CHAPTER: IV

Award of Compensation to the Victims of Motor Accident in India: Judicial Trends
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A. Introduction

The case law relating to Motor Vehicle Accident Cases, which have been judicially determined in High Courts and the Supreme Court of India have been studied, examined, analyzed and critically commented upon for the purpose of appreciating the judicial invocation and application of the evidentiary principles of No Fault Liability, Contributory Negligence, res ipsa loquitur in negligence cases, Act of God, Absolute and Vicarious Liability etc.. These cases cover motor accidents of the nature of both collision as well as non-collision. The word “collision” is used in this chapter as a case where there is collision between two or more motor vehicles, like collision between car and bus etc. The word “non-collision” is used in this chapter as a case where there is no collision between two or more motor vehicles, although these may have been hitting a wall or tree or a human being.

Accidents and compensation are fundamentally the incidents of Law of Torts. Accident connotes a casualty caused by neglect of duty to others. The causa causans of an accident is not mens rea, but remissness. The attributes like animus, motive, intention etc., all tending somewhat to a future consequence are simply misfit to explain the phenomenon of accident, which very often speaks for itself, and is covered by the maxim res ipsa loquitur. The word approximately representing its formal cause finds its legal nomenclature in the term in negligence.
It is this element of negligence which distinguishes an accident simpliciter from the anathema of inevitable accident, conceived in common parlance as Act of God, a stock phrase often deployed as defence to counter a claim for compensation on account of an accident. In the scriptural sense, all that happens is ordained by God, as the Bhagwad Gita proclaims: “all actions are performed by the modes of nature but the fool with his mind perverted by ego arrogates himself as the doer”.¹

It is a pre-condition of any civil society that no one shall conduct his affairs in a way so as to result in loss, damage or injury to the mind, body, reputation or property of another.

Accident, being casualty, cannot, therefore, be a matter of contract and being a wrong independent of contract, it is a tort litigated under the hammer of negligence wherein compensation is the usual relief granted to the aggrieved.

The quantum of compensation cannot be equal in two cases, even if the origin of wrong be identical, since the same accident may cause death of one but only a scratch or abrasion to the other. It is the difference which imports the idea of liability, quantitatively, the extent and qualitatively, the kind of liability. Whatever the injury or damage, no compensation can be awarded unless there are grounds to make the wrongdoer liable².

B. No Fault Liability

Today road accidents in our country has touched a new height and road accidents are increasing day by day and resultant cases relating to motor accidents are increasing in our courts. In majority of road accident cases because of rash and negligent driving, innocent person becomes victims and because of this their

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² Ibid. at 2.
dependents in many cases are virtually on the streets. Because of increasing number of motor accidents and their victims, question of payment of compensation is assuming great importance in public as well as for the courts. Generally as a rule, victims of road accidents have to first establish that the accident was due to fault of the person causing injury or damage, than only court will direct for payment of compensation. Indian legislature being aware of the magnitude of the plight of victims of road accidents has introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner of the vehicle or insurance company.

In 1982 Chapter VII-A was introduced in Motor Vehicles Act, 1939, wherein section 92A(1) provided that where the death or permanent disablement of any person had resulted due to an accident, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of Section 92A(1). Section 92A(2) provided for the fixed amount for such liability on the basis of no fault liability. The claimant was not required to plead or establish that the death or permanent disablement in respect of which the claim had been filed was the result of the wrongful act, neglect or fault of the owner of the vehicle.

In Sohan Lal Passi v. P.Sesh Reddy it was observed by the Supreme Court that by introducing the chapter VII-A in the Motor Vehicles Act, 1939, the Parliament has provided for payment of compensation within certain limits, ignoring the principle of fault. Same is the position in the Motor Vehicles Act, 1988 and similar provisions have been retained in Chapter X of the Motor Vehicles Act, 1988.

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3 Motor Vehicles Act. 1939, Section 92A(3)
In National Insurance Co. Ltd. v. Malathi C. Saliam\(^5\) it was held by Kerala High Court that claim under Section 163A of the Motor Vehicles Act, 1988 cannot be defeated on the ground that death or permanent disablement had occurred due to wrongful act, neglect or default on the part of the deceased or disabled person. Nor the quantum of compensation shall be reduced due to contributory negligence on the part of person who sustained disablement or death.

In M.K.Kunhimohammad v. P.A.Ahmedkutty’s\(^6\) matter, the apex court has made suggestions to raise limit of the compensation payable in respect of death or permanent disablement, as a result of motor accidents, in the event of there being no proof of fault on the part of the person involved in the accident, and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in accident.

The above suggestions were incorporated in the bill of Motor Vehicles Act, 1988. Section 140 of the Act provides that in case of death or permanent disablement of any person resulting from an accident which arise out of use of a Motor Vehicle/s, the owner of offending vehicle/s shall be liable jointly or severally to pay compensation in respect of such death or permanent disablement. Under this section amount of compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement.

Compensation awarded under this section does not barred the victim to claim compensation under any other law being in force, though the amount of such compensation to be given under any other law shall be reduced by the amount of compensation payable under no fault liability under this section or in accordance

\(^5\)National Insurance Co. Ltd. v. Malathi C. Saliam, 2005 (2) ACC 414
\(^6\)M.K.Kunhimohammad v. P.A.Ahmedkutty, 1987 (4) SCC 284
with the structured formula laid down under schedule -2 to this Act read with Section 163A of the Act.

In **Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani** case it was held by the Double Bench of the Mumbai High Court that the phrase ‘has resulted from’ occurring in section 140 of the Motor Vehicles Act, 1988 does not require the death to have occurred in the accident itself. The section is attracted even where death is result or the consequence of the accident arising out of a motor vehicle. What is necessary to see is whether the death is the consequence of an accident arising out of use of motor vehicle.

In **New India Assurance Co. Ltd v. Mehebubanbibi** case the deceased was deputed by his employer to carry a damaged transformer in a tractor. The tractor fell in to a ditch. The deceased was pressed under the damaged transformer, sustained injuries and died in hospital. Death of the deceased had arisen out of and in course of his employment. Though the case was not one of no fault liability, but as the accident had occurred due to negligence of the driver of the tractor, yet the fact of the case attract for a claim of double compensation under two different laws, irrespective of whether the claim is based on fault liability or on no fault liability.

What is material is that a claim under the Motor Vehicles Act is no bar to claiming compensation, if permissible, also under a different law. The Double Bench of Gujarat High Court held that the heirs of deceased in such case could claim compensation both under the Motor Vehicles Act for negligence of the driver of the tractor and also under Worken’s Compensation Act, 1923 for death occurring out of and in the course of employment.

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1. **Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani**, 2005 (1) ACJ 255 (Bom.) DB
2. **New India Assurance Co. Ltd v. Mehebubanbibi**, 2003 (2) TAC 639 (Guj.) DB
In Ram Singh v. Anil\(^9\) it was held by the High Court that when occurrence of accident is proved to have arisen out of use of Motor Vehicle, it is not necessary to plead or prove negligence of driver of vehicle under Section 163A.

In National Insurance Co. Ltd. v. Honnappa\(^10\) in a claim under no fault liability, claimant need not plead or establish that permanent disablement was due to wrongful act or negligence or default of owner of the other vehicle with which the vehicle of claimant has colluded.

In Pepsu Road Transport Corp. v. Kulwant Kaur\(^11\)’s case it was held by the Supreme Court that section 140, as it came in to effect from 01.07.1989, is not retrospective. Hence the provision amended with effect from 14.11.1994 is also not retrospective. Therefore, in accident which occurred on 30.11.1982, and decided on 16.07.1984, the claimant was entitled only Rs. 15,000/- as per provisions of section 92A of the Motor Vehicles Act, 1939.

In New India Assurance Co. Ltd v. Shymo Chauhan\(^12\) it was held by the Punjab and Haryana High Court that when a claim application is filed under section 163A, the owner and insurer are liable to pay to the legal heirs of the deceased in case of death provided the accident has taken place or has arisen out of use of motor vehicle and the liability extends even to cases where the deceased was driver.

In New India Assurance Co. Ltd v. Parameswaran\(^13\) it was held by Kerala high Court that under Section 140 of the Motor Vehicles Act, 1988 liability to pay compensation is absolute and liability created there under is outside law of tort requiring no enquiry as to who was the wrong doer and this right is

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\(^9\)Ram Singh v. Anil, 2009 ACJ 73 (MP) DB
\(^10\)National Insurance Co. Ltd. v. Honnappa, 2008 (3) ACC 726 (Karn) DB
\(^11\)Pepsu Road Transport Corp. v. Kulwant Kaur, 2009 ACJ 1329
\(^12\)New India Assurance Co. Ltd v. Shymo Chauhan, 2006 ACJ 923
\(^13\)New India Assurance Co. Ltd v. Parameswaran, 2006 ACJ 1176
substantive and liability to award specified compensation for death or permanent disability is incurred right on date of accident and not on date of consideration of the claim.

In **Harendra Nath Halder v. New India Assurance Co. Ltd**\(^{14}\), it was held by the Calcutta High Court that so far as no fault liability is concerned, there is no distinction between section 140 and 163A except one that whereas claimant would be entitled to a statutory compensation fixed under section 140, compensation under section 163A would be determined on the basis of structured formula as there under provided with reference to Second Schedule of the Motor Vehicles Act, 1988.

In **Selvarajamani v. National Insurance Co.**\(^{15}\), in this matter accident was caused by a thief having stolen the car from possession of the owner, it was held that the owner and the insurer of the car could be made liable under no fault liability.

In **United India Insurance Co.Ltd. v. Kishorilal**\(^{16}\), in this matter keys of the car were snatched from the driver and the person who snatched the keys drove the car and caused accident killing a person, the Tribunal exonerated the owner and yet made the insurer liable to pay. In appeal, the insurer was absolved of liability on ground that the owner was rightly exonerated and, hence the insurer could not be made liable. The person who drove the car was held liable.

In **A.C.G. Venancias v. Jagajothi**\(^{17}\) in this case accident was caused by a stolen motor cycle, it was held that the insurer cannot avoid liability, since there was no breach of terms of policy in such case.

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\(^{14}\) Harendra Nath Halder v. New India Assurance Co. Ltd, 2006 ACJ 975

\(^{15}\) Selvarajamani v. National Insurance Co., 2003 ACJ 1152

\(^{16}\) United India Insurance Co.Ltd. v. Kishorilal, 2005 (2) ACJ 1399

\(^{17}\) A.C.G. Venancias v. Jagajothi, 2008 ACJ 1434
In *Sitaram Akinchan v. Rajesh Sharma*¹⁸ in this case an accident was caused by a motorcyclist on 05.06.1990 and the vehicle was not insured prior to 11.06.1990. It was held that the liability falls solely on owner of the vehicle despite the plea that it was stolen at the time when accident took place.

C. **Vis Major**

In Hindu Religion it is considered that whatever happens in the world is Act of God, yet in legal parlance, the expression Act of God is a mere short way of expressing the proposition that a common carrier is not liable for any accident as to which he can show that it is due to natural causes, directly and exclusively, without human intervention and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected of him¹⁹.

Act of God usually denoted by the expression vis major, which is distinct from its kindred expression force majeure. The latter expression is not a mere French version of the Latin expression vis major, but is a term of wider import. Difficulties have arisen in the past as to what would legitimately be included in force majeure. Judges have agreed that strikes breakdown of machinery, which though normally not included in vis major, one included in force majeure. An analysis of rulings on the subject shows that where reference is made to force majeure the intention is to save the performing party from the consequence of anything over which he has no control.

Whether force majeure or vis major can be any defence in cases of absolute or strict liability, as opposed to liability simpliciter, since the doctrine propounded in late nineteenth century must have undergone mitigation, modification or made more absolute in course of years, is a debatable question.

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¹⁸*Sitaram Akinchan v. Rajesh Sharma*, 2007 (4) ACC 604

In Baldev Narain v. State of Bihar it was held by the High Court that a common carrier is not liable for any accident as to which he can show that it is due to natural causes, directly and exclusively, without human intervention and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected of him.

In Dhanrajmal Govindram v. Shamji Kalidas & Co. it was held by the Supreme Court that where reference is made to force majeure the intention is to save the performing party from the consequence of anything over which he has no control.

In Sankardan Das v. Grid Corporation of Orissa Ltd it was held that the expression Act of God signifies operation of natural forces free from human intervention, such as lightning or severe gale, snow storming, hurricanes, cyclones and tidal waves and the like, though every non-expected wind or storm cannot operate as excuse from liability if there is reasonable possibility of anticipating their happening e.g. the possibility of extraordinary floods in particular region being within competence of authorities to take precautionary steps.

In A. Krishna Patra v. Orissa State Electricity Board it was held that Act of god is some casualty which human foresight could not discern and from consequences of which no human protection could be provided.

In Rishi Prusti v. Orissa State Electricity Board it was held that Act of god is that which human prudence is not bound to recognize possibility.

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20 Ibid.
22 Sankardan Das v. Grid Corporation of Orissa Ltd., 1998 ACJ 1420
23 A. Krishna Patra v. Orissa State Electricity Board., 1998 ACJ 155
24 Rishi Prusti v. Orissa State Electricity Board, 1999 ACJ 440
In *Ali Khan v. Vijay Singh*\textsuperscript{25} it was held by the Rajasthan High Court that tyre fleeing off a running motor vehicle and hitting the deceased person did not constitutes Act of God.

In *Sarda Devi v. Birbal Ram*\textsuperscript{26} in this matter the accident was occurred due to bursting of tyre but the owner had failed to establish that tyre was road worthy, the finding of the Tribunal that it was an Act of God was reversed by the appellate court holding that owner and driver were negligent in operating the bus with unroad-worthy tyres.

In *Shamma v. Kartar Singh*\textsuperscript{27} in this case a tree had fallen on a jeep and a passenger sustained fatal injuries, the plea that the tree had fallen because of storm and therefore there was no negligence on the part of the driver was negated because the occupants of vehicle had warned the driver not to drive in great speed and stop the vehicle prior to accident.

In *Sulochana v. Karnataka State Road Transport Corporation*\textsuperscript{28} in this case a tree had fallen on bus resulting in death of passenger. Tribunal dismissed the claim on ground that accident was a vis major. It was held in appeal that use of vehicle and death are so closely connected that it is difficult to treat death be an Act of God unrelated to such user.

In *United India Insurance Co. Ltd. v. Economic Roadways*\textsuperscript{29} it was held that Act of God is a ground defence, it is for the defendant to prove that accident had occurred for reasons beyond his control.

In *Ashok Kumar v. Surinder Kumar*\textsuperscript{30} it was held that jamming of steering of the motor vehicle is mechanical defect and cannot be held to be vis major.

\textsuperscript{25} *Ali Khan v. Vijay Singh*, 2007 ACJ 350 (Raj.)
\textsuperscript{26} *Sarda Devi v. Birbal Ram*, 2009 ACJ 2780 (Raj)
\textsuperscript{27} *Shamma v. Kartar Singh*, 2008 ACJ 892 (MP) DB
\textsuperscript{28} *Sulochana v. Karnataka State Road Transport Corporation*,  2005(2)b ACJ 849
\textsuperscript{29} *United India Insurance Co. Ltd. v. Economic Roadways*, 2002 ACJ 2024 (Mad.)
In **State of Rajasthan v. Ram Prasad**\(^31\) in the matter claim for compensation was made under the Workmen’s Compensation Act, 1923, in respect of death of a lady worker who died of an accident which took place on account of lightning. It was held that she was working on the site and would not have been exposed to such hazard of lighting striking her, had she not been working so.

**Sharma v. Kartar Singh**\(^32\) it was held that a driver, continuing to drive a jeep when there was storm despite request of occupants to stop, cannot plead that accident was an Act of God.

**R.J. Foujdar Bus Service v. Ganpat Singh**\(^33\) in this matter a driver took the bus on the bridge when water was overflowing. The bus was washed away, resulting in death of several passengers. Accident was not an Act of God and negligence of driver was writ large.

In **Amar Nath Goel v. Mayur Syntex**\(^34\) in this matter, the portion of a factory wall had collapsed, resulting in death of three persons and injuries to the plaintiff. The defence plea was that the wall had collapsed due to lightning but neither there was any report nor any witness from the meteorological department was examined, nor any independent evidence was adduced to substantiate the plea. No evidence of the design of the wall at the time of its construction and precautions taken, had been produced. It was held that it was duty of the defendant to ensure that the wall was not dangerous and that same was maintained in proper condition, and having failed so to prove, the defendant was held liable.

\(^{30}\) **Ashok Kumar v. Surinder Kumar**, 1999 ACJ 1119 (HP) DB
\(^{31}\) **State of Rajasthan v. Ram Prasad**, 2001 ACJ 647 SC
\(^{32}\) Supra n.27
\(^{33}\) **R.J. Foujdar Bus Service v. Ganpat Singh**, 2007 ACJ 1591 (MP) DB
\(^{34}\) **Amar Nath Goel v. Mayur Syntex**, 1990 ACJ 93 (Del)
In *M P State Road Transport Corporation v. Bhoj Singh* in this case a bus had collided against a tree which caused a tyre burst in the rear wheel, causing injury to a passenger. The defence was that the tyre was in good condition and that the burst was a vis major. The evidence was that the bus was overloaded with 80-90 passengers. It was held that the tyre burst was due to overloading and that the driver was negligent in having the bus overloaded.

**D. Application of Principle of Vicarious and Absolute Liability in Motor Accident Cases**

The term liability gives wide suggestions. It is a broad term of large and comprehensive significance and means legal responsibility or obligation to do a thing. Liability means “the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility”.

In *First National Bank Ltd. v. Seth Sant Lal* it was observed in this matter that the term ‘liability was of large and comprehensive significance and when construed in its usual and ordinary sense in which it is commonly employed, it expresses the state of being under obligation in law or in justice.

Similar observations were given by the Delhi High Court in the matter of *Mohd. Yaqub v. Union of India*, it observed that the word Liability in ordinary sense in which it is commonly employed, it expresses the state of being under obligation in law or in justice.

Thus, is what the term ‘liability’ simpliciter should connote. When liability of one is substituted by that of another, that is, when one becomes liable by legal

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36 *Andersons’ Law Dictionary*
37 *First National Bank Ltd. v. Seth Sant Lal*, AIR 1959 Pun. 328
38 *Mohd. Yaqub v. Union of India*, AIR 1971 Del 45
fiction for the wrong or neglect of another, the term ‘liability’ is prefixed by the
appellative ‘vicarious’.

I. Vicarious Liability

Normally no person is held responsible for the wrongs done by someone else. However, there are few instances wherein a person can be held liable for the conduct of another person. This liability is known as Vicarious Liability.

The following relationships are the best examples of Vicarious Liability:

- Liability of the Principal for the act of his Agent
- Liability of the Partners
- Liability of the Master for the act of his Servant

Liability of the Principal for the act of his Agent When a principal authorizes his agent to perform any Act, he becomes liable for the act of such agent provided the agent has conducted it in the course of performance of duties.

Liability of the Partners For the tort committed by a partner of a firm, in the normal course of business of that partnership, other partners are responsible to the same extent as that of the partner who is in fault. The liability thus arising will be joint and several.

Liability of the Master for the act of his Servant The liability of the master for the act of his servant is based on the principle of ‘respondeat superior’, which means ‘let the principal be liable’. This principle originates from the maxim, ‘Qui Facit per Alium Facit per se’ which means ‘he who does an act through another is deemed in law to do it himself’. In tort, the wrongful act of the servant is thus deemed to be the act of the master. However, such

wrongful act should be within the course of his master’s business and any act, which is not in the course of such business, will not make the master liable\(^{40}\).

In *Rani Devi @ Usha Rani v. Devilal*\(^{41}\) it was held that if vehicle is used for purpose of owner or owner’s business, the act of servant would make the owner vicariously liable for payment of compensation, but where the vehicle was driven by an unauthorized person not for owner’s purpose or owner’s business, owner would not be vicariously liable.

Expression ‘Vicarious liability’, has been defined by Peter Barrie as under:

“Vicarious Liability: where a person is liable for an act committed by someone else on his behalf. The commonest situation is employment: an employer is liable for the acts of his employee, it is the employer who will be named as the defendant (and who will hold the relevant liability insurance policy)”\(^{42}\).

The term vicarious liability has been described in Winfield & Jolowicz on Tort as follows:

“The expression ‘vicarious liability’ signifies the liability which A may incur to C for damage caused to C by the negligence or other tort of B. the fact that A is liable does not, of course, insulate B from liability, though in most cases it is unlikely that he will be sued or that judgement will be enforced against him. It is not necessary for vicarious liability to arise that A shall have participated in any way in the commission of the tort nor that a duty owed in law by A to C shall have been broken. What is required is that A should stand in a particular relationship to B and that B’s tort should be referable in a

\(^{40}\) *Ibid.*

\(^{41}\) *Rani Devi @ Usha Rani v. Devilal*, 2009 ACJ 858 (Raj.)

\(^{42}\) Oxford University Press. *“Compensation for Personal Injuries”*, (2002), p.12,
certain manner to that relationship A’s liability is truly strict, though for it to arise, a case of negligence, there has to be fault on the part of B. the commonest instance of this in modern law is the liability of an employer for the torts of his servants done in the course of their employment. The relationship required is the specific one, that arising under a contract of service and the tort must be referable to that relationship in the sense that it must have been committed by the servant in the course of his employment. The liability of one partner for another, that of father for his minor son, that of husband, in certain cases for the act of his wife, or that of a principal for his agent, may be other illustrations. In criminal law, it implicates the act of abettor for the act of the person abetted, and the conspirators in the act committed in pursuance of a conspiracy.

Generally the doctrine of vicarious liability recognizes that a person may be bound to answer for the acts of another. Similarly in the case of corporations—the company may be liable for the acts of its employees, agents, or any person for whom it is responsible. The doctrine of vicarious liability developed originally in the context of tortious liability, was imported into the criminal law, when this type of offences were essentially absolute liability offences.

II. Absolute Liability

Rules of Strict and Absolute Liability are based on the concept of ‘No fault liability’. At times a person may be held responsible for some wrong though there was no negligence or intention on his part to do such wrong. This rule was laid down by the House of Lords in Rylands v Fletcher and hence it is also commonly termed as the Rule in Rylands v Fletcher.

43 Winfield & Jolowicz on Tort, (2002), p.701
In India, this rule was formulated in the case of **M.C. Mehta v Union of India**\(^{44}\), wherein the Supreme Court termed it as ‘Absolute Liability’. This rule was also followed in the case of Indian Council for Enviro-Legal Action v Union of India (1996) Section 92A of the Motor Vehicles Act, 1939 also recognises this concept of ‘liability without fault’. The ingredients of the Rule of Strict Liability are:

- Some hazardous thing must be brought by the defendant on his land.
- There must be an escape of such thing from that land.
- There must be a non-natural use of the land.

Exceptions to the Rule of Strict Liability:

- If the escape of the hazardous good was due to plaintiff’s own fault or negligence.
- Vis Major or Act of God is a good defence in an action under the Rule of Strict Liability.
- In cases where the wrong done has been by someone who is a stranger and the defendant has no control over him.
- Cases where the plaintiff has given his consent to accumulate the hazardous thing in the defendant’s land for the purpose of common benefit.
- Any act done under the authority of a statute

Where an enterprise is engaged in a hazardous or inherently dangerous activity, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident, and such liability is not subject to any of

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\(^{44}\text{M.C. Mehta v Union of India, AIR, 1987 SC 1086}\)
the exceptions which operate vis a vis the tortious principle of strict liability under the rule in **Rylands v. Fletcher**\(^45\).

In **Rylands v. Fletcher**\(^46\), the plaintiff was the occupier of certain mines and the defendants were the owners and occupiers of a mill standing on land adjoining the plaintiff’s land. The defendant wished to construct a reservoir and employed a competent engineer and a contractor to do it. There were certain old passages of disused mines on the defendant’s lands which were connected with vertical shafts which communicated with the above land. These shafts were filled with mud and earth and so were not apparent. When the reservoir was constructed and filled with water, the water broke through the shafts, ran along passages and flooded the plaintiff’s mines. The defendants were held liable, though there was no negligence on their part.

