

**HIGH COURT OF TRIPURA
AGARTALA
RFA 19 of 2023**

1. Sri Sekhar Chandra Das
son of Late Anil Chandra Das,
Proprietor of M/S Sekhar Chandra Das

2. Sri Janmejoy Das,
son of Late Anil Chandra Das,
care of Sri Sekhar Chandra Das,
both are resident of Village,
P.O. & P.S. Panisagar,
District-North Tripura, PIN-799260

Versus

----Appellant(s)

1. Smt. Nandita Debnath,
wife of Late Ranjit Debnath

2. Sri Ratnajit Debnath (Minor),
son of Late Ranjit Debnath

(represented by his natural guardian mother
Smt. Nandita Debnath, respondent plaintiff No.1)

both are resident of Village-P.O.& P.S. Panisagar,
District-North Tripura, PIN-799260

----Respondent(s)

For Appellant(s)	:	Mr. R. Saha, Adv. Mrs. R. Purkayastha, Adv.
For Respondent(s)	:	Mr. Sankar Bhattacharjee, Adv. Mr. S. Noatia, Adv.
Date of Hearing	:	03.09.2024
Date of delivery of Judgment & Order	:	12.09.2024
Whether fit for reporting:	:	YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order**

This appeal is preferred under Section 96 read with Order 41 Rule 1 of CPC challenging the judgment dated 26.03.2019 and decree dated 28.03.2019 delivered by Learned Civil Judge, Senior Division, North Tripura, Dharmanagar in connection with Case No.M.S.06 of 2017. By the said Judgment, the Learned trial Court below has awarded compensation

amounting to Rs. 7,42,831/- and Rs 40,018/- as cost of the suit in favour of the plaintiffs

[2] Heard Mr. R. Saha, Learned counsel appearing for the appellant defendants as well as Mr. Sankar Bhattacharjee, Learned counsel appearing for the respondent-plaintiffs.

[3] Before proceeding with the merit of the appeal, let us discuss about the subject matter of the suit filed by the respondent-plaintiffs before the Learned Court below. The respondent as plaintiffs before the Court of Learned Civil Judge, North Tripura, Dharmanagar filed one suit for granting a decree of damage and for compensation. The crux of the suit filed by the plaintiffs was in short is that the husband of the plaintiff No.1 i.e. the predecessor in interest was the teacher of Ananda Marga Primary School, Panisagar which was a private school run by a committee as per norms of the committee. According to the plaintiffs, while working as a teacher in the said school, the deceased husband of the plaintiff No.1 was entrusted with some of the extension and renovation work of the said school and accordingly, on 17.06.2016 he went to the shop of the defendant No.1 i.e. the appellant herein at Panisagar bazaar for purchasing of some GCI sheets for the purpose of said school. While said Sekhar Chandra Das i.e. the defendant No.1 was going to take out the tin (GCI sheet) from the stack inside the shop premises, then all on a sudden, the bundle of tins stack had down upon the body of the deceased Ranjit Debnath and the predecessor in interest of the plaintiffs was went under the bundle of GCI sheets and the deceased received serious injury on his person.

[4] It was further submitted that the defendants along with other workers with shabal and other instruments tried to bring out the injured from the bundles of tin which caused more injuries upon the person of said Ranjit Debnath without seeking any help from the nearby shop owners and thereafter, they took the injured to the Panisagar Hospital without informing

any relatives of said Ranjit Debnath and from where he was referred to Kailashahar District Hospital and as his condition was critical, so the doctor referred him to G.B. Hospital at Agartala. On 18.06.2016, he was admitted in ILS Hospital but the cost of ILS Hospital was very much expensive so it was not possible on their part to arrange for his treatment keeping under ventilation support in the said hospital due to their financial stringency. Thereafter, when said Ranjit Debnath was taken back to Panisagar, that time on the way near Panisagar his condition became deteriorated and he was taken to Panisagar Hospital accordingly when the doctor declared him as dead. According to the plaintiffs, Ranjit Debnath expired in between 10.30 a.m./11.00 a.m.

[5] The plaintiffs further submitted that the Doctor of Panisagar Hospital informed the matter to Panisagar Police Station and accordingly, the Panisagar Police Station registered one Case vide PNS PS U/D Case No. 2016 PNS 010 under Section 174 of Cr. P.C. According to the plaintiff the accident occurred due to the fault of the defendants and it was occurred inside the shop of the defendants where he stacked the GCI sheets in a horizontal position carelessly without any system and support and when the deceased tried to bring out the samples of tin sheets the bundle fell down him. It was further asserted by the plaintiffs that the injury occurred due to wrongful act, neglect and default on the part of shop owners. Moreover, the defendants negligently and carelessly without informing to the nearby show owners and people tried to drag out him from the bundle of GCI sheets using shabal and thus, he sustained additional injuries on his person. According to the plaintiffs to conceal the illegal activities of the defendants, they did not call upon anybody for which Ranjit Debnath succumbed to his injuries.

[6] As already stated, the deceased was a teacher of Ananda Marga Primary School, Panisagar and he used to get salary at the rate of Rs. 7,700/- per month and from private tuition he also used to earn Rs.

10,000/- per month and thus, his total income per month was Rs 17,700/- and by that income, he used to maintain his family consisting of three members. At the time of death, the age of the deceased was 51 years and due to that incident, the plaintiff No.1 lost her husband and the plaintiff No.2 lost his father So, the plaintiffs filed the suit due to premature death of their predecessor in interest for a decree of realization of money amounting to Rs.49,78,000/- with interest at the rate of Rs.18% p.a. w.e.f. 18.06.2016 till realization.

[7] The defendants i.e. the appellants herein contested the suit by filing written statement denying the entire assertions of the plaintiffs. According to them, there was no negligence and fault on the part of the defendants in connection with the said incident inside the shop premises of the defendant No. 1. It was submitted that at that time, the defendant No. 1 was busy with nearby shop owners for some important discussions. That time, the answering defendants requested him to wait for a while but the customer was in a hurried mode and on his own way wanted to see the quality of GCI sheet and entered into the store room. He tried to pull out one of the GCI sheet from the bundle from upper rack of the store room and thus, the entire bundle of GCI sheet fell upon him on the head of the said customer and thus, he sustained injury and cried out in a big sound. The defendant No.1 rushed to the spot from nearby shop and shifted the injured at once to the Panisagar hospital with the help of others. As the condition of the customer was serious, so he was shifted to ILS Hospital, Agartala and succumbed to his injury and on humanitarian ground the defendants paid transportation cost for shifting the injured to the hospital and they also paid Rs. 2,00,000/- to the wife of the deceased namely Smt. Nandita Debnath for performing shradha/funeral ceremony on humanitarian ground and the answering defendants denied the liability to give any compensation because the post mortem examination report established that the death was occurred

due to accident and they had no negligence. Finally, they submitted that the police enquiry ended in final report and due to filling of the suit, their public image was lost in the eye of local people along with their reputation. So, the defendants prayed for dismissal of the suit with exemplary costs.

[8] Upon the pleadings of the parties, the following issues were framed by the Trial Court :

ISSUES

- (i) Whether the suit is maintainable ?
- (ii) Whether defendants No.1 & 2 were the owners of a shop of tin sheets at Panisagar market?
- (iii) Whether on 17.06.2016 at 3 p.m. Ranjit Debnath (deceased) went to the shop of defendants at Panisagar market to purchase tin for his school?
- (iv) Whether on the relevant date, time and place defendants were negligent in keeping the tin sheets in their shop ?
- (v) Whether on the relevant date, time and place Ranjit Debnath sustained severe injuries due to any rash and negligent act of defendants?
- (vi) Whether on 18.06.2016 Ranjit Debnath succumbed to his injuries received due to the negligent act of defendants ?
- (vii) Whether Ranjit Debnath was earning monthly income of Rs.17,700/- on the relevant date of incident?
- (viii) Whether defendants paid Rs.2 lacs to the plaintiff No.1 during the funeral ceremony of deceased Ranjit Debnath ?
- (ix) Whether plaintiffs entitled to get compensation of Rs.49,78,000/- along with interest 18% per annum w.e.f. 18.06.2016 from defendants?
- (x) Whether defendant suffered any legal injury due to loss of good will and reputation of their business and they are entitled to get compensation of Rs.50 lacs?"

