

**(1978) 09 AHC CK 0035**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 72 of 1967**

|                               |    |            |
|-------------------------------|----|------------|
| The National Small Industries |    | APPELLANT  |
|                               | Vs |            |
| Bishambhar Nath and Others    |    | RESPONDENT |

**Date of Decision :** 15-09-1978

**Acts Referred:**

Evidence Act, 1872 — Section 114, 3

**Citation :** AIR 1979 All 35

**Hon'ble Judges :** V.K. Mehrotra, J;H.N. Seth, J

**Bench :** Division Bench

**Advocate :** K.C. Saxena, for the Appellant; Ashoka Gupta, for the Respondent

**Final Decision :** Dismissed

## Judgement

H.N. Seth, J.—Defendant, National Small Scale Industries Corpn. Ltd. has come up in appeal against the judgment of the Civil Judge Agra, dated Oct. 29, 1966 decreeing the plaintiff's suit for recovery of a sum of Rs. 17,687 as damages for the loss suffered by them on account of a fire that broke out in bungalow No. 17 Mall Road, Agra Cantt on 5-6-1963. There is also before us a cross-objection by the plaintiffs, Bish-ambharnath and others, who claim that their suit for damages" should have been decreed for a sum of Rs. 56,800/- as claimed by them in the plaint and that the decree under appeal should be modified accordingly.

2. Plaintiffs claim to be the owners of bungalow no. 17 Mall Road, Agra Cantt, which had been leased out to the defendant on payment of Rs. 520 per month as rent. Main building of the bungalow was fairly old and had thatched roofing. According to the plaintiffs, the defendant carried on the business in shoes and in that connection it stored highly inflammable materials in the main building. Even though inflammable articles were being stored in the building, labourers and employees of the defendant had been acting negligently inasmuch as they had, while at work, been indulging in careless habit of smoking cigarettes and Biris and also in using open fire while carrying out certain manufacturing process in

that building. Consequently, on the night between 4th and 5th June 1963, a fire broke out which completely gutted the building entailing a loss of Rs. 60,000 to them. This fire, according to the plaintiffs, occurred as a result of negligent and careless handling by the defendant and its employees, and as such the defendant was liable to compensate them for their loss. However, in the plaint, the plaintiffs confined their claim for damages to a sum of Rs. 56,800/- only.

3. The defendant contested the suit and denied that it had in any way, acted carelessly or negligently. It also denied that any inflammable article was being stored in the building and asserted that adequate precaution against fire had been taken by it. It claimed that the building had been let out to it by Messrs. Chhitarmal Ram Dayal and that the plaintiffs were not landlords thereof. According to the defendant, the amount of damages claimed by the plaintiff was grossly exaggerated.

4. After taking into consideration the pleadings of the parties and the evidence produced on their behalf, the trial court found that in the building which had thatched roof, jute carpets had been spread over the floor and that shoes, rubber soles, plastic bags, wooden crates and papers were being stored therein. There were, besides iron girders, wooden Ballis, for supporting the thatched roof. Below the thatched roof there was cloth ceiling at a height of about 18-20 feet from the floor. While at work the employees of the defendant used to smoke Biris and Cigarettes. Besides this, the defendant also used some fire for the purpose of stamping the shoes brought by the fabricators and approved by it. The trial court found that the fire in this case started from one of the rooms and that it could not be caused either by short circuiting of electric wiring or by some outside source. In the result it concluded that the fire in question must have broken out because of some negligent act on the part of defendant's employees and that the defendant was liable for the loss suffered by the plaintiffs. It assessed the amount of damages suffered by the plaintiffs as Rs. 17,687/- and decreed their suit accordingly.