The absolute or strict liability evolved in Rylands v. Fletcher’ case dispenses with the liability being incumbent on negligence. Negligence is wholly irrelevant to the escape of things to which the rule of absolute or strict liability would apply, and the rule applies to all those things which are either inherently dangerous or which are likely to do mischief if they escape, the negligence or the utmost care or precaution on part of the defendant being both out of question or consideration.

In **New India Assurance Co. Ltd. v. Takhuben Rajhabhai**\(^47\) case, it was held by the High Court that rule propounded in Rylands v. Fletcher’s case would apply where death or injury is caused to a pedestrian or bystander on road and the claimant would not be required to lead evidence, but enquiry would have to be made where accident has arisen by use of two or more vehicles to find out which of the drivers, or both drivers were negligent.

\(^45\) **Rylands v. Fletcher**, (1868) LR 3 HL 330

\(^46\) Ibid.

\(^47\) **New India Assurance Co. Ltd. v. Takhuben Rajhabhai**, 2008 ACJ 989 (Guj.) DB
The rule of strict liability admits of certain exceptions. In order to defend himself against the rule of absolute liability, the defendant is entitled to show that the escape of the dangerous thing was caused by the plaintiff’s own default or by an Act of God or by the act of a stranger, or that the accumulation was with the consent of the plaintiff or by a statutory authority, or the act of an enemy alien.

Whether the motor vehicle is an inherently dangerous chattel has yet to be examined, but the law evolved in India and abroad has never accepted the defence of volenti non fit injuria in case of motor accidents, and the owner of the vehicle cannot be allowed to argue that the passenger who rode his vehicle, for fare or reward or even gratuitously, had done so with all awareness of the dangers inherent in its driving or in the roads on which it is driven, but to an extent the plying of the motor vehicle is hazardous to public and passenger health, because, in the wake of the new ecological culture, the motor vehicle is a contributing factor to ecological pollution both by its noise and by the fumes it discharges by burning of the fuel.

In M.C. Mehta v. Union of India, the Supreme Court, felt justified in alienating itself from the limitations of the rule of Rylands v. Fletcher, firstly, because of the incapacity of the rule to cope with the liabilities of an industrialized society and secondly, because of the need for a free and indigenous thinking.

As to the first, the court said: “Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy”.

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48M.C. Mehta v. Union of India, AIR 1987 SC 1086
As to the second, the court said: “We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build upon own jurisprudence and we cannot countenance an argument that merely because the new law does not recognize the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as it is or it developed in England recognizes certain limitations and responsibilities. We in India cannot hold our hands back and venture to evolve a new principle of liability which English courts have not done.

With this inspiration, the traditional idea of the activities or chattel inherently dangerous would have to be impenetrated afresh. In a conspectus of foreign decisions, the motor vehicle has not been held to be an inherently dangerous chattel. In case a motor vehicle as such be held to be not an inherently dangerous chattel, the principle of absolute liability may not apply to the keeping or plying of a motor vehicle.

In New Asiatic Insurance Co. v. Pessumal Dhanamal Aswami⁴⁹ wherein the owner of an insured car, had permitted one person who was not the regular driver, to drive the car along with two other persons therein. In an accident of that car, one of the two inmates died and the other sustained injuries. In two separate claims for compensation, one by the legal heirs of the deceased and the other by the injured, both against the driver of the car, insurer contented that driver was not a person insured under the policy in question and hence, the insurer cannot be held liable. Negativing the contention of the insurer, the Supreme Court held that the liability of the insurer for indemnity towards any driver who drives the car with the consent or order of the insured and that in the present case, the driver was driving the car with the permission of thee owner who had effected the policy with the

⁴⁹New Asiatic Insurance Co. v. Pessumal Dhanamal Aswami, (1964) 2 SCJ 428
result that the insurer must be held to have undertaken indemnify the driver in accordance with the terms of the policy.

In *B. Govindarajulu Chetty v. M.L.A. Govindaraja Mudaliar*\(^{50}\), it was held that the motor vehicles are not such dangerous things. The following observations therein are significant, "...there is ample authority for the view that the lorry is not in itself a nuisance or a hazardous chattel so as to attract the doctrine of absolute liability...." At page 665 the learned Law Lord in *Wing v. London General Omnibus Co*\(^{51}\), has explained as to why the rule in *Rylands v. Fletcher*\(^{52}\), would not apply to the ownership of a motor vehicle."

In *New India Assurance Co. Ltd. vs Meenal And Ors*\(^{53}\) one Muthuraman was driving the said car taking along with him in the said car his relatives and was proceeding in a normal speed. A cyclist, coming in the opposite direction, suddenly swerved to the right in front of the car. In order to avert dashing against him and killing him, the said Muthuraman suddenly swerved his vehicle to the left, thereby brought it down to the mud portion of the road and as the road was slippery the vehicle skidded and went uncontrollable and capsized. Due to this, the deceased sustained grievous injuries in the lower part of the abdomen and after the villagers removed him and other occupants from the car by bringing it to the normal position, he was admitted in Ponnamaravathi Hospital to which he was carried in a town bus. Immediately on admission he succumbed to the injuries. The accident is only due to the slippery condition of the road and the deceased was not in any way responsible for the same. The first respondent is the owner of the car, the

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\(^{50}\) *B. Govindarajulu Chetty v. M.L.A. Govindaraja Mudaliar*, 1966 ACJ 153 (Mad.)

\(^{51}\) *Wing v. London General Omnibus Co.* (1909) 2 KB 652

\(^{52}\) *Rylands v. Fletcher* (1868) LR 3 HL 330

\(^{53}\) *New India Assurance Co. Ltd. v. Meenal And Ors*, 2 (1993) ACC 443
deceased was driver in the car as a third party, and the insurer as well as the owner are liable to answer the claim.

The Tribunal has accepted the case of the claimants and has held that the said Muthuraman did not drive the car negligently and that there is no contra-evidence on the side of the Insurance Company which has simply taken the question of maintainability of the petition. Then, on the question whether the petitioners before it are entitled to the compensation, it has observed that the petitioners before it have not claimed the compensation on the ground that the said Muthuraman was a paid driver under the 5th respondent therein, that the claim was not made by the third party against the owner of the vehicle and the Insurance Company, that since the car was entrusted to the deceased Muthuraman, he was in possession of the vehicle in the capacity of the owner of the vehicle and that hence the Insurance Company is liable to pay the compensation to the claimants.

There was no plea that there was any master-servant relationship between the owner of the car and the said Muthuraman. In such a case, no vicarious liability also will arise or can be foisted on the owner, the 5th respondent herein. It is also well settled law that when the owner/insured is not liable, the insurer cannot be held liable.

Then claimant raised the issue that this case is a case of strict or absolute liability as was in the case of Rylands v. Fletcher. For this, they contended that the motor vehicle itself was a dangerous chattel coming within the principle of the said liability. He also cited in this connection *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*54. But there the Supreme Court only observed that in view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be

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54 *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*, 1987 ACJ 561 (SC)
regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher.

But, from that it cannot be concluded that the motor vehicles are always dangerous chattels coming within the principle of the above said liability. Further, here also, there is neither plea nor proof that the above said car was such a dangerous chattel which would give rise to the abovesaid strict liability under Law of Torts. That apart, in B. Govindarajulu Chetty v. M.L.A. Govindaraja Mudaliar\(^{55}\), it was held that the motor vehicles are not such dangerous things. The following observations therein are significant”.

There is ample authority for the view that the lorry is not in itself a nuisance or a hazardous chattel so as to attract the doctrine of absolute liability.... At page 665 the learned Law Lord in Wing v. London General Omnibus Co.\(^{56}\), has explained as to why the rule in Rylands v. Fletcher, would not apply to the ownership of a motor vehicle."

Further in Bishan Devi v. Sirbaksh Singh\(^{57}\), the Supreme Court has held that a liability can be cast on another only if he is in any way responsible for the accident which occasioned the injury. In other words, there is no scope for any absolute liability on the owner of the vehicle to compensate the injured. The provisions of the Motor Vehicles Act do not contain any statutory provision to that effect. The Act does not provide a new right or a new remedy to a person who is injured by an accident. The provisions of the Act do not in any way interfere with the substantive common law on the subject.

\(^{55}\) B. Govindarajulu Chetty v. M.L.A. Govindaraja Mudaliar, 1966 ACJ 153 (Madras)

\(^{56}\) Wing v. London General Omnibus Co. (1909) 2 KB 652

\(^{57}\) Bishan Devi v. Sirbaksh Singh, 1979 ACJ 496 (SC)
This principle is also followed by Kerala High Court in *New India Assurance Co. Ltd. v Raju Markose*\(^{58}\). There also it was held that proof of negligence is necessary before owner or the insurer can be held liable for payment of compensation in a motor accident claim's case. There, the accident occurred before Section 92-A of the Act which provided for no fault liability came into force. It is also explained there that Section 92-A dispenses with proof of negligence in the matter of award of compensation to the extent indicated therein, that the said section indicates that the substantive law is changed only to the extent indicated and that, but for the said modification, the substantive law continues to be in force and no claim for compensation is sustainable without proof of negligence except to the extent such proof is dispensed with by Section 92-A. It is also so observed in the Supreme Court decision reported in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*\(^{59}\), while dealing with Section 92-A of the Act in the newly introduced Chapter VII-A of he said Act providing for 'no fault liability'. The Supreme Court in the said decision observed that part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.

This passage of the Supreme Court is also referred to in one judgment in *K. Nandakumar v. Managing Director, Thanthai Periyar Transport Corporation Ltd*\(^{60}\). and it was held that it must be noted here that only to the above extent, the substantive law has been modified in this regard, and not to the extent that even where the deceased or the injured, as the case may be, is

\(^{58}\) *New India Assurance Co. Ltd. v Raju Markose*, 1989 ACJ 643 (Kerala)

\(^{59}\) *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*, 1987 ACJ 561 (SC)

\(^{60}\) *K. Nandakumar v. Managing Director, Thanthai Periyar Transport Corporation Ltd*, AIR 1996 SC 1217
negligent and not the other party, the former can claim compensation. Where
the former is negligent, there is no scope at all for himself claiming any
compensation from any other party for his own fault that is the substantive
law. That part of the substantive law has not at all been modified by Section
92-A of the Act.

In United India Insurance Co. Ltd. v. Kantabai\textsuperscript{61}, it was held that even on
general principles it was difficult to entertain the contention that the liability
in respect of the tortfeasors himself would be covered by the Insurance
Company.

In Mallika v. S.V. Alagarsami\textsuperscript{62}, also it has been held that the question of
vicarious liability will not arise when the claim is made by the tortfeasors
himself or any person claiming under the tortfeasors. There, the deceased, his
wife and children accompanied the son of the owner in the car. Due to long
driving, the driver of the car felt tired and the deceased relieved him and
drove the car. The car dashed against the tree and the deceased sustained fatal
injuries. The Court observed that Section 95(1), Motor Vehicles Act, in so far
as it uses the expression 'in respect of the death of or bodily injury to any
person or damage to any property of a third parry' should be taken to cover
any liability which may be incurred by the owner of the vehicle in respect of
death of or bodily injury to any person or damage to any property of a third
party. The presence of two expressions 'any person' and 'third party' in the
same provision would indicate that the expression 'any person' has been used
in a wide sense and not only in the sense of a 'third party'. Even if Section
95(1) can be construed as including the liability of the owner of the car for
the death of or bodily injury to any person, this provision cannot be invoked
by the claimants in this case, unless the claimants are able to establish that

\textsuperscript{61} United India Insurance Co. Ltd. v. Kantabai, 1991 ACJ 22 (BOM.) DB
\textsuperscript{62} Mallika v. S.V. Alagarsami, 1982 ACJ 272 (Madras)
the owner has incurred a liability in respect of the death of or bodily injury to
the deceased, which liability has to be insured as per the provisions of
Section 95(1). It cannot be said that the mere ownership of the car creates
liability on the part of the owner of the vehicle to pay compensation for the
death of or injury to any person. The liability can arise only when the owner
of the vehicle was in any way responsible for causing the accident which has
resulted in that liability. In this case, the accident was caused by the rashness
and negligence of the deceased and in such cases there is no legal liability
arising either under the Law of Torts or any other basis under the common
law. Only when there is a legal liability, that liability has to be insured under
Section 95(1). In this view of the matter, we are unable to agree with the
learned Counsel for the appellant that an absolute liability has been cast on
the owner of the vehicle to pay compensation under Section 95(1) and that
absolute liability does not depend on the fact as to who caused the accident
and whether the owner of the vehicle is negligent or not.

In Minu B. Mehta v. Balkrishna Ramchandra Nayan\textsuperscript{63}, the Supreme
Court also held that the concept of vicarious liability without any negligence
was opposed to the basic principles of law.

\textbf{III. Absolute Liability and State}

State cannot claim sovereign immunity in Motor Accident cases. The already
devastated legal heirs of deceased victim of the vehicle accident involving
government vehicle now, no longer have to run from pillar to post to get
compensation which is denied to them on the ground of government vehicle
engaged in so called sovereign duty and thus claim sovereign immunity which is
an archaic concept. No civilized country in this world which claims itself to be
founded on the notions of the welfare state, shun its liability towards accident

\textsuperscript{63}Minu B. Mehta v. Balkrishna Ramchandra Nayan, 1977 ACJ 118 (SC)
victims and their legal heirs involving its own vehicle on the ground they were doing a government duty, thus, entitled to act in any manner as it is sovereign. No legal system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his life or property illegally by negligent act of employees or officers of the State without any remedy. The Government and its functionary have trend to deny their liability towards the poor victim or the legal heir victim of state negligent act by raising the plea of the sovereign immunity, showing their apathy towards the victims which reflects the medieval mindset borrowed from the British Raj.\(^6^4\).

The Motor Accident Claims Tribunal awarded the compensation to the poor widowed lady whose husband died in an accident cause by the Air Force Vehicle. The Air force filed an appeal in the High Court that it is not liable to pay compensation as its vehicle was exercising a sovereign function, an oft repeated plea taken by various departments of governments to shun their liability towards the accident victim. Advocate Neeraj Arora took the noble cause to fight for justice for the poor lady pro bono and represented the poor lady in the Delhi High Court against the irresponsible behavior of the Air Force. Advocate Neeraj Arora argued at length the dichotomy between sovereign and non-sovereign functions citing leading judgments of Apex Court and various High Courts which shows that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act is concerned.\(^6^5\).

The Hon’ble Mr. Justice J.R. Middha, taking the note of the important constitutional issue that whether the “Doctrine of Sovereign Immunity” is available to defeat the claim for compensation under the Motor Vehicles Act, 1988 appointed Amicus Curie and also requested the Additional Solicitor General to assist the case. The legal luminaries submitted that the Motor Vehicle


\(^6^5\) Ibid.
Act, 1988 was a special law and no exception had been carved out in the statute in respect of use of government vehicle for defense purposes. It was also submitted that the doctrine of sovereign immunity had no place in Indian Jurisprudence citing the judgment of the Hon’ble Apex Court in State of Rajasthan v. Vidyawati\textsuperscript{66}. The said principle has been reiterated by the Supreme Court in a large number of decisions and in one of the decisions; the concept was described as ‘Old and Archaic”. In addition to the judgments of the Supreme Court, there are a substantial number of judgments of various High Courts which have rejected the plea of sovereign immunity. The doctrine of sovereign immunity is based on the supremacy of the monarchy of the England. In India, which is a parliamentary democracy governed by the Constitution, there is no equivalent to monarch\textsuperscript{67}.

The Hon’ble Mr. Justice J.R. Middha took note of the contentions raised against the illogical principles of sovereign immunity reflecting the apathy of the state towards the poor victims of the accident involving government vehicles and rightly observed that it did not behoove the State to take cover under the principle of sovereign immunity only to shun liability for the consequences of the negligence of its servants. However, before passing any final verdict on the issue, the Hon’ble Mr. Justice J.R. Middha considering the adverse implications of the government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon’ble Supreme Court issued the direction to the Ld. Attorney General seeking its opinion as to in how many cases, the state has taken or raised the plea of “sovereign immunity” in pending motor accident claim cases in various courts and tribunals and also directed the Attorney General to consider the possibility

\textsuperscript{66} State of Rajasthan v. Vidyawati, AIR 1962 SC 933
\textsuperscript{67} Supra n.64
of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future⁶⁸.

The aforesaid directions of the Hon’ble Mr. Justice J.R. Middha are judicious, well thought-out, highly commendable as it seeks out to curb the government apathy and irresponsible behavior in motor accident cases once and for all not only in present pending cases but also the similar cases which may arise in future through the country⁶⁹.

The Ld. Solicitor General Mr. Gopal Subramaniam in his communiqué dated 19th May, 2010 addressed to the Hon’ble High Court of Delhi opined that taking into account correct legal position as enumerated above, a clear office memorandum should be issued to the effect that the defence of sovereign immunity not be pleaded by Department of Government in cases involving compensation arising out of motor vehicle accidents involving the use of Government vehicles on Government duty and advised the Ministry of Law & Justice to issue the said memorandum⁷⁰.

Thus, the aforesaid direction of the Hon’ble Justice Mr. J.R. Middha has paved a new foundation for justice and corrected a grave constitutional error in form of doctrine of sovereign immunity which can now no more be pressed as defence by the government departments to shun their liability towards its poor subjects⁷¹.

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⁶⁸ Ibid.
⁶⁹ Ibid.
⁷⁰ Ibid.
⁷¹ Ibid.
E. Negligence, Contributory Negligence and Application of Res Ipsi Loquitur

Black’s Law Dictionary\textsuperscript{72} defines the term Negligence as “omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would not do”.

In Managing Director, Tamil Nadu State Transport Corporation v. Ayyammal\textsuperscript{73} it was observed that negligence is not only commission of an act but is also an omission to do something which a reasonable man would do or is obliged to do.

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe for the protection of the interests of another person, the degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one, it rather a comparative term.

What constitutes negligence varies under different conditions and in determining whether negligence exist in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. To determine whether an act would be or would not be negligent, it is relevant to determine, if any reasonable man would foresee that the act would cause damage or not.

\textsuperscript{72} Black’s Law Dictionary, 6\textsuperscript{th} Edition
\textsuperscript{73} Managing Director, Tamil Nadu State Transport Corporation v. Ayyammal, 2007 ACJ 66 (Mad.)
In Municipal Corporation of Greater Bombay v. Laxman Iyer\textsuperscript{74} The omission what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is negligent act.

In Poonam Verma v. Ashwini Patel & others\textsuperscript{75} it was held by the Supreme Court that negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do. The breach of duty may occur either by not doing something which a reasonable man, under a given set of circumstances, would do, or by doing some act which a reasonable prudent man would not do.

In motor accident cases negligence is understood as failure in duty to take care which implies the degree of care that ought to be taken by a reasonable man in a given set of circumstances.

In M S Grewal v. Deep Chand Sood\textsuperscript{76} it was held that negligence is breach of duty or lack of proper care in doing something. It is want of attention and doing something which a prudent and reasonable man would not do.

In Gujarat State Road Transport Corporation v. Kamla Ben Valjibhai Vora\textsuperscript{77} it was held that negligence is careless conduct. An act is negligent when done either from error of judgement or on account of mistake or wrong judgement without involving intention of the doer.

\textsuperscript{74} Municipal Corporation of Greater Bombay v. Laxman Iyer, AIR 2003 SC 4182
\textsuperscript{75} Poonam Verma v. Ashwini Patel & others, AIR 1996 SC 2111
\textsuperscript{76} M S Grewal v. Deep Chand Sood, 2001 ACJ 1719
\textsuperscript{77} Gujarat State Road Transport Corporation v. Kamla Ben Valjibhai Vora, 2002 ACJ 780
In Sheela Kumari Singh v. G.S. Atwal & Co. (Engg) Pvt. Ltd\(^7^8\) it was held by the High Court that negligence on the part of both the drivers of vehicles cannot be ruled out when accident has been taken place in the middle of road.

I. Contributory Negligence and Composite Negligence

The expressions contributory negligence and composite negligence are having different meanings.

Contributory negligence has been defined as “a plaintiff’s own negligence that played a part in causing the plaintiff’s injury and that is significant enough to bar the plaintiff from recovering damages\(^7^9\)”.

Contributory negligence is defence whereas composite negligence is a fact situation involving joint or combined negligence.

Composite negligence is defined as “where a person is injured without any negligence on his part but as a combined effect of the negligence of two other persons”.

If due to negligence of A and B, Z has been injured. Z can sue both A and B for the whole damage. There is clear distinction between the contributory negligence and composite negligence. The term contributory negligence applies solely to the conduct of a plaintiff.

In Sombathina Ramu v. T. Shrinivasulu\(^8^0\) it was held that contributory negligence means that there has been an act of omission on the part of plaintiff, which has materially contributed to the damage.

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\(^7^8\) Sheela Kumari Singh v. G.S. Atwal & Co. (Engg) Pvt. Ltd, 2006 ACJ 980 (Jhar.) DB

\(^7^9\) Black’s Law Dictionary, edition 7

\(^8^0\) Sombathina Ramu v. T. Shrinivasulu, 2009 ACJ 187 (AP)
It was further held that where a person is injured without any negligence on his part but as result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Polock as injury by composite negligence\textsuperscript{81}.

Composite negligence is not a term defined or explained. It should ordinarily mean that both acts of negligence operate at the same time so as to form one transaction, which gets so mixed up that it is not possible to separate the same in order to find out the whole fault in question. Principle of composite negligence are when more than one person is responsible in the commission of the wrong, the person wronged has a choice of proceeding against all or any one or more than one of the wrongdoers. Every wrongdoer is liable for the whole damage if it is otherwise made out\textsuperscript{82}.

II. Rule of Last Opportunity

Doctrine of last opportunity is explained in simplest way in the matter of \textit{Municipal Corporation of Greater Bombay v. Laxman Iyer}\textsuperscript{83} Where an accident is due to negligence of both parties, substantially, there would be contributory negligence yet even in such a case, whichever party could have avoided the consequence of other’s negligence would be liable for the accident.

The decision in the matter of \textit{Davies v. Mann}\textsuperscript{84} is said to be the originator of the rule of last opportunity, though the word as such do not appear in the judgement. In that case, the plaintiff had left his donkey in the lane with its forefeet fettered. The donkey was run over by a wagon going a little too fast. The plaintiff succeeded since the defendant could have avoided the accident.

\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid.
\textsuperscript{83} \textit{Municipal Corporation of Greater Bombay v. Laxman Iyer}, 2004 ACJ 53
\textsuperscript{84} \textit{Davies v. Mann}, (1842) 10 M & W 546
though the plaintiff was also at fault in turning the donkey in to the lane with its forefeet fettered.

Doctrine of last opportunity cannot be applied in case of children who are seldom held guilty of contributory negligence.

III. Contributory Negligence and Children

In Taj Hussain v. Misru Khan\textsuperscript{85} where offending truck was being parked at the place of accident where children were playing and while the truck was being taken on reverse hitting a boy of 12 years causing 100\% permanent disability. Apportionment of liability by the tribunal on the basis of contributory negligence was held unsustainable. Claimant being 12 years of age cannot be said to be of such an age as reasonably to be expected to take precautions for his own safety and he had no road sense or experience of his elders. Therefore, he is not to be found guilty of contributory negligence. Truck driver should have taken extra precaution to save the pedestrians.

In Malikdhinar English Medium School v. A.Babudeen\textsuperscript{86} where a girl of 3½ years alighted from the school bus and the driver started the bus suddenly without caring for the safety of the child and in that process the vehicle ran over the child resulting in her death on the spot, it was held that since a child age 3 ½ years can hardly be blamed for negligence, the driver of the bus was guilty since it was duty of the driver to take care of the child.

In Sudhir Kumar Rana v. Surinder Singh\textsuperscript{87} where a minor scooterist who had no driving licence, collided with mini truck and sustained injuries, it was held that the scooterist could not be held guilty of contributory negligence merely because he had no licence.

