occurrence of an injury is sufficient to raise a

"prima facie" case,

(a) when the injurious agency is under the management of the defendant;

(b) when the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care.

Over inanimate things this duty of care is absolute; over animate beings it only goes to guard against injury from their customary habits (Beyen on

Negligence, Vol. I 14th Edition: page 126): - "Scott v. London & Saint Katherine Docks", (1865) 3 H & C 596 at p. 601 (B): - "Barkway v.

South Wales Transport Co. Ltd.", (1950) 1 All E. R. 392 (C): - "Bolton v. Stone", (1951) A C 850 (D). The application of this rule is

necessitated by the fact already referred to viz.; that there are cases in which the true cause of accident lies solely within the knowledge of the

defendant or his servants who caused it & the plaintiff can prove the accident but it is not possible for him to prove how it happened so as to show

that it was due to the defendant's negligence.

This rule applies when the accident could not in the natural course of events have happened without negligence on the part of the defendant or his

employees. (Law of Torts by Anand & Sastri (1952), page 684, Venkatesa Iyer.

The Law of Torts (1933) Pages 57 to 60: The English and

Indian Law (sic) Torts by Ratanlal & Dhirajlal 4th Edition: page 426).

15. The limitations of the application of this principle have now got to be delimited. The rule is useful for determining the onus of proving further

facts in the case and is unnecessary when all the facts are before the court. (Law of Torts by Ramaswamy Iyer, 4th Edition page 526). So where

all the facts are known, there is no room for the application of the maxim; in such a case the only question of law is whether negligence can be

inferred from the facts established: (1950) 1 All E. R. 392 (C); (1951) A. C. 850 (D).

As a rule the mere proof that an accident has happened, the cause of which is unknown is no evidence of negligence. In special circumstances

indeed, the mere fact that an accident has happened may be "prima facie" evidence of negligence. So, if in a case like this, the defendant produced,

reasonable explanation, equally consistent both with the presence as well as with the absence of negligence the burden of proving the affirmative,

that the defendant was negligent and the accident was occasioned by his negligence still remains on the plaintiff.

- "Ballard v. North British Ry., 1923 S.C. (III) 43 (E): The Kite, (1933) P. 154 (F): The Mulbera, (1937) P. 82 (G) - "Mason v. Osborne",

(1939) 2 K.B. 14(H): Imperial Smelting Corporation, (1940) 1 K.B. 828 (I). In - "Davis v. Bunn, 56 CLR 246 at pp. 267-272 (J), it was held

that even where the maxim "res ipsa loquitur" applies there is no legal presumption of negligence so that the legal burden of disproving it lies on the

defendant.

But the plaintiff by proving the accident is deemed to have produced sufficient evidence, on which the jury may, if they think fit, give a verdict in

favour of the plaintiff. But the Judicial Committee of the Privy Council have treated the doctrine "res ipsa loquitur" as something akin to a Canadian

Statute which placed the onus of proof upon the defendant in cases of injury caused by motor vehicles & so laid down a rebuttable presumption of

negligence; --- "Winnipeg Electric Co, v. Geel, AIR 1932 P.C. 246 (K). Langton, J. however in (1953) P 154 at p. 166 (F), has attempted to

reconcile the two views by treating the onus as less heavy on a defendant under doctrine of "res ipsa loquitur" than it is upon the plaintiff.

But if the defendant calls no evidence the jury may be told that ""the merest balancing of probabilities in the plaintiff's favour is sufficient to satisfy

the onus of proof"". The presumption raised by the rule is a presumption of fact and not one of law. Even where the rule applies, the jury may find

for the defendant although he produces no rebutting evidence. But normally the plaintiff should succeed unless the defendant produces a reasonable

explanation which negatives negligence (ibid).

