Court was maintainable in the Court of the Additional District Judge and as such his order was not revisable.

N.K.S.

Before S. S. Sodhi, J.

JARAO KAUR,—*Appellant.*

versus

MANGTOO RAM AND OTHERS,—*Respondents.*

First Appeal From Order No. 102 *of* 1978.

February 22, 1984.

Motor Vehicles Act (IV of 1939)—*Section* 110-B—*Bus suddenly going off the road and striking against the wall of a house causing injuries to the claimant—Principle of* res ipsa loquitur—*Whether could be applied—Principles for the application of the maxim—Stated—Mechanical failure pleaded by the driver as a defence—Onus to establish such failure—Whether rests on the driver—Discharge of such onus—Manner of—Stated.*

Held, that law recognises that there are cases where considerable hardship may be fall the victim of an accident by the rigid application of the rule that it is for such victim to prove negligence. This is where the principle of *res ipsa loquitur* comes in— the thing speaks for itself. This maxim applies where it is so improbable that such an accident could have happened except by negligence. In other words, where the accident by its very nature is such that negligence stands spelt out by the mere occurrence of it in that manner. Buses do not normally go off the road and hit into the walls of houses except by negligence. The maxim *res ipsa loquitur* thus stands attracted to such a case and consequently the burden of proving negligence which rested upon the claimant stood discharged by mere proof of the accident. Where the accident is admitted by the bus driver the burden gets shifted on to him to disprove negligence.

(Paras 2 and 3).

Held, that when mechanical failure is pleaded as a defence, the onus is upon the driver and the owner of the offending vehicle to establish by evidence that such mechanical failure had resulted despite due care and caution on their part which they exercised

from time to time to keep the vehicle in a roadworthy condition. In other words, it must be proved by evidence what care was taken of the vehicle to make it roadworthy, how old the vehicle was, how much mileage it had covered and at what intervals it was checked and what was the last occasion it was found fit and proper and by whom.

(Para 8).

First Appeal from order of the court of Shri R. L. Lamba, Motor Accident Claims Tribunal, Gurgaon, dated the 21st September, 1977 dismissing the petition.

O. P. Goyal, Advocate, *for the Appellant.*

Harbhagwan Singh, A.G., Haryana with P. S. Duhan, D.A.G. Haryana for respondent 2 and 3.

JUDGMENT

S. S. Sodhi, J.

(1) *The maxim res ipsa loquitur* is provided a classic illustration of its application in the manner in which the accident here occurred — all of a sudden a Haryana Roadways bus HRG-292 while proceeding towards Delhi turned to its left, went off the road and hit into the outer wall of the house of the claimant Smt. Jarao Kaur resulting in the claimant, who was lying on a cot inside, being buried under the debris thereof.

(2) As is now well settled, the law recognizes that there are cases where considerable hardship may befall the victim of an accident by the rigid application of the rule that it is for such victim to prove negligence. This is where the principle of *res ipsa loquitur* comes in — the thing speaks for itself. This *maxim* applies where it is so improbable that such an accident could have happened except by negligence. In other words, where the accident by its very nature is such that negligence stands spelt out by the mere occurrence of it in that manner.

(3) Buses do not normally go off the road and hit into the walls of houses except by negligence. The *maxim res ipsa loquitur* thus stands attracted to the present case and consequently the burden of proving negligence which rested upon the claimant stood discharged by mere proof of the accident. The accident having

been admitted by the bus driver the burden got shifted on to him to disprove negligence.

(4) The version of the bus driver was that a B.S.F. truck had suddenly come on to the main road from a bye-lane at a fast speed and it was in order to avoid collusion with it that he had swerved his bus towards its left and then there was a sudden failure of the brakes of the bus when he tried to apply them and this is what led to the bus hitting into the house of the claimant.

