REVISIONAL CIVIL

Before Bhandari, C. J.

UNION OF INDIA,—*Petitioner.*

versus

FIRM MADAN LAL-PREM KUMAR,—*Respondents.*

Civil Revision Application No. 376-D of 1954

1956

Jan. 10th

Tort—Damage to goods—Maxim "res ipsa loquitur", when applies—Railway Administration—Damage to goods caused by negligence—Liability.

Held, that when damage is caused by an article which is under the control or management of the defendant and the occurrence is one which does not happen if due care has been taken the damage speaks for itself (res ipsa loquitur) and is prime facie evidence of negligence. Although this doctrine does not shift the burden of proof from the plaintiff to the defendant, it certainly establishes a *prima facie* case against the defendant and places an obligation on him to show that the damage was not due to his want of care.

Petition under section 25 of Small Cause Courts Act for reversal of the order of Shri B. L. Aggarwal, Judge, Small Cause Court, Delhi, dated the 10th July, 1954, passing a decree for Rs. 826-3-6 with costs in favour of the plaintiff against the defendant.

R. B. NANAK CHAND, for Petitioner.

A. L. SEHGAL, for Respondent.

JUDGMENT

Bhandari, C.J.

BHANDARI, C. J. This petition raises the question whether certain goods belonging to the plaintiffs were damaged on account of the negligence of the Railway administration.

It appears that on or about the 15th, July, 1952. Messrs. Madan Lal-Prem Kumar of Chandni Chowk, Delhi, consigned ten bales of power-loom cotton cloth from Jaswantpur to Delhi. The goods arrived in Delhi in a damaged condition and as the Railway administration declined to reimburse the plaintiffs for

Union of India
v.
Firm Madan Lal Prem Kumar.

Bhandari, C.J

the loss sustained by them the latter were compelled to bring an action in the Court of Small Causes at Delhi. The trial Court came to the conclusion that the loss had been occasioned by reason of the negligence of the Railway administration and awarded a decree to the plaintiffs in a sum of Rs. 823-3-6. The defendant is dissatisfied with the order and has come to this Court in revision.

Two points arise for decision in the present case, namely, (1) whether the goods were consigned at owner's risk and (2) whether the plaintiffs have been able to bring the charge of negligence home to the defendants.

The first question must be answered in the negative. It is true that the Railway administration averred in the written statement that the goods were consigned at owner's risk but this statement is not borne out by the oral or documentary evidence which has been produced in the case. I am accordingly of the opinion that the goods were not sent at owner's risk but were sent at Railway risk. The provisions of section 74-C (3) of the Indian Railways Act cannot come into play in the present case.

The second and perhaps the more important of the two questions which have been agitated before me is that whether the goods of the plaintiffs were damaged by reason of the negligence of the Railway administration.

It is contended on behalf of the defendants that they put the bales belonging to the plaintiffs in a wagon which was properly sealed, that the bales were found to be in perfect condition when they were examined at Nagpur on the 13th August 1952 but that they were found to have been damaged when they were unloaded at the Railway Station at Delhi.

Union of India
v.
Firm Madan
Lal Prem
Kumar.

Bhandari, C.J.

It is accordingly conjectured that damage was caused by the rain water which appears to have penetrated through the crevices of the flap doors of the wagon in the long journey from Nagpur to Delhi. The defendants contend that they took as much care of the consignment belonging to the plaintiff as they would have taken of their own goods and cannot possibly be saddled with liability if strong winds carried the rain water into the wagon and damaged the bales.

This explanation cannot, in my opinion, exonerate the defendants from blame or exculpate them from the charge of negligence which has been preferred by the plaintiffs. It is a well-known rule of law that when damage is caused by an article which is under the control of management of the defendant and the occurrence is one which does not happen if due care has been taken the damage speaks for itself (*res ipsa loquitur*) and is *prima facie* evidence of negligence. Although this doctrine does not shift the burden of proof from the plaintiff to the defendant, it certainly establishes a *prima facie* case against the defendant and places an obligation on him to show that the damage was not due to his want of care.

The defendants have not been able to satisfy the Court that they were not negligent in the discharge of the duties which devolved upon them in their capacity as carriers of goods. The order of the trial Court must therefore be affirmed and the petition dismissed with costs. Ordered accordingly.

REVISIONAL CIVIL.

Before Bhandari, C. J.

SIR SOBHA SINGH AND SONS,—*Petitioners.*

versus

M/s. BIHARI LAL-BENI PARSHAD,—*Respondents.*

Civil Revision No: 419-D of 1955.

1956.

Jan. 16th.

Evidence Act (I of 1872)—Section 102—Burden of proof—Suit for recovery of money advanced as loan—Defendant denying having received the money as loan—