

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.547 of 2006
Date of decision:08.03.2019**

Baljinder Kaur and others

.... Appellants

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. D.K. Nagar, Advocate for the appellants.

Mr. H.S. Sullar, D.A.G., Punjab
for respondents No.1 and 2.

None for respondent No.3.

ARUN KUMAR TYAGI, J.

1. The claimants-widow and minor daughters of deceased-Karamjit Singh have filed present appeal against award dated 01.04.2005 passed by the learned Motor Accidents Claims Tribunal, Muktsar (for short 'the Tribunal') in claim petition registered as **MACP No.35 of 11.03.2003 titled as Baljinder Kaur and others Vs. State of Punjab and others** whereby claim petition seeking compensation on account of death of Karamjit Singh due to injuries suffered in motor vehicle accident, which took place on 07.07.2000, was dismissed.

2. The claimants filed above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 07.07.2000 at about 2:30 p.m. deceased-Karamjit

Singh and his brother Sukhdev Singh were going on their separate scooters from Moga to their village. When they reached near village New Churh Chak and Karamjit Singh was overtaking a Rehra, Punjab Roadways bus bearing registration No.PB-30B-9001 driven by respondent No.3 rashly and negligently came from the opposite side and struck against the scooter of Karamjit Singh who fell down and suffered injuries. Karamjit Singh was taken to Civil Hospital, Jagraon where he died. The claimants further averred in the claim petition that the deceased was aged about 42 years at the time of the accident and was earning Rs.5,000/- per month by working as driver. The claimants, pleading themselves to be dependents and legal representatives of the deceased, sought award of compensation of Rs.20,00,000/- against respondents No.1 to 3 jointly and severally with costs and interest at the rate of 24% per annum

3. The petition was contested by respondents. In their written statements, respondents No.1 and 2 admitted the accident but pleaded that the accident took place due to rash and negligent driving by deceased-Karamjit Singh. In his written statement, respondent No.3 admitted the accident but pleaded that deceased-Karamjit Singh was driving the scooter on very fast speed and when he (deceased-Karamjit Singh) was overtaking the Rehra, his scooter become out of control and struck with the bus by going to his wrong side. The bus was being driven at a very normal speed. He (respondent No.3) also took the bus on his left side Katcha Road and also applied the brakes to stop the bus. The respondents, accordingly, denied their liability to pay the compensation.

4. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that the claimants had failed to prove death of Karamjit Singh due to accident caused by rash and negligent driving of bus bearing registration No.PB-30B-9001 by respondent No.3 and dismissed the petition while noticing that no fault liability. Compensation of Rs.50,000/- had been paid by the respondents to the claimants..

5. Feeling aggrieved, the claimants have filed the present appeal.

6. I have heard arguments addressed by learned Counsel for the parties and have gone through the record.

7. Mr. D.K. Nagar, learned Counsel for the appellants has argued that Karamjit Singh died due to injuries suffered in accident caused by rash and negligent driving of Punjab Roadways Bus bearing registration No.PB-30B-9001 by respondent No.3. The appellants-claimants examined Sukhdev Singh, brother of the deceased who witnessed the accident as PW-3 who has deposed that when his brother was overtaking Rehra, the Punjab Roadways Bus came from opposite side and struck against his scooter due to which his brother received multiple injuries and subsequently died. PW-3-Sukhdev Singh has denied having lodged Daily Diary Report and explained that the police obtained his signature on blank papers. In their written statements the respondents have admitted the accident. Respondent No.3-driver of the offending bus also admitted the accident in his

statement made before the Court as RW-2. Testimony of RW-2 as to accident having taken place due to rash and negligent driving of the scooter by the deceased is not corroborated by any other evidence and could not be relied upon. Principle of *res ipsa loquitur* is applicable and facts speak for themselves. The accident would not have occurred but for negligence on the part of respondent No.3-driver of the offending bus. In any case respondent No.3-driver of the Punjab Roadways Bus was guilty of contributory negligence as on noticing that the deceased was overtaking *rehra* respondent No.3 was duty bound to allow him to overtake the *rehra*. The Tribunal did not properly appreciate the evidence on record and committed material irregularity in dismissing the claim petition resulting in miscarriage of justice. Therefore, finding of the Tribunal on issue No.1 may be reversed, the impugned award may be set aside and the claim petition may be allowed with costs and interest.