In deciding in any particular case whether the maxim "*res ipsa loquitur*" should be applied, the reported facts of other cases are of little value; each

case must be decided upon its own facts. It is unfortunate that questions which are questions of fact alone should be confused by importing into

them as principles of law a course of reasoning which has no doubt been properly applied in deciding other cases on other sets of facts. "(Broom's

Legal Maxims. 10th Edition, page 207) (See -- "*Thomson v. Inland Revenue*", 1919 S.C. (H.L.) 8 at p. 10 (L):

- "*Easson v. L. & N.E. Ry.*", (1944) K. B. 421 (M):-

"*Carpenter v. Haymarket Hotel*", (1931) 1 K. B. 364 (N) embodying this caution by Lord Finlay and Du Parc L. J.)

16. But at the same time a study of the leading (a) English (b) American and (c) Indian cases will not fail to be of considerable help to us in

formulating the principles upon which the particular facts of that case should be evaluated.

17. The English cases bearing upon this rule have been summarised by Salmond in the following extract from *Salmond on Torts*, 11th Edition,

1953, page 517 and following with certain Indian cases inserted at the appropriate places to indicate the parallel line of judicial thinking here:

Times in - "*Byrne v. Boadle*", (1863) 2 H. & C. 722 (O) a barrel of flour rolled out of an open doorway on the upper floor of the defendant's

warehouse, and fell upon the plaintiff, a passer-by in the street below. It was held that this was sufficient evidence of negligence to go to a jury,

without any evidence as to the manner in which the accident happened. For barrels, if properly handled, do not commonly behave in this fashion;

and the improbability of such an accident happening without negligence was sufficient to justify a jury in finding that negligence was the cause of it.

Again, it is now settled that if a motor vehicle has mounted or is projecting over

a payment or a street refuge there is some evidence of negligence

the onus of disproving which will not be displaced merely by proof of skid unless the defendant can satisfy the court that the skid was not due to

negligence. Skid by itself is equivocal. Similarly, after some conflicting dicta, it is now clear that unattended horses bolting or unattended motor-

cars running down hills afford some evidence of negligence.

However, "it can rarely happen when a road accident occurs that there is no other evidence, and if the cause of the accident is proved, the maxim

"*res ipsa loquitur*" is of little moment". (*Barkway v. South Wales Transport Co.*", (1950) 1 All E. R. 392 (C) at p. 399 per Lord Normand).

Other cases in which the same principle has been applied are those in which merchandise, being lowered in a crane, slipped out of its fastenings

and fell upon the plaintiff (1865) 3 II. & C. 596 (B): in which a brick fell down from a railway viaduct upon a person in the highway below (1871)

6 Q. B. 759 (U): (See also, - *Kuppammal Vs. M. and S.M. Ry. Co. Ltd. and Corporation of Madras*, fall of a wall): in which a collision occurred

between two trains belonging to the same company (*Skinner v. L. B. & S. C. Ry.*", (1850) 5 Ex. 787 (W); (or by the derailment of a railway

carriage "*E. I. Rly. v. Kirkwood*", AIR 1922 F.C. 195 (X); - "*Jewan Ram v. E. I. Ry. Co.*", AIR 1925 Cat 108 (Y), in which the door of a

railway carriage flew open on being pressed from within (- "*Gee v. Metropolitan Ry. Co.*", (1873) 8 Q. B. 161 (Z) (where a spark from the

engine set fire to plff's - " *Secretary of State and Another Vs. Dwarka Prasad*, premises near Ry. line in which an aeroplane met with an accident

at the beginning of its light (- "*Fosbroke-Hobbes v. Airwork Ltd.*", 1937 1 All E. R. 108 (Z2); in which an omnibus brushed, against branches of

an overhanging tree (- "*Radley v. London Passenger Transport Board*", 1942-1 All E. R. 433 (Z3); in which a small sports car turned over and

bounded along the road on dry night (- "*Halliwell v. Venables*", (1930) 143 L. T. 215 (Z4);) in which a dog with a loose lead ran about in a town

(--"*Pitcher v. Martin*", (1937) 53 T.L.R. 903 (Z5);) in which a swab was left in the patient's body after an operation (- "*Mahon v. Osborne*"

