



2024:DHC:10086



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

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR KAURAV

+ **RFA 420/2011 & CM APPL. 9514/2013**

MUNICIPAL CORPORATION OF DELHI
THROUGH ITS COMMISSIONER
TOWN HALL - CHANDNI CHOWK
DELHI-110007

..... APPELLANT

(Through: Ms. Sunieta Ojha and Ms. Vasudha Priyansha, Advocates.)

Versus

1. SMT. GURBACHAN KAUR
W/O LATE SH. GURNAM SINGH

2. SMT. AMARJEET SINGH
WIDOW DAUGHTER OF LATE SH. GURNAM SINGH

3. SH. KARAN SINGH
S/O LATE SH. GURNAM SINGH

4. SH. DILBAGH SINGH
S/O LATE SH. GURNAM SINGH

5. MS. REKHA
D/O LATE SH. GURNAM SINGH

ALL RESIDENTS OF:
HOUSE NO. J671
SARDAR COLONY, SECTOR 16
ROHINI, DELHI 85

..... RESPONDENTS



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(Through: Mr. R. K. Nain, Adv and Chandan Prajapati, Advocates.)

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Reserved on: 21.11.2024

Pronounced on: 24.12.2024

J U D G M E N T

The present appeal has been preferred against the judgment and decree dated 29.03.2011, passed in Civil Suit No. 179/10, by the Court of Additional District Judge (North), Tis Hazari Courts, Delhi, decreeing the suit of the respondents/plaintiffs, filed under Section 1A of the Fatal Accidents Act, 1855.

2. The undisputed facts manifest that on 03.06.2008, at approximately 5:30 PM, Sh. Gurnam Singh (*hereinafter referred to as the deceased*), husband of respondent No.1/plaintiff No. 1, left his residence to visit the Police Post, Sardar Colony, Sector-16, Rohini. While walking along the roadside, approximately 100 meters from his residence, he encountered some stray cattle. A cow, without any provocation, became aggressive and attacked the deceased with its horns and hooves. As a result of the attack, he sustained grievous injuries, including severe injuries to his head, face, mouth, eyes and ribs.

3. The deceased was immediately taken to the Government Hospital, Rohini, with the assistance of the bystanders. Despite medical intervention, the deceased succumbed to his injuries on the morning of 04.06.2008. A



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postmortem examination was conducted at Babu Jagjivan Ram Memorial Hospital on 05.06.2008 bearing Postmortem Report No. 547/2008. Thereafter, a complaint bearing FIR No. 339/2008, was registered with respect to the said incident at Police Station, Prashant Vihar, Delhi, for offences punishable under Sections 289 and 327 of the Indian Penal Code, 1860.

4. Subsequently, the respondents/plaintiffs filed a suit seeking compensation of ₹4,80,000/- along with an interest at 12% per annum from the date of the incident until the realisation of payment. As per the plaint, the deceased was a professional long-route truck driver earning a monthly income of ₹10,000 and was the sole breadwinner of the family, providing economic sustenance. Before the Trial Court, the respondents/plaintiffs contended that the incident occurred due to the negligence of the local municipal authorities, who failed to prevent stray cattle from roaming on public roads. It was also their case that this negligence and failure of MCD to abide by the statutory duty directly led to the fatal injuries sustained by the deceased. According to them, the incident has caused them immense loss of physical, economic, moral, and social support, and has exacerbated their financial and emotional distress.

5. After hearing the parties, the Trial Court *vide* the impugned judgment dated 29.03.2011, decreed the suit in favour of the respondents/plaintiffs awarding them a sum of Rs 4,80,000/- as compensation to be shared equally by all dependents.



6. Aggrieved by the aforesaid, the appellant/defendant has knocked on the doors of this Court by way of the present appeal.

7. *Ms. Suneita Ojha*, learned counsel appearing for the appellant/defendant avers that the impugned judgment is vitiated with legal infirmities and errors of law resulting in a grave miscarriage of justice. She further submits that there is no finding on record holding the MCD or its officials negligent in performing the statutory duty vested with it. According to her, the Trial Court failed to consider that the suit was liable to be dismissed due to the non-joinder of necessary parties as the owner of the stray cattle and area SHO was not made a party, neither there was any evidence led with respect to the outcome of the FIR registered. Moreover, learned counsel avers that there is no allegation or evidence placed before the Trial Court to the effect that any complaint was made to the corporation regarding the problem of stray cattle in the area of Sardar Colony, Rohini, and that any negligence was shown by the corporation in taking action against it. Furthermore, it is submitted by the learned counsel that before the Trial Court, the appellant/defendant submitted a report on the impounding of stray cattle by the MCD in 2008-09, showing that a total of 3116 stray cattle were impounded from different parts of the Civil lines zone. Therefore, according to the learned counsel, it is clear on the face of the record that the appellant/defendant was not negligent in performing their statutory duty and the Trial Court has gravely erred in opining otherwise.