8. On the other hand Mr. H.S. Sullar, learned D.A.G. Punjab for respondents No.1 and 2 has argued that PW-3 Sukhdev Singh, brother of the deceased who testified to have witnessed the accident, has not deposed that the accident was caused by rash and negligent driving of the offending bus by respondent No.3-driver. In Daily Diary Report lodged by him, PW-3 Sukhdev Singh had stated that the scooter of his brother became out of control and struck against the bus. The appellants-claimants have failed to produce any evidence to prove causing of the accident due to rash and negligent driving of the offending bus by respondent No.3-driver. The findings of the Tribunal are based on the proper appreciation of the evidence. The impugned

award dismissing the claim petition does not suffer from any illegality. Therefore, the appeal may be dismissed.

9. In a motor accident claim case under Section 166 of the M.V. Act, proof of negligence on the part of driver of the offending vehicle is necessary before the owner and the insurer thereof can be held to be liable for payment of compensation. Unlike, criminal cases where negligence has to be proved beyond reasonable doubt, in motor accidents claims cases negligence has to be proved on preponderance of probabilities.

10. To discharge the onus of proof lying on them the claimants have examined Baljinder Kaur-widow as PW-1, Sukhdev Singh-brother of the deceased as PW-3 and produced copy of Post-Mortem Report Ex.PB and copy of DDR No.32 dated 07.07.2000 as Ex.PC.

11. Even though PW-1-Baljinder Kaur has sworn in her affidavit Ex.PA that her husband Karamjit Singh died due to injuries suffered in accident caused by rash and negligent driving of the offending bus by respondent No.3-driver but admittedly PW-1 Baljinder Kaur was not present at the time of accident and did not witness the same and therefore, her testimony being mere hearsay is liable to be discarded.

12. PW-3 Sukhdev Singh, brother of the deceased, who has deposed to have witnessed the accident, has merely stated that when his brother Karamjit Singh was trying to overtake the Rehra going ahead of him, the Punjab Roadways bus driven by respondent No.3 came from the opposite side and struck against the scooter of his brother Karamjit Singh and PW-3 Sukhdev Singh has not stated in so

many words that the accident was caused due to rash and negligent driving of the offending bus by respondent No.3-driver.

13. The claim of the claimants as to death of Karamjit Singh due to accident caused by rash and negligent driving of the offending bus by respondent No.3 is also contradicted and falsified by Daily Diary Report No.32 dated 07.07.2000, proved by RW-3 HC Mohinder Singh to have been registered on statement of PW-3 Sukhdev Singh. The averment as to obtaining of signature of PW-3 Sukhdev Singh by the Police on blank papers is not supported by any cogent and reliable evidence. No complaint was ever made against any police officer/official in this regard. Therefore, the Daily Diary Report could not be discarded on the ground of obtaining of signature of PW-3 Sukhdev Singh by the police on blank papers. In the abovesaid Daily Diary Report, Sukhdev Singh, brother of the deceased, had stated that when his brother deceased-Karamjit Singh was trying to overtake Rehra going ahead of him his scooter became out of control and struck against the Punjab Roadways bus and Sukhdev Singh did not attribute any negligence to respondent No.3-driver of the Punjab Roadways Bus in causing of the accident.

14. It may also be observed here that the claimants or PW-3 Sukhdev Singh brother of the deceased or even any other person alleged to have witnessed the accident did not lodge any FIR or file any complaint at any point of time alleging that Karamjit Singh died due to injuries suffered in accident caused by rash and negligent driving of the offending bus by respondent No.3-Gurbachan Singh.

15. To rebut the evidence produced by the claimants, respondent No.3-driver appeared in the witness box as RW-2 and stated that the deceased was driving his scooter rashly and negligently on very busy G.T. Road on very fast speed and when the deceased was trying to overtake Rehra going ahead of him his (deceased's) scooter became out of control and struck against his bus. He was driving the bus on its side in a very normal speed and took the bus to the Katcha portion on his left side and applied brakes which stopped the bus. The accident took place due to negligence of the deceased.