(1939) 2 K.B. 14 (Z6);) in which goods were stolen from a bailee's warehouse (- "*Brook's Wharf & Bull Wharf Ltd. v. Goodman Bros.*",

(1937) 1 K.B. 534, at pp. 539-40 (Z7);) in which excess sulphites were found in

underwear; - "Grant v. Australian Knitting Mills", 1936 A.C. 85

(Z8) where the lessee of a house used it for storing fireworks and there was an explosion resulting in the house being gutted; (- " S. Syeda

Mahomed Rowther Vs. A. Shanmugasundaram Chettiar, See also V.S. Narasimha Ayyar Vs. Allu Krishna Ayyar and Others,) (- Deputy Lal Vs.

Reoti Prasad Gupta, On the other hand, it has been held in the Court of Appeal that the electrocution of a man whilst constructing electrical

installations does not itself provide even prima facie evidence of negligence (--"Youngman v. Pirelli Cable Works", 1940-1 K.B. 1 (Z12):) and

Lord Goddard C. J., has held that the maxim did not apply where a person left an ordinary domestic fire burning in a grate and the room was set

on fire by some unknown cause.

For "Everybody knows fires occur through accidents which happen without negligence on anybody's part,": (- "Sochacki v. Sas", 1947-1 All ER

344, at p. 345 (Z13)). Nor does it apply where a law is found to be fractured after a dentist has extracted a tooth - "Fish v. Kapur", 1948-2 All

E. R. 176 (Z14)); or where a piece of projective cornice fell on the plaintiff who went to the defendant's house to collect money due to him as it

was not shown that the defendant was aware or ought to have been aware of the defect -"Pritchard v. Peto", 1917-2 K.B. 173 (Z15); (See also

Pauline D'souza Vs. Cassamalli Jairajbhoy, .

18. The American case-law on the subject is summarised in the following extract from Street's Foundations of Legal Liability:

Volume I, at page 197:

In the following cases the maxim *res loquitur ipsa* was applied. By this maxim the fact is indicated that upon the particular circumstances of the case

the law raises a presumption of negligence or considers negligence as prima facie established. --"Mullen v. St. John", (1874) 57 N.Y. 567 (Z17):

The plaintiff, while properly on the sidewalk of Van Brunt Street, in Brooklyn, was injured by the fall of a wall of a building owned by the

defendant.

There was no storm or violence to cause its fall, and no affirmative evidence of a defect or want of repair in the building sufficient to cause its fall. It

was held that the mere fall of the wall raised a presumption of negligence on the part of the person in charge of the building, because "buildings

properly constructed do not fall without adequate cause".

- "Jager v. Adams", (1877) 123 Mass. 26 (Z18): The plaintiff while passing along a sidewalk in front of a building in course or erection, was

struck by a falling brick. It was held that the defendant, who had the contract for doing the masonry, was liable. It was his duty, said the Court, to

put safeguards and barriers thereto to prevent even the "accidental" fall of a brick. Here the duty to take care reaches the virtual plane of insurance

against all harm attributable to "Vis Major" or external intervention by a stranger.-

Nalkmar v. Manhattan R Co.", (1892) 134 (sic) Y. 418 (Z19): The plaintiff was driving in a street under an elevated railway when he was struck

by a broken portion of a bolt which fell from the defendant's structure overhead. It was held that the fact that the bolt was broken and that part of it

fell was sufficient to raise a presumption that in that particular, defendant's railway was out of repair.-

"Gleeson v. Virginia Midland Rly. Co." (1891) 140 U.S. 435 (Z20): The plaintiff was travelling on defendant's road. In a cut a landslide occurred

which partly derailed the train and threw the car in which the plaintiff was riding violently forward. As a result the plaintiff was seriously injured. It

was held that the defendant was liable.

The mere fact that a wreck is so caused raises, it was held, a "prima facie" presumption of negligence. It is the duty of the company so to construct

the banks of its cuts that they will not slide by reason of the action of ordinary natural causes such as wet weather and vibration due to the

operation of trains.

