In consequence both the appeals fail and are dismissed with costs.

GOSAIN, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before Tek Chand, J.

PARMESHWARI DASS AND OTHERS,—*Appellants*

versus

SOMAN DEVI AND ANOTHER,—*Respondents.*

Second Appeal from Order No. 43 of 1957:

1960

Jan., 11th

Torts—Motor vehicles—Owner of—Duty to keep the vehicle roadworthy and free of defect—Extent of—Accident caused by vehicle getting out of control—Passenger in the vehicle—Whether entitled to compensation—Doctrine of res ipsa loquitur*—applicability of.*

Held, that it is the duty of a person in charge of a motor vehicle to see that it is under proper control and this involves a duty to keep it in proper condition so that proper control can be exercised. There is imposed upon the owner of a vehicle the duty to take such steps as a prudent owner would take to keep his vehicle in a proper state of repair. If he fails to take such care and allows the vehicle to become defective as when the steering of a motor car becomes so worn that the driver cannot control the car that will be evidence of negligence on his part.

Held, that the owners of mortor vehicles are required to see not only that the vehicle is in a roadworthy condition before it is used on the road but also to see that it is not overloaded. The defect in the tie rod is evidence on which, in the absence of satisfactory explanation, negligence on the part of the defendants can be rightly found. Of course, the defendants would not be considered to be at fault if despite having exerted proper care and skill the defect could not be discovered.

Held, that it is irrelevant whether the passenger was being conveyed for reward or gratuitously. The liability remains unaffected in either case. A person is bound to exercise due and reasonable care even if he was conveying another in his vehicle gratuitously.

Held, that in this case the two constituents which require substantiation in a cause of action for negligence have been proved. Firstly a duty was imposed upon the defendants towards the person who was being conveyed in the vehicle, and secondly there was a careless act in so far as a defect, which could have been discovered by the exercise of ordinary care, was not detected. The circumstances under which the maxim *res ipsa loquitur* applies are proved to exist. This rule raises a presumption of fault against the defendants which the latter have not been able to overcome by contrary evidence. The defendants have not shown either that in fact there was no negligence on their part, or that the accident might more probably have happened in a manner which did not connot their negligence. Whether the accident was occasioned in consequence of overloading or as a result of the rod having become defective due to wear or tear, the liability of the defendants in either case is inescapable. In this case it has not been shown that the defendants had subjected the vehicle to periodical examination or had tried to ascertain defects from time to time. If requisite care had been bestowed on the vehicle, the tragedy that took place might have been averted.

Second Appeal from the Order of the Court of Shri Badri Parshad Puri, Additional District Judge, Hoshiarpur, Camp Dharamsala, dated the 6th July, 1957, reversing that of Shri Rajinder Lal Saigal, Sub-Judge, 1st Class, Kulu, district Kangra, dated the 31st May 1956, remanding the case to the lower Court for final decision, after giving a finding on issue No. 5.

A. C. HOSHIARPURI,—for Appellants.

HAR PARSHAD,—for Respondents.

JUDGMENT

TEK CHAND, J.—The facts giving rise to this second appeal from order may be stated as under. Shrimati Soman Devi, the plaintiff-respondent, had filed a suit for the recovery of Rs. 5,000 as damages on account of the death of her husband Om Parkash. The deceased was travelling in a motor vehicle belonging to defendants Nos. 1 to 3 and it was driven by defendant No. 4, Mast Ram as the driver. It could not negotiate a curve and fell into a *khad*. The motor vehicle in question No. PNF 847 is 1943 model of Chevrolet station-wagon and was registered as a private carrier and belonged to Sohan Lal and his two sons Parmeshwari Das and Om Parkash, defendants. On 29th of November, 1953, according to the plaintiff's case this vehicle was proceeding from Banjar to Aut in Kulu hills. It carried thirteen passengers and an equal number of bags of potatoes weighing approximately twenty-six maunds. The accident took place after the motor vehicle had traversed a distance of about seven miles from Banjar. On a curve the steering wheel became free and the vehicle fell into the *khad* seventy feet below. The plaintiff's husband Om Parkash who was one of the passengers and Ishru, a cleaner, died instantaneously. Salig Ram, another passenger, died some days later and other passengers were injured. On 6th of November, 1954, the plaintiff brought a suit for the recovery of Rs. 5,000. On the pleadings of the parties, the following issues were framed:— Tek Chand, J.