[9] In order to prove the case, the plaintiffs have adduced 6(six) numbers of witnesses and relied upon some documents which were marked as Exhibits in the suit and the defendants have adduced one witness and relied upon some documents which were also marked as Exhibits:

(A) Witnesses of the Plaintiffs:

- 1) P.W.1, Smt. Nandita Debnath
- 2) P.W.2, Sri Pranab Debnath
- 3) P.W.3, Smt. Shila Nath
- 4) P.W.4, Samiran Deb
- 5) P.W.5, Sri Anil Das
- 6) P.W.6, Sri Mnindra Chandra Das

(B) Plaintiffs Exhibit :-

- 1. Exibit.1- Original Power of Attorney of Sl. No. 10092 dated 30.09.2011 Certified copy of post mortem report dated 20.06.2016 (2 sheets).
- 2. Exbt.2- Original discharge summary report along with other documents including examination report, medical expenses prescription etc.(12 pages).
- 3. Exbt.3- Copy of death certificate of Ranjit Detinath

(C) Witnesses of the Defendant :

- 1) DW-1, Sri Sekhar Chandra Das

(D) Defendant's Exhibits:

- 1) Exbt.A- Medical report regarding cause of death.

2) Exbt. B-Police report and surothal report.

[10] Finally, on conclusion of trial, Learned Court below decreed the suit in favour of the plaintiffs, ie the respondents herein, For the sake convenience, I would like to refer herein below the operative portion of the Judgment and order of the Learned Trial Court dated 26.03.2019 which runs as follows:

"In the result, the suit stands decreed on contest with cost. Plaintiffs have been able to prove the sheer negligence by shop owners on the alleged day and time. There was lack of preventive measures to place the GCI tins in the shop in horizontal position in a dangerous condition prone to accident. The defendants owed to Ranjit Debnath a specific legal duty to take care, of which they had made a breach and so they are liable to pay compensation to the plaintiffs who are legal heirs of deceased.

We can award the pecuniary loss in favour of plaintiffs would be Rs.5 lakhs. We also can award the medical expenses equal to Rs.36,831/- The conveyance expenses/transportation cost from Panisagar to Kailashahar and Kailashahar to Agartala and return journey will be Rs.6,000/-. We can award the loss of consortium due to the untimely death of Ranjit Debnath as Rs.1 lakh. There will be certainly loss of love and affection by the wife and son of the deceased and it will be Rs.1 lakh. The medical expenses are awarded considering the bills of hospital reflected in Exbt.2 series.

Thus, in total plaintiffs are entitled to get compensation/damage from the defendants for a sum of money of Rs.5 lakh + 36.831/- + 6,000 + 1 lakh 1 lakh = Rs.7,42,831/-. No award is given to the funeral expenses/sharadh ceremony because defendants already paid Rs.2 lakhs in this respect to the wife of the deceased and it was not disputed by the plaintiff side.

This suit accordingly stands decreed on contest with cost.

Prepare decree accordingly.

Enter the result in Trial Register."

[11] In course of hearing of argument, Mr. R. Saha, Learned counsel appearing for the appellants submitted that the suit was not maintainable the Learned Trial Court under the Fatal Accident Act because there was no willful negligence on the part of the contesting defendants i.e. the appellants herein for the alleged incident but the Learned Court without appreciating the legal position has granted the decree in favour of the plaintiffs ie the respondents herein. It was further submitted by the Learned counsel for the appellants that under the Fatal Accident Act compensation can be awarded only against any statutory authority, not against any private individual. Furthermore, Learned counsel for the appellants drawn the attention of the Court referring para-4 of the examination-in-chief in affidavit of PW-1, Smt.

Nandita Debnath and submitted that the deceased himself attributed to the negligence without adhering to the request of the defendant No.1 i.e. the appellant No.1 herein and thus, the accident took place for which the defendants were in no way involved with the alleged incident. Furthermore, Learned counsel for the appellants again drawn the attention of the Court referring para Nos.6 & 7 of the examination-in-chief in affidavit of the said witness and submitted that ignoring the advice of the Medical Officer, the respondents arranged for release of the deceased victim from the ILS Hospital and on the way, he expired and as such, they were totally responsible for the alleged incident.

[12] Learned counsel for the appellants further drawn the attention of the Court referring the discharge summary (Exbt.2 series) wherein the concerned hospital observed as follows:

"Poor prognosis of the patient was explained to the attendants and need for hospital stay and ventilator support. However, attendants are not willing to continue the treatment over here. So, he is being discharged against medical advice (DAMA)."

Referring the said observation, Learned counsel for the appellants submitted that had the victim be admitted in the hospital, in that case, there was every possibility of his survival but the family members did not adhere to the advice of the Medical Officer, rather they of their own accord arranged for his release and on the way he expired.

[13] It was further submitted that before the Learned Trial Court, the plaintiffs Le the respondents herein both by adducing oral/ documentary evidence on record failed to establish that due negligence of the defendants e. the appellants herein the incident took place and as such, the judgment of the Learned Trial Court suffers from infirmities and urged for allowing this appeal by setting aside the judgment and decree of Learned Trial Court.

[14] On the other hand, Mr. Sankar Bhattacharjee, Learned counsel appearing for the respondent-plaintiffs submitted that before the Learned Trial Court there was no such defence from the side of the appellants herein to brush aside the story of negligence because the defendant-appellants by the act of cross-examination of the witnesses of the plaintiffs could not raise any doubt to disbelieve the story of the plaintiffs and finally, on conclusion of trial, Learned Trial Court after considering all the aspects rightly and reasonably delivered the judgment in favour of the appellants for which there is no scope to interfere with the judgment of the Learned Trial Court and urged for dismissal of this appeal with costs.

[15] Admittedly, there is no dispute on record regarding death of the deceased on the alleged day i.e. on 18.06.2016 and also regarding the fact of sustaining injury by the deceased victim due to sudden falling of GCI sheets over his body inside the shop of the defendant No.1 i.e. the appellant No.1 herein.

[16] In course of hearing of arguments both the sides have referred few citations which would be discussed accordingly.

[17] Now, to elucidate the truth, let us discuss about the evidence on record of the parties before the Learned Trial Court. As already stated, to substantiate the issues both the parties have adduced oral/documentary evidence on record. The plaintiffs as already stated have adduced 6(six) numbers of witnesses.

[18] PW-1. Smt. Nandita Debnath in her examination-in-chief in affidavit in paras Nos.3 to 9 have mentioned the following facts:

"3. That, my husband Late Ranjit Debnath here in after called predecessor in interest was the Teacher in Ananda Marg Primary School situated at Panisagar and it was a private School is being run by a committee as per rules and norms of the committee.

My husband Late Ranjit Debnath joined in service of said Ananda Marg Primary School in short School on 01-03-1988 and had been continuing in service till his death on 16-06-2016 and prior to his death he was drawing salary of

Rs.7,700/- (Rupees seven thousand seven hundred) only per month increasable time to time as per norms of said School.

4. That, while he was working as teacher in the said School he was entrusted with some of the extension and renovation work of the School and accordingly he on 17-06-2016 at about 3 p.m. went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and then and there all the staged tin had fallen down upon the deceased Ranjit Debnath and the predecessor in interest of we the plaintiffs was weighted down on the ground under the all bundles of the tin and received serious injury on his person.

5. That, the defendants with other workers with shabal and other instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the said Ranjit Debnath without seeking any help from the nearby shop owners. Not only that they even did not call for the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of we the plaintiffs. They took him to the Panisagar Hospital without informing any relatives of Ranjit Debnath where from he was taken to Kailashahar District Hospital.