In the foregoing cases, the defendant was proved to have had the exclusive control and management of those objects or agencies from some

defect in which the accident must have taken place. Where such exclusive control is not shown the maxim is not applied. (1875) 118 Mas. 234

(Z21): The plaintiff, while attending a concert given by the defendant city, was injured by the fall of a bust or statue, which had been placed outside

an interior balcony of the hall, directly over the plaintiff's seat. During the concert the audience were requested to rise, and as they did so, the bust

fell and hit the plaintiff.

There was no evidence as to the manner in which the bust had been attached to

or placed upon the balcony, or as to whether it had been properly secured. It was held that the evidence did not warrant a verdict for the plaintiff. The reason assigned for this was that the fall of the bust may have

been due not to an inherent defect in the mode of its attachment, but to the wrongful or negligent act of some one of the audience in the balcony.

It was observed: "It is not sufficient for the plaintiff to show that the injury may have been occasioned by the negligence of those whom he seeks to

charge with it. If there were other causes which might have produced it, he is in some way to show these did not operate.

That cases applying the maxim "*res loquitur ipsa*" conform to the general doctrine requiring that a reasonable person should be able to foresee

harm in the abstract is manifest. One who drops a bag of sugar from a warehouse window to the sidewalk, or who maintains a bridge with loose

bricks in it over a highway, or who keeps loose bolts on an elevated railway must, in the ordinary use of his faculties, foresee injury to pedestrians

below as a natural consequence of such negligent act. Hence he is guilty of negligence in that course of conduct.

But of course if he could show that a stranger came along and dropped the bag or loosened the brick the presumption would be rebutted.

19. The Indian case-law may now briefly be stated. In - "*Chouthmull Doogur v. Rivers Steam Navigation Co.*", 24 Cal 786 (Z22) in regard to

certain goods delivered for carriage to Calcutta in a that bottom boat belonging to the defendants, while on board the defendant's flat, the goods

were destroyed by fire. At the trial of the case the defendants gave evidence showing the state of things before the fire occurred the circumstances

leading to the discovery of the fire (but not the cause or origin of it), and the measures taken to extinguish the fire.

An appellate Bench of the Calcutta High Court held that the occurrence of a fire, under the circumstances disclosed in the case, without any

explanation as to the origin of it, was, of itself, evidence of negligence. In - "*Blanche Edith Cates v. Mongini Bros*", AIR 1917 Bom 282 (Z23) the

facts were:

The plaintiff, who was a midwife and sick nurse, went to the restaurant of the defendants to take lunch and sat at a table over which an electric fan

was suspended with a rod attached to the ceiling. As the fan was switched off by

a waiter under her instructions it fell with its dynamo on her left

hand causing injuries to her hand and fingers. The plaintiff ought an action for negligence against the defendants to recover Rs. 15,000 as damages

alleging that she was incapacitated from following her profession and was seriously handicapped by being deprived of the use of her left hand and

had suffered severe physical and mental pain.

It was held ""that the defendants were not liable as the falling of the fan was not due to any negligence on their part but was due to an accident

owing to a latent defect in the metal of the suspension rod and that the accident could not have been averted by the exercise of ordinary care, skill

and caution on the part of the defendants.

The burden of proof in an action for damages for negligence rests on the plaintiff where the injury complained of is caused by the use of tackle or

machinery for which the defendant is responsible."" In *Bajinath Shaw Vs. Corporation of Calcutta*, , it was held that the ordinary rule in running

down cases that the plaintiff must give affirmative proof of negligence on the part of the defendant or his servant is subject to the exception that

where a vehicle is shown to have been under the management of the defendant or his servant and an accident occurs such as in the ordinary course

does not happen, that itself is "prima facie" proof of negligence and the onus then shifts on the defendant to disprove that the accident arose from

want of care.