5. In this appeal, learned counsel appearing for the appellant did not question the finding recorded by the trial court that the plaintiffs were, in their capacity as landlords of building no. 17 of Mail Road Agra Cantt, entitled to maintain the suit. He also did not question the finding of the trial court that the building in question was an old building with thatched roof placed on iron girders and wooden ballis and that there was a cloth ceiling below that roof at a height of about 18-20 feet from the floor. He also did not dispute the fact that jute matting had been spread over the floor of rooms in that building and that shoes, plastic bags and wooden crates and tissue paper had been stored therein. According to him, the defendant had taken all reasonable precautions against fire and urged that there was absolutely no material on the record on which the trial court could conclude that the fire which gutted the building on 5th June, 1963 had been caused because of any careless or negligent act either of the defendant or any of its employees. He urged that in the circumstances the plaintiff's suit deserved to be dismissed in

its entirety.

6. The fire in this case was noticed for the first time by D. W. 4 Om Prakash the watchman, who had been on duty since 1 A. M. in the night, at about 7 A. M. on 5th June, 1963. According to him at that time he saw smoke coming out from the top of roof. He accordingly informed the fire brigade by telephone and Babu Lal sweeper was sent to call Mr. Dass, the Assistant Manager of National Small Industries Corp. posted at Agra. Om Prakash did not state that at that time the thatch was ablaze. On receiving information, Sri Dass, D. W. 1, who lived two furlongs away from the building in question, rushed to the spot and found smoke coming out of the roof. He also did not claim that the roof of the house was at that time ablaze. The fire brigade reached the spot at about 7.40 A. M. and it took about 3 hours in extinguishing the fire. P. W. 1 Sri S, N. T. Zaidi, Fire Station Officer Agra deposed that after getting the fire extinguished he came back to the Fire Station and there on the basis of information given by him, Sri S. D. Trivedi who on that date was in charge of the Fire Station, and who had also visited the spot, prepared a report Ex. 13. The report shows that after the fire was brought under control the Fire Station Officer Sri S. M. T. Zaidi (P. W. 1) on thorough look out for the possible cause of the outbreak of the fire found that maximum burning had taken place inside the store section where the girders, iron rails and steel racks had been twisted as a result of severe heat. The walls were very badly charred and stone slabs had cracked into pieces and at some places the walls had completely collapsed which clearly indicated that fire had started first in that section which ignited the thatched roof. The report indicates that in the opinion of the fire officer the fire did not start from any corner of the room but from the top which could not be without heavy burning underneath. In his statement Sri Zaidi owned up the correctness of the contents of the report.

7. Aforementioned evidence in our opinion clearly indicates that by about 7 A. M. on 6th June 1963 thatched roof of the building was not ablaze. It means that by that time the thatch had not caught fire and that a large amount of fire was burning inside the room as a result of which the smoke was seen coming out of the roof. The damage caused inside the building was to such an extent that girders, iron rails and steel racks had been badly twisted on account of heat. This in the opinion of the fire officer could not be so unless very severe heat had been generated inside the room.

In case the fire had started from outside the room the thatched roof of the building would have been the thing first to catch fire and the roof would have been ablaze before the fire reached articles inside the room and in such an event D. W. 4, Om Prakash, Watchman of the Corporation, would have noticed the same at the earliest and informed the Fire Brigade accordingly. In such an event the fire Brigade would have been in a position to control the fire long before heat to the extent of twisting iron girders, rails and steel racks could be generated. The fact that at about 7; A. M. Om Prakash merely saw huge amount of smoke coming out of the roof of the building and that the thatch was not ablaze at that

time indicates that the fire had been smoldering inside the room for quite some time and that enough heat had been generated so as to twist steel racks and iron rail before the thatched roof could catch fire. In the circumstances we find ourselves in agreement with the conclusion of the trial Judge that the fire in this case started at the floor inside the building and not because of any external source.

