Before G. R. Majithia, J.

SUNEHARI DEVI and others,—*Appellants.*

versus

BAL KISHAN and others,—*Respondents.*

F.A.O. No. 304 of 1984

November 18, 1988.

Motor Vehicles Act (IV of 1939)—*S.* 110-*A Maxim* Res ipsa loquitur—*Applicability of—Plea that accident due to sudden mechanical defect—No plea that defect latent—Effect of—Burden of proof.*

Held, that the burden of proving that the accident was due to mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and despite such care, the defect remained hidden. Though it was stated in the written statement that at the time of accident, the vehicle all of a sudden developed a mechanical defect viz. the steering system became free all of a sudden and the vehicle became out of control but it was not stated that all precautions were taken to keep the vehicle in a roadworthy condition. It was not specifically pleaded that the defect that steering system became free suddenly and that it was a latent defect and could not have been discovered by use of reasonable care. This lack of plea is in addition to the lack of evidence and on facts and defence set up has to be rejected. Thus, it has to be held that the respondents have failed to take proper pleadings that the accident was due to latent defect which was not discoverable by reasonable care. In the case of like negligence, if the doctrine *res ipsa loquitor* applies, there would be a presumption of negligence, which presumption has to be rebutted by the respondents as they failed to do so in the instant case.

(Para 6).

First Appeal from the order of the Court of Shri V. K. Jain (II), Motor Accident Claims Tribunal, Hissar, dated 8th December, 1983 *dismissing the petition.*

Claim:—Application under section 110-A of the Motor Vehicles Act.

Claim in Appeal:—For reversal of the order of lower Court.

L. M. Suri, Advocate, *for the petitioners.*

B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, *for the respondents.*

ORDER

G. R. Majithia, J.

(1) The legal heirs of deceased Chattar Singh have come up in appeal before this Court against the award of the Motor Accident Claims Tribunal, Hissar, dated December 8, 1983. The learned Tribunal dismissed the claim application holding that the accident had not taken place as a result of any negligence on the part of the driver of the four wheeler, which collided with the scooter driven by the deceased. The quantum of compensation was not assessed in view of the finding that the accident had not taken place due to the rash and negligent driving of the four wheeler by respondent No. 1.

(2) The matrix of the case is as under:—Chattar Singh deceased was 52 years of age on the date of accident. He had gone on a scooter bearing registration No. USE-6380 to Jawahar Mill on Dabra road and was returning therefrom on the same scooter when four wheeler bearing registration No. HYR-1197 driven by Bal Kishan respondent No. 1 came from Hissar side. Respondent No. 1 was driving the said vehicle in a rash and negligent manner and caused a head on collision after the four wheeler had come on the wrong side. The deceased was coming on the correct side of the road. As a result of the accident, the deceased suffered multiple injuries. He was removed to civil hospital, Hissar, where he succumbed to the injuries in the night. He was in good health and was likely to live another 40 years. His whole family was dependent upon him.

(3) The deceased after his retirement from Army on December 31, 1977 was working as a partner in Fauji Udyog Mandal, Hissar and he had set up an Ara machine and was looking after that work and his income was Rs. 1,000 per month.

(4) The respondents denied the allegations and took up the plea that the four wheeler was on its way on Hissar-Dabra road when the steering system of the vehicle all of a sudden developed a mechanical defect and it became free and out of control of its driver. This defect in the four wheeler could not be detected earlier. The deceased was very old and week in health and he lost his nerves and collided with the four wheeler from behind. The

entire defence of the respondents is set up in paragraph 14 of the written statement which reads as under :—

> "Para No. 14 of the petition is correct to the extent of the registration number. However, it is submitted that at the time of the alleged accident the vehicle all of a sudden developed a mechanical defect i.e. the steering system became free all of a sudden and hence the vehicle went out of control and as such the alleged accident was not at all the result of rash or negligent act of the driver of the vehicle."

(4A) From the pleadings of the parties, the following issues were framed :—

1. Whether the death of Chattar Singh in road accident on 2nd June, 1982 occurred owing to rash or negligent act of driving of a four wheeler tempo bearing registration No. HYR-1197, owned by respondent No. 2 on the part of Bal Kishan—respondent ? OPP (Objected to).

2. If issue No. 1 is proved, whether the claimants are entitled to the award of compensation and if so, how much ? OPP.

3. Relief.

(5) The respondents have taken a positive stand that the accident had taken place as a result of sudden failure of the steering system and they examined a mechanic serving in the Haryana Roadways, who proved his report dated June 3, 1982 to the effect that the steering system of the vehicle became free.

(6) In the present case undoubtedly the maxim of *res ipsa loquitur applies*. *In Halsbury's Laws of England* (1), the position relating to this maxim is summed up thus :—

> "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff, occurs wherever the facts already established

(1) Hailshaw 2nd Edn. Vol. 23.

are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or whether the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies a presumption of fault is raised against the defendant, which if he is to succeed in his defence must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part. Where, therefore, there is a duty on the defendant to exercise care, and circumstances in which the injury complained of happened are such that with the exercise of requisite care no risk would in the ordinary course of events ensue, the burden is in the first instance, on the defendant to disprove his liability. In such a case, if the injurious agency itself and the surrounding circumstances are all entirely within the defendant's control the inference is that the defendant is liable and this inference is strengthened if the injurious agency is inanimate".