6. Getting the information from the people the plaintiff No.2 had gone to Kailashahar Hospital and seeing his grievous condition he was referred to G.B. Hospital. His condition was very critical and accordingly he was admitted on 18-06-2016 ILS Hospital as indoor patient wherein he was put incubated and put on mechanical ventilator in view of poor GCS. As per the doctor the condition of the patient is very poor and there is no chance for survival, the relatives of the patient was decided to bring him at home as the cost of the ILS Hospital was so high and it was not possible to treat him and kept him stay in the Hospital in ventilator support for as per doctor the patient could be survived for few years only by ventilation support.

7. That, unfortunately when injured Ranjit Debnath was taken to Panisagar on the way near Panisagar his condition was detoriated miserably and he was taken to Panisagar Hospital and wherein the doctor of Panisagar Hospital declared that he had died. It was on 18-06-2016 at about 10.30 a.m. /11.00 a.m.

8. That the Doctor of Panisagar Hospital informed the Panisagar Pance Station and the Panisagar Police registered case being PNS PS U/D Cave No.2016 PNS 010 U/5 174 of Cr.P.C. and investigation was made by the PNS Police Station regarding the occurrence.

On 19-06-2016 Post Mortem Examination of the deceased was done by 3 nos of Doctor wherein it is opined that "the cause of death in this case is intracranial haemorrhage caused by head injury due to heavy blunt force. Accidental in nature It is also mentioned there are two cut present over right leg.

9. That, surprisingly the 1.0. of the PNS PS submitted final report of the case vide his report dated 29-06-2016 without proper inquiry mentioning that the cause of death is head injury due to heavy blunt force accident in nature most for the reason best known to them."

During cross-examination by the defendants ie, the appellants herein said PW-1 stated that her husband was a private school teacher but she did not submit any documentary evidence in this regard nor filed any salary certificate of her deceased husband. She also failed to submit any adjustment paper for renovation work in the school by her husband. She further stated that she filed the case after the said incident. Nothing more came out relevant from her cross-examination

[19] PW-2, Sri Pranab Debnath in his examination-in-chief in affidavit in para Nos.2 to 11 has asserted the following facts:

"2. That, the husband of the plaintiff No.1 Late Ranjit Debnath here in after called predecessor in interest was the Teacher in Ananda Marg Primary School situated at Panisagar and it was a private School is being run by a committee as per rules and norms of the committee.

The predecessor in interest of the plaintiffs joined in service of said Ananda Marg Primary School in short School on 01-03-1988 and had been continuing in service till his death on 18-06-2016 and prior to his death has was drawing salary of Rs.7,700/- (Rupees seven thousand seven hundred) only per month increasable time to time as per norms of said School.

3. That, while he was working as teacher in the said School he was entrusted with some of the extension and renovation work of the School and accordingly he on 17-06-2016 at about 3 p.m. went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and then an there all the staged tin had fallen down upon the deceased Ranjit Debnath and the predecessor in interest of the plaintiffs was weighted down on the ground under the all bundles of the tin and received serious injury on his person.

4. That, the defendants with other workers with shabal and instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the sald Ranjit Debnath wititout seeking any help from the nearby shop owners. Not only that they oven did not call for the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of the plaintiffs. They took him to the Panisagar Hospital without informing any relatives of Ranjit Debnath where from he was Kailashahar District Hospital taken to

5. Getting the information from the people the plaintiff No.2 had gone to Kailashahar Hospital and seeing his grievous condition he was referred to G.B. Hospital. His condition was very critical and accordingly he was admitted on 18-06-2016 ILS Hospital as indoor patient wherein he was put incubated and put on mechanical ventilator in view of poor GCS. As per the doctor the condition of the patient is very poor and there is no chance for survival, the relatives of the patient was decided to bring him at home as the cost of the ILS Hospital was so high and it was not possible to treat him and kept him stay in the Hospital in ventilator support for as per doctor the

patient could be survived for few years only by ventilation support.

6. That, unfortunately when injured Ranjit Debnath was taken to Panisagar on the way near Panisagar his condition was deteriorated miserably and he was taken to Panisagar Hospital and wherein the doctor of Panisagar Hospital declared that he had died. was on 18-06-2016 at about 10.30 a.m. /11.00 a.m.

7. That, the Doctor of Panisagar Hospital informed the Panisagar Police Station and the Panisagar Police registered case being PNS PS U/D Case No.2016 PNS 010 U/S 174 of Cr.P.C and investigation was made by the PNS S Police Station regarding the occurrence.

On 19-06-2016 Post Mortem Examination of the deceased was done by 3 nos. of Doctor wherein it is opened that "the cause of death in this case is intracranial haemorrhage caused by head injury due to heavy blunt force. Accidental in nature." It is also mentioned that there are two cut injury present over right leg.

8. That, surprisingly the 1.0. of the PNS PS submitted final report of the case his report dated 29-06-2016 without proper inquiry mentioning that the cause of death is head injury due to heavy blunt force accident in nature most arbitrarily for the reason best known to them.

9. That, the accident was occurred due to the fault of the defendants and it was occurred within his shop premises. He staged the tin sheets (heavy numbers) in a horizontal position carelessly without any system and support to keep them in a protected position for which when he tried to bring out the sample of a tin sheets it fell down over the deceased who went there for purchase and as a result of this the deceased succumbed to injury on 18-06-2016. The injury was occurred to deceased Ranjit Debnath due to wrongful act, neglect and default of the shop owners. He carelessly without any protection and system kept the tin sheets carelessly unlike a prudent shop owner. Moreover they negligently and carelessly without informing nearby shop owners and peoples tried to drag out the deceased Ranjit Debnath under the tin sheets bundles using shabal (an instrument with pointed edge) unlike a prudent man and in this way he caused additional injuries upon the predecessor in interest of the plaintiffs. The defendants did not call any one just to conceal his illegal activities following which said Ranjit Debnath had succumbed to injuries.

10. That, the deceased had died leaving behind the following surviving legal heirs.

SL No	NAME	RELATIONSHIP	AGE
i.	Smt. Nandita Dennath	wife, plaintiff No.1	48
ii.	Sri Ratnajit Debnath	son, plaintiff No.2	16

11. That, the deceased Ranjit Debnath was the teacher in Panisagar Ananda Marg School (Primary). He joined as teacher in the said School on 01-03-1988 and he got salary Rs Rs.7,700.00 per month increasable time to time as per decision of the committee. For maintaining his family he used d to do private tuitions from which he earned about Rs. 10,000.00 per month and accordingly his total monthly income was Rs. 17,700.00 (Rs.7,700.00 Rs. 10,000.00) and with this income he maintained his family consisting three members. At the time of death he is aged about 51 years and as it is a private School he has opportunity to continue his service till his death or till the date of his working capability. His wife is aged about 48 years and his son is aged about 16 years and studying in Class XII."

During cross-examination by the defendants 1.e. the appellants herein he admitted that at the time of accident he was not present. Again submitted that there was a meeting in between the plaintiffs and the defendants but they could not submit the minutes of the meetings before the Court. Nothing more came out relevant from his cross-examination.

[20] Similarly, PW-3, Smt. Shila Nath in her examination-in-chief in affidavit in para Nos.2 to 11 has asserted the following facts:

"2. That, the husband of the plaintiff No.1 Late Ranjit Debnath was the Teacher in Ananda Marg Primary School situated at Panisagar and it was a private School is being run by a committee as per rules and norms of the committee.

Late Ranjit Debnath joined in service of said Ananda Marg Primary School in short School on 01-03-1988 and had been continuing in service till his death on 18-06-2016 and prior to his death has was drawing salary of Rs.7,700/- (Rupees seven thousand seven hundred) only per month increasable time to time as per norms of said School.

3. That, while he was working as teacher in the said School he was entrusted with some of the extension and renovation work of the School and accordingly he on 17-06-2016 at about 3 p.m. went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and then and there all the staged tin had fallen down upon the deceased Ranjit Debnath and the predecessor in interest of the plaintiffs was weighted down on the ground under the all bundles of the tin and received serious injury on his person.