8. More importantly, learned counsel for the appellant/defendant brings this Court's attention to the preamble of the Fatal Accidents Act, 1855,



which states, *inter alia* that “*whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him.*” She, then, contends that in accordance with the aforesaid, the respondents/plaintiffs were burdened to show that the incident in question took place due to the ‘wrongful act’, ‘neglect’ or ‘default’ of the appellant/defendant. It is also averred that the appellant/defendant cannot be held liable in the absence of any specific contentions made in this regard by the respondents/plaintiffs or any other person. She places reliance on the decision of this Court in ***Common Cause v. Union of India***¹, whereby, this Court has passed the directions *qua* handling the stray cattle and the same has been duly complied with. The decision of this Court in ***Padma Verma v. Municipal Corporation of Delhi***² is also relied upon by the appellant/defendant.

9. *Per contra*, Mr. R.K Nain, learned counsel appearing on behalf of the respondents/plaintiffs, submits that the respondents/plaintiffs have lost their sole breadwinner due to the negligence of the officials of the appellant/defendant and the Trial Court has rightly decreed the suit in the favour of them. Moreover, it is averred that the present case is squarely covered by a decision passed by this Court in ***Shakuntala v. Govt. Of NCT of Delhi and Anr***³, whereby, the Court held that the concept of

¹ W.P.(C) 3791/2009

² 2016 SCC OnLine Del 1717

³ 2017 SCC OnLine Del 11776



compensation under public law must be understood as being different from the damages claimed under private law.

10. The learned counsel also avers that as per Section 298 of the Delhi Municipal Corporation Act, 1957, all public streets in Delhi are vested with the MCD, envisaging its responsibility to maintain the roads in a safe condition including not allowing stray animals and cattle on these roads, endangering the lives of citizens. He places reliance on the decision of this Court in *Madhu Kaur v. Govt NCT of Delhi & Anr* ⁴, where, this Court awarded compensation for the death of the petitioner's son due to the dilapidated condition of the road and falling into a pit. Therefore, learned counsel submits that the impugned judgment does not suffer from any material illegality and the Trial Court has rightly allowed the suit of the respondents/plaintiffs seeking compensation.

11. I have heard learned counsel appearing for the parties and have perused the record.

12. A bare perusal of the impugned judgment would indicate that the Trial Court, on completion of pleadings, framed the following issues: -

- “i) Whether the deceased /Gurnam Singh died due to attack by stray cattle? OPP*
- ii) Whether the area falls within the jurisdiction of MCD and that they are accountable for that? OPP*
- iii) Whether the plaintiffs/Lrs of deceased Gurnam Singh are entitled to compensation. If so, as to what amount? OPP*
- iv) Relief”*



13. In order to prove the case, the respondents/plaintiffs produced five witnesses namely, Smt. Gurbachan Kaur (plaintiff no. 1) as PW-1, Ms. Amarjit Kaur as PW-2, Sh. S.N Bhardwaj as PW-3, Dr. Kuldeep Singh as PW-4, and Sh. H.C. Satpal as PW-5. The respondents/plaintiffs also produced and relied upon copies of the postmortem report, MLC, and the FIR. On the other hand, the appellant/defendant examined one witness namely, Sh. Jagvir Singh, Veterinary Officer as DW-1 while relying upon the report showing the number of impounded cattle in the year 2008.

14. The Trial Court while adjudicating upon the contention that whether the deceased died due to an attack by stray cattle, held that the respondents/plaintiffs have successfully substantiated their case that the deceased had died due to a fatal attack by stray cattle. While arriving at the aforesaid conclusion, the Trial Court mainly relied upon the evidence adduced through the testimonies of PW1 and PW2 which were further corroborated by PW3, who confirmed the postmortem report exhibited as Ex.PW3/1, reflecting that the injuries described by PW1 and PW2 were consistent with the facts. Additionally, PW4, Dr. Kuldeep Singh, who examined the victim on the date of the incident, shed light on the nature of the injuries in document Mark X-1, which confirmed that the deceased was attacked by a cow.

