

*** IN THE HIGH COURT OF DELHI AT NEW
DELHI**

% Judgment delivered on: 23.05.2011

+ **RSA No.17/2009**

N.D.M.C.

.....Appellant
Through: Mr. Ashutosh Lohia, Advocate
for the appellant.
Versus

SHRI CHANDER KISHORE AGGARWAL

.....Respondent
Through: Mr. R.S. Kela, Advocate for the
respondent.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

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

INDERMEET KAUR, J. (Oral)

This appeal has impugned the judgment and decree dated 09.09.2008 which had endorsed the findings of the trial judge dated 23.12.2006 whereby the suit filed by the plaintiff Chander Kishore Aggarwal seeking recovery of Rs.1,00,000/- had been decreed; the impugned judgment has modified the rate of interest from @ 24% per annum to @ 10% per annum.

The plaintiff was a post graduate Teacher working with a Senior Secondary School, Roop Nagar, Delhi. On 19.40.1986 while on his way to Jor Bagh, he was passing through Amrita Shergill Marg, New Delhi on his two wheeler scooter; he came across a speed breaker constructed by defendant no. 3 (NDMC) in front of property no. 19, Amrita Shergill Marg, New Delhi which was neither visible from a distance nor was the same painted nor did it have any road sign indicating its presence, in order to warn the commuters/users of the road as to the existence of the said speed breaker; on account of the presence of this speed breaker the plaintiff met with an accident, this was notwithstanding the fact that the plaintiff was travelling at a very nominal speed. He lost control; fell down; became unconscious; he was removed to the Emergency Ward of Safdarjung Hospital. An FIR was also registered on the same day. He stayed in Sir Ganga Ram Hospital from 20.4.86 to 6.5.85 from where he was removed to Sham Lal Nursing Home, Ansari Road, Delhi where he remained admitted up to 11.05.1986. He incurred expenditure of Rs.25,000/- at Sir Ganga Ram Hospital and Rs.2,000/- at Sham Lal Nursing Home. On 29.9.87 he was again admitted at All India Institute of Medical Sciences; he incurred expenditure of a sum of Rs.2,000/- there and even as on the date of filing of the

suit he was incurring medical expenses @ Rs. 3,000/- per month. All this was because of the negligent act of defendant no. 3.

Defendant nos. 1 and 2 were ex-parte.

In the written statement, the defence of the defendant no. 3 was that the act of the plaintiff himself was responsible for causing the accident; he himself was rash and negligent. It was not disputed by defendant no. 3 that speed breaker was there but it had been installed as per the rules.

On the pleadings of the parties following issues were framed:

- (i) Whether the plaintiff is entitled to recover Rs.1,00,000/- from the department? OPP;
- (ii) Whether the present suit is barred under the provisions of Section 110 of M.V. Act 1988? OPD 3;
- (iii) Whether the suit is not maintainable for want of statutory notice? OPD 3; (iv) Whether the suit is barred by limitation under Punjab Municipal Act, 1911? OP Parties, and
- (iv) Relief.

Oral and documentary evidence was led by the plaintiff.

To prove his case, plaintiff examined four witnesses which included himself; he was examined as PW-1. FIR was proved through the testimony of PW-3. Medical records from the Safdarjung Hospital were proved through PW-4. PW-2 had produced medical record from Sham Lal Nursing Home. The service of the statutory notice was proved as Ex. PW1/1. No evidence was led by the defendant. The trial judge had decreed the suit of the plaintiff.

This judgment and decree was endorsed in first appeal.

The second appeal has been admitted and on 6.10.2010 following substantial question of law was formulated:

“Whether the doctrine of *res ipsa loquitur* was correctly applied to the facts of the instant case, if not, its effect?”

On behalf of the appellant it has been urged that the doctrine of *res ipsa loquitur* was not applicable; this has not been appreciated in the correct perspective by the court below. It is pointed out that the provisions of Section 110 read with Section 116 of the Motor Vehicles Act, 1988 are clear; the Central Government may make rules for the maintenance of motor vehicles which includes the provision for speed breakers; signs board may also be affixed by the State Government. It is pointed out that these provisions had been adhered to and specifically stated by the defendant in

his Written Statement. The plaintiff himself was guilty of negligence; he had not given details i.e. measurement of the speed breaker by virtue of which he had suffered the accident; the decree passed is liable to be set aside; findings are based on material which does not support the case of the plaintiff.

The plaintiff has refuted the arguments. It is pointed out that findings of two courts below do not call for any interference; the act of the defendants was clearly negligent; he is liable to pay the damages.

Records show that the plaintiff had examined four witnesses. PW-1 had on oath supported the averments made in the plaint; service of notice on the respondent was proved as Ex. PW1/1. There is no dispute to the receipt of the notice. Documentary evidence led before the two courts below has been scrutinized by this court as well. Documents Ex.PW1/9 and Ex. PW1/10 are the receipts of Sir Ganga Ram Hospital dated 23.4.86 and 20.4.86 for the sum of Rs.1,000/- and Rs. 1,120/- respectively. These relate to CT Scan and X-rays conducted on the plaintiff. Documents Ex. PW1/11 and Ex. PW1/12 are the bills of the Sir Ganga Ram Hospital pertaining to the 26 days stay there; thereafter receipts pertaining to Sham Lal Nursing Home are also on record. The expenditure incurred by the plaintiff i.e. bills pertaining to the purchase of

medicine have also been proved on record. The case of the plaintiff was that speed breaker was not highlighted; there was no signage indicating its presence giving a warning or notice to the drivers that there is a speed breaker which if had been given would not have resulted in the accident.

Admittedly no defence evidence has been led.

The defence of the appellant that the plaintiff had been negligent in driving his vehicle which had led to the accident is not substantiated; no evidence was led. Defendant no. 3 in his Written Statement had in fact admitted that the speed breaker on the Amrita Shergill road is within the jurisdiction of NDMC; it was constructed as per the traffic police rules; the submission of the defendant that road signs had been affixed at the speed breaker has never been proved by the defendant. No defence has been led on this score. An FIR of even date i.e. of 19.4.1988 had also been proved. The act of the negligence of defendant no. 3 had been noted even therein. The plaintiff was entitled to the decree for the sum of Rs. 1,00,000/- on account of actual expenditure incurred by him as also for the reason that he had not been able to carry on his work in an efficient manner in the future as well. The details of the amount have been given in para 21; a total amount of Rs. 1,00,000/- had been claimed which has been accordingly decreed. There was no evidence to counter this

oral deposition of the plaintiff which coupled with the documentary evidence entitled him to this relief.

The second appeal court is not a third fact finding court. The doctrine of 'res ipsa loquitor' has been rightly adverted to. This maxim proposes two elements, (i) the accident explains only one thing and that is that the accident could not ordinarily occur unless the defendant had been negligent; and (ii) that the cause of mischief was at the material time exclusively under the control of management of the defendant. This rule of evidence has not been rebutted by the defendants, it was for him to have led evidence to prove that there were proper road signs indicating the presence of the speed breaker; no such evidence has been led.

Substantial question of law is answered in favour of the respondent and against the appellant.

There is no merit in appeal. Dismissed.

(INDERMEET KAUR)
JUDGE

MAY 23, 2011
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