- *Liladhar Chaturbhuj Vs. Harilal Jethabhai*, does not throw any light on the matter because the point decided therein was that in an action tor

negligence tor injury caused by negligent driving of a motor car, proof by the plaintiff that the ear which caused the accident belonged at the time to

the defendant affords "prima facie" evidence that the ear at the material time was driven either by the defendant, or by his servant or agent and that

it was, however, open to the defendant to displace that presumption by proving that at the time of the accident the car was not under his control.

In - *The Governor-General in Council Vs. Jamuna Das Agarwala*, it was pointed out that this maxim does not lay down any rule of legal

presumption of negligence which has to be rebutted y the defendant; it only provides a mode of proof.

20. To sum up the general rule is that the plaintiff must establish a breach of

duty and its causal connection with his injury. If he fails to prove either of them action fails. Mere proof of some injury is not enough. - "Wakelin v. L. & S. W. Ry. Co.", (1886) 12 A.C. 41 (Z27); - AIR 1932 95

(Privy Council) "Simmon v. London General Omnibus Co.", (1873) L. R. 8 C. P. 390 (Z29). The exception to this rule is that if the facts proved

or admitted amount to "prima facie" proof of negligence or its causal connection, the burden is shifted to the defendant to rebut these points. The

defendant may be able to rebut the presumption, but rebut it he must if he wishes to escape liability.

The evidence requisite for rebuttal is discussed in (1923) S.C. (H.L.) 43 (E) and - "O" Hara v. Central Scottish Motor Traction Co. Ltd.", (1941)

S. C. 363 (Z30) (Winfield, A Text Book of the Law of Torts 3rd Edition, Page 401).

The plaintiffs evidence must pass however beyond the region of pure conjecture into that of legal inference. The dividing line between conjecture

and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value for its essence is that it is a mere guess.

An inference in the legal sense on the other hand is the deduction from the evidence and if it is a reasonable deduction it may have the validity of

legal proof.

In other words, there can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish and the

Court can come to a conclusion only upon a reasonable probability and not a mere possibility: Her Goddard J. in - "Gibby v. East Grinstead Gas

and Water Co.", (1944 170 L. T. 250 (Z31); - "Horabin v. British Overseas-Airways Corporation", (1952) 2 All E. R. 1016 (Z32); - "Jones v.

Great Western Rail Co.", (1930) 144 L. T. 194 (Z33); - "Caswell v. Powell Duffryn Colliery", (1940) AC 152 at p. 169 (Z34); - "Parfitt v.

Lawless", (1872) L. R. 2 P. & D. 402 at p. 472 (Z35). The facts proved or admitted therefore must amount to "prima facie" evidence of

negligence or its causal connection and then only the burden will be shifted to the defendant to rebut these points.

The question of "prima facie" evidence or onus of proof is generally immaterial where there is evidence on both sides; AIR 1922 P.C. 195 (X).

But it becomes important where the defendant does not offer rebutting evidence or the evidence on either side is scanty or obscure as often

happens in many cases of serious accidents: - "McArthur v. Dominion Cartridge Co.", (1905) A C 72 (Z36). The evidence must be more

consistent with the defendant's negligence than otherwise & not merely consistent with it. If the facts are consistent with either hypothesis, the

plaintiff fails. - "Cotton v. Wood", (1860) 3 C B N S 568 (Z37). But it is not necessary that they should exclude the defendant's innocence. The

courts will take judicial notice of what happen in the ordinary course of things at all events to the extent of using their knowledge of the common

affairs of life to complete or correct what is stated by witnesses. (Pollock: Law of Torts 14 Edition, Page 357).

The doctrine of "res ipsa loquitur" to conclude is in the language of Underhill (Law of Torts pages 192-194) but a branch of a larger rule namely

that where the proved facts render it reasonably probable, in the absence of explanation, that there was negligence on the part of the defendant and

that the damage was caused by that negligence, it is for the tribunal of fact to say whether the case is not established.