(1) Whether the Court has jurisdiction to entertain the suit against defendant No. 1.

(2) Whether the plaintiff is the widow of Om Parkash, deceased.

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(3) Whether vehicle No. PNF 847 was owned by defendants Nos. 1 to 3 at the time of the alleged accident.

(4) Whether the accident, as a result of which Om Parkash died, occurred as a result of the negligence of the defendants.

(5) What damages, if any, has the plaintiff suffered as a result of the accident in suit?

(6) Relief.

The trial Court found that the Court had jurisdiction, that the plaintiff was the widow of Om Parkash, deceased, and that the vehicle in question was jointly owned by defendants Nos. 1 to 3. On issue No. 4. which is the material issue now, the defendants were absolved from any act of negligence and the suit was accordingly dismissed, leaving the parties to bear their own costs.

The plaintiff preferred an appeal. The Additional District Judge disagreed with the conclusion of the trial Court on issue No. 4 and found that the accident was due to the negligence of the defendants. He accepted the appeal, set aside the judgment and decree of the lower Court and remanded the case to the trial Court for final decision after giving a finding on issue No. 5.

The defendants have filed the present appeal from the above order of the Additional District Judge and have contended that on the proved facts of this case, inference as to negligence cannot be drawn and the defendants were in no way negligent and, therefore, liable to damages.

The proved facts of this case are that the tie rod, which connected the steering wheel with the wheels of the car, had become loose and therefore, it was not possible for the driver to steer the car and negotiate the curves. Whether overloading of the car had caused the steering wheel to become free or the tie rod became loose in consequence of wear and tear, appears to me beside the point. The real question in this case is that the deceased was an invitee in the vehicle and under the law the defendants owed certain duties to take proper care as to the soundness of the mechanism and the roadworthiness of the vehicle. It is the duty of a person in charge of such a vehicle to see that it is under proper control and this involves a duty to keep it in proper condition so that proper control can be exercised. There is imposed upon the owner of a vehicle the duty to take such steps as a prudent owner would take to keep his vehicle in a proper state of repair. If he fails to take such care and allows the vehicle to become defective as when the steering of a motor-car becomes so worn that the driver cannot control the car that will be evidence of negligence on his part.

It was held by Darling, J. in *Hutchins* v. *Maunder* (1) that where a motor-car which had its steering gear, by reason of wear, in such imperfect condition that the driver was liable to lose control of the steering, was a thing which on a highway was necessarily dangerous to persons using the highway, and to cause the vehicle to be driven on a highway amounted to negligence even in the absence of knowledge of the defect.

In this case the imperfect condition of the tie rod could have been discovered by taking proper

(1) (1920) 37 T.L.R. 72

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precautions which was not done. Under these circumstances. It is difficult to absolve the defendants from the charge of negligence.

Tek Chand, J.

The defendants, in the case of motor vehicles, are required to see not only that the vehicle is in a roadworthy condition before it is used on the road but also to see that it is not overloaded. The defect in the tie rod is evidence on which, in the absence of satisfactory explanation, negligence on the part of the defendants can be rightly found. Of course, the defendants would not be considered to be at fault if despite having exerted proper care and skill the defect could not be discovered.

There was some irrelevant controversy as to whether the deceased was being conveyed for reward or gratuitously. The liability remains unaffected in either case. A person is bound to exercise due and reasonable care even if he was conveying another in his vehicle gratuitously.

In the circumstances of this case, the doctrine of *res ipsa loquitur* fully applies to the facts of this case. The burden of proving inevitable accident is upon the defendants. They must either show what was the cause of the accident and as a result of that cause the accident was inevitable. They may even show all the possible causes, one or the other of which produced the effect and must further prove with regard to everyone of these possible causes that the result could not have been avoided. The defence of the inevitable accident is not sustainable on the facts of this case.

The accident in question in my view is not due to a latent defect which could be said not to be discoverable by reasonable care. If the defect was of such a character that no skill, care or foresight could have detected its existence, the

defendants would be free from blame. The defendants need not insure that the vehicle, in which the deceased was travelling, was in all respects perfect for its purpose and was free from all defects likely to cause peril, but a high degree of duty is owed by a carrier to the passenger.