\textsuperscript{85} Taj Hussain v. Misru Khan, 2006 (1) ACC 30 (Raj.)
\textsuperscript{86} Malikdhinar English Medium School v. A.Babudeen, 2006 ACJ 1711 (Mad.) DB
\textsuperscript{87} Sudhir Kumar Rana v. Surinder Singh, 2008 ACJ 393 (MP) FB
IV. Application of Doctrine of Res Ispa Loquitur in Collision Cases

Res Ispa Loquitur is a rule of evidence coming in to play when circumstances suggest negligence of driver of the vehicle\textsuperscript{88}, but 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 ispa loquitur.

The general import of the words res ispa loquitur is that the accident speaks for itself. 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\textsuperscript{89}.

In Dhanwanti v. Kulwant Singh\textsuperscript{90}, where it was held by the High Court that on the application of this principle, the burden shifts upon the respondent/defendants to explain the accident.

The maxim 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\textsuperscript{91}.

The doctrine can extend to the cases of breach of duty, general or statutory, on part of driver. A driver is duty bound to give signal before taking a turn on National Highway. Where the driver, instead of explaining his omission, had runaway from the spot he was held guilty of negligence by applying the principle of res ispa loquitur\textsuperscript{92}. The doctrine applies when accident is

\begin{footnotesize}
\textsuperscript{88} Shaju v. Babu, 2008 ACJ 1228 (Ker.) DB.
\textsuperscript{89} State of Madhya Pradesh v. Asha Devi, 1988 ACJ 846 (MP)
\textsuperscript{90} Dhanwanti v. Kulwant Singh, 1994 ACJ 708 (MP) DB
\textsuperscript{91} Salmond, “Law of Torts” 15\textsuperscript{th} edition, p.306
\textsuperscript{92} Oriental Insurance Co. Ltd. v. Nanak Chand, 2009 ACJ 2240(HP)
\end{footnotesize}
admitted but its cause is doubtful. When there is direct evidence of negligence, there can be no question of applying the doctrine\textsuperscript{93}.

The term “collision” used in title has been used here relating to cases where there is collision between two or more motor vehicles, like collision between car and bus etc.

In collision cases where two or more motor vehicles collided together, question arises is what the position of third party who suffers due to the negligence of two or more independent persons damage is caused to a third, individual (person), where the sufferer is not driven to apply any such analysis to find out whom he can sue. Answer is he will be entitled to bring action for damages within the limits set out by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between these persons through in any case he cannot recover more than what he is legally entitled.

The study of case laws relating to collision of Motor Vehicle Accident has been classified in to four categories viz.

(a) Light motor vehicles colliding with light motor vehicles

(b) Heavy motor vehicles colliding with light motor vehicles

(c) Heavy/light motor vehicles colliding with scooters/motor cycles and

(d) Heavy motor vehicles colliding with heavy motor vehicles

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\textsuperscript{93} Parvati Bai \textit{v.} Bhagwat Rambhau Shelke, 2004 AACJ 1647 (Bom.)
(a) Light Motor Vehicles Colliding With Light Motor Vehicles

In New India Assurance Co. Ltd. v. Shyomo Chauhan\textsuperscript{94} it was held by the Punjab and Haryana High Court that where claim application is filed under section 163A, the owner and insurer are liable to pay to the legal heirs of the deceased in case of death provided the accident has taken place or has arisen out of use of motor vehicle and the liability extends even to cases where the deceased was driver.

In Oriental Insurance Co. Ltd. v. Meena Variyal\textsuperscript{95} it was held by the Supreme Court of India that the legislature while enacting the Act of 1988 introducing section 163A, giving the victim an option either to proceed under section 166 or section 163A of the Act. Once they approach the tribunal under section 166, they have to take upon themselves the burden of establishing negligence of the driver or owner of the vechile whereas if they approach under section 163A, compensation has to be awarded accordingly to Second Schedule without establishing fault or negligence.

In Sohan Singh v. National Insurance Co. Ltd.\textsuperscript{96} In a claim application filed by parents for death of their son driving jeep belonging to his mother and met with accident due to his own negligence, it was held that the claim application was not maintainable even under Section 163 for the reason that the liability falls on the owner and a person cannot be both claimant and respondent.

In N. Ramachandran v. Meera\textsuperscript{97} where the deceased was driving on wrong side in an inebriated condition, as proved by toxicological report, it was held by Madras High Court that no compensation was payable.

\textsuperscript{94}New India Assurance Co. Ltd. v. Shyomo Chauhan, 2006 ACJ 923
\textsuperscript{95}Oriental Insurance Co. Ltd. v. Meena Variyal, AIR 2007 SC 1609
\textsuperscript{96}Sohan Singh v. National Insurance Co. Ltd., 2009 ACJ 2869
\textsuperscript{97}N. Ramachandran v. Meera, AIR 2010 (NOC) 12
In **Vikram Singh v. Manvendra Singh**\(^98\) where the accident was caused because a car had suddenly come in front of speeding jeep, statement of the jeep driver that he was slowly driving was not acceptable since had he been slow, he could have stopped the vehicle at once. The driver was held rash and negligent.

In **Zoological Park v. S. Kaynana Raman**\(^99\) it was held by Madars High Court that a driver cannot be exonerated from his negligence merely because criminal proceedings were decided in his favour.

In **Sindhu v. Sekar**\(^100\) where the accident has occurred in broad day light on highway good enough for two vehicles to pass, yet the accident was caused on the middle of road, both the drivers of cars A & B were held negligent, with 70% of car B which attempted to overtake a bus and had the last opportunity to avoid the accident.

In **Rohtan Singh v. Chander Kala**\(^101\) it was held by the High Court of Punjab and Haryana that the registered owner of the offending vehicle is vicariously liable for the damage caused by the driver in an accident.

In **Laxmiben Pravinchandra Barot v. Thakore Prabatji Babuji**\(^102\) where a person having consumed poison was being taken to hospital in a matador which met with an accident causing death of that person, and it was proved that poison had not spread to entire body but dash of Matador was very heavy, death was held attributable to negligence of driver of Matador.

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\(^98\) Vikram Singh v. Manvendra Singh, 2007 ACJ 950
\(^99\) Zoological Park v. S. Kaynana Raman, 2008 ACJ 133
\(^100\) Sindhu v. Sekar, 2009 (1) ACC 828 (Mad.) DB
\(^101\) Rohtan Singh v. Chander Kala, 2010 (1) TAC 140 (P&H)
\(^102\) Laxmiben Pravinchandra Barot v. Thakore Prabatji Babuji, AIR 2010 (NOC) 5 Guj.
In N.R. Patel & Co. v. T. Aparna\textsuperscript{103} where a car at high speed while overtaking a lorry came to wrong side and dashed against a jeep which went off the road and turned turtle, finding that car driver was negligent and solely responsible, which was upheld by the Double Bench of Andhra Pradesh High Court.

(b) Heavy Motor Vehicles Colliding With Light Motor Vehicles

In Gajanad v. Virendra Singh\textsuperscript{104} in an accident between a Matador and a truck resulting in death of driver and inmates of matador, the tribunal dismissed the claim application on the ground that claimants did not implead the owner and the insurer of matador. It was held by the Madhya Pradesh High Court that Tribunal has erred in dismissing the claim application on account of non-impleadment of owner and insurer of matador since there was no necessity to apportion inter se liability of joint tortfeasors.

In Oriental Insurance Co. Ltd v. Parveen Juneja\textsuperscript{105} where in a collision between a car and a stationary tractor trolley, the victims were passengers in the car, it was held by the Punjab and Haryana High Court that no question of contributory negligence of drivers of both vehicles can arise and the claimants in such case of composite negligence can sue any of tortfeasors.

In Indari Lal v. Vijay Kumar\textsuperscript{106} where a matador had come from behind and had dashed against a truck going ahead, resulting in death of passenger in the matador, it was held by the double bench of Madhya Pradesh High court that driver of matador was rightly held negligent in causing the accident.

\textsuperscript{103}N.R. Patel & Co. v. T. Aparna, 2006 ACJ 2719
\textsuperscript{104}Gajanad v. Virendra Singh, 2010 ACJ 145
\textsuperscript{105}Oriental Insurance Co. Ltd v. Parveen Juneja, 2003 ACJ 378
\textsuperscript{106}Indari Lal v. Vijay Kumar, 2009 ACJ (MP) (DB)
In *Rachna v. Himachal Road Transport Corporation through its General Manager, Shimla and others*\(^\text{107}\) the driver of the corporation bus was said to have suffered a fit of epilepsy and the bus hit a stationary jeep and then rolled down the road killing and injuring several passengers, the driver contended that the accident was due to the defective condition of the bus and denied that he was suffering from fits of epilepsy. The Corporation contended that the driver was recently employed and he had produced certificate from Chief Medical Officer and that the accident was inevitable. The Corporation failed to discharge the onus to prove that it had taken all due care to ensure that it was entrusting the bus to be driven by a person who was capable in all respects to do so. The accident was not inevitable. The doctrine of res ipsa loquitur is applicable irrespective of the fact that the claimants were able to present partial account how the accident happened. In this case, it is stated that

“a defendant cannot plead that the plaintiff is not entitled to rely upon the doctrine of res ipsa loquitur merely because the plaintiff is able to present partial account of how an accident happened. The plaintiff can rely upon it for further inferences essential to the winning of his case; the partial explanation may make it more obvious that an inference of negligence on the part of the defendant can be drawn.”\(^\text{108}\)

In *New India Assurance Co. Ltd. v. Saroj Tripathi*\(^\text{109}\) in a case of collision of jeep with a truck, the evidence was that both vehicles had come together on the culvert and the jeep fell down after breaking the railing, both drivers were held equally negligent.

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\(^{107}\) *Rachna v. Himachal Road Transport Corporation through its General Manager, Shimla and others*, 1990 A.C.J. 840 H.P.

\(^{108}\) Ibid. at 845

\(^{109}\) *New India Assurance Co. Ltd. v. Saroj Tripathi*, 2008 ACJ 1274
In **Angoori Devi v. Megh Raj**\(^{110}\) in case of collision between a car and stationary tractor trolley the victims in the accident were passengers in the car. It was held that there was no question of contributory negligence and the claimants in a case of composite negligence of drivers of two vehicles can sue any of tortfeasors. Since composite negligence is a situation where loss or damage is no negligence on his own part.

In **Sakharibal Hasanali Makarsi and others v. Girish Kumar Rupchand Gadia and others**\(^{111}\) a truck driven at fast speed dashed against a taxi coming from the opposite direction resulting in the death of the taxi driver and a passenger in the taxi, and another passenger sustained injuries. The taxi turtle and all the four doors came out, the roof was blown away and the taxi was smashed. The truck went ahead 250 feet into the adjoining field. A passenger in the taxi deposed that the truck came from the opposite direction at a fast speed, hit the taxi which was being driven on its left side of the road. The passenger denied the suggestion that the front tyre of taxi burst, which resulted in the collision. The driver of the truck did not enter the witness box.

The Tribunal held that the accident was an act of God as it was caused by bursting of tyre of the taxi. Rejecting the contention of the Tribunal the Allahabad High Court held that the principle of res ipsa loquitur is applicable and it is established that truck was driven rashly and negligently and the defendant were held liable.

In **National Insurance Co. Ltd. v. Sahiba Khatun and others**\(^{112}\) a dumper dashed against a stationary jeep on the wrong side of the road in open mine area resulting in death of an occupant and the driver of the jeep. The Tribunal

\(^{110}\) **Angoori Devi v. Megh Raj**, 2003 ACJ 293 (Del)
\(^{111}\) **Sakharibal Hasanali Makarsi and others v. Girish Kumar Rupchand Gadia and others**, 1997 A.C.J. 95 Bom.
raised adverse inference for non-examination of dumper driver and on the basis of F.I.R. Charge-sheet spot map, post-mortem report and applying principle of res ipsa loquitur held that the accident occurred due to rash negligent act of the dumper driver.

The Appellate Court observed that through the jeep was wrongly parked, it was stationary in the open area, easily visible, the driver of the dumper had the last opportunity to avoid the accident and upheld the findings of the Tribunal. The court said:

“In the circumstances, the contention that the jeep driver also contributed to the accident as it was parked on the wrong side of the road cannot be accepted. It may be that the driver of the jeep violated the traffic regulations, for that he would have been prosecuted. But the jeep was stationary parked in the open area of the mines, easily visible. Therefore, even if the jeep was wrongly parked, the driver of the dumper had the last opportunity to avoid the accident, hence, the Tribunal rightly applied the principle of res ipsa loquitur.”\(^{113}\)

In **Inderjit Kaur v. Somnath**\(^114\) where a matador tried to overtake a jeep from wrong side of jeep, it was held that there was no contributory negligence on the part of driver of jeep and driver of matador alone was held negligent.

In **Kamla Verma v. Rajesh Kumar Singh**\(^115\) in a collision between a car and a truck, the evidence of the person on back seat of car was that the accident had taken place because of rash and negligent driving on the part of

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\(^{113}\) *Ibid.* at 170.

\(^{114}\) **Inderjit Kaur v. Somnath**, 2007 ACJ 2865 (P&H)

\(^{115}\) **Kamla Verma v. Rajesh Kumar Singh**, 2002 (2) ACC 279 (Jhar) DB
driver of truck. The finding of contributory negligence on the part of driver of car was set aside and driver of truck alone was held negligent.

In Prakash Vati and others v. Sulakhan Singh alias Lakhs and others case, an accident took place between a truck and a jeep resulting in the death of the driver and two passengers in the jeep. The claimants filed claim applications against the driver and the owner of the truck. The Tribunal and the single Judge in appeal disbelieved the testimony of the eye witnesses and doubted their presence at the time of the accident. The claimants produced evidence to establish the negligence of the truck driver. In L.P.A. the statement of these two eye witnesses have been perused and not found creditworthy. The principle of res ipsa loquitur could not be applied on the basis of photos of the scene of occurrence to establish negligence on the part of the truck driver in the absence of any other reliable evidence. K.K. Srivastava, J. observed:

“In the instant case the principle of res ipsa loquitur is sought to be applied on the basis of the photographs of the scene of occurrence. No doubt the accident resulted due to negligence. The accident caused due to the collision of the two vehicles is Jonga Jeep and the truck which is alleged to be involved in this occurrence. It cannot be said that on the application of the said principle the liability would necessarily be fastened on the driver of that truck and the finding could be arrived at, in the absence of any other reliable evidence, that the driver of the offending vehicle was the culprit and responsible for causing the accident due to his rash, negligent and careless driving. In the facts and the circumstances of the case, the claimants were required in law to prove as a fact that the accident was caused due to rash and negligent driving of the respondent driver. After carefully perusing the entire evidence on record, we are considered view that the learned single Judge has

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116 Prakash Vati and others v. Sulakhan Singh alias Lakhs and others, 1999 A.C.J. 521, P & H.
rightly held that the claimants have failed to establish that the accident resulted due to rash and negligent driving on the part of the respondent driver. Resultantly, these appeals are devoid of any substance and merit and are dismissed.”

**Mangal and others v. Subhadrabai and another** is an appeal against dismissal of the claim for compensation filed before the Motor Accident Claims Tribunal. Here the accident took place on the off side of the road from the direction in which the truck was proceeding. The car being on its correct side, the truck hit the off side of the front door of the car and caused the death of the driver of the car. Thereafter, the truck proceeded to distance of 15 to 30 feet, hit a tamarind tree and stopped, which itself attracted the maxim res ipsa loquitur, as contended by counsel for the plaintiff. But the evidence is that all the tyre of the truck including the tyre which burst was brand new without any defect either patent or latent. Thus it is true that evidence on record was that the first respondent and her driver used all reasonable care in and around the management of tyre.

Thus it was held, affirming the judgement of the tribunal that the accident in question was inevitable and the maxim is not applicable in the sense that the accident was not due to rash or negligent driving of the defendant truck driver. Thus the appeal failed in this case, the court referred to cases such as **Barkway’s case** and **Laurie’s case**, in giving its judgement. The court also referred to the principle underlying the maxim ‘res ipsa loquitur’ as stated in **Halsbury’s Laws of England**, that wherever the facts already established are such that the proper and natural inference arising from them

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117 *Ibid.* at 528
120 *Laurie v. Regian Building Co., Ltd.* (1942) 1 K.B. 152.
proves that the injury complained of was caused by the defendant’s negligence or where the event charged as negligence “tells its own story” on the part of the defendant, being clear and unambiguous then, the maxim res ipsa loquitur applies. Thus the burden is on the defendant to disprove his liability stating that he had taken all reasonable care, failing which he would be held liable in negligence.

In the case of United India Fire and General Insurance Co. Ltd. v. Maddi Suseela and others\textsuperscript{122}, a lorry crashed into an Ambassador car as a result of which all the inmates of the car died on the spot. The lorry owner (1\textsuperscript{st} defendant) filed a counter stating innocence on the part of the driver in the sense that there was total absence of rash and negligent driving on the part of his driver. The insurance company (2\textsuperscript{nd} defendant) filed the counter stating that the accident was due to the negligent driving of the car driver and thus the car driver contributed to the accident to a greater extent. The lorry was coming at a high speed with passengers, it failed to turn to the left side of the road because of curves. As a result it went to the wrong side and hit the car. The learned counsel for the plaintiffs pleaded that the above maxim res ipsa loquitur has to be applied in this case, where as the counsel for the lorry owner alleged that the accident was nothing but the result of the rash and negligent driving of the car driver.

The serious nature of the accident is apparent from the fact that the accident which took place in board day light caused the death of all the persons sitting in the car except plaintiff who became unconscious. In the absence of any eye witness before the court to speak to the factum of the occurrence of the accident and having regard to the fact that the lorry driver also who could have been available for being examined to speak of the concurrence of the

\textsuperscript{122} United India Fire and General Insurance Co. Ltd. v. Maddi Suseela and others, 1979 A.C.J. 110 A.P.
accident died, the court came to the conclusion that this is a case where the drivers of both the vehicles must be presumed to be negligent. The court referred to the following two cases in support of the judgement viz. (1) Koh Hung Keng v. Low Pee L.T. Co.\textsuperscript{123} and (2) Puspa Bai v. Ranjit G.P.\textsuperscript{124} and also referred the learned views of Salmond\textsuperscript{125} in support of their findings.

Thus in the present case, the plaintiff’s witness who could be said to have witnessed the occurrence in the way that he fell unconscious when the occurrence took place and having regard to the peculiar circumstances standing upon the occurrence of this accident the doctrine of res ipsa loquitur applies and the persons who are opposing the claim of the plaintiffs did not discharge the onus cast on them on account of the applicability of the doctrine. Thus the plaintiffs are entitled to the compensation they claimed.

(c) Heavy/Light Motor Vehicles Colliding With Scooters/Motor Cycles

In Anitha V Bangalore Water Supply and Sewerage Board\textsuperscript{126} where the eye witnesses had neither stated that deceased drove the vehicle rashly or negligently or at high speed nor that accident occurred due to negligence on part of deceased, the finding of the Tribunal that deceased was responsible for accident to the extent of 80% was reversed by the appellate court, holding that the accident occurred due to negligence on the part of Bangalore Mahanagara Palika whose driver drove the vehicle and hit the deceased scoot erist.

In National Insurance Co. Ltd. v. Akhilesh Dwivedi\textsuperscript{127} A truck while overtaking a bus came to its wrong side and collided with a motorcycle.

\textsuperscript{123} Koh Hung Keng v. Low Pee L.T. Co., 1967 A.C.J. 303
\textsuperscript{124} Puspa Bai v. Ranjit G.P. 1971 A.C.J. 343 and 346.
\textsuperscript{126} Anitha v. Bangalore Water Supply and Sewerage Board, 2010 ACJ 27 (Kar) DB
\textsuperscript{127} National Insurance Co. Ltd. v. Akhilesh Dwivedi, 2007 (4) ACC 312 (MP) DB
Deceased Motorcyclist was driving on his correct side with moderate speed and could not move to further left because of ditches and boulders. Truck driver was alone held rash and negligent in driving.

In National Insurance Co. Ltd. v. Ramilaben Chinubhai Parmar\textsuperscript{128} a tanker driver was driving at fast speed on wrong side and had hit to death a motorcyclist and defence was that half portion of road was closed for repair work and that deceased motorcyclist was overtaking another vehicle. No evidence was led by defendant that road was closed for repair. Tanker driver was not examined. Tanker driver alone was held negligent by Gujarat High Court.

In Meena v. M.P. State Road Transport Corporation\textsuperscript{129} a bus at fast speed dashed against a motorcycle killing all the three riders thereon. The explanation of driver was not found satisfactory. Finding of rash and negligent driving on part of driver of the bus was upheld by Double Bench of M.P. High Court.

In New Indian Assurance Co. Ltd v. Rattan Devi\textsuperscript{130} where a truck hit motorcyclist and then a cyclist and finally a person causing three deaths, it was held that negligence on the part of truck driver is obvious.

In Hemu Bai v. Satish\textsuperscript{131} a maruti van came at fast speed and hit a cyclist from behind resulting in his death. Driver of the van who was the best witness to the manner of accident was not examined. Finding that driver was rash and negligent was upheld by Double Bench of M.P. High Court.

\textsuperscript{128} National Insurance Co. Ltd. v. Ramilaben Chinubhai Parmar, 2007 ACJ 1565 (Guj) DB
\textsuperscript{129} Meena v. M.P. State Road Transport Corporation, 2006 ACJ 2383 (MP) DB
\textsuperscript{130} New Indian Assurance Co. Ltd v. Rattan Devi, 2007 ACJ 1817
\textsuperscript{131} Hemu Bai v. Satish, 2007 ACJ 1159
In *Shashibala v. Rajender Sharma*\(^{132}\) in a case of collision between a van and motorcycle, the driver of van had not appeared in witness box. In appeal driver of van alone was held responsible.

In *Devi Singh v. Vikram Singh*\(^{133}\) it was held by Full Bench of Madhya Pradesh High Court that simply because deceased and other 2 persons were sitting on a scooter, that itself does not fasten them with the responsibility of negligence in driving.

In similar case of *Ahmedabad Muncipal Corporation v. Narendrabhai Lalbhai Shah*\(^{134}\) Gujarat High Court held the same that simply because deceased and other 2 persons were sitting on a scooter, that itself does not fasten them with the responsibility of negligence in driving.

In *Roopa Bai v. Ramayan Vikasdhri Diwan*\(^{135}\) where the solitary eye witness had stated that deceased cyclist came in front of car and dashed against it and the driver of car was not at all responsible, no compensation could be awarded since the deceased himself was negligent.

In *A.S. Sharma v. Union of India and another*\(^{136}\) case, a military jeep, while overtaking an auto rickshaw, went to the wrong side of its road and dashed against a scooter coming from the opposite direction. The defence was that the scooterist hit against the petrol tank, which is always fitted on the left side of the vehicle and it was so fitted on the jeep also. The opponents also failed to establish their contention that the scooterist was driving the scooter in violation of traffic rules by allowing two persons to sit on pillion.

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\(^{132}\) *Shashibala v. Rajender Sharma*, 2008 ACJ 2744

\(^{133}\) *Devi Singh v. Vikram Singh*, 2008 ACJ 393

\(^{134}\) *Ahmedabad Muncipal Corporation v. Narendrabhai Lalbhai Shah*, 2010 ACJ 15

\(^{135}\) *Roopa Bai v. Ramayan Vikasdhri Diwan*, AIR 2010 (NOC) 3 (Chhat) DB

The Tribunal held that the jeep was driven in a rash and negligent manner and it caused the accident. The Tribunal’s findings were upheld in appeal. The applicability of doctrine can be invoked where the facts admit an incidence or accident which ordinarily does not happen in the usual affairs or the management of the vehicle driven. The facts and circumstances emerging from the record of the present case invoke the application of res ipsa loquitur.

In *Himachal Road Transport Corporation and another v. Vinod Bali*\(^{137}\) a bus hit a scooter and the scooterist was thrown 10 to 15 feet away sustaining injuries. The pillion rider deposed that the scooter was being driven on the extreme left side of the road at a speed of 15 to 20 Kmh and the evidence has not been shaken in cross-examination. The driver of the bus was the only witness produced in defence but he could not explain how the injured was rash and negligent in driving his scooter. The scooter was going uphill whereas the bus was going downhill; the velocity of the bus naturally would have been more.