If in the ordinary course, the odds in the inferences that may be drawn from the facts proved are decidedly in favour of negligence on the part of

the defendant as the explanation of what occurred then there is sufficient evidence: but if it is in the ordinary course just as likely that the event

happened without negligence as it is that it happened with and in consequence of negligence, then there the case of the plaintiff is at an end and the

defendant is not called upon to run the risk by his answer or possibly by some slip on the part of a careless witness, of providing evidence which

the plaintiff has himself been unable to find-"Langham v. Governors of Wellingborough School", (1932) 147 L. T. 91 at p. 95 (Z38) per Greer

L.J.: (1940) 1 KB 1 (Z12); (1944) 1 KB 421 (M) - " AIR 1932 246 (Privy Council)

21. Bearing these principles in mind, if we examine the facts of this case, we find that the plaintiffs have not brought home the negligence attributed

to the Corporation on which this claim for damages is founded.

22. The gravamen of the accusations against this Corporation is that the Corporation was grossly negligent in allowing this ventilator post to exist in

a rusty condition and secondly in keeping it in an insecure position at the base. It is quite true that it the plaintiffs have been able to make out these

accusations the Corporation would have been guilty of gross negligence. Rut

what are the facts established in this case. In regard to the post being in a rusty condition, at the inquest none of the witnesses except Abdul Razack P. W. 4 spoke to the bottom of the post being in a rusty condition in order to account for its breaking off from the base.

This Razack, however, when cross-examined made admissions showing that he had not examined the column or the place in which it has been fixed either intelligently or adequately. On the other hand, his evidence seems to be nothing more than what he gathered from the talk of the people around that the post must have got rusted and should have thus broken off and fallen. This witness is now saying that he picked up pieces of the breakings of this iron post and that the place where it was broken the edges were all jagged, going up and down.

This witness has not mentioned any such thing at the inquest and what is more, has not handed over the broken pieces which he is stated to have picked up. This witness also stated that the pillar had broken off below the pavement level and which has an important bearing upon the next question about the post not being securely fixed at the base by means of a mugging.

I have already mentioned how the brother of this Razack has not spoken to the pillar being rusty at the bottom when the inquest was held though he now comes into line with his brother and states that next morning for about 2 or 3 minutes he also went and inspected the column as well as the place from which it got broken.

In this connection it is interesting to note that the memories of these witnesses have become very sharp after an adjournment for a few days of this suit, and they have started remembering things to which they never spoke before. The evidence of this Ahmed Siddick shows that he could not have really gone and seen this column as well as the place on which it was fixed.

The brother-in-law of the deceased is naturally giving interested testimony and he now comes with a story of examining this fallen column on the road as well as the base even before going to hospital even though he admits he was in a very great hurry and was in a perturbed state of mind, and that on seeing this fallen column came to the conclusion that his brother-in-law must have been injured by the pillar.

It is not surprising therefore that at the inquest he has not spoken one word

about the condition of the pillar or the place from which it got broken off.

In regard to the Sub-Inspector P. W. 6, it is clear from his own C. D., that he never inspected the place and that he only arranged the pillar to be removed to the police station by means of coolies. If he had really seen the pillar in rusty condition broken off at the base, he would have certainly noted it in his C. D., and, what is more, he would have elicited it in the course of the inquest and this would have formed part of the verdict of the panchayatdars.

Then, the last witness to suggest this rusty condition is P. W. 8 who was a neighbour and intimate friend of the deceased and who was never examined before and whose name was not mentioned by anyone else as having seen the scene of occurrence and he now comes up with the version that he found the bottom of the pillar rusty and that all the people around were mad at the Corporation for allowing such a rusty pillar to exist.

That the evidence of this witness cannot be true is seen from the fact that he says that photographs were taken and obviously they must have been taken by the plaintiffs' party because people were saying according to him that evidence of the appearance of the scene should be preserved and, yet these photographs are not forthcoming.