16. No doubt, respondents have not examined the conductor or any of the passengers to corroborate testimony of RW-2 Gurbachan Singh-driver but mere non-examination of the conductor of the bus or any other passenger does not by itself make his testimony liable to be dis-believed and the same has to be considered in the light of other material on record. Testimony of RW-2 Gurbachan Singh is fully corroborated by Daily Diary Report No.32 dated 07.07.2000 registered on the statement of PW-3 Sukdev Singh, brother of the deceased and therefore, the same deserved to be relied and acted upon.

17. The question which arises is whether the principle of res ipsa loquitur is applicable to the facts of the present case and gives rise to the inference of negligence against respondent No.3-driver of the Punjab Roadways Bus.

18. In **Pushpabai Parshottam Udeshi Vs. Ranjit Ginning and Pressing Co. Pvt. Ltd. AIR 1977 Supreme Court 1735** Hon'ble Supreme Court observed as under:-

“The normal rule is that it is for the plaintiff to prove

negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus : "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

19. In **Kerala State Electricity Board Vs. Kamalakshy**

Amma, 1987 ACJ 251 Hon'ble Supreme Court observed as under:-

"The maxim *res ipsa loquitur* is a principle which aids the court in deciding as to the stage at which the onus shifts from one side to the other. Section 114 of the Evidence Act gives a wide discretion to the courts to draw presumptions of fact based on different situations and circumstances. This is in a way, a recognition of the principle embodied in the maxim *res ipsa loquitur*. The leading case on the subject is **Scott v. London and St. Katherine Docks Co. (1865) 3 H & C 596**. Erle C.J. in the said case has stated

that, "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". Evershad M. R. in ***Moore v. R. Fox & Sons (1956) 1 OB 596*** affirmed and followed the principle laid down in Scott's case. Winfield in his famous treatise on Tort, after referring to the decisions which founded the above doctrine, has mentioned the two requirements to attract the above principle. They are, (i) that the "thing" causing the damage be under the control of the defendant or his servants and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. This principle which was often found to be a helping guide in the evaluation of evidence in English decisions has been recognised in India also. The Supreme Court in ***Syed Akbar v. State of Karnataka, AIR 1979 SC 1848*** has discussed the applicability of the maxim res ipsa loquitur in civil as also criminal cases, in the light of the provisions of the Evidence Act."

20. In **National Insurance Co. Ltd. Vs. Gita Bindal 2013 (8)**

R.C.R. (Civil) 245 Hon'ble Delhi High Court summarised the legal position as to applicability of the principle of res ipsa Loquitur 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."

21. In the present case, Punjab Roadways Bus bearing registration No.PB-30B-9001 is proved to be under the management and control of its driver-Gurbachan Singh and the first condition for applicability of the maxim *res ipsa loquitur* is satisfied but the accident of Punjab Roadways Bus is not proved to be such as in the ordinary course of things would not have happened if its driver-Gurbachan Singh had used proper care and therefore, the second condition for applicability of the maxim of *res ipsa loquitur* is not satisfied. Further, driver-Gurbachan Singh has also explained that the accident occurred due to negligence of the deceased. Consequently, the onus of proof lying on the claimants to prove negligence on the part of Gurbachan Singh-driver of Punjab Roadways Bus did not shift to the respondents and due to non-applicability of the principle of *res ipsa loquitur* and in view of explanation given by respondent No.3-driver, no inference could be drawn that the accident occurred due to negligence on the part of Gurbachan Singh driver of Punjab Roadways Bus. Since, as per the Daily Diary Report lodged by none else but the brother of the deceased the scooter became out of control and struck against the Punjab Roadways Bus no inference of the contributory negligence on the part of respondent No.3-driver could be legitimately drawn.

22. It follows from the above discussion that in the present case the claimants have miserably failed to discharge the onus of proof lying on them and have failed to prove that Karamjit Singh died due to the accident caused by rash and negligent driving of Punjab Roadways bus by respondent No.3. Therefore, the finding of the Tribunal on issue No.1, being based on proper appreciation of

evidence and not being perverse is not liable to be reversed.
Therefore, the claim petition has been rightly dismissed by the Tribunal
and the impugned award is not liable to be set aside.

23. Consequently, the appeal is devoid of any merit and is
accordingly dismissed with no order as to costs.

(ARUN KUMAR TYAGI)
JUDGE

08.03.2019
kothiyal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No