The Tribunal held the bus driver was rash and negligent in causing the accident. The appellate court found “the way in which the accident has occurred can also lead to the application of the principle of res ipsa loquitur and the court is entitled to draw an inference that the bus was driven in a rash and negligent manner in this case.”\(^{138}\)

In *Hazara Singh v. P.L.Joseph and another*\(^{139}\) case, a car hit a scooter from behind and dragged it resulting in injuries to the scooterist. The owner of the car contended that the scooterist came from the side of the van, turned to the right and came in front of the car. Skid marks up to 25 paces,

\(^{137}\) *Himachal Road Transport Corporation and another v. Vinod Bali*, 1998 A.C.J. 1284 H.P.

\(^{138}\) *Ibid* at 1286.

mechanical inspection of the vehicles and medical evidence corroborate the claimant’s version. The car driver’s version was found to be not reliable and the same was not corroborated by any independent evidence.

S.B.Wad J. gave judgement that the Tribunal had rightly come to the conclusion in applying the doctrine of res ipsa loquitur of res ipsa loquitur and the accident was caused because of the rash and negligent driving of the car.

The Corporation was accordingly held to be liable.

It is to be mentioned here that the learned Tribunal in this case has dismissed the claims application holding that the accident had not taken place as a result of negligence on the part of the driver of the four-wheeler which collided with the scooter driven by the deceased.

In Krishna Sehgal and others v. U.P. State Road Transport Corporation and others\(^\text{140}\) a bus went to the wrong side of the road hitting a motor cycle and stopping only after hitting a tree. As a result of accident, the motor cyclist succumbed to injuries. It was held that the driver of the bus was guilty of rash and negligent driving and the deceased motor cyclist was not guilty of contributory negligence as he was driving his motor cycle on his left side. On the facts proved the doctrine of res ipsa loquitur was applicable. The proved facts spoke for themselves that the driver of the bus was plying the vehicle in violation of the traffic rules and the vehicle was in great speed, and for that reason it could not be controlled even after dashing against the motor cycle as it crossed the entire path and hit a tree and it could stop only there. The Court held that the Tribunal rightly held that the driver of the bus was guilty of rash and negligent driving.

\(^{140}\) Krishna Sehgal and others v. U.P. State Road Transport Corporation and others, 1983 A.C.J. 619, All.
In *Union of India the Secretary, Ministry of Defence, New Delhi v. Sudhir Khanna and others* a military truck, negotiating a curve while descending a slope at fast speed, went to the wrong side and collided with a motor cycle causing injuries to the pillion rider. The sketch map prepared by the police clarified that the truck was being driven on the wrong side of the road leaving a very little space for the vehicles from the other side to cross. The skid marks indicated the high speed of the truck. Bhawani Singh J. held,

“It is very difficult to believe that the vehicle was being driven at a speed of 20 to 25 km per hour, as stated. There may be some direction to drivers driving the military vehicles to drive them at a particular speed, but whether the vehicles were actually driven at that space, cannot be said with precision. However, it is clear in this case that the military vehicle was descending. The truck was clearing a curve and it cleared it in such a way that it left no space for the other vehicles to pass through its left side, and the result was that the vehicle struck the motor cycle. The negligence is at large and has been clearly established by the claimants. Besides, the skid marks of the truck found at the spot further establish this fact quite conclusively and the efforts of the respondents to prove to the contrary cannot be accepted in view of the cogent and convincing evidence of the claimants. In such situation the maxim res ipsa loquitur applies.”

In *New India Assurance Co. Ltd. v. Debajani Sahu and others* case, a bus came from behind at a fast speed and dashed against a scooter going ahead, ran over the scooterist causing his death. The claimants’ version was

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141 *Union of India the Secretary, Ministry of Defence, New Delhi v. Sudhir Khanna and others*, 1990 A.C.J. 215, H.P.
143 *New India Assurance Co. Ltd. v. Debajani Sahu and others*, 2000 A.C.J. 1512 Ori.
corroborated by a witness and the driver was not examined to rebut his evidence. The principle of res ipsa loquitur is applicable to the circumstances of the case and an adverse inference is drawable against the driver. The Tribunal held that the bus driver was rash and negligent in causing the accident. The Tribunal’s finding was upheld in appeal.

P.K. Misra, J. observed as under:

“In the present case, the claims Tribunal found about the negligence of the bus driver on the basis of the evidence of witnesses. It is contended that PW2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W.2 is not accepted, still then the doctrine of res ipsa loquitur is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under the accident had taken place.

Of course the bus owner has remained ex parte, but no attempt was made by the insurance company which was contesting the case even on merit (whether justifiably or not is immaterial), to adduce any evidence to rebut the evidence of P.W.2, nor has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/insurance company for not examining the bus driver who would have been the best witness to explain the circumstances under which the accident occurred. In such a view of the matter, the findings of the Tribunal on the question of
negligence cannot be assailed and the contention in this regard raised by the counsel for the appellant cannot be accepted.»144

In Kapil Kaur and others v. Union of India and others145 a military truck running at a fast speed hit a scooter going ahead on the left side of the road resulting in death of the scooterist. The defence was that the scooterist could not control his scooter and it struck against the truck on its left side bumper. An eye witness denied that the military vehicle was moving at a slow speed and had already taken a turn when the scooterist fell in a pit and struck against the left side of the truck. Another eye witness stated that the truck, at fast speed, crossed him and he could save himself by getting on the kacha road; 5-6 yards ahead, he heard a loud bang and he found that scooter was hit and smashed resulting in the death of the scooterist. The site-plan prepared by military authorities’ shows that the scooterist was hit by the truck from behind.

The Tribunal relied upon statement of the relative of the deceased that the truck driver was not to be blamed for the accident and found that the claimants failed to establish negligence of the truck driver. The Appellate Court observed that relative gave this statement to obtain the body without the post-mortem, similarly, the statement of the son of the deceased that ‘there is no foul play involved in the accident’ does not amount to admission regarding negligence of the deceased in the accident.

The Appellate Court reversed the finding of the Tribunal and found that the Principle of res ipsa loquitur was applicable and evidence on record clearly established that the accident was caused entirely due to rash and negligent driving of the truck.

144 Ibid., at 1514 i.
145 Kapil Kaur and others v. Union of India and others, 2000 A.C.J. 864, P & H.
V.K.Jhanji, J. observed,

“It is difficult to believe that the deceased took turn at a high speed and fell in a pit and struck against the military truck on its left side and fell down. It is a case where the maxim res ipsa loquitur is applicable and it can be said that in view of the evidence on record with regard to the fast speed of the truck on G. T. Road and the nature of the weather and road, the accident took place because of negligent driving of the military truck by its driver and the deceased died due to injuries sustained by him in the accident.”\textsuperscript{146}

In \textit{Padmabai and others v. Madhya Pradesh State Road Transport Corporation and another}\textsuperscript{147} a motor cyclist dashed against the bus coming from the opposite direction and sustained fatal injuries. The allegation was that the bus driver drove the bus in rash and negligent manner and caused the accident. The Tribunal appreciated the evidence and held that the claimants failed to prove rash and negligent driving of the bus. The driver of the bus deposed that the deceased came from the opposite direction driving his motor cycle rashly and negligently at a high speed. By seeing this, he took his bus to his left side and stopped it. But the motor cyclist could not control his motor cycle and dashed against the stationed bus and fell down from the motor cycle and sustained injuries and nothing could be elicited in his cross examination. The Tribunal finding is upheld in appeal.

In \textit{Bhuwanweswar Sahu and others v. Sudhir Kumar and others}\textsuperscript{148} case, a dumper dashed against a motor cycle coming from opposite direction and dragged it and its occupants to a distance of 30 feet. The principle of res ipsa loquitur is applicable and dragging to a distance of 30

\textsuperscript{146}Ibid., at 867
\textsuperscript{147}Padmabai and others v. Madhya Pradesh State Road Transport Corporation and another, 2001 A.C.J. 785, M.P.
\textsuperscript{148}Bhuwanweswar Sahu and others v. Sudhir Kumar and others, 2003 A.C.J. 1247, Jhar.
feet is by itself sufficient to infer rashness and negligence on the part of the driver in driving the dumper.

Eqbal and Prasad J.J. held,

“We have perused the judgment of the tribunal and the findings recorded on the issue of rash and negligent driving. The tribunal has held that no reliable evidence has been brought by the claimants to prove that the accident took place due to rash and negligent driving of the dumper. The case of the claimant is that while the deceased was going on a motor cycle, the dumper came from the opposite direction and hit the motor cycle and dragged it along with the occupants for about 30 feet”.

The court said having regarded to the undisputed statements, the tribunal ought to have applied the doctrine of res ipsa loquitur. In other words, sometimes the accident itself proves the negligence. The fact that the dumper hit the motor cycle and dragged it along with the occupants for about 30 feet is itself sufficient to infer rashness and negligence on the part of driver in driving the dumper. We therefore, hold that the accident was caused by the driver of the dumper and as such the claimants are entitled to compensation. The appeal is allowed.

In the case of Hirachand and another v. Union of India149 while the plaintiff was going on a scooter on the main road, a bus belonging to the Union of India came on its extreme wrong side and struck against the scooter, as a result of which the son of the plaintiff died on the spot. Accordingly, to the defendant bus driver, even though the speed of the bus was very low, the scooter coming on the wrong side of the road, on which the deceased was sitting at the backseat, collided with the bus. He had no

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149 Hirachand and another v. Union of India, 1971, A.C.J.475
experience of driving of a scooter, so much so that he even did not have a driving licence. The accident could not be averted due to the failure of brakes which took place on the spot. The tribunal held that the accident has taken place due to negligence of the bus driver.

The learned advocate general, while arguing in favour of the Union of India held that the bus had to take a turn on the left side but at that time a cyclist who was coming from the opposite direction, came in front of the bus. To avoid the cyclist, the bus driver tried his best to turn to the right, but in spite of his best effort the cyclist was struck and as the brakes of the bus failed it collided with the scooter.

The court held that as the defendant failed to provide the reliable evidence to rebut the presumption raised in favour of the plaintiff, they were liable for negligence. This case is based on the judgements given in the *Yakan v. The State of Madras*¹⁵⁰ and *Gobalad Motor Services Limited and another v. R.M.K. Veluswami and Others*¹⁵¹ and *Premaeswari Das and Others v. Saman Devi and Anothers*¹⁵².

(d) Heavy Motor Vehicles Colliding With Heavy Motor Vehicles

In *Raghib Nasim and another v. Naseem Ahmad and other*¹⁵³ case, an accident between HRTC bus and private bus coming from opposite directions resulted in the death of a passenger travelling in the private bus. The driver of the HRTC bus stated that he was driving at a slow speed when the private bus at fast speed tried to overtake another bus, thereby causing the accident. Site Plan established that the HRTC bus was on the extreme left side. It was held that the accident was caused due to the sole

¹⁵⁰ *Yakan v. The State of Madras*, 1968, A.C.J. 216
¹⁵² *Premaeswari Das and Others v. Saman Devi and Anothers*, A.I.R. 1960 314
negligence of the private bus driver. “It is true that the claims Tribunal committed an error of applying the principle of res ipsa loquitur in the present case, in as much as this principle applies when there is no evidence to lead the court to the conclusion with regard to the accident for the purpose of fastening the liability and finding as to who is the defaulting party. In the present case, the evidence had been led by the parties. This error of the claims Tribunal is of a trivial nature as it does not affect the result of the appeal at all.”154

In this connection it is mentioned, “When a person is injured without any negligence on his part but as a result of negligence on the part of another person or due to the combined negligence of two persons, it is not a case of contributory negligence. The question of the contributory negligence arises in a case where the injured or the deceased had contributed to the accident. In a case of composite negligence, the person wronged has a choice of proceeding against all or any or more than one of the wrong-doers. Every wrong-doer is liable for the whole damages if it is otherwise made out”.155

In *Jamla Bi v. Gurmit Singh*156 where driver of a truck put his loaded truck on jack. The jack slipped and the truck, and fell on a mechanic who was attending to that other truck nearby. The mechanic died. The tribunal held the driver of both the trucks to be equally negligent. In appeal, it was held that the truck on jack should have first been unloaded before being put on jack and as the driver of the truck on jack was solely responsible for the accident.

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156 *Jamla Bi v. Gurmit Singh*, 2003 ACJ 1035 (MP)
In *Kothai v. Oriental Insurance Co. Ltd*\textsuperscript{157} where logs protruding outside the offending truck hit against a bus resulting in death of a passenger in bus. Both drivers were blaming each other. The finding of the tribunal that accident occurred solely due to negligence of the truck driver was upheld by the High Court.

In *Basant Kaur v. Chatarpal Singh*\textsuperscript{158} there was accident between trucks A and B resulting in death of driver of truck A. Owner of truck A informed the widow of the deceased driver that death was caused because of rash and negligent driving on part of driver of truck B. The tribunal dismissed the claim on ground that negligence of driver of truck B had not been proved. In appeal it was held that facts were enough to record a finding that driver of truck B was alone responsible for causing the accident.

In *Maniben S. Pandya v. Shashikant P. Shrigalor*\textsuperscript{159} where both the vehicles were moving in different directions but collided and then separated, both the drivers were held equally responsible for the accident.

In *Haryana State v. Krishan Kumar*\textsuperscript{160} where a truck came on wrong side of the road and there was collision with another truck coming from opposite direction on its correct side. Defence was that accident was due to inevitable accident due to mechanical fault. There was no evidence of mechanical failure despite due care and caution to check roadworthiness of the vehicle from time to time. The other truck had been damaged. The driver of the first truck was held to be rash and negligent.

\textsuperscript{157} *Kothai v. Oriental Insurance Co. Ltd*, 2003 ACJ 991 (Mad.)

\textsuperscript{158} *Basant Kaur v. Chatarpal Singh*, 2003 ACJ 369 (MP)

\textsuperscript{159} *Maniben S. Pandya v. Shashikant P. Shrigalor*, 2005(1) ACJ 592 (Guj.) DB

\textsuperscript{160} *Haryana State v. Krishan Kumar*, 2003 ACJ 549 (P&H)
In **Revathi Rajeskaran v. Vijaykumaran**\(^ {161}\) where a truck in high speed had twisted to wrong side and then dashed against a bus. The driver of bus applied brakes and swerved to left on the mud road. Another bus coming from behind that bus was also hit by the truck. The other bus, thus, fell into a ditch causing death of two and injury to several other passengers. The driver of the truck was not examined. The tribunal, relying on the FIR and evidence of driver of bus and claimants, held the driver of the truck as negligent. In appeal, the findings of the tribunal were upheld.

In **State of Karnataka v. Peter Frank**\(^ {162}\) where the accused driver of bus overtaking not one but three buses. It was held that the act itself was a highly dangerous act. There was clinching evidence that not only the accused collided with an incoming bus but had also lost control of his vehicle and dashed against a tree. The factors taken were clearly to be indicative of fact that the vehicle was driven in a rash and negligent manner.

In **Ravinder Kaur v. Haryana State**\(^ {163}\) where a bus collided with truck. Evidence of eye witnesses were that driver of bus had tried to avert accident by applying brakes. The truck being heavier than passenger bus, it was duty of driver of truck to give way to the bus. No negligence was established on part of bud driver. The driver of truck was alone held responsible.

In **Mangilal v. Chairman, Rajasthan State Road Transport Corporation**\(^ {164}\) there had been collision between a private bus and a roadways bus, causing injury to passengers in private bus. The accident occurred while the private bus was taking a turn to the right without any

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\(^{161}\) *Revathi Rajeskaran v. Vijaykumaran*, 2002 ACJ 1925 (Mad.)

\(^{162}\) *State of Karnataka v. Peter Frank*, 2001 (1) ACC 704

\(^{163}\) *Ravinder Kaur v. Haryana State*, 2001 ACJ 635 (P&H)

\(^{164}\) *Mangilal v. Chairman, Rajasthan State Road Transport Corporation*, 2000(1) ACC 509 (Raj.)
indication. The roadways bus was being driven in high speed. The driver of
the roadways bus was not examined to prove that he was not negligent or
that the accident was occurred in a manner in which he could not be held
negligent. The findings of the tribunal as to negligence of driver of private
bus was alone was set aside since driver of the roadways bus could not be
said to be not responsible for the accident.

In **Premlata Shukla v. Sitaram Rai**165 where in a collision of a tempo with
a truck, the statement of widow of deceased who was also travelling in the
tempo that was driven in rash and negligent manner, and there being
nothing to controvert her statement, but same was corroborated by another
witness, the finding that driver of the truck was negligent was set aside and
driver of the tempo was alone was held negligent.

In **Andhra Marine Exports (p) Ltd., Quilon and another v. P.Radha
Krishnan and others**166 case, the road at the place of accident was 31 ¼
feet wide and straight. A van coming from the opposite direction went to
the wrong side of the road and dashed against the bus resulting in extensive
damage to the bus. It was held that the principle of res ipsa loquitur is
applicable and the van driver was found guilty of rash and negligent
driving.

In **N.K.K. Siva Baghyam and others v. P.V. Kalliani Amma and
others**167 case, there was a collision between a bus and a van resulting in the
death of a passenger in the van. K.T. Thomas J held, “We have our own
reasons to hold that the claims Tribunal crossed in finding that there was
composite negligence of the bus driver and van driver in causing the

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165 Premlata Shukla v. Sitaram Rai, 2006 ACJ 1081 (MP) DB
166 Andhra Marine Exports (p) Ltd., Quilon and another v. P.Radha Krishnan and others, 1984
A.C.J. Mad.
167 N.K.K. Siva Baghyam and others v. P.V. Kalliani Amma and others, 1991 A.C.J. 283( Ker.)
accident. As a broad case is admitted by both the sides that the bus was entering the national highway from a by-lane, the degree of care, diligence and circumspection which the bus driver should have adopted was of a far higher one. He is permitted to take his vehicle into the main road from a by-lane only after ensuring that his passage is clear and that there is no risk involved in taking the vehicle into the main road, since the vehicle plying on the main road has the right of passage through the main road. As the accident is a collision between a vehicle which went into the main road from a by-lane and another vehicle which was already plying through the main road, the doctrine of res ipsa loquitur heavily favours the van driver and raises a presumption that the negligence was on the part of the bus driver. Of course, he is entitled to rebut the presumption. But no counter theory was advanced by the owner or the driver of the bus in the joint written statement filed by them except saying that the van was proceeding through the eastern side of the national highways.\textsuperscript{168} The spot of the damage of the front right side of the bus suggests that the van was not being driven on the eastern side of the road the doctrine of res ipsa loquitur heavily favoured the van driver and raise a presumption that the negligence was on the part of the bus driver. The Tribunal’s finding was set aside in appeal and held that the accident was entirely due to the negligence of the bus driver.

In \textit{Nek Ram and others v. Punjab Roadways and others}\textsuperscript{169} case, there was head on collision between bus and truck resulting in the death of the both the drivers and cleaner of the truck. Claim for damages was made by the legal representative of the bus driver. The bus was on its correct side of the road. Bursting of right front tyre of the truck resulted in swaying of the truck to its right and it hit against the bus. There was no evidence to prove

\textsuperscript{168} \textit{Ibid.} at 284.

\textsuperscript{169} \textit{Nek Ram and others v. Punjab Roadways and others}, 1984 A.C.J. 396 (P & H.)
the condition of the tyre. It was held that the res ipsa loquitur was applicable and the truck driver was negligent in causing death of the bus driver.

In Bisarti Bai and others v. Madhya Pradesh State Road Transport Corporation and others, there was head on collision between a truck and a bus coming from opposite direction, the truck travelled some distance before it over turned on its left side crushed several persons standing by the road side. Both the vehicles were travelling at fast speed and none of the drivers was careful to leave the middle of the road, taking his vehicle to the left side and reduce the speed while crossing each other though the road was wide, straight, clear and had no traffic. Driver neither blew horn nor gave any signal to the approaching vehicle to keep more to the left. The Tribunal found that both the drivers were equally rash and negligent in causing the accident. The Appellate Court found that apart from evidence, the doctrine of res ipsa loquitur was applicable and upheld the finding of the tribunal that inter se liability between both the drivers is 50:50.

In Gayatari Devi and others v. Ramesh Chand and others, a collision occurred between a bus and truck coming from the opposite direction resulting in the death of the driver and a passenger in truck. The bus fell at a distance of 20 steps from the place of occurrence towards west side of the road whereas the truck stopped at a distance of 30 steps towards east.

It was held that the principle of res ipsa loquitur is applicable and it was sufficient for the claimants to plead and prove the accident and nothing more; the onus then shifts on the respondents and it would be for them to discharge the burden by pleading and proving specific defence available to

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170 Bisarti Bai and others v. Madhya Pradesh State Road Transport Corporation and others, 1990 A.C.J. 103(M.P.)
171 Gayatari Devi and others v. Ramesh Chand and others, 2000 A.C.J. 898, (Raj.)
them. The court held that in the circumstances of the case all concerns parties are jointly and severally liable for the accident. Accordingly the bus owner, its driver and the truck owner including the New India Assurance Co. Ltd. Were directed to pay the compensation to the appellants as determined by the learned Tribunal.

In Mita Gupta and others v. Oriental Insurance Co. Ltd. And others172 a truck ‘B’ dashed against truck ‘A’ coming from the opposite direction resulting in the death of the driver of truck ‘A’. In F.I.R. it is stated that the driver of truck ‘B’ was driving his vehicle in a rash and negligent manner and it dashed against truck ‘A’. Eyewitness corroborated claimants’ version. The driver of truck ‘B’ is not examined and adverse inference against him is drawable. But the Tribunal disbelieving the eyewitness found that the claimants failed to prove negligence of driver of truck ‘B’ and dismissed the claim application.

The Appellate Court reversed the finding and held that the claimants have proved the accident. Therefore the principle of res ipsa loquitur is applicable and the drivers of both the trucks were held responsible for the accident. A. Karib J. observed,

“The evidence of the driver of truck was the best evidence available as to the manner in which the accident took place. By not producing him as a witness, the respondents withheld the best evidence which ought to have led the Tribunal to draw an adverse presumption in favour of the appellants. Even if there is some manner of doubt as to how the accident occurred by applying the doctrine of res ipsa loquitur, we hold that since the accident was composite in nature, it involved contributory negligence on the part of the both the drivers of the two trucks involved in the accident. In fact, from

a copy of the F.I.R. produced before us, it appears that the driver of the truck was driving in a rash and negligent manner and dashed against truck”.  173

The Judgement of the Tribunal was accordingly set aside and damages were awarded.

V. Application of Doctrine of Res Ipsa Loquitur in Non Collision Cases

Non collision Motor Accident Cases relates to those cases where there is no collision between two or more motor vehicles, although these may have been hitting a wall or tree or a human being. The study of Judicial Determination of Non-collision cases by various High Courts and Supreme Court of India have been divided in the following categories:

(a) Motor Vehicles Hitting Pedestrians

In Mithu Rani Sadar v. United India Insurance Co. Ltd. 174 where a tractor trailer hit a pedestrian and driver and owner of the vehicle remains ex-parte in the matter and post mortem conducted after 10 days of accident could not suggest that deceased was under influence of liquor, and evidence of witness and widow of deceased was consistent, driver of tractor trailer was held rash and negligent.

In Mishri Bai v. Munna 175 where a matador dashed against a person standing on footpath but the tribunal dismissed the claim on the ground that FIR was lodged after 22 days, it was held in appeal that deceased had died in accident by use of matador.

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173 Ibid. at 402
174 Mithu Rani Sadar v. United India Insurance Co. Ltd., 2006 ACJ 2868 (Cal.) DB
175 Mishri Bai v. Munna, 2007 (1) ACC 911 (MP) DB
In Rajasthan State Co-op Diary Federation v. Brij Mohan Lal and Others\textsuperscript{176} case, a tanker hit a pedestrian resulting in his death. The defence was that the deceased was crossing the intersection of two main roads and was in the middle when she moved backward because of an approaching car from the opposite side and she struck against the tanker. The driver speed away after the accident. The driver was the best person to depose about the circumstances of the accident, but he was not examined. The Tribunal drew adverse inference and on the principle of res ipsa loquitur found that the tanker driver was rash and negligent in causing the accident. The Tribunal’s finding was upheld in appeal.