4. That, the defendants with other workers with shathal and other instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the said Ranjit Debnath without seeking any help owners Not Not only that they even did not call for from the nearby shop the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of the plaintiffs. They took him to the Panisagar Hospital without informing any relatives of Ranjit Debnath where from he was taken to Kailashahar District Hospital.

5. That, on the relevant date at about 3.30/4.00 p.m. I came to Panisagar from Fatikroy where I am working as Lecturer in Fatikroy Collage and hearing the information from various persons at Panisagar Bazar I had gone to Panisagar Hospital and then had gone to Kailashahar District Hospital with the injured. And seeing his grievous condition he was referred to G.B.Hospital. His condition was very critical and accordingly he was admitted on 18-06-2016 ILS Hospital as indoor patient wherein he was put incubated and put on mechanical ventilator in view of poor GCS. As per the doctor the of the patient. is very poor and there condition is no chance for survival, the relatives of the patient was decided to bring him at home as the cost of the ILS Hospital was so high and it was not possible to treat him and kept him stay in the Hospital in ventilator support for as per doctor the patient could be survived for few years only by ventilation support.

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and wherein the doctor of Panisagar Hospital declared that he had died. It was on 18-06-2016 at about 10.30 a.m. /11.00 a.m.

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8. That, surprisingly the 1.0. of the PNS PS submitted final report of the case vide his report dated 29-06-2016 without proper inquiry mentioning that the cause of death is head injury due to heavy blunt force accident in nature most arbitrarily for the reason best known to them.

9. That, the accident was occurred due to the fault of the defendants and it was occurred within his shop premises. He staged the tin sheets (heavy numbers) in a horizontal position carelessly without any system and support to keep them in a protected position for which when he tried to bring out the sample of a tin sheets it fell down over the deceased who went there for purchase and as a result of this the deceased succumbed to injury on 18-06-2016. The injury was occurred to deceased Ranjit Debnath due to wrongful act, neglect and default of the shop owners. He carelessly without any protection and system kept the tin sheets carelessly unlike a prudent shop owner. Moreover they and carelessly without informing nearby shop owners and peoples tried to drag out the deceased Ranjit Debnath under the tin sheets bundles using shabal (an instrument with pointed edge) unlike a prudent man and in this way he caused additional injuries upon the predecessor in interest of the plaintiffs. The defendants did not tall any one just to conceal his illegal activities following which said Ranjit Debnath had succumbed to injuries.

10. That, the deceased had died leaving behind the following surviving legal heirs.

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ii.	Sri Ratnajit Debnath	son, plaintiff No.2	16

11. That, the deceased Ranjit jit Debnath was the teacher in Panisagar Ananda Marg School (Primary). He joined as teacher in the said School on 01-03-1988 and he got salary Rs.7,700.00 per month increasable time to time as per decision of the committee. For maintaining his family he used to do private tuitions from which he earned about Rs. 10,000.00 month and accordingly his total monthly income was Rs.17,700.00 (Rs.7,700.00 Rs.10,000.00) and with this Income he maintained his family consisting three members. At the time of de death he is aged about 51 years and private School he has opportunity to as it is a continue his service till his death or till the date of his working capability. His wife is aged about 48 years his son is aged about years and studying in Class XII."

During cross-examination by the defendants i.e. the appellant herein, she stated that at the time of accident she was at Fatikroy. She further stated that there was a meeting in between the plaintiffs and the

defendants but they could not submit the minutes of the meetings before the Court. Nothing more came out relevant from her cross-examination.

[21] PW-4, Sri Samiran Deb in his examination-in-chief in affidavit in para Nos.2 to 6 has asserted the following facts:

"2. That, I know deceased Ranjit Debnath teacher of the Ananda Marg Primary School, Panisagar, North Tripura.
3. That, I have working as worker at Ananda Marg Primary on the basis of no work no pay. It is a private school is being run by a committee and as per the decision of the committee I have been working in the school as worker since long.
4. That, while he was working as teacher in the said School he was entrusted with some of the extension and renovation work of the School and accordingly he on 17-06-2016 at about 3 p.m. went to the shop of the defendant No. 1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and then and there all the staged tin had fallen down upon the deceased Ranjit Debnath and he was weighted down on the ground under the all bundles of the tin and received serious injury on his person.
5. That, the defendants with other workers with shabal and other instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the said Ranjit Debnath without seeking any help from the nearby shop owners. Not only that they even did not call for the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of the plaintiffs. They took him to the Panisagar Hospital without informing any relatives of Ranjit Debnath where from he was taken to Kailashahar District Hospital.
6. That, the accident was occurred due to the fault of the defendants and it was occurred within his shop premises. He staged the tin sheets (heavy numbers) in a horizontal position carelessly without any system and support to keep them in a protected position for which when he tried to bring out sample of a tin sheets it fell down over the deceased who went there for purchase and as a result of this the deceased succumbed to injury on 18-06-2016. The injury was occurred to deceased Ranjit Debnath due to wrongful act, neglect and default of the shop owners. He carelessly without any protection and system kept the tin sheets carelessly unlike a shop owner. Moreover they negligently and carelessly without informing nearby shop owners and peoples tried to drag out the deceased Ranjit Debnath under the tin sheets bundles using shabal (an instrument with pointed edge) unlike a prudent man and in this way he caused additional injuries upon the predecessor in interest of the plaintiffs. The defendants did not call any one just to conceal his illegal activities following which said Ranjit Debnath had succumbed to injuries."

During cross-examination by the defendants i.e. the appellants herein he stated that he used to work in the Ananda marga Primary School and at the time of incident he was at Panisagar market.

[22] PW-5, Sri Anil Das in his examination-in-chief in affidavit in para Nos.3 to 8 asserted the following facts:

"3. That, on 17-06-2016 at about 3 p.m. Ranjit Debnath went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar Bazar for purchasing tin for the School. I was along with him with my card (Thela). I was accompanying him to bring the purchased tin.

4. That, on 17-06-2016 at about 3 p.m. went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and then and there all the staged tin had fallen down upon the deceased Ranjit Debnath and the predecessor in interest of the plaintiffs was weighted down on the ground under the all bundles of the tin and received serious injury on his person.

5. That, the defendants with other workers with shabal and other instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the said Ranjit Debnath without seeking any help the nearby shop owners. Not only that they even did not call for the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of the plaintiffs. They took him to the Panisagar Hospital by the Sekhar Chandra Das & others without informing any relatives of Ranjit Debnath where from he was taken to Kailashahar District Hospital.

6. That, the victim was then taken to Agartala for treatment and ultimately he had died.

7. That, the accident was occurred due to the fault of the defendants and it was occurred within his shop premises. He staged the tin sheets (heavy numbers) in a horizontal position carelessly without any system and support to keep them in a protected position for which when he tried to bring out the sample of a tin sheets it fell down over the deceased who went there for purchase and as a result of this the deceased succumbed to injury on 18-06-2016. The injury was occurred to deceased Ranjit Debnath due to wrongful act, neglect and default of the shop owners. He carelessly without any protection and system kept the tin sheets carelessly unlike a prudent shop owner. Moreover they negligently and carelessly without informing nearby shop owners and peoples tried to drag out the deceased Ranjit Debnath under the tin sheets bundles using shabal (an instrument with po pointed edge) unlike a prudent man and in this way he caused additional injuries upon the predecessor in interest of the plaintiffs. The defendants did not call any one just to conceal his illegal activities following which said Ranjit Debnath had succumbed to injuries.

8. That, the deceased Ranjit Debnath was the teacher in Panisagar Ananda Marg School (Primary)."

During cross-examination, he stated that he appeared before the Court as per request of Nandita Debnath and he could not say the exact date of the incident.

[23] PW-6, Sri Manindra Chandra Nath in his examination-in-chief in affidavit in para Nos. 3 to 13 has asserted that:

3. That, deceased Ranjit Debnath was entrusted to purchase tin from Panisagar Bazar for the School.

4. That, on 17-06-2016 at about 3 p.m. he went to the shop of the defendant No. 1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School.

