
(2006) 11 MP CK 0016
In the Madhya Pradesh High Court

Smt. Hira Bai and Others

APPELLANT

Vs

Pratap Singh and Another

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2, 95
Penal Code, 1860 (IPC) — Section 304A

Citation : (2008) ACJ 2660 : AIR 2007 MP 134

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.—The claimants-appellants, the legal representatives of deceased Lakhan Singh Lodhi (hereinafter referred to as "the claimants"), have called in question the sustainability of the award dated 31-1-2005 passed in Claim Case No. 66/03 by the First Additional Motor Accident Claims Tribunal, Sagar (in short "the tribunal").

2. The facts which are essential to be stated for adjudication of this appeal are that on 23-10-2002 Lakhan Singh Lodhi was seated in a tractor bearing registration No. M.P. 15/F-2354 belonging to Pratap Singh the respondent No. 1, for the purpose of ploughing the field of one Khalak Singh and at that juncture the tractor turned turtle as a result of which Lakhan Singh came underneath the said tractor and breathed his last at the spot. A report was lodged by Khalak Singh son of Roop Singh Lodhi at the Police Station, Gorjhamar and accordingly a criminal case u/s 304A of the Indian Penal Code was registered. Because of the death of Lakhan Singh his legal representatives initiated an action u/s 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 26,10,000/- on the ground that the deceased was aged about 25 years and was earning Rs. 50,000/- per annum by doing agricultural, activities along with his father and by ploughing and sowing the fields by tractor.

3. The respondent No. 1 while replying the claim putforth by the claimants

admitted most of the facts. He contended that the claimants have put forth a claim in an exaggerated manner; and that he is the registered owner of the tractor in question which was insured with the respondent No. 2, New India Insurance Co. Ltd. on the date of accident and, therefore, in case of any liability, would be on the insurer. The respondent No. 1 accepted that the deceased used to drive the tractor in question and he had the licence for the said purpose. The respondent No. 1 also contended that on the date of accident the deceased was driving the said tractor on his instructions according to the terms and conditions of the insurance policy and, therefore, the Insurance Company is liable to pay the compensation.

4. The respondent No. 2, the insurer, while replying to the claim of the appellants denied the averments of the claim petition on the ground of want of knowledge and contended that the claimants are not entitled for any compensation. It further contended that on the date of accident the Tractor Engine No. 77387, Chasis No. 334079 were insured according to the conditions of the insurance policy and hence, it cannot be said that the tractor bearing No.MP-15-F/2354 was insured on the relevant date. The Insurance Company also took the stand that the driver of the tractor did not possess the valid driving licence and that the vehicle was being used for commercial purposes against the terms and conditions of the insurance policy. It was also pleaded that the accident occurred due to the sole negligence of the deceased and since the same did not occur at the public place, the claimants are not entitled for compensation on the basis of principle of no fault.

5. The Tribunal on consideration of the material brought on record came to hold that the deceased had not breathed his last in a public place and the factum of negligence has not been proved and on that basis awarded Rs. 50,000/- compensation towards "No Fault Liability".

6. Two questions emerge for consideration. First, whether the accident had taken place in a public place. Before we advert to the fact situation it is apposite to note some citations in the field. In the case of Narsingh and Anr. v. Balkishan deceased through LRs and Ors. 1988 ACJ 288 it has been held as under:

5. The sole question which arises for consideration in this appeal is whether the printing press, where the accident took place, can be said to be a "public place" within the meaning of Section 95(1)(b)(i) of the Motor Vehicles Act. "Public place", as defined by Section 2(24) of the Motor Vehicles Act, 1939, means "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage". The words "other place" occurring in the definition are significant in their connotation and should be given a wide import and interpretation. "Public place" is a place where the public can and do have access, It was urged by the respondents that the compound of the printing press is a private place. Even user of a private place and access by public can be interpreted as a "public place" within the meaning of

Section 2(24) of the Act. It has come in evidence that trucks have access to the campus of the compound of the printing press and the accident itself has in fact occurred due to a dash by the truck. The mere fact that the compound or the campus of the press is owned by an individual would not make it a "private place". It is not necessary that the place must be the public property.