The accident took place on the middle of intersection of the two main roads. One road was 72 feet wide. The other road was 39 feet wide. After causing the accident the truck sped away. The driver was expected to drive his tanker (truck) on the left side of the road. He was under a duty to take care of pedestrians going on the road. The site plan, formal proof of which has been dispensed with by the appellant (as per the endorsement appearing on the same) goes to show that the impact of the accident was very severe and the books, chappals etc. of the girl were found scattered at quite some distance from the place of the accident. These facts speak for themselves. In my opinion, the appellant ought to have examined to explain the circumstances, the learned Tribunal rightly drew adverse inference against the appellant. On a careful consideration of all the circumstances in question occurred due to rash and negligence driving of the tanker (truck). The finding of the Tribunal was accordingly upheld.\textsuperscript{177}


\textsuperscript{177} Ibid. at 122.
In the matter of *Banwari Lal Aggarwal v. Jeewan Kumar Badu*\(^\text{178}\), where a boy standing on roadside was hit by a vehicle. The fact had been proved by eye-witness. It was held that the evidence of eye-witness directly in Tribunal cannot be ignored on the basis of contents of criminal charge sheet or on unfounded evidence led by defence. The findings of the tribunal that the boy was guilty of contributory negligence was set aside by the High Court and the driver of the vehicle alone was held negligent.

In *Oriental Insurance Co. Ltd. v. Ullasini N. Kamble*\(^\text{179}\) a pedestrian died when hit by a moped. The mopedist deposed that deceased had attempted to cross road at place not marked for crossing. There was no evidence that deceased had even tried to cross the road at a prohibited point. The findings that deceased was guilty of contributory negligence was based only on conjecture. In appeal, the mopedist alone was held negligent.

In the *State of Madhya Pradesh and another v. Diwanchandra Gupta and Others*\(^\text{180}\) case, a truck parked on a slope without the driver and without and precautionary measure slid down the gradient and killed a girl sitting at some distance. The driver’s deposition that some girls had pushed the vehicle was not accepted. It was held that the principle of res ipsa loquitur is applicable and the driver was negligent.

Dr. T.N. Singh, J. observed that the truck was parked on a slope and the driver was not anywhere near the vehicle. It is also in evidence that no precaution or step was taken by the driver to secure the vehicle in such a way that it would not slide down the gradient. The girl Mamta was sitting at some distance from the vehicle at the back side of the vehicle. The truck suddenly moved down and ran over her and death was instantaneous. In

\(^{178}\) *Banwari Lal Aggarwal v. Jeewan Kumar Badu*, 2002(3) ACC 160

\(^{179}\) *Oriental Insurance Co. Ltd. v. Ullasini N. Kamble*, 2002 (1) AJR 301 (Kar.)DB

\(^{180}\) *State of Madhya Pradesh and another v. Diwanchandra Gupta and Others*, 1989 A.C.J. 320, M.P.
these circumstances, the doctrine of res ipsa loquitur immediately becomes operative and the burden is shifted to the driver to satisfy the court that he was not negligent. Although the driver has given evidence that some girls had pushed the vehicle, the Tribunal has rightly not believed him. Those girls who were there were all students of degree class and it is difficult to conceive of the suggestion that they were playing mischief intentionally and indeed, there is no evidence on record to take the view that they had any animus against the deceased so as to cause her death by moving the vehicle in that manner. The court accordingly affirmed the tribunal’s verdict and held that for the negligence of the driver, the claimants were entitled for the compensation for their daughter’s death.\footnote{Ibid. at 321.}

In \textit{Gorli Bai v. Kanti Lal}\footnote{\textit{Gorli Bai v. Kanti Lal}, 2002 (3) TAC 402 (MP)} a lady passenger was waiting for bus at bus stand and was hit by a truck. The evidence of witnesses was that the truck was driven at excessive speed. The situation was self-evident to hold that the driver of the truck was guilty of rash and negligent driving.

In \textit{N.Tantry v. Shwaleela}\footnote{\textit{N.Tantry v. Shwaleela}, 2002 (2) TAC 44 (Karn.)} where a mopedist had dashed against a pedestrian and the pedestrian died, and criminal case was also instituted against the mopedist, and evidence was that the mopedist had first hit the pedestrian and thereafter struck against an electric pole, it was held that the mopedist was rash and negligent in driving.

In \textit{National Insurance Co. Ltd. v. Srimatya Basanti Mondal}\footnote{\textit{National Insurance Co. Ltd. v. Srimatya Basanti Mondal}, 2002(3) TAC 453 (Cal.) DB} where victim was suddenly run over by a vehicle. The defence was that the deceased himself came in front of the vehicle in an attempt to commit suicide. The witness of the opposite party did not establish fact of suicide.
whereas claimants and other eye witnesses were found consistent and reliable. The finding of the tribunal ruling out defence of suicide and holding the driver of the vehicle guilty of rash and negligent driving was upheld by the High Court.

In *Delhi Transport Corporation v. Neelam Deshwar*\(^{185}\) where it was implicit from site plan that at the time of accident, the driver was driving his bus from a bypass towards right edge of road, i.e. on the wrong side, it was held that the driver of the bus alone was negligent.

In *U.P. State Road Transport Corporation v. Shanti Devi*\(^ {186}\) where the post mortem report suggested that death had taken place on account of shock and hemorrhage due to profuse bleeding from ante mortem injuries, the driver of the bus was rightly held responsible for the accident.

In *Udayshanker Bhai v. Heirs and Legal Representatives of the deceased Ala Rama and Others*\(^ {187}\) case, a truck knocked down a pedestrian. The driver lodged F.I.R. to the effect that he was driving the truck in a rash and negligent manner and the deceased fell down from the truck and was killed. The claimants based their claim application on the F.I.R. The owners contented that the deceased jumped out of the truck. Neither any eye-witness to the accident nor the driver was examined,. The version of the accident as given in the F.I.R. in the absence of evidence of the driver was not accepted. Blood spots at a place 2 feet from the western side of the road and some articles of the deceased and bajra were lying near the blood spots on the road. The truck was found about 600 feet away from the spot and was facing towards place ‘p’ to purchase grains on the

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\(^{185}\) *Delhi Transport Corporation v. Neelam Deshwar*, (2009) 1 ACJ 1 (Del.)

\(^{186}\) *U.P. State Road Transport Corporation v. Shanti Devi*, 2007 ACJ 2750

previous day. The bags of bajrs indicate that he was returning from ‘p’ after making purchases and he was not traveling in the truck which was going towards ‘p’. The deceased and his belongings would not fall at the same place from the running truck. It was held that the truck driver rashly and negligently knocked down the deceased when he was walking on the road carrying his goods. R.C. Mankad, J. observed, that the deceased received fatal injuries when he was knocked down by the truck of the appellant which was driven by the driver. We are not making out any new case for the claimants who did not have any personal knowledge about the manner in which the accident occurred. It is the duty of the court to probe into facts and draw appropriate inference from the physical facts which were found soon after the accident. It is in a case like this that the principle of res ipsa loquitur is attracted and it is the duty of the court to reconstruct the accident or occurrence from the physical facts. In a case like this, in which claimants who have no personal knowledge and most of whom are minors, cannot be bound by what has been stated in the application. Again, as already pointed out above, what is stated in the claim petition is not on the basis of personal knowledge, but on the basis of the information which was in their possession. The High Court of Gujarat held the accident occurred on account of rash and negligent driving of the truck on the part of the driver when the deceased was walking on the road.\(^\text{188}\)

In \textit{Ramathal v. Kerala State Road Transport Corporation and another}\(^\text{189}\) case, a bus overtook a stationary bus at high speed at right and ran over two boys crossing the road in the middle of the road. The Trial court held that the driver could not be in a position to see those crossing the road suddenly, and it being night time, nobody could anticipate the accident and the boys were negligent. It was held that principle of res ipsa loquitur is

\(^{188}\text{Ibid. at 165.}\)
\(^{189}\text{Ramathal v. Kerala State Road Transport Corporation and another, 1986 A.C.J. 186, Ker.}\)
applicable and driver was negligent as he violated the requirements of rule 56 of Kerala Motor Vehicl
es Rules 1961 which states that:

“56(2) the driver of the public service vehicle while on duty… (i) shall not, when bringing his vehicle to rest for the purpose pf picking up or setting down any passenger at or near the place where another public service vehicle is at rest for the same purpose, driver the vehicle so as to endanger, inconvenience or interfere with the driver or the conductor of the other vehicle or any person mounting or preparing to mount hereon or alighting there from, and shall bring his vehicle to rest behind the other vehicle and on the left hand side of the road or place.

The court held that the accident happened at an important junction in the periphery of the city with large flow of traffic, a pedestrian crossing the road has to be anticipated and necessary precaution taken\textsuperscript{190}.

In A.S. Manjunathaiah and another v. M.V. Nanjundaiah and another\textsuperscript{191} case, a girl walking on the left side of the road was run over by a bus coming from the opposite direction resulting in her death. The bus driven at fast speed crossed to its extreme right side and knocked down the pedestrian girl. It was held that the circumstances speak for themselves and the doctrine of res ipsa loquitur applied. The accident was caused due to rash and negligent driving of the bus. In this case the learned member of the tribunal says, in the case of his judgement, that this is not a case where the doctrine of res ipsa loquitur is attracted. That clearly shows that he has not taken into consideration the circumstantial evidence at all, paced on record.

\textsuperscript{190} Ibid.
\textsuperscript{191} A.S. Manjunathaiah and another v. M.V. Nanjundaiah and another, 1986 A.C.J. 295, Kar.
In *Gothelal Chourasis and another v. Gajjansingh and others* case, a truck dashed against a child and killed her. The respondents contend that the accident occurred due to negligence and carelessness of the child. The Claimants’ witnesses deposed that the truck was being driven at a speed of 50-60 kilometers per hour and the horn was not blown. The Tribunal accepted the contention of the respondents and dismissed the claim. The appellate Court held that the doctrine of res ipsa loquitur is applicable and driver was guilty of negligent driving as he failed to keep a good look out and take care of the pedestrian and his duty becomes higher when the pedestrians are children of tender age, because the behaviour of children is uncertain on the approach of a motor vehicle.

In *Naugapa Chinsya ans another v. Bhogoban Sahoo and another* case, a tractor-trailer hit and killed a woman who was selling vegetables. The vehicle was being driven at a fast speed without blowing the horn in a crowded place and the speed of the vehicle was not controlled even though it was coming down gradient. The principle of res ipsa loquitur was applicable and it was for the defendant to establish that the accident happened not due to negligence. Therefore it was held the vehicle was being driven in a rash and negligent manner.

In *Rajasthan State Road Transport Corporation v. Nand Kishore and Others* case, the offending bus went off the road that too by 5-7ft. away from the metalled portion of the road and hit the deceased pedestrian resulting in his death. The bus went in Kachha road and covered a distance of 61 feet after hitting the deceased. It was held that the principle of res ipsa loquitur was applicable to the circumstances of the case. The tribunal held

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192 *Gothelal Chourasis and another v. Gajjansingh and others*, 1988 A.C.J. 120, M.P.
that the bus driver was rash and negligent in causing the accident. The tribunal’s finding was upheld in appeal.

In Talasila Sandhya v. Andhra Pradesh State Road Transport Corporation and another\textsuperscript{195} case, a bus hit two little girls crossing the road and one of them sustained injuries. The defence was that the two girls suddenly emerged from behind a parked truck and while crossing the road, they had a fall, and sustained injuries due to the fall and not by hitting the bus. Medical evidence that injuries leading to disabilities to one of the girls support the circumstances that the bus hit the girl. Neither the report which was given to the police after the accident nor the report to the official superiors of the driver was produced before the Tribunal.

The Tribunal did not assist the child witnesses in understanding the questions and giving rational reasons but found inconsistency in their testimony and exonerated the driver. The Appellate Court observed that there cannot be any negligence or contributory negligence against a child of tender age and inability of the driver of a public transport bus in stopping the vehicle claimed to be moving slowly within a distance of 20 yards speaks of his incompetence. The Appellate court applied the doctrine of res ipsa loquitur and held that the bus driver was rash and negligent in causing the accident.

In K.L.Pasrija and others v. Oriental Fire and General Ins. Co. Ltd. And Others\textsuperscript{196} case, car hit a child pedestrian and ran over him and then dashed against a parked scooter rickshaw. The car driver did not possess a

\textsuperscript{195}Talasila Sandhya v. Andhra Pradesh State Road Transport Corporation and another, 1999 A.C.J. 629 A.P.

\textsuperscript{196}K.L.Pasrija and others v. Oriental Fire and General Ins. Co. Ltd. And Others, 1986 A.C.J.252 P & H.
driving licence nor knew driving. It was held that res ipsa loquitur is applicable and car driver was held negligent.

Gokal Chand Mittal J., observed “I am of the view that there is no escape from the conclusion that it was the driver of the car who was negligent. The photographs and other evidence brought on the record clearly go to show that it was a case of res ipsa loquitur”\textsuperscript{197}.

In \textit{Vasathy G.Kamath v. Keral State Road transport Corporation}\textsuperscript{198} case, the deceased was proceeding along the National Highway, on his way to the bus stop to catch the bus to his school. The deceased was beyond the foot path, he was off the sandy portion newly acquired for the highway. A bus belonging to the defendants came from behind and knocked him down. The left front wheel of the bus ran over the right leg and inflicted fatal injuries on him. The deceased was not negligent in any manner.

According to the plaintiff the bus was driven carelessly and at a high speed. The court held that this case was pre-eminently a fit case for the application of the principle of res ipsa loquitur.

\textbf{Kumaran and another v. Augustina}\textsuperscript{199} is a case where a bus took a sudden turn to right and hit the plaintiff, and knocked him down, thereby he was seriously injured in his head and limbs. The bus was going from the west to the northern side of the road had suddenly turned to the right and gone to the south side of the road and stop after hitting a concrete post. Defendants alleged that before the bus stopped, the plaintiff who was on the northern side of the road suddenly crossed the road to the south and as a result, to

\textsuperscript{197} \textit{Ibid.} at 254.
\textsuperscript{199} \textit{Kumaran and another v. Augustina}, 1976 A.C.J.479 Ker.
avoid a fatal accident, the bus had to be swerved to the south and in that process it hit the plaintiff and he fell down. But no attempt was made by the defendants to prove any positive evidence that the plaintiff was at the northern side of the road and crossed the road suddenly. In the absence of sufficient evidence for the defence, the defendants were held to be negligent. Syed Akbar v. State of Karnataka\textsuperscript{200} and Russell v. London & South Western Rly. Co.\textsuperscript{201} were cited in support. The inference of negligence on the part of the second defendant as drawn by the lower court cannot be said incorrect. The court affirmed the decision of the lower court.

In Amina Begum v. Ram Prakash\textsuperscript{202} the plaintiff was sitting in front of his shop and doing his work as a painter. The defendant’s bus, when it reached the shop of the plaintiff, it swerved towards the right side of the road and hit the plaintiff. The impact caused multiple fractures in his left leg. The defendant owner of the bus alleged that the accident was a result of a latent defect in the vehicle in as much as its brakes suddenly failed and the steering wheel became free on account of the bolt of the push and pull rod going out of order. The defendant driver lost control over the steering wheel.

Hyder J. was of the view that the defendant has not been able to rebut the presumption by merely proving the latent defects in the vehicle. The sudden failure of the brakes and the steering wheel may be due to carelessness on her part to keep the vehicle in a proper state of repair. In the circumstances the defendant should have further proved that the latent defect pleaded by her occurred in spite of the fact that she took necessary steps for the proper maintenance and upkeep of the vehicle. The defendant made no attempt to do so. The scale was tilted against the defendant by the presumption. The

\textsuperscript{200}Syed Akbar v. State of Karnataka, 1980 ACJ, 38
\textsuperscript{201}Russell v. London & South Western Rly. Co., 24(T.L.R.)548
\textsuperscript{202}Amina Begum v. Ram Prakash, 1979, ACJ 449 All.
decision of this court was also based on the views expressed in Colhills Ltd. v. Devine\textsuperscript{203} and Henderson v. Henry E. Jenkins Sons\textsuperscript{204}.

In State of Mysore and another v. Fatima Manwali Fernandis and another\textsuperscript{205} case P.W.D. truck was going up the gradient from towing a tar mixing machine tagged it with the help of a rope. Two girls were coming on the left side of the road. On seeing the truck they got upon the parapet wall of the drain. The truck passed by them. But, soon after, the tar mixing machine which was tagged to the truck with the help of the rope stated sliding down as the rope snapped and it came and hit the girls. The right leg of one girl was crushed as also heels of both the legs of the other girl. The doctrine res ipsa loquitur was invoked. Normally, the driver could have taken care to see that a strong rope was used to tag the tar mixing machine in the up gradient. The driver had not stepped into the box to explain how the snapping occurred. The burden was on the defendant. Hence the High Court of Karnataka held that actionable negligence on the part of the driver was established. There was no substance in the argument addressed to the contrary.

In Adamkhan Mohamed v. Ramesh Raya Naik\textsuperscript{206} case, a lorry driven by the defendant driver went off the road on the extreme left side, hit against a boy who was on the extreme left side and dragged to the lorry on the road for some distance, as result of which the boy sustained serious injuries on his left arm. Ultimately, there was permanent deformity and disability. The evidence revealed that the lorry came in a rash and negligent manner. But the defendant driver never appeared as a witness. So, adverse inference had to be drawn in the circumstances against the driver. In addition to the

\textsuperscript{203} Colhills Ltd. v. Devine, 1969, 2All E.R.53.  
\textsuperscript{204} Henderson v. Henry E. Jenkins Sons, 1970 ACJ 198  
\textsuperscript{205} State of Mysore and another v. Fatima Manwali Fernandis and another, 1979 A.C.J. 323 Kar.  
\textsuperscript{206} Adamkhan Mohamed v. Ramesh Raya Naik, 1978 A.C.J. 409 Kar.
positive evidence on the record the maxim res ipsa loquitur was invoked to
hold that the defendants were held liable.

In Hanuman Dass v. Usha Rani and another\textsuperscript{207} the plaintiff met with an
accident, as a result of which her right collar bone was fractured, right arm
was amputated near the shoulder and three fingers of right foot were
chopped off. The truck which was involved in the accident struck against
an electric pole, situated on the corner of the terrace in front of a house. The
plaintiff, in order to escape injury, had suddenly mounted the terrace but
got injured.

A vehicle has to be driven on the path, and in the course of normal drive,
there is no question of its leaving the path and striking against the platform
and the electric pole abutting the path unless the driver happened to be
negligent or there were circumstances which left him no choice but to take
the vehicle to a point where it struck the electric pole. The fact of the
present case, the doctrine of res ipsa loquitur, was straight away attracted
for the negligence of the driver, unless he placed on record the
circumstances which left him no choice but to take the truck in the direction
of the electric pole. The burden is on the defendant to prove that he was not
negligent. The driver himself made confessional statement in the criminal
court which was proved. The driver admitted his own negligent driving.
The defendant did not deny that he did not know driving well and that at no
time he had possessed a driving license and yet he was rash enough to take
to driving in the streets of the town. The judge in the case found that the
lower court was right in holding that the accident occurred as a result of the
rash and negligent driving of the truck by the defendant. Hence, liable for
the consequences.

\textsuperscript{207} Hanuman Dass v. Usha Rani and another, 1978 A.C.J. 310 Pij. & Har.
(b) Motor Vehicles Hitting Cyclists

In Hemu Bai v. Satisht where a maruti van came at fast speed and hit a cyclist from behind resulting in his death. Driver of the van who was the best witness to the manner of the accident was not examined. It was held by the Madhya Pradesh High Court that driver of the van was rash and negligent.

In Ramlayak Ram v. Umrawati Devi where a cyclist was dashed against by a truck, causing death of one of riders of the cycle. The surviving rider deposed that no horn was blown by the driver and that he himself was thrown away into a field. Tribunal’s findings that death did not occur because of accident was reversed by the High Court and driver of the truck was held responsible for the accident.

In Revathi Rajsekharan v. Vijay Kumaran where a cyclist was hit by a jeep from behind. The cyclist got injured but the pillion rider died. The driver of jeep had run away from the spot and later denied involvement of the vehicle in any accident. The officer who maintained the log book was not examined. The driver was prosecuted but acquitted. Finding of the tribunal that driver was negligent was upheld by the High Court.

In Helen Ekka v. Anil Sharma where a cyclist was hit by truck and died on spot. Evidence clearly demonstrated that accident took place due to rash and negligent driving of truck. Defence taken by the respondents was not supported by evidence. The findings of the tribunal that the truck driver was negligent was upheld by the High Court.

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208 Hemu Bai v. Satish, 2007 ACJ 1159
209 Ramlayak Ram v. Umrawati Devi, 2002 ACJ 1146 (HP) DB
210 Revathi Rajsekharan v. Vijay Kumaran, 2002 ACJ 1925 (Mad.)
211 Helen Ekka v. Anil Sharma, 2002 ACJ 1982 (MP) DB
In P. Satyanarayana represented by his wife, **P. Mahalakshmi v. I. Babu Rajendra Prasad and another case** a jeep went to the wrong side and hit a cyclist coming from the opposite direction. The defence was that the cyclist dashed against some pedestrians and came to his right side but there was no evidence except that of the driver. There was a government official traveling in the government jeep at the time of accident, but he was not examined. The serious nature of the injuries gives rise to an inference that the jeep was going at fast speed. The Tribunal discovered discrepancies in the evidence of the claimant’s witnesses and rejected the theory of negligence of the jeep driver. The appellate court set aside the finding of the tribunal and applied the doctrine of res ipsa loquitur and held the jeep driver negligent.

M. Jagannadha Rao, J. observed:

“having regard to the serious injuries, losing of one eye on the spot (and the other later) and the severe head injuries – the inference can only be that the jeep was going at a high speed. If, in fact, it was going slow at 5 Km. as alleged by the respondent, and the cyclist hit the jeep, these injuries are almost impossible. The place where the claimant fell, even as per the respondents, requires invoking the principles of res ipsa loquitur. I have no hesitation in holding that this serious accident occurred solely because of the negligence of the driver of the jeep. I hold accordingly.

In **Bhaswarlal v. Kabulsingh and others** a truck came from behind and dashed against a cyclist who was going on the left side of the road. The cyclist was injured and his cycle was damaged. The truck did not stop at the site. It was held that the principle of res ipsa loquitur is applicable and the

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212 **P. Mahalakshmi v. I. Babu Rajendra Prasad and another case**, 1988 ACJ 88, AP
213 Ibid., at 92.
214 **Bhaswarlal v. Kabulsingh and others**, 1989 ACJ 189, MP
truck driver was rash and negligent in causing the accident. Dubey, J. held that there was another feature in the case that why an illiterate person will involve the respondent in a case, if accident had not occurred with the said truck of the respondent Nos. 1 and 2. No enmity or any ulterior motive has been proved nor there is any cross-examination to that effect on the claimant. In such circumstances, when both the parties led evidence and the burden lost its importance, it was the duty of the respondents to prove that the accident was not caused by the said truck and according to their plea of alibi, the truck at the relevant time was at some other place and it could not have been there where the accident occurred. In the circumstances, I am of the view that the findings of the Tribunal arrived at with an erroneous approach deserve to be set aside, and hold that it was the truck which was involved in the accident; and to evade the liability, false defence was raised by the respondents, the owner and the driver. As the truck dashed against the claimant who was going on his bicycle on the left side of the road and the claimant fell down on the road as a result of the impact, his cycle was crushed, he received multiple injuries and the truck did not stop at the site. This also suggests that the truck driver was rash and negligent in the circumstances of the case. Moreover, the aid of the principle of res ipsa loquitur can also be taken for holding the truck in question was being driven rashly and negligently causing the accident to the claimant.\textsuperscript{215}

In \textit{Beni Bai v. Chhandilal}\textsuperscript{216} where a cycle was hit by a jeep, resulting in death of the cyclist but the tribunal had not relied on evidence of the eye witness deposing that the jeep was driven rashly and negligently merely because name of such witness was not mentioned in FIR. In appeal, findings of the tribunal were reversed by holding the driver of the jeep as rash and negligent.