5. That, the husband of the plaintiff No.1 Late Ranjit Debnath was the Teacher in Ananda Marg Primary School situated at Panisagar and it was a private School is being run by a committee as per rules and norms of the committee.

6. That, while he was working as teacher in the said School he was entrusted with some of the extension and renovation of the School and accordingly he on 17-06-2016 at about 3 p.m. went to the shop of the defendant No.1 Sekhar Chandra Das at Panisagar bazar for purchasing tin for the School. Sekhar Chandra Das asked the deceased Ranjit Debnath to wait said Sekhar Chandra Das going to take out the tin sheets from the staged within the shop premises (kept in a horizontal position) and there all the staged tin had fallen down upon the deceased Ranjit Debnath and the predecessor in interest of the plaintiffs was weighted down on the ground under the all bundles of the tin and received serious injury on his person.

7. That, the defendants with other workers with shabal and other instruments tried to bring out the injured Ranjit Debnath following which caused more injuries upon the said Ranjit Debnath without seeking any help from the nearby shop owners. Not only that they even did not call for the Fire Brigade and somehow removing bundle of tins causing more injury to the predecessor in interest of the plaintiffs. They took him to the Panisagar Hospital without informing any relatives of Ranjit Debnath where from he was taken to Kailashahar District Hospital.

8. That, the victim was taken to Panisagar Hospital and then to Kailashahar District Hospital and seeing his grievous condition he was referred to G.B.Hospital. His condition was very critical and accordingly he was admitted on 18-06-2016 ILS Hospital as indoor patient wherein he put incubated and put on mechanical ventilator in view of poor GCS. As per the doctor the condition of the patient is very poor and there is no chance for survival, the relatives of the patient was decided to bring him at home as the cost of the ILS Hospital was so high and it was not possible to treat him and kept him stay in the Hospital in ventilator support for as per doctor the patient could be survived for few years only by ventilation support.

9. That, unfortunately when injured Ranjit Debnath was taken to Panisagar on the way near Panisagar his condition was deteriorated miserably and he was taken to Panisagar Hospital and wherein the doctor or of Panisagar Hospital declared that he had died. It was on 18-06-2016 at about 10.30 a.m. / 11.00 a.m.

10. That, the accident was occurred due to the fault of the defendants and it was occurred within his shop premises. He staged the tin sheets (heavy numbers) in a horizontal position carelessly without any system and support to keep them in a protected position for which when he tried to bring out the sample of a tin sheets it fell down over the deceased who went there for purchase and as a result of this the deceased succumbed to injury on 18-06-2016. The injury was occurred to deceased Ranjit Debnath due to wrongful act, neglect and default of the shop owners. He carelessly without any protection and system kept the tin sheets carelessly unlike a prudent shop owner. Moreover they negligently and carelessly without informing nearby shop owners and peoples tried to drag out the deceased Ranjit Debnath under the tin sheets bundles using shabal (an instrument with pointed edge) unlike a prudent man and in this way he caused additional injuries upon the predecessor in interest of the plaintiffs. The defendants did not call any one just to conceal his illegal activities following which said Ranjit Debnath had succumbed to injuries.

11. That, the deceased had died leaving behind the following surviving legal heirs.

SL No	NAME	RELATIONSHIP	AGE
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- | | | |
|-----|--|-----------|
| i. | Smt. Nandita Dennath wife, plaintiff No.1 | 48 |
| ii. | Sri Ratnajit Debnath son, plaintiff No.2 | 16 |

12. That, the deceased Ranjit Debnath was the teacher in Panisagar Ananda Marg School (Primary). He joined as teacher in the said School on 01-03-1988 and he got salary Rs.7,700.00 per month increasable tim 12. e to time as per decision of the committee. For maintaining his family he used to do private tuitions from which he earned about Rs. 10,000.00 per month and accordingly his total monthly income was Rs.17,700.00 (Rs.7,700.00 Rs.10,000.00) and with this income he maintained his family consisting three members. At the time of death he is aged about 51 years and as it is a private School he has opportunity to continue his service till his death or till the date of his working capability. His wife is aged about 48 years and his son is aged about 16 years and studying in Class XII.

13. That, he was a teacher in a private School and there is no system of pensionary or any service benefits. Moreover if he continued service his remuneration could be increased time to time or the School might be taken by the Government in near future and in event his salary might be be increased reasonably and his demand for private tuition would have been increased."

During cross-examination by the defendants i.e. the appellants he stated that he did not issue any memo in writing or adjustment of authority to the teacher Ranjit Debnath for purchasing of tin from a shop at Panisagar on last 17.06.2016 for renovation of school building nor he issued any salary certificate to Ranjit Debnath in respect of his salary Rs 7,700/- per month. Nothing more came out relevant from his cross- examination

[24] The appellants have adduced only one witness Le. the evidence of defendant No. 1, Sri Shekhar Chandra Das. He in his examination-in-chief in affidavit tried support the version of written statement filed by them before the Learned Trial Court.

During cross examination by the plaintiffs, he stated that he is running a valid business and is an Income Tax payee. His shop consists of two doors. But he could not say in which side of the door the incident occurred and he found the injured person inside his shop after coming from house. But he could not say in which side injured person was there. He along with other villagers shifted the injured to the hospital and injured. person was dragged out under the bundle of tins by shifting the bunch of tin The injury was not appeared to be serious. He further stated that the injured

person was lifted from the spot by vehicle for treatment. Also stated that his shop is nearly 10 cubits in breadth and the doors divided into two parts nearly 5 cubit and 5 cubit. His shop is connected with hardware and tin in the sign board his name was written and a verandah was in the front side. Again he stated that tin was put on the southern portion of the shop. He could not say the length of the tin in the bundle when the incident occurred. The sitting table is in the northern side of the shop and the size of the table is 3x3 ft. The victim was shifted to hospital by him and other villagers but at that moment no family members were there. They shifted the victim to hospital urgently on humanitarian ground without informing the family members. He denied to have any bartakh, the again stated that he was not present in the shop when the incident occurred.

These are the sum and substance of the evidence on record of both the parties.

[25] In course of hearing of argument as already stated Mr. Saha, Learned counsel for the appellants drawn the attention of the Court that the plaintiffs Le the respondents herein filed the suit before the Learned Court below under the Fatal Accident Act but before the Learned Trial Court they have failed to show the negligence on the part of the present appellants herein, Even, to substantiate the claim of the plaintiffs, no independent witness could be adduced by the respondents before the Learned Trial Court but the Learned Trial Court on the basis of some omnibus statements decreed the suit in favour of the plaintiffs ie. the respondents herein. In support of his contention, Learned counsel for the appellants relied upon one citation of the Hon'ble Supreme Court of India in **Rajkot Municipal Corporation versus Manjulben Jayantilal Nakum and Others** reported In **(1997) 9 SCC 552** wherein in para Nos. 11 to 15 the said Apex Court has observed as under:

"11, In "Blacks Law Dictionary (6th Edn.) at page 1489, tort is defined as violation of duty imposed by general law or otherwise upon all persons occupying the relation to each other involved in a given transaction. There must always be a violation of some duty owed to plaintiff and generally such a duty must arise by operation of law and not by mere agreement of the parties. "A legal wrong is committed upon the person or property, independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the Individual. Negligence is failure to use such care.. reasonable prudent and careful person would use, under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar Circumstances. Negligence also is omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

12. Negligence and tort have been viewed without elaborately embarking upon the definition of "tort" applicable to varied circumstances and the scope of negligence in its wider perspective. Let us proceed to consider the meaning of "negligence in the context of tort liability arising in this case. In every case giving rise to tortious liability, tort consists of injury and damage due to negligence. Claim for injury and damage may be founded on breach of contract or tort. or tort. We are concerned in this case with tort. The liability in tort may be strict liability, absolute liability or special liability. The degree of liability depends on degree of mental element. The elements of tort of negligence consist in (a) duty of care; (b) duty is owed to the plaintiff; (c) the duty has been carelessly breached. Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognized by law to avoid conduct fraught with unreasonable risk of damage to others. The question whether duty in a particular situation involves exists involves determination of law. Negligence would in such acts and omissions involve an unreasonable risk of harm to others. The breach and how much is the damage duty causes damage and how much should be comprehended by the defendant. Remoteness relevant and compensation on proof thereof requires consideration. The element of carelessness in the breach of the duty and those duties towards the plaintiff are important components in the tort of negligence. Negligence would mean careless conduct in commission or omission of an act connoting duty, breach and the damage thereby suffered by the person to whom the plaintiff owes Duty of of care is, therefore, crucial to understand the nature and scope of the tort of negligence.