6. Learned Counsel for the appellants pointed out that in the compound itself there was an office of the Text Book Corporation and public at large cannot be denied access to such an office. In this view of the matter the place of accident is held to be a "public place". See *Lanka Sarmma Vs. Rajendra Singh and Others*, . The respondent-insurance company is, therefore, held to be liable for paying the compensation to the claimant-appellants jointly and severally with other two respondents.

7. In *Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others*, , G.B. Patnaik, J. (as his Lordship then was) while dealing with the concept of public place after referring to the decisions rendered in the cases of *R. v. Kane* (1965) 1 All ER 705, *Lanka Sarmma v. Rajendra Singh* (supra), *Narsingh v. Balkishan* (supra) and *Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others*, in Paragraphs 9 and 10 opined thus:

9. After discussing the several authorities and disagreeing with the views expressed by the Madras High Court, Allahabad High Court, Orissa High Court and Kerala High Court referred to earlier in this judgment, the learned Judges held that for the purpose of Chapter VIII of the Act, the expression "public place" will cover all places including those of private ownership where members of public have an access whether free or controlled in any manner whatsoever.

10. Bearing In mind the fact that the provisions of Section 95 of the Act are beneficial provisions for making the insurer liable to pay compensation in a case where death or bodily injury to any person or damage to any property of a third party is caused by or arising out of the use of the vehicle in a public place, there cannot be any manner of doubt that the expression "public place" should be given a wider interpretation. In this view of the matter, the road inside the Orissa Secretariat compound must be held to be a public place and if any death or injury occurs inside that compound on account of any use of vehicle, then the insurer must be held liable to pay the compensation. Disagreeing with the narrow interpretation given by the learned single Judge of this Court in *Life Insurance Corporation of India Vs. Karthyani and Others*, and following the Full Bench decision of the Bombay High Court in *Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others*, , I would hold that the road inside the Secretariat compound is also a public place within the meaning of Section 2(24) of the Act and attracts the provision of Section 95(1)(b)(i) of the said Act, inasmuch as the members of the public have a right of access to the Secretariat though a permission or pass is required for such entry. Mr. Basu's contention must, therefore, be rejected.

8. A Full Bench of Madras High Court in the case of United India Insurance Co. Ltd. Vs. Parvathi Devi and Others, has held as under:

16. The definition of "public place" is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word "public place", wherever used as a right or controlled in any manner whatsoever, would attract Section 2(24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a "public place".

17. In view of what we have discussed above, we hold that the expression "public place" for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever.

9. The obtaining factual matrix is to be tested on the anvil of the aforesaid pronouncements of law. The Tribunal has recorded the finding that the driver was proceeding towards the public road and at that juncture the accident had occurred at the public place. As has been held in the aforesaid decisions that the public place does not necessarily mean that it must be the public property. As is evincible from the evidence on record though the place was not a public road but the public had the right to access to the same. There is no testimony that the public was debarred to enter into the said road. Keeping in view the connotative expanse of the term public place", in our considered opinion, the view expressed by the tribunal is indefensible and accordingly we dislodge the same.

10. The next facet which requires to be dealt with is whether the tribunal is justified in saddling the liability on the insurer on the foundation that negligence had not been proved and the driver himself was rash and negligent. To arrive at the said conclusion the Tribunal has opined that when the accident occurred there was no other vehicle or person. Submission of the learned Counsel for the appellant is the driver was trying to save the life of an animal and that ensued in the overturning of the vehicle. The learned Counsel for the insurer urged that such a pleading was not put forth and hence, the same cannot be argued at this stage. On a perusal of the pleading it is noticeable that such a stand was not taken. Though it is contended with force that the claimants are illiterate and belong to a rustic area, hence emphasis should not be laid on the aspect of pleadings, more so, when a claim is put forth under a beneficial statute. In our considered opinion, in the case at hand the said facet need not be reverted to, for the learned Counsel for the appellants has alternatively submitted that the fact that the accident had occurred and there is no positive evidence that the driver was at fault, the doctrine of *res ipsa loquitur* would get attracted. We are inclined to accept the alternative submission of the learned Counsel for the appellant.

