PETITIONER:
SHYAM SUNDER AND OTHES

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT12/03/1974

BENCH:
MATHEW, KUTTYIL KURIEN
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ALAGIRISWAMI, A.

CITATION:
1974 AIR 890 1974 SCR (3) 549
1974 SCC (1) 690
CITATOR INFO :
RF 1976 SC 700 (13,25)

ACT:
Fatal Accidents Act, 1855, Sec. 1--A--Accident resulting from truck catching fire--Occupant dying of injuries sustained in jumping out of truck on caution by drive--Maxim res ipsa loquitur--Applicability of Constitution of India, Art. 300-Tortious liability of state--Held, famine relief work not a sovereign function.

HEADNOTE:
The deceased, who was at the material time in the employment of the State of Rajasthan in the Public Department, was required to proceed from his office at Bhilwara to Banswara, in connection with famine relief work undertaken by the department. For that purpose, he boarded a truck owned by the department from Bhilwara on May 19, 1952 with six others. Throughout the journey the radiator of the truck was getting heated frequently and the driver was pouring water into it after every 6 or 7 miles of journey. The truck took nine hours to travel the distance or seventy miles. After having travelled four miles from Peragraph, 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, they did so, The deceased struck against a stone lying by the side of the road and died instantaneously.
The widow of the deceased brought a suit for damages against the State of Rajasthan under the provisions of the Act. The plaintiff alleged, inter alia, that it was on account of the negligence of the driver of the truck that a truck which was notroad-worthy was put on the road and that it caught fire which led to the death of her husband 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. The state resisted the claim denying negligence of the driver and pleading sovereign immunity.
The trial Court relied on the maxim res ipsa loquitur, found

that in putting the truck on the road the driver was negligent as the truck was not road-worthy and since the driver was negligent, it held that 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. Against this decree the state appealed to the High Court on the evidence on record, the High Court held that the principle of res ipsa loquitur had no, application to the facts of the case.

Accordingly, the High Court allowed the appeal. On appeal by special leave to this Court.

HELD : (1) Generally speaking an ordinary road-worthy vehicle would not catch fire. 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 journey. The vehicle took 9 hours to cover the distance of 70 miles between Chittorgarh and Paragraph 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 Distt. Judge found on the basis of evidence of witnesses that the driver knew about this defective condition of the truck when he started from Bhilwara. [554D-F]

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. these circumstances, the maxim ipsa loquitur is attracted. [514F-G]

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The maxim does not embody many rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply a caption to an arguments on the evidence. 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 any specific act or omission on the part of the defendant. Its principal function is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and 'the dependent responsible for it, even when the facts bearing on the matter are at the outset unknown to him and often within the knowledge of the defendant. The maxim is based on commonsense and its purpose is to do justice when the facts bearing on causation and on care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant. [k52F-553 C]

The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in circumstances 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 loquacious is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability. Res display loquitur is an immensely important vehicle for importing strict liability into negligence cases.[583 C-D, 584 F]

Scott. v. London & St. Catherine Docks [1865] 3 H. & C. 596, 601, (1923) S. C. (HL) 43, Barkway v. South Wales Transport [1950]1 All-E.R. 392, Jones v. Great Western, [1930] 7 TLR 39, referred to.

(11)As the law stands today, it is not possible to say that

famine relief work is :.it 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. [555 E-F]
Kasturilal v. State of Uttar Pradesh [1965] 1 S.C,.R. 375, referred to.
Quaere : (a) 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; (b) whether there is any rational dividing line between the so-called sovereign and proprietary commercial functions for determining the liability of the state. 1555 B-C, E]
Sensable : The modern sovereign immunity doctrine which is based on the ground that there can be no legal right as against the authority that makes the law on which the right depends, for exempting the sovereign from suit is neither logical nor practical. [555 D-E].

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1827 of 1967.
Appeal by special leave from the judgment and order dated the '29th April 1966 of the Rajasthan High Court at Jodhpur in D. B. ,Civil Regular First Appeal No. 57.
U. N. Trivedi and Ganpat Rai, for the Appellants.
Sobhagmal Jain, for the respondent.
The Judgment of the court was delivered by
MATHEW, J. This is an appeal by special leave against the judgment and decree of the High Court of Rajasthan, setting aside decree for recovery of damages under the Patel Accidents Act, 1855 hereinafter referred to as the
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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 works 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 Pratapgarb, 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 the truck. While doing so, Navneetlal struck against a stone lying by the side of the road and died instantaneously.
Parwati Devilwidow of Navneetlal brought a suit against the State of Rajasthan for damages under the provisions of the Act,
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 employees in the course of

his employment. The plaint also alleged that the decreased 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.

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 troubles suddenly which resulted in its catching fire, the defendant was not liable as there was no negligence the part of the driver.

The trial court found that the act of the driver in putting the truck on the road was negligent as the truck was not roadworthy 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 this plaintiff.

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

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

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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.

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 damage,,, if the proper inference to in 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.

The maxim is stated in its classic form by Erle, C. J.

> " Where the thing is to 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 (2). 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 rebutting 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 dependent responsible for it, even when the facts bearing on the matter are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus the fact that

(1) See SCOtt v. London St. Katherine Docks (1865) 3 H. & C. 596, 601.

(2) See Ballard v. North British Railway Co. 1923 S. C. (H.L.) 43.

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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 common sense and its purpose is to do justice when the facts bearing on the 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 Barkway v. S. Wales Transport(1).

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.

The answer needed by the defendant to meet the plaintiff Is 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.

It should be noticed that the defendant does not advance his case 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 (2)

> "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 it sessense is that it is a mere guess. An inference, inthe, legalsense, on the other hand,is a deduction from the evidence, and if it is are a sonable 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.

(1) [1950] 1 All England Reports 392, 399.

7-M 45 Sup CI/75

(2) [1930] 47 T. L. R. 39.

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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.

Res ipsa loquitur is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where res ipssa 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 (1).

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).

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 between Chittorgarh and Pratapgarh. The fact that normally a motor vehicle would not catch fire if its mechanism is in order would indicate that there v as 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.

It is clear that the driver was in the, 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.

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

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

(1) See Millner : "Negligence in Modern Law". 92.

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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 (1) 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 oftquoted words of Blackstone(2) :

> "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".
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> 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(3) :-
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> "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.

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.

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 limitation.

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.

S.B.W.

(1) [1965] 1 S. C. R. 375.

(2) Blackstone, Commentaries (10th ed., 1887)

(3) Kawananaka V. Polyblank, 205 U. S. 349, 353.

Appeal allowed.

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