
(1978) 09 AHC CK 0042
In the Allahabad High Court
Case No : Second Appeal No. 1237 of 1971

Smt. Amina Begam

APPELLANT

Vs

Ram Prakash

RESPONDENT

Date of Decision : 02-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 11

Citation : (1979) ACJ 449 : AIR 1978 All 526

Hon'ble Judges : S.J. Hyder, J

Bench : Single Bench

Advocate : V. Sahai, B. Dayal, R.C. Upadhyay, G.P. Bhargava and A.N. Bhargava, for the Appellant; Shambhoo Pd., for the Respondent

Final Decision : Partly Allowed

Judgement

S.J. Hyder, J.—The plaintiff, Ram Prakash met with an unfortunate accident at about 1-O'clock in the noon on 16th Feb., 1965 in the town of Etah. As a result of this accident he sustained multiple fractures in his left leg.

2. It is not in dispute that the defendant is the owner of Bus No. UPT 713 which was being driven at the time of accident by the defendant's driver Fazal Ahmad, who was its sole occupant at the time of the accident. The bus was proceeding on the G. T. Road from east to west and when it reached near the shop of the plaintiff it swerved towards the north and hit the plaintiff, who was sitting in front of his shop and doing his work as a painter. The impact caused the injuries stated above to the plaintiff.

3. The plaintiff accordingly commenced the action for recovery of Rupees 5,000/- as damages from the defendant, He pleaded that he was run down and injured on account of rash and negligent driving on the part of Fazal Ahmad, who was driving the vehicle in the course of his employment with the defendant.

4. The defendant raised a number of pleas in his written statement. In this second appeal however, we are concerned only with the plea put forward on her

behalf that the accident was a result of a latent defect in the vehicle inasmuch as its brakes suddenly failed and the steering wheel became free on account of the bolt of the push and pull rod going out of order. Fazal Ahmad it is stated lost control over the steering wheel.

5. The trial court in the first instance found that the accident was due to negligence of the defendant. It however, found that the plaintiff was only entitled to damages amounting to Rs. 2,500/-. The suit was accordingly decreed for the said amount. The plaintiff "submitted to the decree but on appeal preferred by the defendant the court of appeal was of the view that the testimony of Habib Ahmad Mechanic of the Police Department who had inspected the vehicle immediately after the accident, should have been recorded by the trial court in order to test the validity of the plea relating to the latent defect in the vehicle raised on behalf of the defendant. It accordingly allowed the appeal and remanded the case to the trial court.

6. After the order of remand the evidence of Habib Ahmad Motor Mechanic was recorded by the trial court. It again found in favour with the plaintiff and this time decreed the suit for the whole amount, claimed by the plaintiff respondent. The appeal preferred by the defendant to the District Judge, also failed. She has now come up in second appeal to this Court.

7. From the facts found by the two courts below it is clear that the Bus was shown to be under the management of the defendant through her servant. It was proceeding from east to west and should, therefore have been on the southern side of the road. It went over not only to the right side but several metres beyond it and hit the plaintiff. The sequence of events is such which could not have happened in the ordinary course of things.

8. It is true that it has not been found by any of the two courts below that the vehicle was being driven recklessly or at a fast speed. The plaintiff's witnesses have estimated the speed of the vehicle at the time of the accident as 20 miles per hour. The version of the defendant is that it was moving at the speed of five miles per hour only. Even if we assume that the plaintiff's version is correct, the speed of the bus travelling on the G. T. Road in a small town like Etah cannot be said to be reckless. This, however, does not absolve the defendant of her liability for the injuries sustained by the plaintiff.

9. "There must be reasonable evidence of negligence," said Sir William Erle C. J, in delivering the judgment of the Court of Exchequer in the leading case of *Scott v. London and St. Katherine Docks Company* (1865) 3 H & C 596 "but where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in the ordinary course of things does not happen if those who have the management, used proper care, it affords reasonable evidence, in the absence of any explanation by the defendant, that the accident arose from want of care."

10. The above dictum is a classical exposition of the maxim *res ipsa loquitur*. In

order to get over the said presumption operating against her the defendant pleaded and tried to prove that there was a latent defect in the vehicle. According to her the brakes suddenly failed and the steering wheel also went out of order. Both the courts have found in favour of the defendant on this point, who was supported by the testimony of Habib Ahmad, Police Motor Mechanic. The question then which requires consideration, is, whether the explanation offered by the defendant is sufficient to rebut the presumption against her.

11. The maxim of *res ipsa loquitur* notwithstanding a defendant is entitled to succeed, even though he cannot explain exactly as to how the accident happened, if he establishes that there was no lack of reasonable care on his part.

12. On a consideration of the facts as stated above I am of the view that the defendant has not been able to rebut the presumption by merely proving the latent defects in the vehicle. The sudden failure of the brakes and the steering wheel may be due to the carelessness on her part to keep the vehicle in a proper state of repairs. In the circumstances the defendant should have further proved that the latent defect pleaded by her occurred in spite of the fact that she took necessary steps for the proper maintenance and up-keep of the vehicle. She has made no attempt to do so, The scale was tilted against her by the presumption referred to above. The explanation offered by her consistent with negligence or no negligence on her part (*sic*). The result is that the scale remains tilted against her as it was at the beginning. (See *Colvilles Ltd. v. Devine* (1969) 1 WLR 475 and *Henderson v. Henry E. Jenkins and Sons* 1970 AC 282.)

13. In these circumstances the courts below were right in passing a decree in favour of the plaintiff respondent.

14. However, the plaintiff's suit had been decreed for a sum of Rs. 2,500/- only before the order of remand dated 29-1-1969. The plaintiff had submitted to this decree. As such the decision of the trial court on the quantum of damages payable by the defendant to the plaintiff operated as *res judicata*. The trial court after the remand of the case could not have decreed the suit for a sum of Rs. 5,000/-. The lower appellate court has also erred in maintaining the decree for the said amount.

15. The result is that this appeal partly succeeds. The decree passed by the trial court and affirmed in appeal is modified. The suit of the plaintiff is decreed for recovery of Rs. 2,500/-. The rest of the claim is dismissed. The plaintiff respondent will be entitled to proportionate costs of this second appeal and also of the courts below.