In *Bingam's Motor Claims cases*—6th Edn. at page 183 it is pointed out that there would be no negligence if the accident is due to latent defect which is not discoverable by reasonable care. In *Henderson v. Henry E. Jenkins and Sons,* (2) the House of Lords in their majority judgment, were of the view that the defendants had failed to prove that they took all proper steps to avoid the danger and that therefore, they were liable to damages on the ground of negligence.

Lord Donovan observed as under :—

"The plea of 'latent defect' made by the respondent had to be made good by them. It was for them to show that they had taken all reasonable care and that despite this, the defect remained hidden.

They proved that the pipe in question was visually inspected in site once a week: that the brake pedal was on these

(2) 1969-3 All E.L.R. 756.

occasions depressed to check for leaks from the pipe and none seen : that nothing more than such visual inspection of the pipe was required by Ministry of Transport rules or the maker's advice ..... It is obvious that visual inspection of the pipe in situ, however, frequent could not disclose corrosion on the hidden part of it. The question, therefore, suggests itself at once : did not reasonable care require the removal of the pipe at suitable intervals so that the whole of it could be inspected ? It is equally obvious that the answer to this question must depend partly on the age of the vehicle, partly on the mileage it had done, and partly on the load it had been carrying. All these things affected the measure of reasonable care which the respondents had to exercise."

This judgment was followed by the Apex Court in *Minu B. Mehta* ***and another*** v. *Balkrishna Ramchandra Nayan and another* (3), wherein it was observed as under:—

"In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. The law on this subject has been laid down in *Henderson* vs. *Henry E. Jenkins & Sons*, 1970 A.C. 282. In that case the lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result, the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to a latent defect not discoverable by reasonable care on driver's part. It was found that the lorry was five years' old and has done at least 1,50,000 miles. The brakes were hydraulically operated. It was also found after the accident that the brake failure was due to a steel pipe bursting from 7 mm to .1 mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed that it was not a normal precaution to do

(3) A.I.R. 1977 S.C. 1248.

this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind such as exposure to salt from the roads in winter or on journeys near the sea. The House of Lords held that the burden of proof which lay on the defendants to show that they had taken all reasonable care had been discharged. The defect remained undiscovered despite due care. As the evidence had shown that something unusual had happened to cause this corrosion it was necessary for the defendants to show that they neither knew nor ought to have known of any unusual occurrence to cause the breakdown."

Applying this ratio to the facts of the instant case, I hold that the burden of proving that the accident was due to mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and despite such care, the defect remained hidden. Though it was stated in the written statement as reproduced above, that at the time of accident, the vehicle all of a sudden developed a mechanical defect viz. the steering system became free all of a sudden and the vehicle became out of control but it was not stated that all precautions were taken to keep the vehicle in a roadworthy condition. It was not specifically pleaded that the defect that steering system became free suddenly and that it was a latent defect and could not have been discovered by use of reasonable care. This lack of plea is in addition to the lack of evidence and on facts the defence set up has to be rejected. Thus, I hold that respondents have failed to take proper pleadings that the accident was due to latent defect which was not discoverable by reasonable care. In the cases of like negligence, if the doctrine *res ipsa loquitor* applies, there would be a presumption of negligence, which presumption has to be rebutted by the respondents and they have failed to do so in the instant case. Resultantly, it has to be held that the accident took place due to rash and negligent driving of the four wheeler by Bal Kishan driver. The finding under issue No. 1 is accordingly reversed.

(7) On the question of compensation, Smt. Sunehri Devi widow of the deceased appeared as P.W. 2. She stated that her husband was 51 years of age at the time of his death. He was a retired Subedar from the Army. He was getting Rs. 325 per month as pension. He was a partner in Tall and Aara business and used

to contribute Rs. 1,000 per month on the family maintenance. There was no cross-examination with regard to the quantum of contribution made for the family maintenance. The following observation of this Court in the judgment reported as *M/s. Chuni Lal Dwarka Nath* v. *Hartford Fire Insurance Co. Ltd and another* (4) are very relevant to the facts of the instant case :—

> "It is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. If no such questions are put, the Courts presume that the witness account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation."

The statement *prime facie* has to be taken as correct. Even if the monthly income of the deceased is taken at Rs. 750 he would be contributing Rs. 500 per month minimum towards the family maintenance and the dependency of the family is determined at Rs. 500 per month. Applying the multiplier of '16' which is quite reasonable in the instant case, the appellants are entitled to receive Rs. 96,000 by way of compensation.

(8) The next question which arises for determination is whether the claimants are entitled to interest from the date of the accident or from the date of filing of the claim petition. This question is although of importance and divergent views have expressed by various High Courts and it has to be answered in a proper case. It will, however, not arise in the instant case. The claimants have specifically pleaded in the replication that they may be awarded interest on the compensation amount at the rate of 10 per cent per annum from the date of filing of the petition till realisation. Accordingly, I direct that the respondents shall pay the compensation amount awarded with interest at the rate of 10 per cent per annum from the date of filing of the petition till realisation. The appellants will also be entitled to the costs of litigation. Counsel's fee is assessed at Rs. 1,000.

S.C.K.

(4) A.I.R. 1958 Punjab 440.