15. Therefore, the Trial Court did not find any reason to disbelieve the version of the respondents/plaintiffs that the deceased was fatally trampled by a cow, and the aforesaid factum proved a negligent omission of the appellant/defendant. The Trial Court was of the opinion that the alleged

⁴ 2009 SCC OnLine Del 1842



inconsistencies in the cross-examination of PW1 and PW2, as highlighted by the learned counsel for the MCD, were insufficient to undermine or disbelieve the case set up by the respondents/plaintiffs. The relevant extract of the impugned judgment is reproduced herein, as under: -

“13. The plaintiffs have substantiated the case that the deceased Gurnam Singh died due to assault by the stray cattle which can be inferred from the evidence led by the plaintiffs in the shape of testimony of PW1 and PW2. Their testimony further gets substantiated when PW3 proves the postmortem report Ex.PW3/1 where nature of injuries reflect that what has been deposed by PW1 and PW2 is feasible. This fact further gets strengthened through the testimony of PW4 Dr. Kuldeep Singh who had examined the victim on the date of incident i.e. 3.6.2008 and has elaborated the nature of injuries sustained by the deceased in Mark X-1. The document mark X-1, which was prepared almost immediately after the incident proves that the deceased was hit by cow. At that point of time nobody knew that such a situation would arise that victim would not survive or claim would be filed against the MCD. Thus, there is no reason to disbelieve the version given qua the cause of injury to the deceased was badly trampled by the cow and as a result of shock arising from such injuries, victim lost his life. Ld. Counsel for the MCD has emphasized that there are holes in the cross examination of PW1 and PW2, which renders the case of the plaintiffs unbelievable and untrustworthy is not enough to dislodge the fact that the deceased died due to the assault by the stray cattle. Thus, the plaintiffs are able to drive home their case so far as the issue no.1 is concerned and accordingly, the same is decided in favour of the plaintiffs and against the defendant.”

16. Furthermore, the Trial Court also observed that the appellant/defendant did not aver that the location of the accident was outside its jurisdiction and was under other civic bodies. The Court was of the opinion that the location of the incident fell within the jurisdiction of the appellant/defendant as was also confirmed through the affidavit of Dr. Jagvir Singh, Veterinary Officer of the MCD, who got deposed as DW1. The affidavit by DW1 and the reports presented by the appellant/defendant



of impounding of stray cattle led the Trial Court to conclude that the accident site fell under the MCD's Rohini Zone, thereby indicating the existence of the duty to ensure that the stray cattle are deterred from roaming on public streets.

17. On the issue of the quantum of compensation, the Trial Court has delved into the following discussion while awarding Rs. 4,80,000/- : -

“15. The plaintiffs have brought on record that they are part of family of the deceased Gurnam Singh and were dependent upon him. The MCD has not attempted to dislodge this fact. What has been contended on behalf of the MCD is that the plaintiffs are not able to tell the exact date of birth/ age of the deceased as different dates are coming in different documents. This in itself is not going to make any difference for the simple reason that it is the death of individual which is in controversy and it has been proved on record on behalf of the plaintiff that indeed Gurnam Singh died on account of assault by a stray cow.

16. The age may have, rather has, relevance so far as the earning capacity and potential of the deceased is concerned, but then it is not unusual in this country that people carry loads on their heads irrespective of their age, of course forced by their circumstances. Similarly, it cannot be ruled out that the deceased was responsible to feed his family inasmuch as it has been brought on record that his younger son aged 23 years is incapable of doing anything on account of burn injuries sustained during the anti Sikh riots in 1984. One of his daughters is unmarried and is a student and another son is working as a cleaner and is being paid meager salary. The status of minimum wages in this country is also not a secret especially in the private and unorganized sector. Another daughter of the deceased, namely, Amarjeet Kaur is a widow and is residing with her parents who too was dependent on the deceased, alongwith her two kids. There is no cross examination on the aspect of dependency thus, this can be taken as correct being stated on oath and reflected strongly by the circumstances.

