SUPREME COURT OF INDIA

Shyam Sunder

Vs.

State of Rajasthan

C.A.No.1827 of 1967

(K. K. Mathew and A. Alagiriswami, JJ.)

12.03.1973

JUDGEMENT

MATHEW, J.:-

1. This is an appeal, by special leave, against the judgment and decree of the High Court of Rajasthan, setting aside a decree for recovery of damages under the Fatal Accidents Act, 1855 (hereinafter referred to as the Act).

2. Navneetlal was a resident of Udaipur. He was in the employment of the State of Rajasthan and was, at the material time, working in the office of the Executive Engineer, Public Works Department. Bhilwara as a Store Keeper. In connection with the famine relief work undertaken by the department, he was required to proceed to Banswara. For that purpose, he boarded truck No. RJE - 131 owned by the department from Bhilwara on May 19, 1952 and reached Chittorgarh in the evening. Besides himself, there were Fateh Singh, Fundilal and Heera Singh, the driver, cleaner and a stranger in the truck. On May 20, 1952, they resumed the journey from Chittorgarh at about 11 A. M. and reached Pratapgarh in the same evening. The truck started from Pratapgarh to Banswara at

about 10 A. M. on May 21, 1952. After having travelled for 4 miles from Pratapgarh, the engine of the truck caught fire. As soon as the fire was seen, the driver cautioned the occupants to jump out of the truck, Consequently, Navneetlal and the other persons jumped out of truck. While doing so, Navneetlal struck against a stone lying by the side of the road and died instantaneously.

3. Parwati Devi, widow of Navneetalal brought a suit against the State of Rajasthan for damages under the provisions of the Act.

4. The plaintiff alleged that it was on account of the negligence of the driver of the truck that a truck which was not road-worthy was put on the road and that it caught fire which led to the death of Navneetlal and that the State was liable for the negligence of its employee in the course of his employment. The plaint also alleged that the deceased had left behind him his widow, namely, the plaintiff, two minor sons, one minor daughter and his parents. The plaintiff claimed damages to the tune of Rs. 20, 000/- and prayed for a decree for that amount.

5. The State contended that the truck was quite in order when it started from Bhilwara and even when it started from Pratapgarh to Banswara and that if it developed some mechanical trouble suddenly which resulted in its catching fire, the defendant was not liable as there was no negligence on the part of the driver.

6. The trial Court found that the act of the driver in putting the truck on the road was negligent as the truck was not road-worthy and since the driver was negligent, the State was vicariously liable for his act. The Court assessed the damages at Rs. 14,760/- and granted a decree for the amount to the plaintiff.

7. It was against this decree that the State appealed to the High Court.

8. The High Court came to the conclusion that the plaintiff had not proved by evidence that the driver was negligent, that the mere fact that the truck caught fire was not evidence of negligence on his part and that the maxim res ipsa loquitur had no application. The Court said that the truck travelled safely from Bhilwara to Pratapgarh and that the engine caught fire after having travelled a distance of 4 miles from Pratapgarh and that there was nothing on record to show that the engine of the truck was in any way defective or that it was not functioning properly. The Court was of the view that the mechanism of an automobile engine is such that with all proper and careful handling it can go wrong while it is on the road for reasons which it might be difficult for a driver to explain. The Court then discussed the evidence and came to the conclusion that no inference of negligence on the part of the driver was possible on the basis that the engine of the truck got heated of and on and that water was put in the radiator frequently, or that it took considerably long time to cover the

distance between Bhilwara and Chittorgarh and that between Chittorgarh and Pratapgarh. The High Court, therefore, allowed the appeal.

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

10. The maxim is stated in its classic form by Erle, C. J. See Scott v. London and St. Katherine Docks, (1865) 3 H and C 596, 601. :

".....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."

The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle. See Ballard v. North British Rly. Co., 1923 SC (HL) 43. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. 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. But thought the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming. The Law of Torts, 4th ed., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based on commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant. (see Barkwav v. South Wales Transport, (1950) 1 All ER 392, 399).

11. The plaintiff merely proves a result, not any particular act or omission producing the result. If

the result, in the circumstances in which he proves it makes it more probable than not that it was caused by the negligence of the defendant, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.

12. The answer needed by the defendant to meet the plaintiff's case may take alternative forms. Firstly, it may consist in a positive explanation by the defendant of how the accident did in fact occur, of such a kind as to exonerate the defendant from any charge of negligence.

13. It should be noticed that the defendant does not advance his case by inventing fanciful theories, unsupported by evidence, of how the event might have occurred. The whole inquiry is concerned with probabilities and facts are required, not mere conjecture unsupported by facts. As Lord Macmillan said in his dissenting judgment in Jones v. Great Western: (1930) 47 TLR 39. :

"The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference, in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference from the facts actually observed and proved".

In other words, an inference is a deduction from established facts and an assumption or a guess is something quite different but not necessarily related to established facts.

14. Alternatively, in those instances where the defendant is unable to explain the accident, it is incumbent upon him to advance positive proof that he had taken all reasonable steps to avert foreseeable harm.

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 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. See 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 ed., p. 260).

17. We are inclined to think the learned District Judge was correct in inferring negligence on the part of the driver. Generally speaking, an ordinary road-worthy vehicle would not catch fire. We think that the driver was negligent in putting the vehicle on the road. From the evidence it is clear that the radiator was getting heated frequently and that the driver was pouring water in the radiator after every 6 or 7 miles of the journey. The vehicle took 9 hours to cover the distance of 70 miles beteween Chittorgarh and Pratasgarh. The fact that normally a motor vehicle would not catch fire if its mechanism is in order would indicate that there was some defect in it. The District Judge found on the basis of the evidence of the witnesses that the driver knew about this defective condition of the truck when he started from Bhilwara.

18. It is clear that the driver was in management of the vehicle and the accident is such that it does not happen in the ordinary course of things. There is no evidence as to how the truck caught fire. There was no explanation by the defendant about it. It was a matter within the exclusive knowledge of the defendant. It was not possible for the plaintiff to give any evidence as to the cause of the accident.

19. In these circumstances, we think that the maxim res ipsa loquitur is attracted.

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 v. State of Uttar Pradesh, (1965) 1 SCR 375 = (AIR 1965 SC 1039 = 1965 (2) Cri LJ, 144) 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 ed. 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: Kawanankea v. Polyblank, (1906) 205 U. S. 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.

21. We are of the view that, as the law stands today, it is not possible to say that famine relief work is a sovereign function of the State as it has been traditionally understood. It is a work which can be and is being undertaken by private individuals. There is nothing peculiar about it so that it might be predicated that the State alone can legitimately undertake the work.

22. In the view we have taken on the merits of the case, we do not think it necessary to canvass the correctness of the view expressed by the High Court that the appeal by the State before the High Court did not abate even though the legal representatives of the plaintiff-respondent there were not impleaded within the period of limination.

23. In the result, we set aside the decree of the High Court, restore the decree and judgment passed by the District Judge and allow the appeal with costs.

Appeal allowed.