\textsuperscript{215}Ibid., at 192.
\textsuperscript{216}Beni Bai \textit{v. Chhandilal}, 2005 (2) ACJ 816 (MP) DB
In Chairman-cum-Managing Director, Bihar State Road Transport Corporation v. Manju Bhushan Sinha and others, a bus came at fast speed and hit a cycle-rickshaw from behind throwing away its occupants more than 10 feet away on the road, injuring them, and one of the passengers succumbed to his injuries. The defence was that two rickshaws were trying to overtake each other and they were being driven negligently. The bus did not stop after accident and traversed to the right side of the wide road and broke the boundary wall of the open ground to the length of 21 feet. The defendants failed to examine the driver and this failure leads to adverse inference. The manner of the accidents clearly goes to show that the bus was driven rashly and negligently.

The Tribunal applied the doctrine of res ipsa loquitur and held that the bus driver was rash and negligent in causing the accident. The Tribunal’s finding was upheld in appeal by the High Court of Patna.

In Ravi Kumar v. Manager, Indian Textile Co-operatives Ltd., in a case of accident between a car and a cycle carrying a pillion rider, the cyclist was held guilty of contributory negligence, since two persons riding on cycle would make it oscillate in zigzag fashion

In Philippose Cherian and another vs. T.A.Edward Lobo and another case, there was a collision between a bus and the cycle coming from opposite direction and the cyclist sustained fatal injuries. The scene mahazar was prepared by the investigating officer, and the driver of the bus admitted that the accident occurred on the northern half of the road which

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217 Chairman-cum-Managing Director, Bihar State Road Transport Corporation v. Manju Bhushan Sinha and others 1992 ACJ 1073, Pat.
218 Ravi Kumar v. Manager, Indian Textile Co-operatives Ltd., 2006(1) ACC 184 (Karn,) DB
was the wrong side for the bus. The Tribunal found that there was no proof of negligence in driving the bus and dismissed the claim. The Tribunal’s finding was reversed in appeal and held that the doctrine of res ipsa loquitur was applicable and as there was no evidence to rebut the presumption, the bus driver was held negligent in causing the accident.

In *Kanwaljit Singh and Others v. Santokh Singh and Others* case, a car and a cyclist were proceeding in the same direction. The car hit the cyclist from behind. As a result of the accident, the cyclist was run over while his minor son sustained grievous injuries.

S.S. Sodhi, J. observed that the circumstances and the evidence on record, thus clearly lead to the conclusion that both the cyclist and the car were proceeding in the same direction when the accident took place and that the car came from behind and hit the cyclist. It follows from this that it lay upon the car driver to explain the manner in which he came to hit the cyclist from behind, more so when the position of the deceased Joginder Singh and his injured son Kanwaljit Singh immediately after the accident pointed to their having been on the left edge of the road when the car hit them. What the driver came forthwith instead is a totally different version which cannot stand for scrutiny.

The damage on the front right side of the car shows negligence on the part of the car driver keeping in view the position of the deceased and the injured child immediately after the accident as observed by AW 4 Suraj Bhan. The counsel for the claimants was indeed justified in invoking the principle of res ipsa loquitur, in the circumstances of this case the burden shifts upon the car driver failed to discharge. There can, thus, be no escape from the finding that the accident in this case took place as per the version

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220*Kanwaljit singh and Others v. Santokh Singh and Others*, 1983 ACJ 470 (P&H)
of the claimants and was, thus, entirely due to the rash and negligent driving of the car driver\textsuperscript{221}.

In \textit{I. Palley Ram and another v. P.K.Janardhan and another}\textsuperscript{222} case, a military vehicle came at fast speed and knocked down a cyclist from behind resulting in his death. The cyclist was on his correct side of the road. The Appeal Court found that the Tribunal has correctly appreciated the evidence. The doctrine of res ipsa loquitur was applicable and held that the driver of the military vehicle was rash and negligent and the finding of the Tribunal was upheld.

In \textit{P.Dappammal (since deceased) and Others v. International Space Research Organization and another}\textsuperscript{223} case, a bus rushed against a cycle while overtaking and ran over a person sitting on the cycle carrier. The bus driver blew the horn and the cyclist went to his left. The road was 11/2 feet space for the cyclist. Even an expert cyclist negotiating through that narrow space, with the bus overtaking him, would have lost his balance, especially when rubble had been stacked on that side of the road. It was held that the accident was caused due to rash and negligent driving of the bus driver. A prudent driver would have seen the probability of the cyclist and his companion losing balance and falling and being run over by the bus; he should have waited till the cyclist went past the trenches so as to avoid the accident.

Kochu Thomman, J. observed, that res ipsa loquitur apart, the evidence on record clearly supports the plaintiff’s case that the deceased died as a result of the rash and negligent driving of the second defendant. Seeing that the

\textsuperscript{221} Ibid. at 474
\textsuperscript{222} \textit{I. Palley Ram and another v. P.K.Janardhan and another}, 1985 ACJ 812 Del.
\textsuperscript{223} \textit{P.Dappammal (since deceased) and Others v. International Space Research Organization and another}, 1986 ACJ 812 Ker.
cycle was proceeding well ahead of the bus and then turned to the left hand side of the road when the bus sounded the horn at a point where it was far too narrow for the bus to overtake it, any reasonable person in the position of the second defendant would have anticipated the danger of not waiting till the cycle passed the narrow area.

The court held the second defendant ought to reasonably have foreseen the grave danger to which he was exposing the cyclist and his companion by overtaking them at that point. His own evidence as DWI regarding the width of the road and the bus highlights this aspect. These facts together with what followed, namely, the death of the deceased, clearly speak for themselves and irresistibly point to the negligence of the second defendant who was acting in the course of his employment, thereby making the first defendant vicariously liable.\textsuperscript{224}

In \textit{Parkash Kaur and Others v. Municipal Corporation of Delhi and Others}\textsuperscript{225} case, a bus hit a cyclist at a round-about on road crossing and the cyclist succumbed to injuries. The bus was coming at a fast speed without blowing the horn. Eye-witness, site plan and medical evidence establish that the deceased was hit from behind.

It was held that the maxim applies and accident caused due to rash and negligent driving of the bus.

S.B.Wad, J. observed that the evidence of the eye witness gives the clear account as to how the accident took place. The fact that the cyclist was hit from behind is established by the evidence, by the site plan and medical evidence. The injuries were very serious and the death took place due to the said injurious. The maxim of res ipsa loquitur clearly applies in this case.

\textsuperscript{224} \textit{Ibid.} at 815.

\textsuperscript{225} \textit{Parkash Kaur and Others v. Municipal Corporation of Delhi and Others}, 1985 ACJ 639 Del.
The respondents had failed in cross-objection. It was tried to be contended that the bus driver was not driving rashly as he was carrying the school children. It was then submitted that the deceased took a turn without giving signal and hit the bus.

The tribunal has carefully considered the evidence of the claimant’s witness and has rightly believed the version. The counsel for the respondents could not persuade the court to take a different view from that of the Tribunal. The accident was thus caused due to rash and negligent driving by respondent No. 3, the driver in the employment of respondent No. 2, the O.T.C. The accident took place during the course of employment. Respondent No. 2 is, therefore, liable to pay compensation\textsuperscript{226}.

(c) Motor Vehicles Involved in Accident While Trying to Save Cattle

In Shivlal and Others v. Rukmabai and Others\textsuperscript{227} case, the driver of a tractor driving at an excessive speed lost control when faced with a cow and the tractor turned turtle causing death of a passenger. The driver contended that to save the cow he swerved the tractor and thereafter tried to bring it to a proper side in the consequent jolt, the deceased caught hold of the steering resulting in the accident. This version of the accident does not find place in the report lodged by the driver immediately after the accident. A heavy vehicle like tractor does not normally turn turtle without negligence. The maxim res ipsa loquitur is applicable. The owner/driver failed to produce credible material to rebut the presumption of negligence. It was held that the negligence of the tractor driver was the cause of accident.

\textsuperscript{226} Ibid. at 640.
\textsuperscript{227} Shivlal and Others v. Rukmabai and Others, 1987 A.C.J. 341, M.P.
“It may be pointed out that in evaluating evidence for a conclusion on the question of negligence the standard of proof required in a criminal trial is not to be applied and a broad view on the basis of probabilities is the proper approach.

In the instant case a heavy vehicle like the tractor had turned turtle and normally such a thing does not happen with a careful driving. The applicability of the maxim res ipsa loquitur is clearly, therefore, attracted in this case and there is no credible material to rebut the presumption of negligence. We, therefore, hold that the learned Tribunal committed no error in coming to the conclusion that negligence on the part of the driver was the cause of the accident”.228

In Bhagwandas and another v. National Insurance Co. Ltd. and another229 case, a truck overturned due to excessive speed resulting in the death of several persons and injuries to many. The driver contended that two buffaloes were crossing the road and as he applied brakes, there was sudden breakdown of some parts of the truck which resulted in its overturning. There was no corroborative evidence about the breakdown of the truck. It is evident that it was drizzling and the truck was driven at a fast speed. It was held that the principle of res ipsa loquitur was applicable and the accident occurred on account of the rash and negligent driving.

K.K.Verma, J. observed,

“The claimants Ram Prasad AW2, Kamal Singh AW3 and Sardar Singh AW4 were traveling in the same truck as passengers. Their evidence is to the effect that when all of them including the dead and the injured boarded the truck, it was drizzling. They consistently deposed that the truck driver

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228 Ibid. at 344.
tore off in an excessive speed which induced fear and apprehension in the minds of the passengers. They cried out for the slackening of the speed but the truck driver did not pay any heed to them. The result was that the truck overturned. These witnesses withstood the cross-examination very well.

The sole witness in rebuttal was appellant No. 1 Bhagwandas, the truck driver. He admitted that the truck was loaded with murrum. He admitted that the truck over-turned on its side near the river.

The driver’s explanation is that two buffaloes were coming on the road. The truck was being driven slowly. He applied the foot brakes resulting in the sudden breakdown of some parts of the truck and the accident occurred. The claimant’s witnesses denied the aforementioned suggestions.

The five labourers, who escaped uninjured, were not examined by the appellants, who did not adduce any corroborative evidence about the breakdown of the truck as a result of the use of the foot brakes of the truck.

We accept the claimants’ evidence and hold that the accident occurred. It is a clear case of res ipsa loquitur as a result of rash driving by appellant No. 1 Bhagwandas”.

In the above cases the vehicles were driven by the driver at a fast speed. Due to their negligence, when the cattle were on the road the drivers could not control the vehicles and the vehicles turned turtle. The principle of res ipsa loquitur clearly applied in such cases.

230Ibid. at 500.
(d) Motor Vehicles Falling in Ditches, Canals, Washed Away in Floods, Hitting Culverts etc.

In **Himachal Road Transport Corporation v. Himi Devi and others**\(^\text{231}\), plaintiff filed a suit to recover damages. Some passengers were traveling in a bus. The bus had been taken very near the outer edge of the road from where it fell in to the Khud. As many as nine persons, including the driver, were killed and many received injuries. The bus in question was a condemned bus. The bus was over-loaded and it had to be started by pushing it over some distance. In the circumstances of this case the maxim res ipsa loquitur was applied. The buses are not supposed to leave the road and roll down into khuds. If they do so, a heavy burden lies only on the appellant to show that all reasonable care had been taken and there was no negligence. The defendants were held liable. The case of **Krishna Bus Service Ltd. v. Smt. Mangli and other**\(^\text{232}\) was referred to in support.

In **Triveni Prasad and others v. Indrapal Kachhi and others**\(^\text{233}\) case, a boy was working as casual labourer for filling tractor-trolley with soil and on the date of accident went for work. He was brought back injured to his house in the trolley and he succumbed to his injuries. The owner of the tractor-trolley did not deny his employment and the fact that he went in the tractor for his duty. The driver of the tractor said that the boy went in the tractor. The defendant’s evidence is not clear how the boy met with the accident and what happened when he was on duty. Medical evidence revealed that there were eight injuries on the person of the boy and opines that these injuries could be caused by tractor accident. It was held that the

\(^{231}\) **Himachal Road Transport Corporation v. Himi Devi and others**, 1981 A.C.J. 365, H.P.


\(^{233}\) **Triveni Prasad and others v. Indrapal Kachhi and others**, 1997 A.C.J. 269, M.P.
principle of res ipsa loquitur was applicable and the boy died in accident with the tractor.

In Madhya Pradesh State Road Transport Corporation v. Anjani Chaturvedi and Others\textsuperscript{234} case, the driver took the bus across the bridge which was submerged and the bus was washed away by flood water when it was in mid-stream resulting in the death of all the passengers persuaded the driver to cross the bridge and when the bus entered the bridge it was not submerged and the accident took place due to sudden rising of water-level, a vis major. The defence taken is based on hearsay evidence because no one from whom this information was gathered had been examined. An eye-witness who saw the accident from the bank of the river deposed that the bridge was submerged and trucks were waiting on both ends for water-level to recede but the driver of the bus despite warning proceeded ahead. The Tribunal relied upon the evidence of the eye-witness which negatives the plea of vis major and invoking the doctrine of res ipsa loquitur, held that the accident was caused due to rashness of the driver. The tribunal’s finding was upheld in appeal.

In Mahendra Pal Singh and another v. Prakash Chand Goyal and others\textsuperscript{235} case, the deceased was traveling in a truck proceeding on a high way. The truck, after hitting a culvert turned topsy-topsy and the deceased was buried under a coal lad in the truck. The driver stated that another truck was coming from the opposite direction at excessive speed and with full-bloom light. The Tribunal held that the truck and lost control and was therefore negligent in not controlling the speed of the vehicle. Appellants challenged the finding of negligence against the driver on the ground that the claimants have not discharged their onus to prove the negligence on the

\textsuperscript{234}Madhya Pradesh State Road Transport Corporation v. Anjani Chaturvedi and Others, 1993 A.C.J. 363, M.P.

\textsuperscript{235}Mahendra Pal Singh and another v. Prakash Chand Goyal and others, 1987 A.C.J. 677, M.P.
part of the driver. It was held that res ipsa loquitur is applicable and it is sufficient for the elements to prove the accident and nothing more. Because the true cause of the accident was solely within the knowledge of the driver who caused it. When the driver had seen a truck coming from the opposite direction with full-bloom light, he should have controlled the speed of his vehicle and should have kept his vehicle standstill by the side of the road, as it was well in his knowledge that his truck was loaded with coal.

In *Gulaba Ram v. Divisional Forest Officer, Bilaspur, H.P.* case, a jeep driven at fast speed fell into a khud and a passenger sustained injuries. The defence was that the accident was due to failure of breaks. There was no mention in the F.I.R. that the accident was caused due to failure of breaks. There was no evidence to discharge the burden that the respondent had taken all reasonable care in the maintenance of the vehicle and its break system and that the vehicle was subjected to periodical checks and it was in a road worthy condition. The tribunal was reversed in appeal, and held that the principle of res ipsa loquitur is applicable and accident was caused due to the rash and negligent driving of the jeep.

In *Farida and others v. Abid and others* case, a passenger traveling in a trolley hooked to tractor fell down when the trolley jumped and the wheel of the trolley past over his stomach resulting in his death. Defence was that the deceased was sitting at the edge on front panel of the trolley and when the trolley jumped, he lost his balance and fell down and he was himself responsible for the accident. No evidence was shown that the driver drove the vehicle negligently and rashly. Tribunal held that the principle of res ipsa loquitur did not apply to the facts of the case as musk-melon and other articles did not fall out from the trolley as a result of jump of the trolley and

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236 *Gulaba Ram v. Divisional Forest Officer, Bilaspur, H.P.*, 1991 A.C.J. 493, H.P.
deceased lost balance on account of his own negligence. Appeal Court upheld the findings of the Tribunal.

In Asa Singh and others v. State of Himachal Pradesh and another\(^{238}\) case, a jeep carrying a passenger met with an accident at a place nearly four miles from the starting point. It was averted that the driver of the jeep drove the jeep negligently as a result of which the front wheel of the jeep collided with the hillock and the rear wheel went out of the road. The driver lost control over the vehicle and the jeep ultimately rolled down some 500 feet and fell into a nallah. The deceased passenger died on the spot. The driver of the jeep was also injured even through the driver of the jeep was stated to be alive, he was not produced as a witness to show that the accident did not take place due to his negligence. It was held that the defendants were liable for the negligence. State of Punjab v. H.L. Kochar and another\(^{239}\) and Barkway’s Case\(^{240}\) and also Krishna Bus Service Ltd.\(^{241}\) were relied on.

V. Narayana Reddy v. Syad Azgar Bareed\(^{242}\) is a case where the plaintiff was traveling in a bus along with the passengers. The bus went off the road 300 feet away on the right side of the road as a result of which it fell into a ditch, thereby caused injuries to the plaintiff and to the other passengers. Plaintiff suffered facture of the right femur ultimately causing him the loss of his right leg. The bus was owned by first defendant and driven by second defendant (driver).

The High Court of Kerala observed that res ipsa loquitur applies in this case. The second defendant had filed a written statement taking the stand

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\(^{238}\) Asa Singh and others v. State of Himachal Pradesh and another, 1981 A.C.J. 313 H.P.


\(^{241}\) Krishna Bus Service Ltd. v. Mangli and Others, 1976 A.C.J. 184 S.C.

that he lost control of the vehicle because the steering did not work. He died during the pendency of the proceeding, and so had no opportunity to substantiate his stand. But that cannot be held to have prevented the plaintiff from bringing a suit against the defendant for vicarious liability. The defendant had not discharged the burden shifted on to him and so was held liable for negligence. Cases referred in support of this decision were Syad Akabar v. State of Karnataka\textsuperscript{243} and Gobald Motor Service Ltd. v. R.M.K. Velusami.\textsuperscript{244}

\textbf{State of Punjab v. Harbhajun Lai Kochhas and others}\textsuperscript{245} is a case where a passenger bus belonging to state of Punjab left the last stop and traveled a distance of about 200 meters, the bus went off the road rolled down into the khad. Some of the passengers had died while some received injuries. It was averted that the accident took place due to rash and negligent driving of the driver defendant. The passengers found that the driver driving the bus in an irresponsible manner and warned him twice for that. The driver was in the habit of suddenly applying the brakes and giving a great jolt to all the passengers. The driver overtook some stationary vehicle near the place of the accident and while he did do lost control of the bus because of its speed, with the result that the bus went off the road and rolled down the khad. The driver could not control the bus and for that reason it rolled down immediately. There was no evidence on record to show that at the time of the accident the steering got jammed. The bus must have been inspected mechanically by the experts after the accident. That evidence was available to the experts after the accident. That evidence was available to the defendant owner. But it was not produced. The condition of the bus about its road-worthiness was within the special knowledge of the defendants and

\textsuperscript{245} State of Punjab v. Harbhajun Lai Kochhas and others, 1980 A.C.J. 437 H.P.
it was for them to prove that there was some latent defect in the bus which resulted in the alleged jamming of the steering system.

The High Court of Himachal Pradesh held that the facts as described no doubt prove that the maxim of res ipsa loquitur is applicable in the circumstances of the present case. The court found that the bus had no latent defect, it should not have gone off the road and rolled down the khad but for the negligence on the part of the defendant driver. Hence defendants were held liable. The cases referred in support were **Barkway v. South Wales Transport Co. Ltd.**, 246 **Krishna Bus Service Ltd. v. Mangli and Others**, 247 **Minu B Mehta v. Balakrishna Ramachandra Nayar and another**, 248 **Syad Akbar v. State of Karnataka**. 249

(e) Passengers Falling Down While Boarding/Sitting on the Vehicle

In **Gousipala Manemma v. Andhra Pradesh State Road Transport Corporation and another** 250 case, the driver accelerated speed of the bus without caring to see that all the passengers had boarded the bus safely and a passenger who was boarding the bus was thrown out and sustained fatal injuries. The driver, despite shouting by other passengers, did not stop the bus. A friend of the deceased who was travelling with him corroborated the claimant’s version. The F.I.R. did not contain the number of the bus and the name of the driver and it shows that the deceased fell down from the bus while boarding due to accidental slip. The Tribunal did not believe the evidence of the claimant’s witness on the ground that he was a friend of the deceased. The driver who was the best witness to explain the circumstances

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247 Krishna Bus Service Ltd. v. Mangli and Others, 1976 A.C.J. 183 S.C.
250 Gousipala Manemma v. Andhra Pradesh State Road Transport Corporation and another, 2001 A.C.J. 901, A.P.
of the accident was not examined. The tribunal held that there was no negligence of the bus driver. The Appellate Court applied the doctrine of res ipsa loquitur and observed that once the accident was proved by the claimant, it was for the corporation to prove that there was no negligence of the bus driver. Therefore the Appellate Court reversed the finding and held that bus driver was rash and negligent in causing the accident.

In *Geeta Bai and others v. Ram Singh and others*\(^2\) case, the driver of a tractor took a sudden turn without reducing speed and a labourer sitting on the tractor was thrown on the ground and was crushed under the wheel of the trolley. An eyewitness who was travelling on the same vehicle corroborated claimant’s version. The Tribunal held that claimants failed to establish rash and negligent driving of the tractor driver and dismissed the claim application. Appellate Court observed that taking a sudden turn at the same speed shows rash and negligent driving and even otherwise principle of res ipsa loquitur is applicable. The Tribunal’s finding was reversed. Appeal Court held that tractor driver caused the accident due to his rash and negligent driving.

In a case *Babu Singh v. Champa Devi and others*\(^2\) the deceased was going on his cart. A truck came from behind and smashed the buffalo cart, with the result that the deceased and the buffalo died on the spot and the cart was badly damaged.

The cart was going on the left of the road in the same direction, and the road was 12 feet wide. There was no justification for the truck to collide with the cart if the driver was vigilant enough. The extent of damage done was also relevant and material to assess the speed of the truck 20 or 25

\(^2\) *Geeta Bai and others v. Ram Singh and others*, 1998 A.C.J. 1231 M.P.

kilometers per hour on a clear road may not be excessive speed, but it will be a negligent speed at a place where there the road is narrow. The court considered the views expressed in *Anchor Products Ltd. v. Hedge* \(^{253}\) and the evidence on record and inferred that res ipsa loquitur applied in this case to show negligence of the truck driver.

The defendant stated later that a bus was intervening between the cart and his truck with the result that the truck driver could not see the cart. But the court disbelieved this story, since there is no proper supporting evidence. Hence the court was in full agreement with the finding of the tribunal that the accident was the result of the negligence act of the truck driver.

It is the duty of the driver and the conductor to see that passengers do not fall and get injured. The above accident is a clear case of negligence and the principle of res ipsa loquitur applied.

### (f) Motor Cycle/Scooter Accident Involving Pillion Riders

In *S.K. Bhatia and another v. Jaspal Singh Mann and another* \(^{254}\) case, a motor cycle going a fast speed skidded and the pillion rider (second person sitting on a motor cycle) sustained fatal injuries. The doctrine of res ipsa loquitur was applicable and the motor-cyclist was negligent in causing the accident since it is not a case of collusion between two vehicles.

Bhawani Singh, J. observed,

“It is in evidence that the motor cycle was lying in the middle of the road where the accident had taken place. The road was not wet and it is difficult to believe the story set up by Respondents No. 1 that the deceased might have lost balance and fallen down the seat. It is not a case of collision...

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\(^{254}\) *S.K. Bhatia and another v. Jaspal Singh Mann and another*, 1990 A.C.J. 13, H.P.
between two vehicles and is a case where the maxim res ipsa loquitur is applicable and it can be said that in view of the evidence on record as to the fast speed of the vehicle and nature of the road, the accident took place because of the negligent driving by respondent No. 1 and the deceased died as a result of the injuries sustained by him due to the accident”. 255

In Tilak Singh v. Shahi Bijulwan and Others256 case, a scooter skidded and fell in a nalla resulting in the death of pillion rider. The defence was that the scooter skidded due to bajri lying on the road. The scooterist admitted to having seen the bajri but continued to drive at the same speed. Skidding of the vehicle across the 20 feet wide road indicates that the vehicle was being driven at fast speed and the scooterist failed to take necessary precautions while driving. Tribunal applied the doctrine of res ipsa loquitur and held that accident occurred due to rash and negligent driving of the scooter. The tribunal’s finding was upheld in appeal.