8. It was suggested on behalf of the appellant that it is quite possible that the fire might have been caused because of short circuit in the electrical installation. It is significant to note that the defendant in his pleadings never suggested that the fire in this case could have been caused by short circuit in the electrical installation of the building. It also did not adduce any evidence whatsoever with regard to the condition of the wiring inside the building. Nor did it suggest to the plaintiffs' witnesses that wiring inside the building was defective to the extent that it could, by short circuiting, ignite a fire. It is difficult to believe that the defendant, which is a public sector undertaking of Government of India would have permitted the defective wiring to continue to exist. In this connection learned counsel for the appellant invited our attention to a communication dated 28th September 1959 from the defendant to the landlords (Ext. A-24) in which it was mentioned that the defendant will feel obliged if the landlord would kindly have electrical fittings tested and the faults remedied in certain parts of the buildings. Electrical line was at that time dead. There is nothing on record to show as to what happened thereafter and whether the landlord got the faults mentioned in that letter remedied. It is difficult to believe that the defendant continued for about four years with the defect which was discovered as far back as Sept. 1959. As there is no evidence of any further complaint made by the defendant to the landlord with regard to electric wiring inside the building, it can safely be presumed that the defect in the electric wiring, pointed out in the year 1959, must have been removed within a reasonable time and the electric wiring of the building was not in a bad shape so as to cause a fire to the building by short circuiting. There was some discussion before us as to whether the defendant had been storing rubber soles, petrol, mobiloil and some other highly inflammable articles inside the building. The trial court has found that although rubber soles were stored inside the building the other inflammable articles like petrol, mobiloil etc. were not being stored. As before us it has not been disputed that jute matting were spread over the floor inside the rooms wherein large number of shoes packing boxes, tissue papers and wooden crates were stored and this material itself was easily combustible, the fact whether or not rubber soles, mobiloil, petrol and other highly inflammable articles were stored inside the building or not will, in the circumstances of the case, make no material difference to the liability of the defendant. In the circumstances it is not necessary for us to come to a definite finding on this aspect of the case. The evidence on the record undoubtedly indicates that the fire in the building, which was throughout in the absolute control and possession of the defendant, started from inside the store rooms where certain combustible material was stored in

large quantities. It is true that there is no direct evidence, and it could also not be there in the circumstances of the case, to show as to how actually the fire in question started. It is also obvious that the fire could not be self generated, and could not be caused unless there was some negligence on the part of the employees of the defendant in leaving some fire inside the store room after working hours, which continued to smolder without breaking into flames for some time and therefore it went unnoticed. In due course the fire spread from one article to the other and ultimately resulted in gutting the entire building.

9. Learned counsel appearing for the defendant appellant however, urged that in this case it was not possible to find that the building had been set on fire either because of negligent handling of the fire used in stamping of shoes or because of negligent act of defendant's employees in leaving the lighted butt ends of cigarette or Biris inside the store room from where the fire started. According to him the evidence produced in the case shows that actually no stamping which required use of open fire was being done inside the building and that adequate precaution had been taken by prohibiting the employees from smoking Biris and cigarettes inside the rooms of the building. Whatever may be the position with regard to the fire said to have been used for stamping of shoes, defendant's own witness viz. Sri S. P. Dass P. W, 1 admitted in his cross-examination that he had come to know that defendant's employees were in the habit of smoking Biris and cigarettes inside the premises during working hours. Accordingly, he had issued instructions, vide office order dated 25th May 1963, prohibiting the workers from smoking inside the premises. However, he was not in a position to say whether or not the instructions contained in that office order were being followed by the employees. In the circumstance the possibility that the fire in question was caused because some employees of the defendant negligently left a lighted butt end of biri or cigarettes inside the store room, is very real and has not been ruled out.

10. Learned counsel for the appellant strenuously argued that it cannot be held that the plaintiff has succeeded in proving that the fire was caused as a result of negligence on the part of defendant's employees merely because there is a possibility of the fire being caused by such negligence. He urged that no finding that the defendant or his employees were negligent can be recorded merely on the basis of conjecture. It was for the plaintiff to have proved affirmatively that the fire which destroyed the building had been caused because of defendant's negligence which he has failed to do.