Erle, C.J., in Scott v. The London and St. *Katherine Docks Co.*, (1), stated the rule in the following words:—

> "* *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",

In *Barkway* v. *South Wales Transport Co., Ltd.* (2), an omnibus went over to the off side of the road, mounted the pavement, crashed into some railings, and fell on its side down an embankment on to some railway trucks, killing four of the passengers and injuring others. It was held that the fact that the omnibus left the road and fell down the embankment raised a presumption of negligence against the defendants, requiring them to prove affirmatively that they had exercised all reasonable care. The rule of law was stated by Asquith, L. J., in the following words :—

> "The position as to onus of proof in this case seems to me to be fairly summarized in the following short propositions. (i) If the defendants' omnibus

(1) (1865) 3 H. and C. 596 (601)=159 English Reports 665
(2) (1948) 2 All. E.R. 460

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leaves the road and falls down an embankment and this without more is proved, then *res ipsa loquitur,* there is a presumption that the event is cause by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption. (ii) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-brust *per se* is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in *Laurie* v. *Raglan Building Co., Ltd.,* (1), where not a tyre burst but a skid was involved. (iii) To displace the presumption, the defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to a specific cause which does not connote negligence on their part but points to its absence as more probable, or (b), if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres."

The above two rulings were cited with approval in *Gobald Motor Service Ltd.* v. *R.M.K. Velusami* (2).

(1) (1941) 3 All. E.R. 332
(2) A.I.R. 1953 Mad. 981

In this case the two constituents which require substantiation in a cause of action for negligence have been proved. Firstly a duty was imposed upon the defendants towards the person who was being conveyed in the vehicle, and secondly there was a careless act in so far as a defect, which could have been discovered by the exercise of ordinary care, was not detected. The circumstances under which the maxim *res ipsa loquitur* applies are proved to exist. This rule raises a presumption of fault against the defendants which the latter have not been able to overcome by contrary evidence. The defendants have not shown either that in fact there was no negligence on their part, or that the accident might more probably have happened in a manner which did not connote their negligence. In my view, if requisite care had been bestowed on the vehicle, the tragedy that took place might have been averted.

Whether the accident was occasioned in consequence of overloading or as a result of tie rod having become defective due to wear and tear, the liability of the defendants in either case is inescapable. In this case it has not been shown that the defendants had subjected the vehicle to periodical examination or had tried to ascertain defects from time to time. Mast Ram, the driver of the vehicle, did not choose to appear as a witness and we are left with no explanation as to how the car got out of control. The burden that the law places upon the defendants in such a case has, therefore, not been discharged. The circumstances clearly show that the accident could have been avoided if proper care had been taken before starting the journey from Banjar.

The lower appellate Court has believed the evidence on the record that the vehicle was overloaded as alleged by the plaintiff's witnesses and

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I think rightly. Defendant Sohan Lal, D.W. 8. has admitted that the vehicle could not be steered at the place of the accident where there was a bend in the road.

Tek Chand, J.

After giving careful thought to the arguments of the learned counsel, I am satisfied that the lower appellate Court came to a correct conclusion. In the result, the appeal fails and is dismissed. There will be no order as to costs. The court-fee paid in excess may be refunded.

B.R.T.

REVISIONAL CIVIL

Before K. L. Gosain, J.

MURARI LAL,—*Appellant*

versus

PIARA SINGH,—*Respondent*

Civil Revision No. 38 of 1957:

1960

Jan., 12

East Punjab Urban Rent Restriction Act (III of 1949)—Section 15(5)—Revision under—Whether maintainable in a case pending in Bhatinda under section 13 of the Pepsu Urban Rent Restriction Ordinance, 2006 Bk., on May, 9, 1958, when East Punjab Act applied to erstwhile Pepsu territory—Pepsu Urban Rent Restriction Ordinance (VIII of 2006 Bk.)—Section 13(3)(a)(i)(b)—Interpretation of—Landlord occupying one room and a verandah in another building which is found to be insufficient for his needs—Whether can evict tenant from his own building.

In the Pepsu Urban Rent Restriction Ordinance, 2006 Bk., under which the petition for eviction of the tenant was made, no provision existed for revising the orders of the Appellate Authority. The Punjab Urban Rent Restriction Act, 1949, was enforced in the territory of the erstwhile Pepsu State on the 9th May, 1958, by means of