There has been no attempt made for having an inspection made by a Commissioner or other person of the condition of the pillar notwithstanding the fact that this pillar was at the police station for a long time and has been sent to the Corporation stores for disposal only then. The only inference that can be drawn from the fact that no attempt has been made to preserve the material object is the plaintiffs expected to derive no support from it.

This rusty condition is incidentally said to have been brought about by the pillar not being repainted. But if it got broken at the bottom 1 inch below the pavement level, the painting would not have prevented the breaking of the column.

The rusting would be at a level where the naked eye could not have perceived it. This non-painting has not also in any way affected the stability of

hundreds of other similar non-painted columns in the vicinity or elsewhere in Madras.

Then, turning to the other accusation that it was not securely supported in that there was no muffing around it, the witnesses all agree that there are

hundreds of ventilator columns with muffings and there are equally hundreds without muffings. In addition, if the pillar broke off below the

pavement level the muffing would not have prevented such a breaking off.

In fact, it stands to common sense that an iron pillar 20 ft. high and securely fixed in an iron socket 3 ft. deep and packed with cement concrete all

round would not have derived any additional support from a muffing which is often placed when it is erected on a low lying place to drain off water

and prevent stagnation and give an ornamental appearance.

23. Therefore on these two grounds on which the entire negligence of the Corporation is based have, not been made out by the plaintiffs in their

evidence. On the other hand, the evidence of the Engineer shows that this ventilator column like dozens of other ventilator columns have been

imported from England about 30 years ago, that they came painted with anti-corrosive paint, that they have been functioning satisfactorily and that

no case of any such breakage has been known to have happened before, that they are securely fixed on a cement pavement in an iron socket sunk

three feet deep and that they are packed all round with concrete cement and that they are connected to the manholes by means of a tube adjoining

the bend at the bottom of the iron socket and that the question of painting would depend upon exigencies and that experience has shown that no

such repainting was required, that they are periodically inspected along with the manhole to which the pipe connects this ventilator column and that

in this particular case there was such an inspection as shown by the register tiled and that nothing material was discovered showing that attention

was required in regard to this pillar.

In regard to the muffing too, the Engineer states categorically that it will not in any way add to the strength of the column which would depend upon

its being filled deep inside the iron socket packed all around with concrete cement, and, that these muffings which are slender cement cones

surrounding the iron pillar at the base are in most cases put up merely for ornamental purposes and as well as in some cases where the tubular pillar

is not fixed upon cement pavement and stagnation of water has to be warded off. Both the parts of the evidence of the Engineer, commended themselves to me as trustworthy. In short neither accusations which according to the plaintiffs amount to grave negligence on the part of the Corporation has been brought home to them.

24. On the other hand the Corporation through, its Engineer suggests two possibilities for the column breaking and failing down as it did. In his report in the Commissioner dated 4-6-1953, the Engineer, Mr. Bhaskaran has stated as follows:

The steel ventilating column which is 22 feet in height and 6" in diameter is the usual type fixed in various parts of the city the column has been well imbedded in a cast iron base to a depth of about 3 feet and concreted all round. There is no structural defect and there is no reason for the column falling down in the ordinary course. In fact there are several such columns erected in various parts of the city and none of them has shown sign of wear and tear or damage.

The accident is the first of its kind. This column has been noticed by the Sewer Superintendent in charge of the division during his round of inspection of the locality, and he has found no damage to it.

The falling of the column is, therefore, not due to any structural defect or negligence on the part of any of our staff to properly maintain it and it was in a good condition. The cause of the damage cannot be easily guessed.

I strongly feel that some one should have meddled with the column prior to the accident. I may bring to the notice of the Commissioner that there have been a series of thefts of such ventilating columns belonging to Corporation recently. Three ventilating columns in Mylapore Drainage Stores, 3 ventilating columns in Shenoy Nagar Drainage Stores and 15 ventilating columns in Napier Park Drainage Stores were stolen on various occasions.