16. It has been further contended on behalf of the defendant that no evidence has been brought on record about the amount earned by the deceased Gurnam Singh and for that matter whether he was working or not? The contention of the counsel for the appellant/defendant/defendant/ MCD is correct to the extent that there is no evidence on record with regard to the employment of the deceased



or what salary, if any, being earned by him. This in itself is not enough to wholly discard the utility of a man. It is the case of the plaintiffs that deceased was working as truck driver on long routes. It is again a matter of common knowledge that in unorganized sector, there is no letter of appointment, there is no salary slip or no other proof which may establish a direct connection. The people are engaged by reference on word of mouth and terms are usually settled orally. The plaintiffs apparently belong to a poor strata of the society and also appear to be not much educated except for the youngest daughter stated to be a college student. In these circumstances, it would be expecting too much from them to keep meticulous record of the deceased as to where he was working, for whom he was driving so or and so forth. However, this again cannot be ruled out that he was an individual and had his own existence, life and utility, if not to the society, to his family was certainly there. The family of the deceased has been indeed deprived of so many aspects of anormal life on account of the negligence on the part of the MCD in not getting hold of stray cattle. Even if it is presumed that he was not earning a handsome salary, he must be earning something to feed the family which might have been the only source for the dependents of the deceased. In a civil case the possibilities and probabilities are to be considered also there is a possibility rather strong one supporting the case of the plaintiffs. The kind of evidence required in a civil case is there on record. These all factors, put together, persuade me to hold that the dependents of the deceased Gurnam Singh are indeed entitled for compensation.

17 *What amount should be paid to the plaintiffs is the next question for consideration? The plaintiffs have demanded a sum of Rs.4.80,000/- and have worked out the amount on the basis of minimum wages at the rate of Rs.40571/- per month which comes to Rs.48,684/- per year and has apparently applied the formula applicable in motor accident cases. However, the same it seems cannot be applied here. Nevertheless it can be very well presumed that deceased must be getting more than the maximum wages, for long route drivers are paid handsomely and besides salary certain day to day expenses are also being paid to them which also result in to some savings. Thus, in any case, the deceased might earning somewhere approx. Rs.7000/- which brings his annual income to the tune of Rs.84,000/- . He would have been able to earn this money for about 5 to 10 years depending on his physical ability. Thus, the annual income can be multiplied by 7 working years and additional increase could be added into that at the rate of 2-3% per annum. As such, an approximate calculation can be had by multiplying the annual income(Rs.84,000/-) by number of years i.e. 7, which comes to Rs.5,88,000/- (Rs.84,000x7) and annual income can roughly be calculated by adding 2% of the annual income of Rs.84,000/- which*



comes to Rs.11,760/-(84,000x2/100 = 11760) and can be added in one go to the annual income, which comes to Rs.5,99,760/ -. The family of the deceased is also entitled to receive compensation on account of loss of protection, security, love and affection, guidance, care which can roughly be worked out to the tune of Rs.1,50,000/- and the amount so calculated arrives to Rs.7,49,760/ -.However, the plaintiffs have since restricted their claim to Rs.4,80,000/-,therefore, the same atleast can be granted. Accordingly the suit filed on behalf of the plaintiffs stands decreed and a sum of Rs.4,80,000/- is awarded to the plaintiffs as compensation which shall be shared by the dependents equally. Decree be drawn accordingly.”

18. At this stage, this Court takes note of various decisions passed by the Courts regarding compensation for death caused by negligence of statutory authorities.

19. This Court in ***Shakuntala Devi***, which is also relied upon by the respondents, held that the duty of care in ensuring that stray cattle or bulls are kept away from public roads is vested in the MCD. In the aforementioned case, the Court was dealing with a similar incident, wherein, a roadside fruit vendor was mauled by bulls. The findings rendered by this Court in the aforementioned decision read as under: -

“21. The respondents’ principal argument in this proceeding is that there is no discernable duty of care in ensuring that stray cattle or bulls are kept away from roads and streets, and that those plying their trades have to take care of themselves against any such hazards.22. It would be necessary to see whether there is any obligation cast upon the authorities, in this regard, under the relevant enactments. Under section 298 of the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 (hereafter the Act) all the public streets within Delhi or New Delhi are vested in the Municipal Corporation of Delhi or the New Delhi Municipal Council, as the case may be. These streets are under the control of the MCD and the NDMC, which are also responsible for their maintenance and regulation. The MCD, which is primarily asked to account for its action here, is also empowered to regulate public streets; it has the right to invoke eminent domain, for the purpose of road development, expansion, etc. Sections 42 of the Act lists out that the Obligatory