13. The question in each case whether the defendant has been negligent. In determining duty of care, public policy involved in the statute requires detailed examination. Upon examination, they are required to further consider whether its extension elongates that public policy or retards its effectuation or frustrates its object and the inevitable effect thereof on the affected plaintiff as well as general public. No general or abstract principle is desirable to be laid. The general careless breach of duty will vary from case to case and it should not be unduly extended or confined or limited to all situations. The attending circumstances require evaluation and application to particular set of facts of a given case. The standard of care also varies in a particular factual situation. Defendant must be under a Defendant duty of care not to create latent source of physical danger to the person or property of

third party whom he ought to reasonably foresee as likely to be effected thereby, Thus the latent defect causing actual physical damage to the person or property gives the cause of action and then only the defendant is liable to pay the damages for tortious liability. It must, therefore, be an essential element to establish that there is a positive act or a duty and the defendant is under duty of care not to create/direct latent source of physical danger to the person or property of third party whom he ought to reasonably foresee as likely to be affected thereby.

14. Negligence has been viewed in three ways. Firstly involving a careless state of mind, secondly, a careless conduct, and thirdly, a tort in itself. Every case giving rise to tortious liability, consists of injury and damage may be found due to breach of contract or tort. We are concerned in this case with the injury and damage in tort. Therefore, it is necessary to dwell, in depth, on strict liability, absolute liability or special liability. In the present case, the omission alleged is to take care of periodical check-up of the condition of the trees. The degree liability depends upon the degree of mental element. The elements of tort of negligence, therefore, consist in (a) duty of care (b) duty owed to the plaintiff and (c) it has been carelessly breached. Negligence does not give rise to liability unless the law fastens the duty of care in given circumstances. Duty is an obligation recognised by law to avoid conduct brought with unreasonable risk of damage to another. The question whether duty consists in particular situation involves determination as a question of law.

15. Negligence would include both acts and omissions involving unreasonable risk of having done harm to another. The breach of duty must cause damage. How much of the damage to be compensated by the defendant should be attributed to his wilful conduct and how much to his wilful negligence or careless conduct or remissness in performance of duty, are all relevant facts to be considered in a given act or omission in adjudging duty of care. The element of carelessness or the breach of duty and whether that duty is towards plaintiff or class of persons to which the plaintiff belongs are important components in tort of negligence. Negligence would, therefore, mean careless conduct in commission or omission of an act, whereby another to whom the plaintiff owed duty of care has suffered damage. The duty of care is crucial in understanding the nature and scope of tort of negligence. The question in case is whether the defendant has been negligent in the performance of duty or omission thereof. Determination of duty of care also involves statutory action which requires detailed examination. Local authority, when it exercises its public law function, generally owes no law duty of care. Duty of care must be owed to a person or class of persons to which the plaintiff belongs and must be to avoid causing particular type of injury damage to his person or property. The Court requires to examine the scope of duty of care which the local authority owes to the plaintiff. The court is required to consider the object, scope and breach of the Act. Though the statute is of general character, since the Government or local authority is entrusted with the duty to implement the law, though at its discretion, and if damage is done in execution thereof, what requires to be examined is whether the aforesaid elements of tort of negligence stand attracted. The Court is further required to consider whether extension of duty of care by the process of interpretation would elongate the public policy or retard its object or frustrate public policy behind the statute and the inevitable effect thereof on the affected plaintiff as well as the general public. No general principle of law is desirable to be laid down as an acid test."

Relying upon the aforesaid citation, Learned counsel for the appellants further drawn the attention of the Court in the given case the plaintiffs have failed to establish negligence for awarding compensation in their favour. But the Learned Trial Court failed to appreciate the evidence on record negligence and decreed the suit which needs to be interfered with.

[26] On the other hand, Mr. Bhattacharjee, Learned counsel for the respondents in course of hearing of argument submitted that the Learned Court below after appreciating the evidence on record rightly and reasonably decreed the suit in favour of the respondents herein and in support of his contention, he also relied upon the citation of the Hon'ble Supreme Court of India in **Gobald Motor Service Ltd. and Another versus R.M.K. Veluswami and Others** reported in **AIR 1962 SC 1** wherein the said Apex Court in para No.5 has observed as under:

"5. Apart from the positive evidence, in the present case the accident took place not on the main road, but on the off side uprooting the stone at the drain and attacking a tamarind tree 25 feet away from the said stone with such a velocity that its bark was peeled off and the bus could stop only after travelling some more distance from the said tree. The said facts give rise to a presumption that the accident was caused by the negligence of the driver. Asquith, L. J., in Barkway v. South Wales Transport Co. (1) neatly summarizes the principles applicable as to onus of proof in the following short propositions:

"(i) If the defendants' omnibus leaves the road and falls down embankment, and this without more is proved, then the res ipsa loquitur, there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption. (ii) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre- burst, since a tyre-burst per se is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in Laurie v. Raglan Building Company Ltd., (2), where not a tyre burst but a skid was involved. (iii) To displace the presumption, the defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to a specific cause which does not connote negligence on their part but points to its absence as more probable, or (b) if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres."

The same principles have been restated in Halsbury's Laws of England, at p. 671, paragraph 956, 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 immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged negligence tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part. Where, therefore, there is a duty on the defendant to exercise care, and the circumstances in which the injury complained of happened are such that with the exercise of the requisite care no risk would in the ordinary course of events ensue, the burden is in the first instance on the defendant to disprove his liability. In such a case, if the injurious agency itself and the surrounding circumstances are all entirely within the defendant's control, the inference is that the defendant is liable, and this inference is strengthened if the injurious agency is inanimate.

The said principles directly apply to the present case. Here, the events happened tell their own story and there is a presumption that the accident was caused by negligence on the part of the appellants. But it is, said that this presumption was rebutted by proof that the accident was due to the rear central bolt of the bus suddenly giving way. The High Court, after considering the relevant evidence, held that it was not possible to hold that the accident was caused by the break in the bolt. We have gone through the evidence and we do not see any flaw in that conclusion."

In **Municipal Corporation of Delhi versus Subhagwanti and Others** reported in **AIR 1966 SC 1750** the Hon'ble Apex Court in para No.4 has observed as under :

"4. The main question presented for determination in these appeals is whether the appellant was negligent in looking after and maintaining the Clock Tower and was liable to pay damages for the death of the persons resulting from its fall. It was contended, in the first place, by Mr. Bishen Narain on behalf of the appellant that the High Court was wrong in applying the doctrine of *res ipsa loquitur* to this case. It was argued that the fall of the Clock Tower was due to an inevitable accident which could not have been prevented by the exercise of reasonable care or caution. It was also submitted that there was nothing in the appearance of the Clock Tower which should have put the appellant notice with regard to the probability of danger. We are unable to accept the argument of the appellant as correct. It is true that the normal rule is that it is for the plaintiff to prove negligence and not for the defendant to disprove it. But there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part. The principle has been clearly stated in Halsbury's Laws of England, 2nd Edn., Vol. 23, at p. 671 as follows:

"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 immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part."