11. In this context, we may refer with profit to the decision rendered in the case of *Shyam Sunder and Others Vs. The State of Rajasthan*, . In the aforesaid case their Lordships expressed the opinion that the maxim *res ipsa loquitur* is restored to when an accident is shown to have occurred and the cause of the accident is primary within the knowledge of the defendant. The mere fact that the cause of accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim *res ipsa loquitur* applies. In paragraphs 10, 11, 13 and 16 of the said decision their Lordships expressed the view as under:

10. The maxim is stated in its classic form by Erle, C.J. "...where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle. 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 responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, *The law of Torts*, 4th Ed., P. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based on common sense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant see *Barkway v. S. Wales Transo*.

11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.

13. It should be noticed that the defendant does not advance his case by inventing fanciful theories, unsupported by evidence, or how the event might have occurred. The whole inquiry is concerned with probabilities, and facts are required, not mere conjecture unsupported by facts. As Lord Macmillan said in his dissenting judgment in *Jones v. Great Western*:

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 a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution, of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved.

In other words, an inference is a deduction from established facts and an assumption or a guess is something quite different but not necessarily related to established facts.

16. Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age; less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance (see John G. Fleming, *the Law of Torts*, 4th ed. p. 260).

11-A. In *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, the Apex Court has ruled thus (para 6):

Normally it is for the plaintiff to prove negligence but as in some cases considerable hardships is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

12. In *Mahila Dhanwanti and Others Vs. Kulwant and Others*, Division Bench of this Court in paragraph 7 has expressed the view as under:

7. Even assuming for the sake of argument that the driver was not negligent, in

the facts and circumstances of the present case, we can safely apply the doctrine of *res ipsa loquitur*, which is a rule of evidence departing from the normal rule that it is for the plaintiff to prove the negligence, but in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him, but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident, but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more and the present case is like that where the accident speaks for itself. See *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . as also *State of Madhya Pradesh through Collector, Jhabua v. Ashadevi* 1988 ACJ 846 (MP). Therefore, on the application of the doctrine, the burden is shifted upon the respondents/defendants to explain the accident. From the evidence on record, we are not satisfied that the driver has discharged the burden by the pleading and proving that he was not negligent, and as such, the respondents cannot escape their liability by preferring hypothetical explanation, howsoever plausible, of the accident.

13. In the case at hand there is no material to show that actually how the accident occurred. The Tribunal has recorded a finding in an extremely cryptic manner that the driver was at fault. In the absence of any material, we are inclined to think the benefit of the aforesaid doctrine should be made] applicable, for we do not see any reason why the legal representatives of the driver should not get the benefit of compensation.

14. Presently to the quantum of compensation. The tribunal has not computed the liability. The deceased was 25 years of age. He was working as a driver. Regard being had to the undisputed fact that he was working as a driver and the evidence adduced by the claimants, we are inclined to think his monthly income would not be less than Rs. 2500/-. Thus, the yearly income would be Rs. 30,000/-. After deducting 1 /3rd of the income towards the expenses on himself the yearly contribution to the family which constitutes five minor children would be Rs. 20,000/-. Be it placed on record, we have so held in addition to the job of the driver as there is material on record that he was also working as a labourer in the field at times. In the obtaining factual matrix applicability of the multiplier of 17 would be attracted. Thus, the amount of compensation on this score would be Rs. 20,000/- x 17 = Rs. 3,40,000/-. To the aforesaid sum we shall add an amount of Rs. 10,000/- on three heads, namely, loss of consortium, loss of estate and funeral expenses. Ergo, in toto, the appellants would be entitled to get Rs. 3,50,000/- (Rupees three lakhs fifty thousand only), The differential enhanced sum shall carry interest at the rate of 6% p.a. from the date of presentation of the application before the Tribunal till the date of deposit before it. The insurer is directed to deposit the aforesaid amount within a period of three months from the date of receipt of the order passed today. The tribunal

shall disburse the amount keeping in view the law laid down in the case of the General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

15. In the result, the appeal is allowed to the extent indicated above, There shall be no order as to costs.