Functions of the Corporation, the ones in relation to Public Streets are-

(n) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;

(o) the lighting, watering and cleansing of public streets and other public places;

(p) the removal of obstructions and projections in or upon streets bridges and other public places;

(q) the naming and numbering of streets and premises;"

23. In Common Cause (Regd Society) V. Union of India (UOI), &Govt. of NCT of Delhi, MCD and NDMC and Ram Pratap Yadav v.MCD (decided on 03.11.2000) a decision of this Court, the court was concerned with the precise duty of the MCD to maintain public roads and streets and ensure that they are free of stray cattle, for the safety of road users (which would include pedestrians, those plying vehicles and vendors on footpaths, etc.) it was observed that-

"14. The menace of stray cattle is hazardous and causes traffic snarls. It affects the safety of human beings on the road. It has the potential to cause accidents. Besides, it depicts a very dismal picture of the capital. It is also very cruel on the bovine animals as they are let loose on the roads because the owners do not want to feed them. These animals have to fend for themselves. They eat whatever comes in their way including garbage and plastic bags. This affects their health and causes extreme trauma to them. We also find that Gosadans, by and large, have not been able to fulfill the purpose for which they were established. The fact that the animals which were made over to Gosadans have disappeared speaks volumes about their working. The capital city of Delhi should be a show window for the world. The stray cattle on the roads gives a wrong signal. 'Cattle and other animals which are let loose on the roads by their owners and also responsible for filth, squalor and outbreak of diseases.'"

20. At this stage, to thoroughly understand the legal position of suits instituted under the Fatal Accidents Act, 1855, pertinent observations of the Supreme Court in the case of *Shyam Sunder v State of Rajasthan*⁵ need to be considered. In the said case, the controversy was *qua* the recovery of damages under the Fatal Accidents Act, 1855, where the deceased, a



storekeeper for the PWD, died after jumping from a truck that caught fire due to frequent radiator overheating. The widow of the deceased filed a civil suit against the State of Rajasthan for damages, alleging that the driver's negligence in operating an unroadworthy truck, caused her husband's death. The Trial Court found the act of the driver in putting the truck on the road, when it was not roadworthy, as negligent and the State was held vicariously liable for the act of its employee. The State appealed in the High Court where it was held that the plaintiff was not successful in proving negligence and the mere fact that the truck caught fire was not enough evidence to prove negligence.

21. In *Shyam Sunder*, the Supreme Court has explicated the principle of *res ipsa loquitur* by stating that the maxim is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. It was also held that the cause of the accident being unknown does not prevent the plaintiff from recovering the damages if proper inference could be drawn from the known circumstances that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then only the maxim *res ipsa loquitur* gets attracted.

22. The Supreme Court in paragraphs No. 9, 15, 16 and 20 has held as under:-

“9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is

⁵ 1974 1 SCC 690



*resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the appellant/defendant/defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the appellant/defendant/defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim *res ipsa loquitur* applies.*

.....

15. *Res ipsa loquitur* is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the appellant/defendant/defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance [Millner: "Negligence in Modern Law", 92] .

16. Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance (see John G. Fleming, *The Law of Torts*, 4th Edn., p.260).

.....

20. It was, however, argued on behalf of the respondent that the State was engaged in performing a function appertaining to its character as sovereign as the driver was acting in the course of his employment in connection with famine relief work and therefore, even if the driver was negligent, the State would not be liable for damages. Reliance was placed on the ruling of this Court in *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 SCJ 318] where this Court said that the liability of the State for a tort committed by its servant in the course of his employment would depend upon the question whether the employment was of the category which could claim the special characteristic of sovereign power. We do not pause to consider the question whether the immunity of the State for



injuries on its citizens committed in the exercise of what are called sovereign functions has any moral justification today. Its historic and jurisprudential support lies in the oft-quoted words of Blackstone: [Blackstone, Commentaries (10th Edn. 1887)]

“The king can do no wrong ... The king, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness.”

In modern times, the chief proponent of the sovereign immunity doctrine has been Mr Justice Holmes who, in 1907, declared for a unanimous Supreme Court [Kawananakoa v. Polyblank, 205 US 349, 353.] :

“A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.”

Today, hardly anyone agrees that the stated ground for exempting the sovereign from suit is either logical or practical. We do not also think it necessary to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State.”