11. Section 3 of the Indian Evidence Act lays down that a fact is said to be proved when after considering the matter before it the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists.

12. The question before us is to find out as to whether it has been proved that the fire to the building had been caused because of some negligence of the defendant or its employees. Plaintiffs would succeed in proving such negligence if

they succeed in establishing such circumstances which make the fire being caused by some negligence either on the part of the defendant or his employees, so probable that a prudent man ought, in the circumstances of the case, to act upon the supposition that it was so caused.

13. Similarly Section 114 of the Indian Evidence Act lays down that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

14. In the instant case combustible material was being stored in the store rooms which were in exclusive control and super-vision of the defendant. It is only the workers of the defendant who had access to those store rooms. These workers were in the habit of smoking Biris and cigarettes inside the premises during working hours. Considering the circumstances in which and the time at which the fire was first discovered it is apparent that there was no external source which was responsible for setting fire to the building. The articles stored in the building were not capable of being ignited by themselves. In the circumstances the fire being caused by defendant's employees negligently leaving a lighted cigarette or biri end inside the store room becomes so probable that a prudent man ought under the circumstances of the case to act upon such supposition. Similarly having regard to the common course of natural events and human conduct the court could in such circumstances presume that the fire must have been caused because of some negligent act of the defendant or its employees.

15. The rule of evidence pointed out above is fully reflected in the well established doctrine "*res ipsa loquitur*", which has, in connection with proof of negligence, been consistently followed in this country. In order to understand the scope of the doctrine it would be helpful to extract the following passage from Clerk and Lindsell on Torts 12th Edition page 441:--

"The onus of proof, which lies on a party alleging negligence is, as previously pointed out, that he should establish his case by preponderance of probabilities. This he will normally have to do by proving *inter alia* that the other party acted carelessly. But evidence of this is not always forthcoming. It is possible however in certain cases for him to rely on the mere fact that something happened as affording *prima facie* evidence of want of due care on the other part: "*Res ipsa loquitur*" is a principle which" helps him to do so. The classic statement of the circumstances in which he is able to do so is by Erle C. J. "There must be reasonable evidence of negligence. But where the thing is shown 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 use proper care, it affords reasonable evidence in the absence of explanation by the defendant, that the accident arose for want of care. It has been explained that the doctrine does not state any principle of law. It neither possesses any magic qualities nor has it any added virtue other than that of brevity merely because it is expressed in Latin. It is only a convenient label to a set of

circumstances in which a 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. He 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 negligence of the defendant, the doctrine "res ipsa loquitur" is said to apply and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that by probability. The doctrine applies (1) when the thing that inflicted the damage was under the sole management and control of the defendant or someone for whom he is responsible or whom he has a right to control, (2) the occurrence is such that it would not have happened without negligence if these two conditions are satisfied, it follows, on a balance of probability, that the defendant, or the person for whom he is responsible, must have been negligent. There is, however, a further negative condition : (3) there must be no evidence as to why or how the occurrence took place. If there is, then appeal to res ipsa loquitur is inappropriate for the question of defendant's negligence must be determined on that evidence".

16. In the case before us there is no manner of doubt that the building in question was in the sole management and control of the defendant and his staff. The incident of fire which took place was, as has already been shown by us, such that it would not have happened if the defendant or his employees had taken proper care. There is also no evidence to show as to how precisely the fire started. In the circumstances the balance of probability certainly is that the defendant or his employees who have been responsible for the affairs carried out inside the building were negligent. In the case of Deputy Lal Vs. Reoti Prasad Gupta, a claim for damages caused by fire which started inside a room in exclusive control and possession of the defendant was made.

17. The learned Judge summed up the findings of fact arrived at by the courts below on the basis of which he proceeded to decide the second appeal thus :--

"The net result of the finding of the two courts is that both Courts are at one that the fire started from inside a room, one or the other, that the fire was not an act of God or of an incendiary and that the night was calm and ..... there were paper and account books and cow dung cakes and fuel, in other words combustible material was stored in one or other of these rooms but the cause of fire is unknown and in the circumstances of the case the burden of proof was upon the plaintiff to establish negligence of the defendant which he had failed to discharge".