In our opinion, the doctrine of *res ipsa loquitur* applies in the circumstances of the present case. It has been found that the Clock Tower was exclusively under the ownership and control of the appellant or its servants. It has also been found by the High Court that the Clock Tower was 80 years old and the normal life of the structure of the top storey of the building, having regard to the kind of mortar used, could be only 40 or 45 years. There is also evidence of the Chief Engineer that the collapse was due to thrust of the arches on the top portion and the mortar was deteriorated to such an extent that it was reduced to powder without any cementing properties. It is also not the case of the appellant that there was any earthquake or storm or any other natural event which was unforeseen and which could have been the cause of the fall of the Clock Tower. In these circumstances, the mere fact that there was fall of the Clock Tower tells its own story in raising an inference of negligence so as to establish a *prima facie* case against the appellant."

Relying upon the same, Learned counsel for the respondents submitted that the defendants of the original suit i.e. the appellants herein were negligent in discharging their duties as required by law and there was want of proper care and caution on the part of the appellants herein and due to their negligence, the incident took place for which the victim succumbed to his injuries. According to Learned counsel for the respondents, there was no error in the judgment of the Learned Trial Court and the Learned Trial Court after considering the evidence on record both by oral/documentary allowed the suit and granted decree in favour of the respondents herein.

[27] Learned counsel for the respondents further submitted that the points of argument as raised by Learned counsel for the appellants before the High Court were not raised by the appellants before the Learned Trial Court nor they have, adduced proper evidence. Learned counsel for the appellants in course of hearing also relied upon "*volenti non-fit injuri*", '*contributory negligence and res ipsa loquitur*' and submitted that there was no negligence on the part of the appellants herein for which the suit was not

maintainable. Now, let us examine about Negligence. 'Negligence' is the breach of a duty caused by the omission to do something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. It is the settled position of law that in an action for negligence, the plaintiffs have to prove the following factors:

- 1) That the defendant owed duty of care to the plaintiff.**
- 2) The defendant made a breach of that duty.**
- 3) The plaintiff suffered damage as a consequence thereof.**

[28] Here, in the given case before the Learned Trial Court, the respondents as plaintiffs have adduced in total 6 numbers of witnesses. Admittedly, none of the witnesses are/were the eye witnesses of the alleged incident because none of them were present to the PO at the time of alleged occurrence. Rather, it appears that the defendant No.1 i.e. the appellant No.1 herein was present to the PO at the time of alleged occurrence. Admittedly, there is no dispute on record that the appellant No.1 is the owner of the shop from where the deceased went to purchase GCI sheet on that relevant day and time. The appellant himself have admitted the said fact. Now, we are to see to what extent and how the appellants were negligent in discharging their duties. If we go through the evidence of the respondents and their witnesses, it appears that on the alleged day i.e., on 17.06.2016 at about 3 p.m when the deceased went to the shop of the defendant No.1, Shekhar Chandra Das i.e. the appellant herein, that time, said defendant asked the deceased to wait and thereafter, he proceeded to take out the GCI sheets from the stack inside the shop premises which according to the respondent-plaintiffs were kept in horizontal position and that time, the stack fall down on the person of the deceased for which he

sustained fatal injuries and ultimately succumbed to his injuries. It was the duty of the plaintiffs to satisfy the Court as to how the tins were kept inside the shop, at what distance the deceased was waiting/standing, how the GCI sheets were fallen on his body and furthermore, no neighboring persons or shop owners came forward to support the case of the respondent-plaintiffs. Naturally, a question arises that if the defendant No.1 i.e. the appellant asked the deceased to wait, then, how he entered inside nearby GCI sheets. In this regard, there was no explanation from the side of the respondent-plaintiffs. Furthermore, whether the deceased was standing outside the shop on the verandah or inside the shop, that point also could not be clarified by the respondent-plaintiffs before the Learned Trial Court. Also as a normal parlance, it was the duty of the defendant No.1 to show the GCI sheets to the deceased as per evidence of the respondent-plaintiffs but surprisingly, why the deceased went nearby the GCI sheets, that part also could not be explained by the respondent-plaintiffs before the Learned Trial Court. If the deceased of his own entered inside without adhering to the caution given by the defendant No.1 or alternatively if in a hurry the deceased himself went nearby the bundles of stack of his own, in that case, whether that would be tantamount of negligence or not could not be explained by the respondent-plaintiffs either before the Trial Court and also to the High Court also and if there is evidence of contributory negligence, in that case, whether that would be amount to negligence from the side of appellants, that portion also could not be decided by the Learned Trial Court. More so, there was no evidence on record from the side of the respondent-plaintiffs to show any documentary evidence as to how the GCI sheets were supposed to be kept inside the shop. Whether the same be kept horizontally or vertically in this regard no clear picture could projected by the respondent-plaintiffs before the Trial Court below. Even, no technical person or any expert was adduced by the respondent-plaintiffs before the Learned Trial Court. Rather, if we rely

upon the evidence of DW-1 it appears that the deceased himself attributed to the incident. Learned Court below at the time of delivery of judgment did not consider also those aspects, rather, on the oral evidence of the respondent-plaintiffs and their witnesses came to the observation that the defendant No.1 i.e. the appellant was negligent for the alleged incident. Even, from the relevant document of U/D case no material is found to come to a conclusion that there was negligence on the part of the appellants for the alleged incident on that day.

[29] The principle of citation as referred by Learned counsel for the appellants is very much significant for deciding this appeal. Rather, the citations as relied upon by the respondents herein, appears to be distinguishable in facts not appropriate for decision of this present appeal. Learned Court below while passing the judgment referred different citations where the Court below has explained the theory of 'negligence'. But, at the time of appreciating the evidence on record came to the observation that the appellants were negligent on that relevant date and time which in my considered view Learned Court below misinterpreted and misconstrued the theory of 'negligence' and thus came to an erroneous finding fixing the liability upon the present appellants for negligence on the alleged day and thus decreed the suit in favour of the respondents which in my considered view was not based on any sound footing of law and thus, it appears that the judgment of the Learned Trial Court below suffers from infirmities for which the interference of this Court is required.

[30] The Hon'ble Supreme Court of India in **Managing Director, Kerala Tourism Development Corporation Limited versus Deepti Singh Others** reported in **(2019) 16 SCC 573** in para Nos 7, 8 & 9 has observed as under :

7. In **Pounam Verma v Aswin Patel (1996) 4 SCC 332**, a two Judge Bench of this Court elucidated on the elements of the tort of negligence. S Saghir Ahmad, J held thus :

“14. Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do.”

The Court listed the following elements which constitute negligence’: Poonam Verma (supra)

15. (1) a legal duty to exercise due care;

(2) breach of the duty; and

(3) consequential damages."

8. In **Rajkot Municipal Corporation versus Manjulben Jayantilai Nakum :(1997) 9 SCC 552**, a two judge bench of this Court characterized the tort of negligence as "careless conduct in commission or omission of an act." Ramaswamy, J. opined thus (SCC p. 569, para 12)

12. ... The elements of tort of negligence consist in- (a) duty of care; (b) duty is owed to the plaintiff; (c) the duty has been carelessly breached; Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognized by law to avoid conduct fraught with unreasonable risk of damage to others. The question whether duty exists in a particular situation involves determination law. Negligence would in such acts and omissions involve an unreasonable risk of harm to others. The breach of duty causes damage and how much is the damage should be comprehended by the defendant. Remoteness is relevant and compensation on proof thereof requires consideration. The element of carelessness in the breach of the duty and those duties towards the plaintiff are important components in the tort of negligence. Negligence would mean careless conduct in commission or omission of an act connoting duty, breach and the damage thereby suffered by the person to whom the plaintiff owes. Duty of care is, therefore, crucial to understand the nature and scope of the tort of negligence.

9. The ingredients of the tort of negligence are : (i) existence of a duty of care; (ii) a breach of the duty through action or omission; and (iii) damages arising as a consequence of the breach."

In another case Hon'ble the Supreme Court of India in **State of Uttar Pradesh Through Secretary (Excise) and Others versus Mcdowell and Company Limited** reported in **(2022) 6 SCC 223** in para Nos. 68 to 71 further observed as under :

68. "Negligence" is one such class of "wrongs" that leads to liability. The fundamental jurisprudential principle of "liability" is crisply defined in *Salmond on Jurisprudence* thus: 12th edn., p.349 thus :-

"Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong."