In spite of vigorous search by the Police, the culprits were not traced and booked. Due to a recent boom in the sale of scrap iron a lot of silt

catcher buckets and man-hole covers etc., in several parts of the city were also stolen away about which Police were duly informed. I, therefore,

feel that the damage to this column should have been caused by a miscreant who after an unsuccessful attempt to remove the column would have

left it in an insecure state and the column would have fallen accidentally on the unfortunate victim.

I am led to this conclusion, because no structural defect could be noticed in the construction.

The Engineer has spoken to these facts in evidence and has been cross-examined and his evidence stood unshaken in cross-examination. Beyond the fact that this may be interested testimony it cannot be said that his has been invented now for the purpose of this case. In fact this Engineer who has inspected this column as early as 12-5-1953 has also reported that he found it cut.

There is nothing improbable in this explanation. It is also suggested in the course of the trial that if a heavy motor-lorry had hit this ventilating column and gone away without reporting the matter, the impact would have brought about the breaking off of the column at its base as it would be the point of impact where the heaviest pressure would be felt.

It is no argument to say that such a collision has not been reported because the P. Ws. know nothing concerning the condition of the column before the actual sound of its failing down was heard. Secondly, no lorry driver who had injured Corporation property would in this city at least stop to report the matter and normally would slip away without anybody being made the wiser.

It is our constant experience that lorries plied very high, cut the telephone wires stretched across the roads and that the first notice of it is by the house-owners on either side finding their telephone lines dead. These alternative theories - they are nothing more than that - receive corroboration from the fact that this column which had not been noticed to be in an unsafe condition before by anybody or at the routine inspection some weeks before had broken 1" below the pavement level and the column above it has been found to be intact.

It is unfortunate that the plaintiffs who could have placed the matter beyond doubt by having a competent person examine this column as well as the place in which it had been fixed and taken photographs of it and preserved this column have not chosen to do so. Therefore, we are not in a position to say that these alternative possibilities suggested by the Corporation are inconsistent with the negligence attributed to it or fantasies of its

imagination born of a desire to escape liability.

25. To sum up, the plaintiffs have not shown that the two grounds upon which they rested their case against the Corporation for negligence and

want of due care and attention viz., rusting, and lusting as a result of not repainting and not providing muffing, accounted for this breaking of the

column below the pavement level.

On the other hand it is seen that neither repainting nor providing muffing would have in any way promoted the stability of this column. In short, the

circumstances put forward by the plaintiffs as evidencing negligence and want of due care and attention by the Corporation have not been shown

to be reasonable explanations for the accident.

On the other hand, the Corporation has shown that all legitimate precautions had been taken by them and that there was no want of adequate care

and attention on their part which can be normally expected in the circumstances of this case. They have put forward also two explanations which

cannot be described as unreasonable for the accident which happened. It may be that they constitute nothing more than guess-work. A simpler

explanation might be metal fatigue discussed in - " AIR 1917 Bom 282 (Z23)".

The defendant would not be liable for the falling down of the column as this was not due to any negligence on its part and the accident could not

have been averted by the exercise of ordinary care, skill and caution on the part of the defendant.

26. I find therefore under issue 1 that the suit is maintainable; under issue 2 that the defendants have not been shown not to have maintained the

ventilating column in proper condition; under issue 3 that the deceased died as a result of the fall of the ventilating column on him; under issue 4 that

the column did not fall on account of the act on the deceased and that it cannot be said whether it fell on account of any vis-major though this

cannot be ruled out; under issue 5 that it does not rise for decision in view of my finding that the plaintiffs have not established the negligence on the

part of the defendant, entitling them to damages either affirmatively or even on the foot of the maxim ""The thing sneaks for itself""; and under issue 6

that the plaintiffs are not entitled to any relief.

The suit is dismissed and in the circumstances without costs. I trust that this conclusion will not stand in the way of the Corporation which ought to

the sympathetic in such matters making an ex gratia payment to the unfortunate plaintiffs and I am sure our benign local Government wedded to a socialistic pattern of life will not stand in the way of the Corporation doing so.