23. The Supreme Court in ***Municipal Corpn. of Delhi v. Subhagwanti***,⁶ also discussed the provisions of the Fatal Accidents Act while adjudicating whether the High Court incorrectly applied the doctrine of *res ipsa loquitur* in the first appeal. The Court held that though the plaintiff generally has the *onus* of proving negligence, an exception exists when the incident occurred under the defendant's control, and such an event wouldn't normally occur without negligence, either by commission or omission. The pertinent observations made by the Supreme Court read as under: -

“4. The main question presented for determination in these appeals is whether the appellant was negligent in looking after and maintaining

⁶ 1966 SCC OnLine SC 22



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 on 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.

7. Section 1 of the Fatal Accidents Act, 1855 (Act 13 of 1855) reads:

“Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.”

This section is in substance a reproduction of the English Fatal Accidents Acts, 9 and 10 Vict. Chapter 93, known as the Lord Campbell's Acts. The scope of the corresponding provisions of the English Fatal Accidents Acts has been discussed by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. [(1942) AC 601] At p. 617 of the Report Lord Wright has stated the legal position as follows:

“It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however,



has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.”

24. In addition to the aforesaid decisions, the statutes governing the appellant/defendant, in particular Section 42 of the DMC Act, envisage the duty to ensure the safe condition of roads. Moreover, under Section 418, the duty of impounding certain animals is vested in the appellant/defendant if and when found abandoned, roaming, or tethered on any street or public place.

25. More importantly, the legislative intent behind the enactment of the Fatal Accidents Act in Britain and subsequently during the colonial period in India was to make an exception to the principle as exemplified in maxim *actio personalis moritur cum persona*, i.e., a personal action dies with a person. The aforementioned statute was envisaged to make a statutory exemption to extend the benefit of a substantive right and its redressal by way of damages to identified legal representatives of the deceased who died due to wrongful act, neglect, or default of another person.

26. Furthermore, the death of the victim due to an actionable wrongful act of another is amenable to the law of torts even *de hors* the Fatal Accidents Act. The jurisprudence of torts in independent India has departed from the strict interpretation of the right of remedy dying with the death of the person. It is instead woven in the fabric of the Indian values of welfare State and the social obligation of the State to provide immediate relief to the people affected by natural disasters/calamities and/or from the failure of public authorities to abide by the duty of care vested in it.



27. In light of the aforesaid legal position exposited by the Courts and the pertinent statutes, the Trial Court has rightly held that the mere existence of a duty of care and the factum of death would establish negligence on the part of the appellant/defendant.

28. A perusal of the copy of the post-mortem report exhibited as PW3/1 explicates that as per medical opinion the cause of death has been opined to be “*cerebral damage as a result of blunt force impact*” and all injuries are observed to be “*antemortem in nature and possible in manner as alleged*” by the respondents/plaintiffs. The copy of MLC exhibited as mark X-1 also indicates that the deceased was taken to the hospital with an alleged history of being hit by a cow as per the patient’s attendants. The inference drawn from the aforementioned evidence connotes that the death was, indeed, a result of a fatal cow attack. Thus, the factum of death is sufficiently proved by the material placed on record.

29. Therefore, the claim of the appellant/defendant that no specific findings have been rendered by the Court indicating that the appellant/defendant was in default or was negligent, falls short in light of the categorical finding rendered by the Trial Court that respondents/plaintiffs were able to evidently establish the factum of death due to a fatal attack by stray cattle with adequate testimonies and documentary evidence, including the postmortem report, medical records, and eyewitness testimonies.

30. The Trial Court also rightly opined that the appellant/defendant, despite contesting the facts, failed to disprove the existence of statutory duty and obligation on the corporation to maintain public safety by controlling



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stray animals and restraining them from roaming on public streets. More importantly, the Trial Court unerringly inferred that the reports of impounding of stray cattle in the year 2008, adduced by the appellant/defendant, further, corroborated the imputation of negligence on their part, indicating an indisputable duty in ensuring stray cattle are dissuaded from roaming on public street.

31. Thus, the Trial Court appropriately applied the legal principles of tort, negligence, and dependency in determining liability and awarding compensation, ensuring that the respondents/plaintiffs were granted adequate redressal to ameliorate the loss of financial support and the emotional toll suffered due to the untimely death of a breadwinner.

32. Therefore, the impugned judgment and findings rendered by the Trial Court do not suffer from any material illegality or perversity.

33. Accordingly, the instant appeal stands dismissed along with the pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024/mjo