The learned Judge observed that in the circumstances the doctrine of res ipsa loquitur applied. The learned Judge quoted with approval following passages from Salmond on Torts IX Edn. p. 470 and Bevan on Negligence, IX Edn. Vol. I at page 126.

"The rule that it is for the plaintiff to prove negligence, and not for the defendant

to disprove it is in some cases one of considerable hardship to the plaintiff; because it may be that the true cause of 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 so 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".

"The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused".

"There must be reasonable evidence of negligence it is said in (1865) 3 H and C 596 but 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 defendant, that the accident arose from want of care.

On the other hand, if the defendant produces a reasonable explanation, equally consistent with negligence and no-negligence the burden of proving the affirmative, that the defendant was negligent and that his negligence caused the accident, still remains with the plaintiff.

There is not indeed, even where *res ipsa loquitur* applies, any legal presumption of negligence, so that the legal burden of disproving it lies on the defendant. But the plaintiff by proving the accident has adduced reasonable evidence, on which the jurors may, if they think fit, find a verdict for him. Salmond on Law of Torts.

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. Bevan on Negligence.

The learned Judge then went on to observe thus :

"I am not aware whether the attention of the Court below was drawn to the law as I have stated above, but in my opinion on the facts which have been proved and found in the case, a stage had been reached where the presumption of negligence arose against the defendant and it was for the defendant to explain how the fire got into the rooms and that he was free from any negligence in the fire having got into the rooms and in burning the house and this burden the

defendant had failed to discharge. It may be that a domestic fire is not a dangerous article, still it has got to be kept at a proper place and used with due care and if the fire starts from a room in the first floor (a pucca room) and it is definitely proved that the fire was calm and the fire was not an act of God or an act of an incendiary, then in my opinion, it is for the tenant to establish how the fire got into the room and how it burnt the house and in the absence of an explanation on the defendant's part it should be presumed that there must have been some negligence on his part."

18. We find ourselves in respectful agreement with the views expressed by the learned Judge in the aforementioned case and applying the test laid down by him to the facts of the present case we find that the only inference that can be drawn is that the fire to the building was caused because of some negligence on the part of the defendant or his employees. The defendant has not offered any explanation for displacing the aforesaid inference and it should be held that the plaintiff has succeeded in proving that the fire which damaged his building was caused because of negligence of the defendant or his employees. The defendant is therefore liable to compensate the plaintiff for the loss suffered by him.

19. Learned counsel for the appellant relied upon the case of Mohammad Habib Vs. Ram Narain Lall and Others, where the court stated the doctrine of Res Ipsa Loquitur as explained by Earl C. J. in the case *Scot v. London Dock Co.*, (1865) 3 H and C 596 thus :-- (at p. 349).

"There must be reasonable evidence of negligence, but where a thing is shown 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 management used proper care, it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care".

A perusal of the judgment however, shows that the Court took into consideration the observation made by Lord Goddard C. J. in the case of *Sochacki v. Sas*, (1947) 1 All ER S44, that it is well known that fires occur through accidents which happen without negligence on party's part, and held that the doctrine of Res Ipsa Loquitur will not apply and that the plaintiffs claim for damages could not be accepted unless he by adducing positive evidence proved it that it was the negligence of the defendant which was responsible for the fire. It is true that in a case where the cause of fire is equally consistent with the defendant being or not being negligent neither the doctrine of Res Ipsa Loquitur nor the principle underlying Sections 3 and 114 of the Indian Evidence Act shall apply, and it will not be open to the court to say that the negligence of the defendant has been proved. However, in the case, like the one before us, where the circumstances are not equivocal and in all probability the fire would not have taken place, but for some negligence on the part of the defendant or his employees, there is no reason not to apply the aforesaid doctrine.

