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Court : Rajasthan

Decided On : Aug-11-1998

Reported in : 2000ACJ898; 1999(1)WLC474

Judge : Shiv Kumar Sharma, J.

Appeal No. : S.B. Civil Misc. Appeal Nos. 328 and 375 of 1989

Appellant : Gayatri Devi and ors.

Respondent : Ramesh Chand and ors.

Advocate for Def. : S.C. Srivastava,; H.M. Bhargava,; Madhav Mitra and;

Advocate for Pet/Ap. : J.P. Goyal and; Sandip Mathur, Advs.

Judgement :

Shiv Kumar Sharma, J.

1. Salmond on Law of Torts, 15th Edn. at page 306 wrote-'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.' In Halsbury's Laws of England, 3rd Edn., Vol. 28 at page 77, this position is further explained as under-'An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs whenever the facts already established

are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or, where the event charged as negligence 'tells its own story' of negligence on part of the defendant, the story so told being clear and unambiguous.'

2. Their Lordships of the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343 (SC), had occasion to examine the maxim '*res ipsa loquitur*'. It was propounded that: 'where the maxim is applicable the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.'

Their Lordships further observed that: 'the normal rule is that it is for the plaintiff to prove negligence but as 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 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.'

3. Applying the principle as indicated hereinabove, I proceed to examine whether the requirements are satisfied in the instant case.

4. First some facts. In support of an accident which had taken place between truck No. RRM 8251 and bus No. RJL 5639 on 18.2.84 at Jaipur-Dausa Highway near village Mohanpura Bassi around 2.30 a.m. resulting in the death of Ramesh Chand Goyal (driver of the truck) and one Abdul Hakim who was sitting in the truck, two claim petitions bearing Nos. 104 of 1984 and 239 of 1984 were filed by

the legal representatives of the said deceased against the bus driver, bus owner, truck owner and insurance company of the truck. The claim petitions were consolidated on 3.12.1988. Truck owner Ramesh Chand Gupta did not choose to file reply and was proceeded ex parte. New India Assurance Co. Ltd., however, filed reply. Bus owner Ram Singh also submitted reply whereas bus driver Upendra Vyas was proceeded ex parte. The issues were framed and the witnesses were examined. Truck owner Ramesh Chand Gupta also appeared as a witness. Learned Tribunal allowed the claim petitions only against respondent No. 2 Ram Singh (bus owner) and respondent No. 3 Upendra Vyas (bus driver) and exonerated truck owner Ramesh Chand Gupta (respondent No. 1) and New India Assurance Co. Ltd. (respondent No. 4). Award in the sum of Rs. 1,48,000 was made in Claim Petition No. 104 of 1984 whereas Rs. 2,43,400 were awarded in Claim Petition No. 239 of 1984.

5. Claimants-appellants have preferred instant appeals seeking relief against truck owner Ramesh Chand Gupta and New India Assurance Co. Ltd. The claimants-appellants have prayed that they may also be held liable jointly and severally to pay the amount under awards.

6. I have reflected over the rival submissions and carefully scanned the record.

7. Mr. S.C. Srivastava, learned counsel appearing for the New India Assurance Co. Ltd. canvassed that if it is held that the accident was the result of the rash and negligent driving of the truck by the deceased driver Ramesh Chand Goyal himself, claim petition of his legal representatives is not maintainable under the Motor Vehicles Act. The remedy lies under the Workmen's Compensation Act. Learned counsel further contended that the Tribunal rightly held that it was bus driver Upendra Vyas who caused the accident by rashly and negligently driving the bus and compensation can be recovered from bus driver and bus owner. Reliance was placed on D. Jayamma v. 5. Govindaswami 1982 ACJ 467 (Karnataka).

8. Division Bench of Karnataka High Court in D. Jayamma v. S. Govindaswami 1982 ACJ 467 (Karnataka), propounded thus:

(10) To make a claim under the provisions of the Motor Vehicles Act, it is necessary to plead and prove that the accident was the result of rash and negligent driving of the vehicle in question by its driver resulting in the accident, the claim being for injury or death of a third party. Without proving such actionable negligence, compensation under the Motor Vehicles Act is not maintainable. The point is settled by a decision of the Supreme Court of India in the case of *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 1977 ACJ 118 (SC). Therefore, if the accident, as in the present case, has occurred due to the rash and negligent driving of the lorry by the deceased driver himself, the petition for compensation cannot lie under Section 110-A of the Motor Vehicles Act, by his legal representatives. The reason is obvious. A person cannot claim advantage of his own wrong. If he proves, however, that the negligence was in the maintenance of the lorry by the owner and not in the driving of the vehicle, no doubt an application can lie under Section 110-A of the Motor Vehicles Act. There is no such pleading in the petition and the respondent has specifically averred that there was no negligence in the maintenance of the lorry.

9. A look at the material on record demonstrates that the truck owner Ramesh Chand Gupta did not choose to file reply to the claim petition. Though Ramesh Chand Gupta appeared in the witness-box but he did not depose that there was no negligence in the maintenance of the truck by him. New India Assurance Co. Ltd. also did not plead and prove that there was no negligence in the maintenance of the truck. I have carefully scanned the site-plan, Exh. 3. The road where the accident occurred was 22 ft. wide. Truck was proceeding from Jaipur towards Dausa whereas bus was going from Dausa towards Jaipur. The bus and truck collided at place '+' shown in the site-plan which is at a distance of 4 ft. from the north side of the road. After accident the bus fell at a distance of 20 steps from the place of occurrence towards west side of the road whereas truck stopped in a broken condition at a distance of 30 steps towards east. The accident speaks for itself. Thus, it was sufficient for the claimants to plead and prove the accident and nothing more. It was incumbent upon the respondents truck owner Ramesh Chand Gupta and New India Assurance Co. Ltd. to establish that there was no negligence in the maintenance of the truck. Under these circumstances the claim petition of the legal representatives of the truck driver is maintainable against the truck owner

and it is not necessary to initiate proceedings under the provisions of the Workmen's Compensation Act.

10. In *D. Jayamma v. S. Govindaswami* 1982 ACJ 467 (Karnataka), it was indicated that if claim petition is filed by the legal representative of the deceased driver of a vehicle, it is maintainable in the Motor Accidents Claims Tribunal on the ground that the negligence was in the maintenance of the vehicle by the owner and not in driving of the vehicle. Decision of issue No. 5 in respect of deceased Abdul Hakim is also correct but compensation awarded to his L.Rs. is not required to be stepped up in the facts and circumstances of this case.

11. Principles deducible from the above discussion may be summarised thus -

(i) In cases where the accident speaks for itself it is sufficient for the claimant to prove the accident and nothing more. The onus then shifts and it will be for the respondents to discharge the burden by pleading and proving specific defence available to them.

(ii) Claim petition instituted by the L.Rs. of the deceased driver of the vehicle is maintainable in the Motor Accidents Claims Tribunal on the ground that the negligence was in the maintenance of the vehicle by the owner and not in the driving of the vehicle.

12. For the reasons mentioned above, I dispose of the appeals holding that along with Ram Singh (bus owner) and Upendra Vyas (bus driver) respondents Ramesh Chand Gupta (truck owner) and New India Assurance Co. Ltd. shall also be liable jointly and severally to pay the compensation to the appellants as determined by the learned Tribunal. The impugned judgment stands modified as indicated above. Record of the case be sent back forthwith.