(5) The Tribunal accepted this version and held that the claimant had failed to prove negligence on the part of the bus driver. In holding so, the Tribunal fell in error, in the first instance, in placing the burden of proving negligence of the bus driver upon the claimant, when the *maxim res ipsa loquitur* was so patently applicable here. The burden, infact, lay upon the bus driver to disprove negligence.

(6) Next, the Tribunal erred in accepting the plea of mechanical defect namely, failure of brakes, as put-forth by the bus driver. A plea of this kind whenever raised has to be established as a fact. The yard-stick being, that despite reasonable care such defect could not have been detected and remedied.

(7) In *Lakshmismmal and others* v. *State of Tamil Nadu,* (1), a bus ran off its track jumped over the pedestrian pavement and hit into a cyclist. A sudden failure of brakes, due to oil leakage at the front left wheel cylinder, was attributed as the cause of this incident. It was held that the *maxim res ipsa loquitur* applied in such a case and further that the sudden failure of the brakes was by itself not sufficient to hold that the accident was caused not due to negligence, as in cases where latent defect was pleaded as a defence, it had to be shown that such latent defect was not discoverable inspite of reasonable care. In this behalf the observations of Lord Donovan reproduced hereunder in *Henderson* v. *Henry E. Jankins and Sons* (2) were quoted with approval.

> "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".

(1) AIR 1975 Madras 157.

(2) 1969—All Eng. Law Reports, 756 at page 764.

(8) When mechanical failure is pleaded as a defence, the onus is thus upon the driver and the owner of the offending vehicle to establish by evidence that such mechanical failure had resulted despite due care and caution on their part which they exercised from time to time to keep the vehicle in a roadworthy condition. In other words, it must be proved by evidence what care was taken of the vehicle to make it roadworthy how old the vehicle was, how much mileage it had covered and at what intervals it was checked and what was the last occasion it was found fit and proper and by whom. The bare uncorroborated testimony of the driver, as in the present case, cannot obviously suffice. In other words, the evidence on record falls far short of that required to absolve the bus driver from blame for the accident in this case on the plea of sudden failure of brakes as put-forth by him. It follows, therefore, that the accident in the present case must be taken to have been caused entirely due to the rash and negligent driving of the bus driver.

(9) Next to consider is the matter relating to the delay in the filing of the claim application. The Tribunal had held that the claim made was barred by limitation as it had been filed one day after the last date for the filing thereof. The claimant had sought to explain this delay on the plea that it was her impression that the date on which the accident had taken place was to be excluded in computing the period of limitation available to her for filing this claim. On the face of it, this provides ample sufficient cause to condone the delay in filing the claim application. In the circumstances it would be unjust to deny the claimant's claim on this account.

(10) The matter now to consider in this appeal is with regard to the amount payable to the claimant as compensation for the injuries received by her. There is no dispute here to the fact that the debris of the wall had indeed fallen upon the claimant while she was lying on a cot and on account of the injuries suffered by her, she had to be removed to the hospital where she was kept as an indoor patient for three days. The claimant here was 65 years of age at the time of this accident. Considering her age and what befell her in this accident her statement that she became unconscious and regained consciousness only in the hospital and that for about six months thereafter she could not stand erect on account of the pain and injury on her back and that her right hand was still giving her pain, cannot be doubted. There can also be no manner of doubt that some amount must also have been spent by

her upon her treatment. No corroborative evidence either from the hospital or in the form of bills for medicines purchased is forthcoming, but it would be pertinent to note that hospital record was summoned, but it was reported to be untraceable by the officials concerned. This circumstance cannot therefore, be held against the claimant.

(11) In the totality of the circumstances of the case, the claimant is clearly entitled to compensation for the pain and sufferings caused to her by this accident. The evidence on record would amply justify the Award of a sum of Rs. 5,000 for such pain and sufferings and other expenses incurred by her on her treatment. The claimant is accordingly hereby awarded a sum of Rs. 5,000 as compensation which she shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

(12) This appeal is consequently accepted with costs. Counsel's fee Rs. 300.

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