20. Learned counsel for the appellant then cited the case of *C. and N. I. T. Co. v.*

Dinkar Joshi, AIR 1955 Madh Bha 214, wherein the law on the subject laid down by the learned fudges has been correctly extracted in head note (a) of the report which runs thus:--

"The maxim *Res Ipsa Loquitur* when applied to an action for negligence is merely a rule of evidence affecting onus. It does not alter the general rule that the burden of proof of the alleged negligence rests upon the plaintiff. It means that the res or the facts and circumstances of the accident proved by the plaintiff are by themselves without any direct proof of negligence, sufficient *prima facie* evidence from which an inference of negligence may reasonably be drawn.

The inference may be rebutted by the defendant by proving some specific cause of the accident for which he was not responsible or by proving that he was, in fact not negligent, or by giving a reasonable explanation and proving it, that the happening of the accident was as consistent with the absence of negligence as it was with the presence of negligence. When the defendant has done this, the burden is shifted back to the plaintiff.

If the defendant fails to give any such evidence, the plaintiff succeeds not because the burden of disproof of negligence is on the defendants, but because by reason of the res or the facts and circumstances of the accident proved, he has discharged the onus of establishing his case of negligence.

It is not correct to say that the principle of *Res Ipsa Loquitur* ceases to apply if the plaintiff assigns a possible cause of the accident and tenders evidence which does not completely explain the accident. The effect of the plaintiffs assigning a cause for the accident and leading some evidence to explain it can only be to strengthen or weaken the inference of *prima facie* negligence resulting from the fact of the accident itself.

In such a case it is the weight and the cogency of the evidence as a whole that will determine the inference of negligence.

21. In our opinion the proposition of law as laid down in the aforesaid decision is not different from the view which we are inclined to take in the case and that this case does not help the defendant appellant in any way.

22. Learned counsel for the appellant then relied upon the case of *M. Madappa v. K. Kariappa* AIR 196 4Mys 80 in which case also, like that in the case of *Mohammad Habib Vs. Ram Narain Lall and Others*, , the equivocal chance of the fire taking place purely as a result of accident and without any negligence on the part of the defendant had not been ruled out. In this case it was found that it was the fire that had been started by the defendant on his own land that had spread into plaintiff's garden. The burden of proving that the defendant had taken all necessary precaution and that it was not on account of his negligence that the fire spread in plaintiff's garden lay heavily on the defendant as the defendant had not produced any material to prove that he had taken necessary precaution to prevent the fire from spreading into the neighbourhood it was not open to him

to contend that it was not on account of his negligence or carelessness that the fire started on his land spread into the garden of the plaintiff. Learned Judges observed that when the defendant set fire to his land without taking necessary precaution to prevent it from spreading into the lands in the neighbourhood he was "playing with fire" and should be deemed to have foreseen the possibility of the fire spreading into the lands adjoining his land and was liable for any damage caused to them. There is nothing in this case which in any way helps the appellant.

23. In the result we are satisfied that the trial court correctly applied the rules of evidence and principles of law applicable to the facts of this case and rightly held the defendant to be responsible for the fire that had been caused to building No. 17 Mall Road, Agra Cantt.

24. We now come to consider the cross-objection filed by the plaintiff. The plaintiff claimed that as a result of fire to his building, he had suffered damages amounting to Rs. 56,800/- He suggested a number of alternatives for working out the damages claimed by him. According to him he had purchased the building for a sum of Rs. 45,000/- and that he had spent a sum of Rs. 35,000/- over its repairs and setting up of new constructions in the premises. Thus the total amount spent by him comes to Rs. 80,000/-- Since the main building was completely gutted, the damages could reasonably be estimated at Rs. 56,800/- as claimed by him. In our opinion the learned trial Judge has correctly pointed out that the amount of Rs. 80,000/- included not only cost of building but also the cost of land underneath it. Evidence on the record does not indicate that the entire main building has been completely destroyed by fire. The plaintiff had after purchasing the house set up a number of constructions in the compound. There is nothing on the record to show that the entire sum of Rs. 35,000/- was spent by the plaintiff in the main building which was gutted by fire. In the circumstances the amount spent by the plaintiff in purchasing the building and in setting up constructions thereon could not provide any basis for calculating the damages suffered by the plaintiff.

