

+ **FAO No. 473/2002**

Sh. Dev Raj Appellant
Through: Mr. O.P. Mannie, Advocate

Sh. Rassis Kumar & Ors. Respondents
Through: Nemo.

1.	Whether the Reporters of local papers may be allowed to see the judgment?	YES
2.	To be referred to Reporter or not?	YES
3.	Whether the judgment should be reported in the Digest?	YES

1. The present appeal arises out of the order dated 8.5.2002 passed by the Learned Motor Accident Claim Tribunal dismissing the petition filed by the claimant appellant.

2. The brief conspectus of facts is as under:
3. That on 27.1.1991 at about 3.45 p.m. the appellant was crossing Road No. 41, very carefully near SD Block, Tower Apartments, Saraswati Vihar, Delhi when at the same time respondent No. 1 while driving vehicle bearing registration No. DL-4C-5526 rashly and negligently at fast speed came from Madhuban Chowk, side and hit against the appellant resulting serious grievous injuries to the appellant.
4. A claim petition was filed on 4/3/1991 and an award was passed on 8/5/2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh. O.P. Mannie counsel for the appellant claimant urged that the tribunal erred in dismissing the claim petition. The counsel submitted that the appellant had fully proved that the respondent driver of the offending vehicle was rash and negligent in driving the vehicle bearing registration no. DL 4C 5526.
6. Nobody appeared for the respondents.

7. I have heard the counsel for the appellant and perused the award.

8. In a plethora of cases the Hon'ble Apex Court and various High Courts have held that the emphasis of the courts in personal injury cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injuries the general principle is that such sum of compensation should be awarded which puts the injured in the same position as he would have been, had accident not taken place. But at the same time, it is also well settled that when a claim petition is filed under S. 166 of the MV Act then the burden to prove that the respondent was rash and negligent rests on the claimant. In this regard in **Oriental Insurance Co. Ltd. v. Meena Variyal,(2007) 5 SCC 428**, the Hon'ble Apex Court observed as under:

27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 10 was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second

Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. **Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.**

9. It would be evident from the record and after considering the facts and circumstances of the instant case that the appellants had provided enough material by placing on record the FIR Ex. PW1/1. The eyewitness PW2 Alim Khan also deposed that the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing registration No. DL 4C 5526. Therefore, there was ample material on record to prove the negligence of respondent driver.

10. In **Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., (1977) 2 SCC 745**, the Hon'ble Apex

Court explained the concept of *res ipsa loquitur* and observed as under:

6. 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. Salmond on the Law of Torts (15th Edn.) at p. 306 states: “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 p. 77, the position is stated 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 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 a; negligence ‘tells it own story’ of negligence on the part of the defendant, the story so told being clear and unambiguous”. Where the maxim is applied 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.

11. Further, the tribunal while deciding this case, took into account the decision in the criminal case arising out of the same FIR No.

40/1991 wherein the criminal court acquitted the respondent driver due to inability of the prosecution in proving beyond reasonable doubt that the respondent driver was rash and negligent in driving the vehicle. It is well settled that acquittal in criminal case has no bearing on cases under MV Act. As regards negligence, in **N.K.V. Bros. (P) Ltd.Vs. M. Karumai Ammal and Ors.- AIR 1980 SC 1354, (1980) 3 SCC 457**; the Hon'ble Apex Court observed as under:

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness Under Section 304-A I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps a case for enhancement, the High Court dismissed the cross claims also. Being questions of fact, we are obviously unwilling to reopen the holdings on culpability and compensation.

12. Be that as it may, minor contradictions can be ignored if other evidence is sufficient enough to prove otherwise. Thus, the discrepancy of the PW2 in calling the offending vehicle a car when the same was a van can be ignored.

13. Therefore, in view of the above discussion, there can be no confusion that the driver of the offending vehicle was negligent and was liable for the accident. The tribunal therefore committed

error in holding that the appellants could not prove negligence of the offending vehicle.

14. With the above discussion, the present appeal is remitted back to the tribunal for deciding the other issues. Parties are directed to appear before the Tribunal on 25.5.2009. The Tribunal shall decide the claim petition as expeditiously as possible but in any case not later than one year from the date of this order.

15. In view of the above directions, the appeal is disposed of.

04th May, 2009

KAILASH GAMBHIR, J.