"Liability" arises from breach of duty, which may be in the form of an act or omission. We need not delve, for the present purpose, on the classification of liability into civil or criminal and remedial or penal and various other jurisprudential features of liability. In the present case, we are primarily concerned with the question of liability arising out of negligence. Having regard to the questions involved and the provisions applicable, it would be appropriate to take into comprehension the meaning and connotation of the term "negligence" with reference to the dictionaries, lexicons and decided cases.

68.1. In *Concise Oxford English Dictionary* :11th Edn.,p.958, the term "negligence" is defined and explained as under: -

"negligence-n. failure to take proper care over something. Law breach of a duty of care which results in damage."

The adjective of this expression is "negligent" and its adverb form is 'negligently'. These expressions, for deeper understanding need to be correlated with the verb 'neglect' that has been defined and explained in the same dictionary as under: -

"neglect · v. fail to give proper care or attention to. fail to do something. · n. the state or process of neglecting or being neglected failure to do something."

68.2. In Webster's Third New International Dictionary:1976 Edn., Vol.II, p.1513 the terms "neglect" and "negligence" are defined and explained as under: -

"neglect 1 a : to give little or no attention or respect to : consider or deal with as if of little or no importance : DISREGARD, SLIGHT <some of the most significant issues have been ~ed -Bruce Payne> <~ed the real needs of the students> b : to fail to attend to sufficiently or properly : not give proper attention or care to 2 : to carelessly omit doing (something that should be done) either altogether or almost altogether : leave undone or unattended to through carelessness or by intention : pass lightly over <~ing their obvious duty> <~ed to mention that he was a convict -Bernard Smith>.

"negligence 1 a : the quality or state of being negligent b : a failure to exercise the care that a prudent person usu. exercises – opposed to diligence;"

68.3 In *Black's Law Dictionary*:10th Edn.,pp.1196-1198, "negligence" and several of its forms and features have been explained. For the present purpose, we may usefully extract the relevant parts as under: -

"negligence, n. (14c) 1. The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or

the failure to do what such a person would do under the circumstances.....

active negligence. (1875) Negligence resulting from an affirmative or positive act, such as driving through a barrier. Cf. passive negligence.

advertent negligence. (1909) Negligence in which the actor is aware of the unreasonable risk that he or she is creating; **RECKLESSNESS.** – Also termed *willful negligence*; *supine negligence*.

casual negligence. (1812) A plaintiff's failure to (1) pay reasonable attention to his or her surroundings, so as to discover the danger created by the defendant's negligence, (2) exercise reasonable competence, care, diligence, and skill to avoid the danger once it is perceived, or (3) prepare as a reasonable person would to avoid future dangers.

* * *

gross negligence. (16c) 1. A lack of even slight diligence or care. • The difference between gross negligence and ordinary negligence is one of degree and not of quality. Gross negligence is traditionally said to be the omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property. – Also termed willful and wanton misconduct. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages. – Also termed *reckless negligence*; *wanton negligence*; *willful negligence*; *willful and wanton negligence*; *willful and wanton misconduct*; *hazardous negligence*; *magna neglegentia*.

* * *

inadvertent negligence. (18c) Negligence in which the actor is not aware of the unreasonable risk that he or she is creating, but should have foreseen and avoided it. – Also termed simple negligence.

* * *

passive negligence. (18c) Negligence resulting from a person's failure or omission in acting, such as failing to remove hazardous conditions from public property. Cf. active negligence." 49.4. In P. Ramanatha Aiyar's Advanced Law Lexicon¹³, various connotations of the expression "negligence" are stated, inter alia, in the following terms: -

"Negligence. Failure to use the care that a reasonable and prudent person would have used under the same or similar circumstances.

Negligence in law signifies a coming short of the performance of duty.

Failure to use the care that a reasonably prudent and careful person would use under similar circumstances.

Negligence is "the absence of proper care, caution and diligence; of such care, caution and diligence, as under the circumstances reasonable and ordinary prudence would require to be exercised."

50. Salmond on Jurisprudence refers to a terse exposition in *Grill v. General Iron Screw Colliery Co.*: (1866) L.R. 1 C.P., that negligence is "the absence of such care as it was the duty of the defendant to use"; and further explains the subtle distinction of inadvertent and advertent negligence in the following: -

"It is to be observed, in the second place, that carelessness or negligence does not necessarily consists in thoughtfulness or inadvertence. This is doubtless the commonest form of it, but it is not the only form. If I do harm, not because I intended it, but because I was thoughtless and did not advert to the dangerous nature of my act, or foolishly believed that there

was no danger, I am certainly guilty of negligence. But there is another form of negligence, in which there is no thoughtlessness or inadvertence whatever. If I drive furiously down a crowded street, I may be fully conscious of the serious risk to which I expose other persons. I may not intend to injure any of them, but I knowingly and intentionally 13 5th Edition, Vol. 3, p. 3435 14 Ibid p. 380 expose them to the danger. Yet if a fatal accident happens, I am liable, at the most, not for wilful, but for negligent homicide. When I consciously expose another to the risk of wrongful harm, but without any wish to harm him, and harm actually ensues, it is inflicted not wilfully, since it was not desired, nor inadvertently, since it was foreseen as possible or even probable, but nevertheless negligently

(c).

Negligence then is failure to use sufficient care, and this failure may result from a variety of factors....."

51. Without multiplying the case law on the topic, sufficient it would be to refer to the connotation of the term "negligence" explained succinctly by this Court in the case of State of Maharashtra and Ors. v. Kanchanmala Vijaysing Shirke and Ors.: (1995) 5 SCC 659 as follows: -

"9....'Negligence' is the omission to do something which a reasonable man is expected to do or a prudent man is expected to do..."

71. Therefore, it could be reasonably summarised for the present purpose that failure to exercise that care which a reasonably prudent person would usually exercise under similar circumstances would amount to negligence; it is not necessary that negligence would always be advertent one where the wrongdoer is aware of unreasonable risk being created but it may be inadvertent or passive too, arising for want of foresight or because of some omission. However, the question as to whether the liability because of negligence could be fastened on the respondent company or not cannot be determined without dealing with the other aspects related with exceptions and defence to the allegation of negligence."

On perusal of the aforesaid citations of the Hon'ble Apex Court on India it appears to this Court that the respondent-plaintiffs before the Learned Trial Court could not establish or prove any 'negligence' on the part of the appellants to award damages in their favour. Even the plaintiffs failed to show as to how the defendants were negligent on the subject matter in Issue But the Learned Trial Court below in deciding the suit has failed to appreciate or ignored the aforesaid principles of law laid down by the Hon'ble Apex Court. Thus, in the said case, decreed the suit in favour of the respondent-plaintiffs. So, relying upon the said principles, it can be said that the Learned Trial Court below misconstrued the legal provisions in awarding the damages in favour of the respondent-plaintiffs for which the judgment of the Learned Court below cannot be sustained as per law and the same requires interference.

[31] From the record it appears that the appellants on humanitarian ground paid a sum of Rs 2,00,000/- to the respondents for funeral expenses and since the appellants have given the money to the respondents herein and for that the appellants cannot be considered as guilty for negligence. Furthermore, the respondent-plaintiffs by adducing oral evidence on record have failed to satisfy the Court that due to the negligence on the part of the appellants, the incident occurred. So, the Judgment delivered by the Learned Trial Court cannot be sustained in the eye of law and as such, the same suffers from different infirmities and is liable to be set aside.

In the result, the appeal filed by the appellants is hereby allowed. The judgment dated 26.03.2019 and decree dated 28.03.2019 delivered by Learned Civil Judge, Senior Division, North Tripura, Dharmanagar in connection with Case No.M.S.06 of 2017 is hereby set aside but considering the facts and circumstances of this case, no order is passed as to costs.

Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE

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BHATTACHARJEE
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