25. Learned counsel for the respondent then relied upon the evidence of P. W. 6 .Sri S. R. Tewari who prepared a report and opined that the total loss suffered by the plaintiff came to Rs. 56,800/-. Learned counsel for the plaintiffs contended that the plaintiffs were entitled to recover the amount of Rs. 56,800/- as that would be the amount needed for reconstructing the building and bringing it in the same condition in which it was before the fire had been caused to it. We have absolutely no quarrel with the proposition that the damages have to be estimated with a view to find out as to what amount would be required to bring the building in the same condition in which it was before it was damaged by fire. The statement of P. W. 6 Sri S. R. Tewari, however, shows that he has estimated the amount of Rs. 56,800/- as damages by taking into consideration the cost of new material. He also admitted that out of 19 items given in his report items Nos. 2-19 were for fresh constructions, and that item No. 1 was merely for

dismantling the existing construction. He estimated the cost of new teak wood doors, painting, cement plaster, though he had not seen the building earlier. In the circumstances the report submitted by Sri S. R. Tewari can also not provide a correct basis for estimating the damages suffered by the plaintiff.

26. The only course, therefore, that was left to the learned Judge was to find out some criteria for estimating the damages suffered by the plaintiff. According to the plaintiff himself the total built up area of the building was 115 ft. x 74 ft. i.e. 8510 sq. ft. Shri R. P. Anand P. W. 7 mentioned that such a building could be constructed at the rate of Rs. 6/- per sq. ft. i.e. the value of the new building so constructed would come to Rs. 51,060/-. Further an amount of Rs. 2000/- would have to be spent on electrical fittings. The total value of the burnt up building therefore came to Rs. 51,060/- in case the building was to be constructed absolutely new. Undoubtedly, the building of the plaintiff which was burnt out was not a new building. It was a building about a hundred years old and its life had considerably diminished. In the garb of claiming damages the plaintiff cannot be given such an amount as damages which may entitle him to have a brand new building having life much longer than that of the building that was burnt down. In the circumstances, the trial Judge was justified in estimating the cost of the building which was burnt up by deducing the cost required for setting up a new construction by one third of the same. Learned counsel for the respondent has in our opinion failed to show that the amount awarded by the trial court is inadequate.

27. Before parting with the case we may add that learned counsel for the appellant claimed that the amount of damages as per report of Sri R. P. Anand P. W. 7, should not be considered anything more than Rs. 6890/- and accordingly the amount of compensation awarded should be reduced to that amount. The report submitted by Sh. R. P. Anand which is Ex. A-35 on the record shows that he had calculated the value of the loss suffered by the plaintiffs thus :--

(1) Amount for building 100 years old

Rs. 500/-

(2) Amount due to damages

Rs. 5730/-

(3) Amount due to damages to electric wiring and fittings.

Rs. 660/-

Rs. 6890/-

In his evidence he stated that the building being 100 years old its construction value had become zero. It is apparent that he has calculated the value of the existing construction by taking into consideration the book value of the building obtaining at the time after taking into account depreciation in its value as a result of passage of time. Defendant had taken this building on rent for a sum of

Rs. 570/- per month. In these circumstances it would be too much to expect that the value of the building which had been destroyed by fire was Rs. 500/- only. We agree with the learned trial Judge that the method adopted by Sri Anand, for computing the loss suffered by the plaintiff also cannot be accepted.

28. In the result both the appeal and the cross-objection fail and are dismissed. In the circumstances we direct the parties to bear their own costs.