R.L.Khurana, J. observed,

“It appears that in spite of having seen the bajri, the appellant continued driving at the same speed, and as a result the scooter skidded from the left side of the road to the right side and after having gone off the road had fallen into a nalla shows that the scooter was being driven at a very high speed. The appellant, therefore, failed to take the necessary precautions expected of him while driving the scooter. The learned Tribunal by applying the principle of res ipsa loquitur, has rightly held that the accident had taken place due to rash and negligent driving on the part of the appellant”. 257

256 Tilak Singh v. Shahi Bijulwan and Others, 1999 A.C.J. 661, H.P.
257 Ibid. at 663.
These two are the cases in which the accidents were caused due to fast speed of the vehicles and skid causing death of one pillion rider and fatal injuries to another pillion rider. In both the cases principle of res ipsa loquitur was applied.

**(g) Parking Vehicles on Public Places Leaving the Key**

In *Venkatachalam v. Sundarambal Ammal and another* case, the driver parked the bus in the bus stand. The driver and the conductor left the bus unattended with the ignition key in the bus. A third person drove the bus out of the stand and dashed against a shop causing damage to the building shutter, cycles etc. The owner of the bus contended that the third person was not connected with him, he was not authorized and there was no relation of master and servant between the owner and the third person.

It was held that the owner of the bus is liable for the damages because the driver was negligent and he did not take due precaution in taking away the ignition key so as to rule out the possibility of somebody meddling with the bus and as such the owner was vicariously liable for the damages. The doctrine of res ipsa loquitur was applicable.

Ratnam Justice held that ordinarily, when a vehicle is parked and the driver is desirous of going away the place where the vehicle is so parked, certain elementary precautions have to be taken to see to it that the vehicle is stationed in such a manner that nobody can attempt to move or drive the vehicle from the place where it is parked. In this case it clearly indicates that R.W.2 the driver of the vehicle did not take all the necessary precautions for parking the bus in such a manner as to rule out the possibility of somebody meddling with the bus during his absence and

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thereby causing an accident. The driver of the bus R.W.2 in this case, has facilitated and assisted the occurring of the accident by leaving the key in the vehicle itself. The negligence of the driver in having so left the key in the vehicle was the primary cause of the accident. The driver while leaving the bus had taken care to remove the starting key and had also taken other precautions to ensure that the vehicle could not be moved during his absence then different considerations may arise. But such is not the case here.

The leaving of the ignition key by the driver had facilitated the person who drove the vehicle at the time of the accident, to start the vehicle and also drive the same. The accident could have been averted or avoided if the driver had not left the ignition key in the bus. In other words this would be a cause to which the principle of res ipsa loquitur would apply. The accident in this case had taken place only on account of the key of the bus having been left in the bus when the bus was not attended to either by the driver or by the conductor. Under those circumstances the appellant as the owner of the vehicle would undoubtedly be liable for the accident that had been caused by the negligence of his own servant R.W.2. In this view, it is really unnecessary to deal with or examine whether the person who drove the bus was a broker, he was a broker or not and whether even if he was not such a broker, he was one who had been authorized by the driver to drive the bus or not and whether on that basis the appellant could avoid his liability.259

In Dwarka Prasad Jhunjhunwala and another v. Shushila Devi and Others260 case, the driver parked the car leaving the key in it by mistake. A third person stated the car and caused the accident. It was held that the

259 Ibid. at 516.
owner of car is held that the owner of car is held liable for the negligent act of his driver the principle of res ipsa loquitur is applied.

Harilal Agrawal, J. observed:

“two witnesses were examined on behalf of the appellant. It is not necessary to advert to their evidence on the record as the learned counsel for both the parties did not challenge any of the finding recorded by the learned District Judge. He accepted the case of the appellants regarding the manner of occurrence, namely, that the car was started by some unknown person unnoticed by anybody, and in course of the movement of the car, it knocked the deceased against a wall resulting in his death as already said earlier. By applying the rule of res ipsa loquitur the learned judge has rightly put the burden of proof on the appellants. On the facts of the present case is obvious that here the driver had not permitted anybody to drive the vehicle. He might not even be expecting such an eventuality, but none-the-less, his omission in not taking the precaution just mentioned above would be a negligent act”.

These above two cases very clearly show that the principle res ipsa loquitur is applied. Leaving the key in the parked vehicle itself gives scope for others to handle the vehicles. Which itself is negligence. Also while parking the vehicle on a slope one has to take more case to see that the vehicle does not slide.

(h) Motor Vehicles Dashing Against Trees

In Hindustan Aeronatics v. T. Venu and another,262 the plaintiff boarded a bus belonging to Hindustan Aeronautics Ltd. when it approached a

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261 Ibid. at 572.
262 Hindustan Aeronatics v. T. Venu and another, 1972 A.C.J. 266, Mys.
particular spot, its right wheel went over the pit about 1 ½ feet in diameter which was on the right, there was a jerk, and suddenly took a turn towards right and hit a tree at a distance of nearly 25 ft. which gave way and there after it dashed against another tree. The plaintiff who was sitting near the windscreen on the left side of the driver sustained a compound fracture. The axle centre bolt was cut. Steering turned towards right. This was the reason given by the driver. He admitted that he was driving the bus on that road even prior to the accident; he saw the pit even on his earlier trips and used to slow down. He stated that through he applied brakes, the bus did not stop. It dragged till it hit the tree. He did not specify at what speed he was driving at that time.

Evidence showed that the driver had not slowed down the bus nor attempted to do so when the bus was approaching the pit. There was also evidence of the S.I. that the bus swerved to the right because the driver wanted to avoid collision with another bus which was destructive of the theory of the breakage of the bolt, put in defence. There was no report about the regular inspection or maintenance of the vehicle.

The court held that the evidence is sufficient to infer rash and negligence driving. The maxim res ipsa loquitur was attracted. The burden on the defendant did not discharge to the satisfaction of the court.

**Sardar Mohan Singh Bedi v. Mano Maya** is a case, where plaintiff claimed compensation for the death of her husband in a motor vehicle accident. The owner of the motor vehicle caused the accident. The deceased was traveling at the time of the accident in the truck. According to plaintiff the accident occurred due to rash and negligent driving by the defendant owner. The defendant’s plea was that the accident was not due to rash and

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negligent driving. It was also contended that there was no direct evidence proving that the truck was being driven rashly and negligently. The evidence in this case disclosed that the driver hit an electric pole and then against a tree which was there on the left flank on the road.

As a result of the impact the electric pole was damaged and the tree was uprooted. Both the front wheels were pulled out and thrown behind the truck. The injuries on the deceased are clear indication of the great impact which was the result of the accident. It was not disputed that the engine of the truck was very badly damaged. From all these facts and circumstances, the Court came to the conclusion that the truck in question was being driven rashly and negligently at the time of the accident. These circumstances speak for themselves and in the absence of any satisfactory explanation by the defendant regarding the accident, affirmed the decision of the tribunal.

In Bhagwat Singh and another v. Ram Pyari Bai and others case, the deceased was found dead with his cycle lying near his body and the truck was lying in a damaged condition after having dashed against a road side tree. In such a situation the doctrine of res ipsa loquitur could be appropriately applied. In this case the driver remained ex-parte and the defendants failed to prove that the accident did not take place due to negligence of the driver. The Tribunal was justified in holding that the accident took place because of negligence of the driver of the truck.

In Maya Devi v. Kartav Bus Service Ltd. and Others case, the bus was driven at a fast speed and while overtaking a truck, the driver suddenly noticed another bus coming from the opposite direction. The driver, while

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264 Bhagwat Singh and another v. Ram Pyari Bai and others, 1991 A.C.J. 1115, M.P.
265 Maya Devi v. Kartav Bus Service Ltd. and Others, 1987 A.C.J. 145, P & H.
giving way to the other bus, lost control and hit into a tree resulting in the
death of one of its passengers. The respondent’s contention that stub-axle
and tie-rod of the bus broke while going over a slight bump on the road and
the driver lost control of the bus did not find mention in the written
statement. It would appear that if at all the stub axle had broken it was by
the bus hitting against the tree.

S. S. Sodhi J Observed:

“There is clearly no warrant to attribute the present accident to any latent
defect which could spare the bus driver from blame for the accident. Indeed, the manner in which the accident occurred clearly attracted the
maxim res ipsa loquitur. The testimony of the claimant’s witness in fact
clearly established that the accident here occurred entirely due to the rash
and negligent driving of the bus driver. The finding on the issue of
negligence to the contrary, as recorded by the Tribunal cannot, therefore, be
sustained”.

In State of Orissa and another v. Nalini Kumari Patnaik and
others

case, a jeep, while negotiating a U turn dashed against a tree and
then over turned and then moved away a distance of 150 feet from the road.
Its passenger’s were thrown off resulting in the death of one passenger and
injuries to others. The doctrine of res ipsa loquitur was attracted; and the
presumption was that the vehicle was being driven rashly and negligently
causing the accident. “Neither the driver, who was driving the vehicle, nor
any other person was examined to say how in fact the accident took place.
The Tribunal was, therefore, right in drawing presumption of negligence
from the manifest circumstances of the case”.

267 Ibid. at 127.
In *Sumati Debinath v. Sunil Kumar Sen and another*\(^{268}\), a mini bus being driven at fast speed went off the road, dashed against a tree and overturned. A passenger in the bus sustained fatal injuries. The court observed that the driver was not vigilant to see it there was any impediment on the way and held that the accident occurred on account of rash and negligent driving on the part of the driver. “Where the vehicles did not go in the usual manner, went off the road and dashed against a tree, then the principle of res ipsa loquitur is applicable and the burden of proof shifts on to the other party”.\(^{269}\)

(i) **Accident Due to Explosion of Tankers/Fire in Motor Vehicles**

*Oriental Fire and General insurance Co. Ltd. v. Suman Navnath Rajguru and Others*\(^{270}\) is a case of accident caused by or arising out of use of vehicle in a public place. The deceased was walking along the road when an oil tanker parked near the footpath, exploded. The deceased was seriously injured and succumbed to injuries later. The insurance company contended that it was not liable as the vehicle was not in state of locomotion. It was held that the injury arose out of use of vehicle and owner and insurer held liable. An Oil tanker normally does not have tendency to burst into flames and if such a situation occurs under the principle of res ipsa loquitur, the owner of the vehicle will prima facie be guilty of negligence:

It is observed by Vaze, Judge that there is no force in this contention of the learned counsel for the insurance company, because according to the evidence of Barikoo Rajguru a nephew of the deceased, who visited the

\(^{268}\) *Sumati Debinath v. Sunil Kumar Sen and another*, 1994 A.C.J. 734, Gau.

\(^{269}\) Ibid. at 737.

spot of accident, the green coloured tanker was standing near the footpath on the road and not in any garage and the dead body of Navnath was found at a distance of about 10 feet from the tanker.

As regards the question of negligence, it need not be emphasized that the oil tanker normally does not have tendency to burst into flames and if such a situation occurs under the principle of res ipsa loquitur, the owner of the vehicle will prima facie guilty of negligence. The poor and innocent cobbler who was moving by the side of the parked vehicle on the road had no reason to suspect that there is any lurking danger in a parked tanker, nor is there any suggestion of arson by the claimants”.

In Shyam Sunder and others v. The State of Rajasthan case, wife and children of the deceased who died in the accident were the plaintiffs.

After traveling for 4 miles from the last stop 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 the deceased and other persons jumped out of the truck. While doing so the deceased struck against the stone lying by the side of the road and died instantaneously.

The Supreme Court referred, in this case, to the following cases and authorities, i.e., judgement of Earl C.J. in Scott v. London and St. Katherine Docks, Bollord v. North British Railway Co., Barkway v. S.Wales Transport Co., Lord Macmillan’s dissenting judgement in Jones v. Great Western, and John G. Fleming view regarding burden of proof and the application of res ipsa loquitur.

\[^{271}\text{Ibid. at 244.}\]
\[^{272}\text{Shyam Sunder and others v. The State of Rajasthan, 1974 A.C.J. 296 S.C.}\]
\[^{273}\text{Scott v. London and St. Katherine Docks, (1865) 3 H & C. 598.}\]
\[^{274}\text{Bollord v. North British Railway Co., (1925) S.C. 43, H.L.}\]
\[^{275}\text{Barkway v. S.Wales Transport Co., (1950) 1 All E.R. 292.}\]
\[^{276}\text{Jones v. Great Western, (1930) T.L.R. 47.}\]
\[^{277}\text{ resolves the question.}\]
After considering the above views, the Supreme Court gave judgement that the District Judge was correct in inferring negligence on the part of the driver. Generally speaking, an ordinary road worthy 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 every 6 to 7 miles of the journey. The vehicle took 9 hours to cover the distance of 70 miles. 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 witness that driver knew about the defective condition of the truck when he started from the last stop.

It is clear 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 show 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 the maxim res ipsa loquitur applies. The Supreme Court held the defendant liable.

In these above two cases the principle is applied for their negligence. The vehicles were not in roadworthy condition. Hence the accident was caused and people died. It is always dangerous to keep such vehicles on the road without taking proper care.

(j) **Motor Accidents Due to Tyre Burst**

In *Sewassam Alias Sewan v. Nanhe Khan alias Asgar Begand others*\(^{278}\) case, a truck driven at excessive speed turned turtle and a labourer in the

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\(^{278}\) *Sewassam Alias Sewan v. Nanhe Khan alias Asgar Begand others*, 1987 A.C.J. 354, M.P.
truck sustained injuries. The owner/driver contended that the accident took place due to tyre burst. Where mechanical defect or tyre burst is pleaded as cause of accident, then responsibility lies on the owner/driver to discharge the burden. Absence of reasonable explanation affords presumption that the accident arose for want of care and the doctrine of res ipsa loquitur applies. It was held that the driver of the vehicle was responsible for the mishap.

B. M. Lal, J. observed:

“As far as rash and negligent driving of the truck is concerned, from the perusal of the record, including the evidence of the parties, it appears that there is sufficient material to reach the conclusion that the truck was driven at an excessive speed. Although the cleaner of the truck, Barbal stated that the accident took place due to bursting of the tyre, yet Ghasiram (A.W. 2) and Sitaram (A.W.3) who went in the truck at the time of the accident have deposed that due to rash and negligent driving of the truck, the alleged accident had taken place. In such circumstances where it is pleaded by the truck owner or the driver that suddenly on account of some mechanical defect or bursting of the tyre, the accident had taken place, then strict burden of proof lies on them to discharge their liability and the doctrine of res ipsa loquitur applies in the cases of motor accidents that where the thing is shown to be under the control and the management of the respondent owner of the truck on his servant driver and the accident in 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 reasonable explanation by the truck owner or his driver that the accident arose for want of care”.

279 Ibid. at 356.
In *J & K State Road Transport Corporation v. Presiding Officer M.A.C.T. and others* footnotes, the tyre had burst and the vehicle swerved to a side killing a pedestrian. No evidence to show the mileage down by the tyre and that the tyre was periodically examined, and it was in a roadworthy condition. It was held the owner was held liable. The doctrine of res ipsa loquitur is was applicable and the owner failed to show that he had taken proper care to ensure road worthiness of the vehicle.

Dr. A.S. Anand, Chief Justice observed that there is no evidence brought on the record by the appellant to show the total mileage done by the tyre which had burst. No witness has come forth to say on behalf of the appellant examined by a mechanic with a view to knowing its condition. The solitary statement of respondent No. 3, driver of the offending vehicle, who stated that the vehicle had been checked even one day prior to the accident by some mechanic who had found that the tyre was in a good condition, is not sufficient to discharge the onus of negativating negligence. The mechanic, who, according to the deposition of the driver had examined the vehicle and the tyres of the vehicle one day prior to the accident, was not examined by the appellant for reasons best known to it. Even his report was not brought on record, an inference would, therefore, be available to be drawn against the appellant that, had the mechanic been examined, his evidence would have gone against the appellant.

In the absence of any evidence led by the appellant to show that it had taken proper care to ensure the road worthiness of the vehicle which, in the case of the public utility service, was its paramount duty and obligation and that the bursting of the tyre took place on account of some latent defect which was not discovered despite reasonable care and diligence having been

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taken, there is no escape from the conclusion that the doctrine of res ipsa loquitur applies and the accident, in the present case, must be attributed to the negligence of the driver and the owner of the offending vehicle. Issue No. 1 in my opinion, was, therefore, correctly decided by the learned Motor Accidents Claims Tribunal in favour of the claimant and against the owner and driver and I confirm the finding on that issue.\textsuperscript{281}

In the case of \textit{Ganga Rama and another v. Kamalabai and others}\textsuperscript{282} defendant driver was driving the taxi in a rash and negligent manner as a result of which the front right tyre burst and the taxi left the road, went on its off-side and toppled, as a result of which the two passengers in the taxi died on the spot. Plaintiffs were related to one of the deceased. The law on this point was settled when the vehicle which was admitted in control of the driver, left the road, went on its off side and toppled, without doubt, the doctrine res ipsa loquitur was attracted. The burden shifts to the defendant. The defendants alleged that the accident was inevitable. The tyres were new. The front right wheel tyre burst, as a result of which the driver lost control over the vehicle. The vehicle turned a somersault.

There was no evidence produced before the tribunal in that behalf. Normally a new tyre does not burst. The opinion of a layman without giving any basis that the tyre was a new one cannot be relied upon. Hence the driver and the owner i.e. defendants failed to discharge the onus placed on them to establish that they had taken all care and precaution to keep the tyre roadworthy. Thus the court held that the defendants were liable. Two decided cases were considered in support of this decision \textit{Gobalad Motor}

\textsuperscript{281}\textit{Ibid.} at 947.
\textsuperscript{282}\textit{Ganga Rama and another v. Kamalabai and others}, 1979 A.C.J. 393 Kar.

In Iswari Yatayat Cooperative Society Ltd. And another v. Umroo Singh case, the plaintiff was sitting on the seat above the mudguard of a bus. When the tyre of the bus got burst, an iron sheet of the mudguard came up and injured him. The Judge expressed his opinion that in this case the doctrine of res ipsa loquitur was attracted. Normally when the tyre burst, that by itself does not ordinarily result in flying of the metal sheet of the body of the bus.

The defendant driver gave different versions about the cause of the accident that it was due to the piercing of the metal sheet of the bus. He also said, changing his version, that the tyre burst was due to the crushing of a horseshoe under the wheel. The defendant’s conduct showed that he could not give definite cause for it. The judge held that in the absence of satisfactory explanation the defendants were held to be negligent and liable for the consequences.

In Calcutta State Transport Corporation Calcutta v. Kamal Prakash De case, the injured person occupied a seat just over the rear left wheel on the lower dock before the accident. The inner tyre of the said rear left wheel had a burst, as a result whereof he received bleeding injuries and a fracture of both the bones of his left leg. The bus was overloaded and the passengers duly alighted. The defendants said that the accident in question was an act of God (Vis Major). They contended that the accident could not be foreseen and that the driver of the bus had no control over the same.

The judge expressed his view that the onus of proof was not discharged by the defendants. It is the duty and the obligation of the owner in a case like this to prove and establish by reliable evidence that all the necessary precaution and due care were taken for maintaining and offering proper and sufficient service to the travelling public. Here the defendants significantly failed to discharge the said onus and the rule res ipsa loquitur applied. The defendants were held liable citing the **Henderson’s case**\(^{287}\).

The above five accident cases clearly indicate that they were caused due burst injuring and killing the passengers. The type burst was caused due to overloading, due to negligent driving and improper maintenance of the vehicles. The principle of res ipsa loquitur was applied in 100% cases.

**(k) Motor Accidents Due to Mechanical Breakdown**

In **Kartik Ram and another v. Chandra Gopal and others**\(^{288}\) case, death of a person sitting on the mudguard of tractor occurred when the tractor turned turtle. Defence was that the accident occurred due to breaking of connecting hooks coupling the trolley with the tractor. No evidence that the connecting rod and tie-rod were checked before putting tractor-trolley on road for transporting and found to be in good and roadworthy condition. It was held that the principle of res ipsa loquitur was applicable and the driver of tractor-trolley was rash and negligent in causing the accident. Presumption of negligence has not been rebutted and it was not proved that there was no want of reasonable care and the vehicle was kept in roadworthy condition.

S. K. Dubey, Judge held that no evidence has been led by the owner and the insurer that the connecting rod or its tie-rod was not weak when it was


\(^{288}\) **Kartik Ram and another v. Chandra Gopal and others**, 1998 A.C.J. 1118 M.P.
checked before the tractor-trolley was put on road for transporting paddy. No mechanical expert was also examined that the connecting rod and its tie-rod were in good and road worthy condition and were able to carry load in the trolley. In the circumstances, when the accident is admitted and the defence taken by the owner of the vehicle that it was due to mechanical breakdown due to latent defect has not been established, even if the witnesses examined who were travelling in the trolley could not see the manner and the circumstances in which the accident occurred to remove hardship to claimants the principle of res ipsa loquitur could be safely applied, which is a rule of evidence departing from the rule that it is for the claimants to prove negligence, but in such cases considerable hardship is caused to claimants as the true cause of the accident is not known to them but is solely within the knowledge of the person who caused it.

Claimants can prove the accident but cannot prove how it happened to establish negligence. The present case is that where the accident speaks for itself. When this principle is applied, the burden shifts upon the owner and driver to establish that the accident was not caused due to their negligence which in the case has not been discharged. The presumption of negligence is not rebutted by the mere fact that there was mechanical breakdown but the burden was further on them to prove that there was no want of reasonable care and vehicle was kept in order.289

In Anandi Ravji Vats v. Oriental Insurance and others290 a case of breaking away of universal joint the bus driver, at fast speed, knocked down a pedestrian girl causing injuries. The driver contended that it was not the bus which knocked the injured, but the universal joint of the bus suddenly stripped itself apart and hit her and this was an inevitable accident.

289 Ibid. at 1121.
as the eventuality could not be foreseen. No evidence to the effect that vehicle was subjected to rigorous periodical check within reasonable time before embarking upon the journey and each part was found in perfectly fit condition and subsequent breaking away of the universal joint could not be attributed to the initial weak or fault condition.

Coming out of such a part would give rise to the presumption that the requisite initial care was not taken by the driver or the owner. Respondents failed to rebut this presumption. Trial court accepted the condition of the driver and dismissed the insured’s suit. It was held in appeal that failure to take care constitutes negligence and owner and driver are liable; owner’s liability is not only vicarious for the negligence of the driver, but he is himself negligent in not keeping the vehicle in a roadworthy condition.

In *Jai Singh v. Gashwal Motor Owners and Others*,

291

case plaintiff filed a suit for recovery of damages arising from personal injury caused to him by motor accident. It was caused due to breaking down of spindle of front wheel of the bus. It was held that burden lay on the owner to prove that he took all the necessary care and caution, but even then accident could not be prevented. The maxim res ipsa loquitur was applicable.

D.Nandan, J observed:

“The motor bus was undoubtedly under the management of the defendants and spindles of motor buses do not in ordinary course of things break down unless of course the case is of negligence in running the bus. It follows that the fact that the accident was caused by the breaking down of the spindle speaks for itself and shows that the defendants must have been negligent

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and defendants can rebut that inference only showing that they used all the
necessary care and caution and that the accident could not be prevented in
spite of the same.”

In State of Rajasthan and others v. Lakshmi Sharma and others case, a jeep skidded, over turned and fell in a deep ditch resulting in death of a passenger. The defence was that the accident occurred due to the breaking of tie-rod. It was neither pleaded nor proved that the jeep was regularly maintained in a roadworthy condition by all necessary care and precautions having been taken. No evidence was provided that the vehicle was checked before the commencement of the journey. It was held that the principle of res ipsa loquitur was applicable and the driver was rash and negligent in causing the accident.

