

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

+ MAC.APP.No.554/2004 & CM No.7490/2007

% Date of decision : 11th December, 2012

THE ORIENTAL INSURANCE
COMPANY LTD.

..... Appellant

Through : Ms. Manjusha Wadhwa, Adv.

versus

SANJAY RATHI & ORS.

..... Respondents

Through : None.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of `50,000/- has been awarded to the claimant/respondent no.1.

2. The accident dated 24th April, 1993 resulted in grievous injuries to the claimant/respondent no.1 – Sanjay Rathi. Respondent no.1 was sitting on the front seat of Maruti Car No.DL-4C-A 2801 which was being driven by respondent no.3 – Vikas Aggarwal at a very high speed. The driver of the vehicle lost control and the car climbed over the central divider and turned up side down resulting in grievous injuries to the claimant/respondent no.1.

3. Learned counsel for the appellant has urged at the time of hearing of this appeal that the alleged accident has not been proved.

It is further submitted that no FIR has been registered in this matter. It is further submitted that the negligence of respondent no.3 has also not been proved by the claimant/respondent no.1.

4. The claimant/respondent no.1 examined four witnesses before the Claims Tribunal. The claimant/respondent no.1 himself appeared in the witness box as PW-2 and deposed that he was travelling in Maruti Car No.DL-4C-A 2801 on 24th April, 1993 at about 11.45 pm. The car was being driven by his friend Vikas Aggarwal at a very high speed and he lost control over the car which crossed the middle divider of the road and turned turtle resulting in grievous injuries. The claimant was admitted to Sunder Lal Jain Hospital, Ashok Vihar where he remained till 29th April, 1993. The claimant has given the particulars of his injuries and treatment.

5. The Record Clerk from Sunder Lal Jain Hospital appeared as PW-1 and proved the record of the medical treatment of the claimant as Ex.PW-1/1 to Ex.PW-1/6. Another Record Clerk of Sunder Lal Jain Hospital appeared as PW-4 and proved the MLC of the claimant as Ex.PW-4/1. Respondent No.3 also appeared in the witness box as PW-3. He admitted in cross-examination that the accident was not reported to the police.

6. This Court is of the view that the claimant has proved the accident dated 24th April, 1993. The non-registration of the FIR does not cast any doubt over testimonies of the witnesses. The MLC of the claimant has been proved by the PW-4. So far as the negligence is concerned, this case is governed by the principles of

res ipsa loquitur. Reference in this regard is made to the recent judgment of this Court in *National Insurance Co. Ltd. v. Gita Bindal*, MANU/DE/5041/2012. The relevant portion of the said judgment is reproduced hereunder:

“12. The principle of *res ipsa loquitur* laid down in the aforesaid four judgments is summarized as under:

i. *Res ipsa loquitur* means that the accident speaks for itself. In such cases, it is sufficient for the plaintiff to prove the accident and nothing more.

ii. 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.

iii. There are two requirements to attract *res ipsa loquitur*, (i) that the "thing" causing the damage be under the control of the defendant and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence.

iv. *Res ipsa loquitur* is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.

v. 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. This hardship is to be avoided

by applying the principle of *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.

vi. The effect of doctrine of '*res ipsa loquitur*' is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of '*res ipsa loquitur*', therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortious liability.

vii. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing in the matter are at the outset unknown to him and often within the knowledge of the defendant.

viii. The doctrine of *res ipsa loquitur* has been applied by the Courts in the following cases:-

- Where victim was sleeping on a cot placed in front of his house by the side of the road when the offending vehicle dashed against the cot and injured the claimant.
- Where a bus had dashed against a tree, causing death of a passenger.

- Where a vehicle negotiating a sharp “U” turn dashed against a tree, moved away to a distance of 150 feet from the road and then overturned.
- Where a vehicle went-off the road, hit against the tree and rolled down killing a passenger.
- Where a truck dashed against the victim standing by roadside.
- Where a truck came at breakneck speed without blowing horn and dashed against a 9 years old boy, who was walking on the extreme left side of the road, from behind resulting in instantaneous death.”

7. For the reasons as aforesaid, the appeal is dismissed. Learned counsel for the appellant submits that the principal award amount was deposited by the appellant with the Claims Tribunal vide cheque dated 1st March, 2005 and the same was withdrawn by the claimant/respondent no.1. Let the interest on the award amount upto the date of the deposit be deposited by the appellant with the UCO Bank A/c Sanjay Rathi within 30 days. Upon deposit of the said amount, UCO Bank shall keep the said amount in fixed deposit till the same is withdrawn by the claimant/ respondent no.1. The claimant/respondent no.1 is permitted to withdraw the said amount from UCO Bank.

8. All pending applications are disposed of.

9. Copy of this order be sent to claimant/respondent no.1 as well as his counsel.

J.R. MIDHA, J

DECEMBER 11, 2012/dk