In State of Madhya Pradesh through Collector, Jhabua and another v. Ashadevi and others case, the driver lost control of the police vehicle and it dashed against a culvert and turned turtle. Several constables travelling in the vehicle died and many sustained injuries. The driver contended that he saw some cows and buffaloes on the road after the culvert and applied the brakes, but found that the brakes were not working. Eye-witnesses deposed that the vehicle was being driven at an excessive speed and there was no effective cross-examination of the eye-witnesses. Opposite parties neither pleaded mechanical breakdown nor led evidence of any mechanical expert and about day to day maintenance of the vehicle. Inspection report of the mechanical expert after the accident was not produced. Tribunal found that the accident occurred due to sudden failure to brake and driver was not negligent. Appellate court by applying the

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292 Ibid., at 405.
294 State of Madhya Pradesh through Collector, Jhabua and another v. Ashadevi and others, 1988 A.C.J. 846, M.P.
principle of res ipsa loquitur reversed the finding and held that accident was caused due to rash and negligent driving of the vehicle.

S.K. Dubey, J observed that after a careful consideration of the pleadings of the parties and the evidence on record, we are of the opinion that the Tribunal erred in accepting the defence of the failure of brakes on the bare statement of the driver. It is also settled that the tribunal, while deciding cases of motor accidents is as much bound by the pleadings of the parties as the civil court, through pleadings in cases of claimants are liberally constructed. No amount of evidence can be looked into without the pleadings and issues. The plea of mechanical breakdown, sudden failure of brakes or the latent defect or of inevitable accident, is a special plea within the knowledge of the driver and the owner and it should be specifically pleaded, issue should be raised and that such plea should be proved by cogent and legal evidence that reasonable care in inspection and maintenance of the vehicle was properly taken, it was regularly checked and was checked on the ill-fated day of the accident and the vehicle was found in order, but, even after exercising due attention and care the accident could not be avoided and occurred due to the latent defect or a sudden failure of the brakes.  

In **Perumal & others v. G. Ellesamy and another**, the deceased was actually standing on the steps of a tea stall of the pedestrian pavement, facing the stall which was on the left side of the road. He was taking tea. It was then that a lorry swerved to the extreme left, jumped over the pavement and crashed into the tea stall, in the process of which deceased was caught between the lorry and the tea stall and was crushed to death. Another person was also injured in the accident. The front part of the tea stall and

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southern walls were found badly damaged. The driver of the lorry said that two bullock carts were going on his right side. He overtook the two carts and then wanted to bring the lorry to the centre of the road, then the steering began to wobble and turned left and could not be brought to the normal position and that when he applied the brakes they failed and therefore the vehicle got over the platform on the extreme left side and crashed into the tea stall and then came to a stop. The left front wheel was found detached and lying on the left side of the lorry. It was found that the brakes of the vehicle were efficient.

Under such circumstances the doctrine res ipsa loquitur came into play. The mere fact of the accident is prima facie evidence of negligence. Then the burden of proof is on the defendant to explain and to show that it occurred without fault.

There was no evidence as to whether the sub nuts broke or slipped and why the left front wheel came off. If it was due to mechanical defect, there was no evidence that the defendants took all reasonable care to maintain the vehicle in proper condition to avoid such defect. The defendants had not discharged the burden of rebutting the presumption arising from the doctrine res ipsa loquitur. The Court referred to the views of the Bingham, “Motor Claims Cases”\(^{297}\) and \textit{R v. Spuuge}\(^{298}\) in support of the decision.

In \textit{Ram Dulare Shukla v. Madhya Pradesh State Road Transport Corporation and others}\(^{299}\), the plaintiff was a passenger in a bus owned by the defendant. The bus suddenly swerved to the right, jumped over a nallah and crashed into a road side tree. As a result of the accident, plaintiff

\(^{297}\) Bingham, “\textit{Motor Claims Cases}” (6\textsuperscript{th} edition), p. 183.


\(^{299}\) \textit{Ram Dulare Shukla v. Madhya Pradesh State Road Transport Corporation and others}, 1970 A.C.J. 120 M.P.
received severe injuries. He alleged that it was due to the negligence of the driver in driving the bus at an excessive speed. But the defendant Corporation denied the allegations and gave an explanation saying that the shackle pin had fallen down as a result of which the bus went out of his control. This was an unforeseen event and, therefore, an act of God for which no liability could be imposed.

The plaintiffs said that the shackle pin was dislodged due to the violence of the impact on the tree which had the effect of shattering the bolts in the locking device fastening it. This was not proved by him. Withholding of such material evidence clearly justifies an adverse inference against the plaintiff. In the Court’s opinion, the contributory cause of the accident was a latent defect in the vehicle brought about by the slipping of the shackle-pin or the right front wheel. But not any negligence on the part of the driver in driving the bus at uncontrollable speed. The plea of res ipsa loquitur by the plaintiff was rejected in this case by the court.

(l) Motor Vehicles Turned Turtle

In Busthi Kasim Sahab (Dead) LR’s v. Mysore State Road Transport Corporation and others case, the bus was driven at fast speed while crossing a bullock cart which was stationary on the left flank of the road, went on to the kacha flank on the right side, its wheel sank in the soil and the vehicle toppled on its right side resulting in injuries to a passenger. It was raining and in rainy season the unmated portion of the road used to be rendered slushy and muddy and the driver who had been serving on the route for many months ought to be aware of it. The driver admitted that he continued to drive the vehicle in the third gear even at the time of accident.

300 Busthi Kasim Sahab (Dead) LR’s v. Mysore State Road Transport Corporation and others, 1991 A.C.J. 380, S.C.
The High Court set aside the finding and dismissed the claim. The Supreme Court held that doctrine of res ipsa loquitur is applicable and it was for the driver to explain the accident but the defence failed to produce any evidence to support that there was no negligence on the part of the bus driver and upheld the finding of the Tribunal.

Sharme J. observed, that the evidence in the case indicates that there was no traffic on the road at the time of the accident. No untoward incident took place like sudden failure of the brakes or unexpected stray cattle coming in front of the bus and still the vehicle got into trouble. In the absence of any unexpected development it was for the driver to have explained how this happened and there is no such explanation forth coming. In such a situation the principle of res ipsa loquitur applies.

The petitioner, in the circumstances, could not have proved the actual cause of the accident, and on the face of it, it was so improbable that such an accident could have happened without the negligence of the driver, that the court should presume such negligence without further evidence. The burden of such situation is on the defendant to show that the driver was not negligent and that the accident might, more probably have happened in a manner which did not connote negligence on his part, but the defence has failed to produce any evidence to support such a possibility. We therefore, agree with the finding of the trial court on this issue and set aside the judgement of the High Court.  

In G.M. Orissa State Road Transport Corporation v. Maheshwar Rout and others case, a bus went off the national highway and rolled over twice. As a result, the deceased was thrown out and died on the spot. It was

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301 Ibid. at 382.
held that presumptive evidence of rash and negligent driving and doctrine of res ipsa loquitur was applicable.

R.C. Patnaik, J. observed, that having regard to the facts and circumstances, the application of the principle res ipsa loquitur is applicable. The fact that the vehicle while moving on a national highway went off the road and rolled over twice in presumptive evidence of rash and negligent driving. The burden was on the owner to establish that there was no rashness and negligence. But no material was placed by the owner before the tribunal by way of examining witnesses of proving documents to substantiate the plea taken in the written statement. The finding of the Tribunal on the question of rashness and negligence cannot, therefore, be faulted. 303

In Rajasthan State Road Transport Corporation, Jaipur v. Narain Shankar and others, 304 many passengers lost their limbs while travelling in a bus belonging to the nationalized transport system of Rajasthan State Corporation, which was involved in an accident. The Supreme Court observed that the principle was rightly invoked by the tribunal in view of nature of accident and surrounding circumstances. A flimsy plea was put forward by the defendant to escape liability for compensation that the lights of the bus accidentally failed and therefore the unfortunate episode occurred. No reasonable proof was put forward to discharge their burden that they were not negligent. The Supreme Court held that the nature of the accident and the surrounding circumstances are such that the doctrine res ipsa loquitur was rightly invoked by the court below.

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303 Ibid. at 125.
In *M/s Automobile Transport (Rajasthan) Private Ltd., and another v. Dewalal and others* a tree was fallen on the road. Other vehicles passed on the right side, which alone provided sufficient space for the vehicle to pass. There was no sufficient space on the left side of the road. But the defendant driver drove the vehicle rashly and negligently on the left side of the tree, in spite of the protests of the occupants. The vehicle crashed into a side wall which gave way and the vehicle then over turned and fell down.

The left side rule applies only when the road is clear. In this case the road was blocked. The vehicle had to pass through the space that was available. When other vehicles successfully negotiated on the right side of the road, there was hardly any ground for the driver to defend himself. It was a case of mere error of judgment. Therefore, the High Court affirmed the findings of the tribunal that the accident occurred on account of the negligent action on the part of the defendant driver. The Judge mentioned two cases in support of his judgment one *Gobald Motor Service* and the other *Sushila Devi v. Ibrahim*.

In the case of *Krishana Bus Service Ltd., v. Smt. Mangli and another* the bus was overloaded with goods and passengers. It was drizzling the road was wet and slippery. The tie rod of the bus was not found broken but only ‘opened’ (dismantled), when it was examined by the expert motor mechanic on the day following the accident. At the time of the accident the bus was negotiating a turn and passing through the habitation of a village. Immediately before the accident the bus was making zig-zag movement and was being driven at a fast speed despite the protests and shouts of the passengers asking the driver to slow down. The speed of the

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bus at the material time was about 30 miles per hour. The bus overturned as a result of which the deceased who was the relative of the plaintiffs, died on the spot and other passengers received injuries.

The driver who knew best the relevant facts, did not appear in the witness stand to explain the circumstances in which the accident occurred.

The facts mentioned by the High Court were taken into consideration and the judgement was affirmed by the Supreme Court saying that in the peculiar circumstances a duty was cast on the driver to go dead slow. The speed 30 miles per hour in the conditions and in the situation, at the turn of the road was imprudently excessive. Had the bus been properly maintained in a sound road worthy conditions, and used with due care and driven with due caution, the tie road should not have broken loose by the fall of the wheel in the pit, hardly six inches deep, particularly when the upward thrust of the water in the pit had largely absorbed the shock of the fall. The pit was in Kacha flank and not right in the metalled portion. The driver could have with ordinary care and diligence avoided it. Thus the breaking of the tie-rod assuming it did break was at best a neutral circumstance.

At rightly pointed out by the High Court, buses in a sound roadworthy condition driven with ordinary care do not normally over turn. It would be in the driver who had special knowledge of the relevant facts to explain why the vehicle overturned. The maxim res ipsa loquitur would be attracted to such a case. Defendant’s company and the driver failed to rebut the presumption of negligence that arose from the manifold circumstance of the case. The referred cases in favour of the judgement are Barkway case and Laurie v. Regian Building Co., Ltd. 310

In General Assurance Society Limited v. Jayalakahmi Ammalj Case\textsuperscript{311}, the driver of the lorry, belonging to the third defendant, was driving the lorry. The deceased was also travelling in the lorry, as an employee under him. The lorry was proceeding at a fast speed and at that time a car came from the opposite side and the lorry after crossing the car moved on to a cement road. Then the lorry, taking a curve at a particular point, skidded and since the front left wheel moved into a pit of mud the lorry capsized and overturned. It cannot be said that this accident was due to vis major. No doubt there were heavy rains. The facts certainly show that the driver did not have control over the vehicle at that time and must have driven it at an excessive speed. The explanation given by the driver was totally unacceptable. If the driver had driven at a low speed and if he had applied the brakes the lorry would not have left the road and fallen into the pit. The res ipsa loquitur was attracted in this case. The judge agreed with the findings of the lower Court that the defendant was rash and negligent, and so held him liable. In support of this decision following cases were considered Gobald Motor Service Ltd., and another\textsuperscript{312} case, Handersons case\textsuperscript{313}, Jagat Singh and other v. Sawal Singh\textsuperscript{314}.

F. Treatment of Compensation Amount

The judgment of the Apex Court in the case titled Lilaben Udesing Gohal v. Oriental Insurance Co. Ltd\textsuperscript{315} reiterates its appreciation of the guidelines laid down in the case titled Muljibhai Ajrambhai Harijan v. United India Insurance Co. Ltd.\textsuperscript{316} as approved by the Apex Court in its earlier judgments in the cases tilted Union Carbide Corporation v. Union of

\textsuperscript{311} General Assurance Society Limited v. Jayalakahmi Ammalj, 1975 A.C.J. 159 Mad.
\textsuperscript{312} Gobald Motor Services Ltd. v. R.M.K.Veluswami, A.I.R. 1962, 1 S.C.
\textsuperscript{313} Henderson v. Henry E. Jenkins Sons, 1970 A.C.J. 185.
\textsuperscript{316} Muljibhai Ajrambhai Harijan v. United India Insurance Co. Ltd., 1983 ACJ 57 (Guj.).
India\textsuperscript{317} and General manager, Kerala State Transport Corporation v. Susamma Thomas\textsuperscript{318} regarding treatment of compensation awarded to claimants like minor, illiterate and widow etc.. The guidelines stipulated by the apex court are as under:

I. Award of Compensation in Favour of Minor Claimants

The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn\textsuperscript{319}.

II. Compensation Awarded to Illiterate Claimants

In the case of illiterate claimants also the Claims Tribunal should follow the procedures set out in case of minors above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaws, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money\textsuperscript{320}.

III. Compensation to Semi-Literate Claimants

In the case of semi/literate persons the Tribunal should ordinarily resort to the procedure set out in case of minors above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some

\textsuperscript{317} Union Carbide Corporation v. Union of India, (1991) 4 SCC 584

\textsuperscript{318} General Manager, Kerala State Transport Corporation v. Susamma Thomas, 1994 ACJ 1(SC)

\textsuperscript{319} Supra n. 315

\textsuperscript{320} Ibid.
property as mentioned in case of illiterate claimants above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid\textsuperscript{321};

\section*{IV. Compensation Amount Awarded to Literate Claimants}

In the case of literate persons also the Tribunal may resort to the procedure indicated in case of Minor Claimant above, subject to the relaxation set out in case of Illiterate and Semi-literate claimants above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other consideration, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order\textsuperscript{322}.

\section*{V. Award of Compensation to Widow Claimants}

In the case of widows the Claims Tribunal should invariably follow the procedure set out in case of Minor Claimant above\textsuperscript{323}.

\section*{VI. Withdrawal of Amount in case of Personal Injury}

In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment\textsuperscript{324}.

\textsuperscript{321} \textit{Ibid.}
\textsuperscript{322} \textit{Ibid.}
\textsuperscript{323} \textit{Ibid.}
\textsuperscript{324} \textit{Supra n. 315}
VII. Withdrawal of Amount in Case of Emergency

In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such FDR can be liquidated\textsuperscript{325}.

VIII. No Loan or Advance Against the Fixed Deposit Amount of Compensation

In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be\textsuperscript{326}.

IX. Duty of Bank to Affix Note on Fixed Deposit Receipt

We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be upto 80 percent of the amount invested and thereby defeating the very purpose of the order. We do hope that the courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the courts/Tribunals will realize their duty towards the victims of the accident so that a large part of the compensation amount is not lost to

\textsuperscript{325} Ibid.
\textsuperscript{326} Ibid.
them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the court/Tribunals.

X. Cases Settled Outside the Court

It has been observed that in claims that are settled in or outside the court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between parties, the court/Tribunal must apply these guidelines.

G. Driving Licence and Liability of Insurance Company

In the case titled New India Assurance Company v. Kamla it was held by the Hon’ble Supreme Court as under:

I. Driving Licence

Contention that insured made all due enquiries and believed bonafide that the driver employed by him had a valid driving license, in which case there was no breach of the policy condition. As we have not decided on that contention, it is open to the insured to raise it before the Claims Tribunal.

327 Ibid.
328 Ibid.
329 Ibid.
330 Ibid.
II. **Forgery of Driving Licence**

Driving Licence cannot get its forgery outfit striped off merely on account of same officer renewing the same with or without knowing it to be forged\(^{331}\).

The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority would not amount to violation of the conditions of contract or of the insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability\(^{332}\).

III. **Liability of Insurance Company**

When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions, the insurer had no liability to pay such sum to the insured\(^{333}\).

IV. **Amount paid by Insurance Company**

Now the Claims Tribunal has to decide the next question whether the insurance company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no

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\(^{331}\) *Ibid.*


\(^{333}\) *Supra* n. 329
valid licence to drive the vehicle-For that purpose, we remit the case to the Claims Tribunal\textsuperscript{334}.

V. **Policy of Insurance**

If the insurance company succeeds in establishing that there was a breach of the policy condition the claims Tribunal shall direct the insured to pay that amount to the insurer-In default, the insurer shall be allowed to recover that amount from the insured person\textsuperscript{335}.

H. **Third Party and Liability of Insurance Company.**

In case titled \textit{National Insurance co. Ltd. Vs. Santro Devi and others}\textsuperscript{336} the Hon’ble Supreme Court has discussed liability of insurance companies in validly renewed driving licence cases as under:

I. **Insurance Company cannot Refuse to Meet its Liability Qua Third Party**

The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability in as much as third party for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability qua third party\textsuperscript{337}.

\textsuperscript{334}\textit{Ibid.}
\textsuperscript{335}\textit{Ibid.}
\textsuperscript{336}\textit{Supra} n. 332
\textsuperscript{337}\textit{Ibid.}
II. Fraud Committed by the Third Party

The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute.\textsuperscript{338}

I. Grant of Compensation : Miscellaneous Trends

In \textit{Jai Prakash v. National Insurance Co. Ltd.}\textsuperscript{339} Supreme Court of India has issued a number of important guidelines for motor accidents and incidental issues. These are as under:

I. Ensuring Compensation to all victims

To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other Africans countries, Road Accident Funds have been created, managed by Road Accident Fund Commissions, thereby eliminating the need for third party insurance. A fuel levy/surcharge is collected on the sale of petrol and diesel and credited to such fund. All accident victims, without exception, are paid compensation from out of the said Fund by the Commission. But the feedback from operational statics relating to such funds is that the scheme, while successful in smaller countries, may encounter difficulties and financial

\textsuperscript{338} Ibid.
\textsuperscript{339} \textit{Jai Prakash v. National Insurance Co. Ltd.}, 2010 (2) SCC 607
deficits in larger countries like South Africa or developing countries with infrastructural deficiencies.\textsuperscript{340}

II. Collection of one time life time third party insurance premium

An alternative scheme involves the collection of a one time (life time) third party insurance premium by a Central Insurance Agency in respect of every vehicle sold (in a similar manner to the collection of life time road tax). The fund created by collection of such third party insurance can be augmented/supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. Such a hybrid model which involves collection of a fixed life time premium in regard to each vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India. This will also address a major grievance of insurance companies that their outgoings by way of compensation in motor accident claims is four times the amount received as motor insurance premium. The general insurance companies may however continue with optional insurance to provide cover against damage to the vehicle and injury to the owner.\textsuperscript{341}

III. Alternate to present system of third party insurance

A more realistic and easier alternative is to continue with the present system of third party insurance with two changes:

a. Define third party to cover any accident victim (that is any third party, other than the owner) and increasing the premium, if necessary.

\textsuperscript{340} Ibid.
\textsuperscript{341} Ibid.
b. Increase the quantum of compensation payable under section 161 of the Act in case of hit and run motor accidents.

IV. Establishment of Road Safety Bureau

India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing road safety measures and establishment of large numbers of Trauma Centres and First Aid Centres. It is also necessary to consider the establishment of a road safety bureau to lay down road safety standards and norms, enforce road safety measures, establish and run trauma centres, establish first aid centres in petrol stations and carry out research/data collection for accident prevention.

V. Unified and Comprehensive law required

Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to the Accident Tribunal and award of compensation in the Motor Vehicle Act, 1988 and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

VI. Rectification of Second Schedule to Motor Vehicles Act, 1988

The central government may consider amendment of the Second Schedule to the Act to rectify the several mistakes therein and rationalize the

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342 Ibid.
343 Ibid.
344 Ibid.
compensation payable there under, repeatedly pointed out by the Supreme Court\textsuperscript{345}.

Supreme Court of India has earlier also in two cases namely \textbf{U.P. State Road Transport Corporation v. Trilok Chandra}\textsuperscript{346} and \textbf{Sarla Verma v. Delhi Transport Corporation}\textsuperscript{347} express its views for amendment of Second Schedule to the Motor Vehicles Act, 1988.

\section*{J. Review}

The case law relating to Motor Vehicle Accident Cases, which have been judicially determined in High Courts and the Supreme Court of India have been studied, examined, analyzed and critically commented upon for the purpose of appreciating the judicial invocation and application of the evidentiary principles of No Fault Liability, Contributory Negligence, res ipsa loquitur in negligence cases along with Act of God, Absolute and Vicarious Liability etc.. These cases cover motor accidents of the nature of both collision as well as non-collision.

Today road accidents in our country has touched a new height and are increasing day by day and resultant cases relating to motor accidents are increasing in our courts. In majority of road accident cases because of rash and negligent driving, innocent person becomes victims and because of this their dependents in many cases are virtually on the streets. Because of increasing number of motor accidents and their victims, question of payment of compensation is assuming great importance in public as well as for the courts. Generally as a rule, victims of road accidents have to first establish that the accident was due to fault of the person causing injury or damage, then only court will direct for payment of compensation.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{345} \textit{Ibid.}
\item \textsuperscript{346} \textbf{U.P. State Road Transport Corporation v. Trilok Chandra}, 1996 (4) SCC 362
\item \textsuperscript{347} \textbf{Sarla Verma v. Delhi Transport Corporation}, 2009 (6) SCC 121
\end{itemize}
\end{footnotesize}
The quantum of compensation cannot be equal in two cases, even if the origin of wrong be identical, since the same accident may cause death of one but only a scratch or abrasion to the other. It is the difference which imports the idea of liability, quantitatively, the extent and qualitatively, the kind of liability. Whatever the injury or damage, no compensation can be awarded unless there are grounds to make the wrongdoer liable.\(^{348}\)

In **M.K.Kunhimohammad v. P.A.Ahmedkutty**’s\(^ {349}\) matter, the apex court had made suggestions to raise limit of the compensation payable in respect of death or permanent disablement, as a result of motor accidents, in the event of there being no proof of fault on the part of the person involved in the accident, and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in accident.

Whether force majeure or vis major can be a defence in cases of absolute or strict liability, as opposed to liability simpliciter, since the doctrine propounded in late nineteenth century must have undergone mitigation, modification or made more absolute in course of years, is a debatable question.

Normally no person is held responsible for the wrongs done by someone else. However, there are few instances wherein a person can be held liable for the conduct of another person. This liability is known as Vicarious Liability. In **Rani Devi @ Usha Rani v. Devilal**\(^ {350}\) it was held that if vehicle is used for purpose of owner or owner’s business, the act of servant would make the owner vicariously liable for payment of compensation, but where the vehicle was driven by an unauthorized person not for owner’s purpose or owner’s business, owner would not be vicariously liable.

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\(^{349}\) **M.K.Kunhimohammad v. P.A.Ahmedkutty**, 1987 (4) SCC 284

\(^{350}\) **Rani Devi @ Usha Rani v. Devilal**, 2009 ACJ 858 (Raj.)
Rules of Strict and Absolute Liability are based on the concept of ‘No fault liability’. At times a person may be held responsible for some wrong though there was no negligence or intention on his part to do such wrong. This rule was laid down by the House of Lords in *Rylands v Fletcher*. In India, this rule was formulated in the case of *M.C. Mehta v Union of India*, wherein the Supreme Court termed it as ‘Absolute Liability’ This rule was also followed in the case of Indian Council for Enviro-Legal Action v Union of India (1996). Further, section 92A of the Motor Vehicles Act, 1938 also recognises this concept as ‘liability without fault’.

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe for the protection of the interests of another person, the degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one, it is rather a comparative term.

Doctrine of last opportunity is explained in simplest way in the matter of *Municipal Corporation of Greater Bombay v. Laxman Iyer*, wherein an accident caused due to negligence of both parties, substantially, there would be contributory negligence yet even in such a case, whichever party could have avoided the consequence of other’s negligence would be liable for the accident.

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351 *M.C. Mehta v Union of India*, AIR, 1987 SC 1086