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MUNICIPAL CORPORATION OF DELHI

v.

SUBHAGWANTI & OTHERS

(With connected Appeals)

February 24, 1966

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[K. SUBBA RAO AND V. RAMASWAMI, JJ.]

Negligence—Clock tower belonging to Municipal Committee falling—Causing death of persons by—Whether doctrine of res ipsa loquitur *applies—Fatal Accidents Act,* 1885, *s.* 1*—Damages—Quantum—Principles for determining.*

C

Three suits for damages were filed by the respondents as heirs of three persons who died as a result of the collapse of the Clock Tower in Chandni Chowk, Delhi, belonging to the appellant-Corporation, formerly the Municipal Committee of Delhi. The trial court held that it was the duty of the Municipal Committee to take proper care of buildings so that they should not prove a source of danger to persons using the highway as a matter of right, and granted decrees of Rs. 25,000, Rs. 15,000 and 20,000 respectively to the plaintiffs in each of the three suits.

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On appeal to the High Court, although the decree for Rs. 25,000 in one of the suits was maintained, the amounts of Rs. 15,000 and Rs. 20,000 in the other two decrees were reduced to Rs. 7,200 and Rs. 9,000 respectively. The High Court held that the principle of *res ipsa loquitur* applied to the case and considered that it was the duty of the Municipal Committee to carry out periodical examination for the purpose of determining whether deterioration had taken place in the structure of the building and

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whether any precaution was necessary to strengthen it. Apart from superficial examination from time to time, there was no evidence of an examination ever made with a view to seeing if there were any latent defects making the building unsafe.

In the appeal to this Court, it was contended on behalf of the appellant that the High Court was wrong in applying the doctrine of *res ipsa loquitur* to this case and that the fall of the clock tower was due to an

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inevitable accident which could not have been prevented by the exercise of reasonable care or caution; that since the defects which led to the collapse were latent, the appellant could not be held guilty of negligence, and that in any event the damages awarded were excessive.

HELD : The High Court was right in applying the doctrine *res ipsa loquitur* as in the circumstances of the case the mere fact that there was a fall of the clock tower, which was exclusively under the ownership and control of the appellant, would justify raising an inference of negli-

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gence so as to establish a *prima facie* case against the appellant. [652 F, H]

There is a special obligation on the owner of adjoining premises for the safety of the structures which he keeps besides the highway. If these structures fall into disrepair so as to be of potential danger to the passers-by or to be a nuisance, the owner is liable to anyone using the highway

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who is injured by reason of the disrepair. In such a case it is no defence for the owner to prove that he neither knew nor ought to have known of the danger. In other words, the owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect. [653 E-G]

Wringe v. *Cohen*, [1940] 1 *K.B.* 229, *Mint* v. *Good*, [1951] 1. K.B. 517 *and Walsh* v. *Holst and Co. Ltd.* and *Ors.* [1958] 1 W.L.R. 800, referred to. A

The High Court had applied the correct principles in estimation of the damages in all the three appeals.

Davies v. *Powell Duffregn Associated Collieries Ltd.* [1942] A. C. 601 and *Nance* v. *British Columbia Electric Railway Company Ltd.* [1951] A.C. 601, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1102-1104 of 1963.

Appeals from the judgments and decrees dated November 27, 1959 of the Punjab High Court (Circuit Bench) at Delhi in Civil Regular First Appeals Nos. 69-D, 71-D and 85-D of 1963. C

Bishan Narain, Sardar Bahadur and Arun B. Saharya, for the appellant (in all the appeals).

N.D. Bali and Din Dayal Sharma, for the respondents (in C. As. Nos. 1102 and 1103 of 1963).

A. G. Ratnaparkhi, for respondent (in C.A. No. 1104 of 1963). D

The Judgment of the Court was delivered by

Ramaswami, J. These appeals arise out of 3 suits for damages filed by the heirs of three persons, namely Shri Ram Parkash, Shrimati Panni Devi and Sant Gopi Chand who died as a result of the collapse of the Clock Tower situated opposite the Town Hall in the main Bazar of Chandi Chowk, Delhi belonging to the appellant-Corporation, formerly the Municipal Committee of Delhi. E

Suit No. 552 of 1952 was filed by the heirs of Shri Ram Parkash, suit No. 930 of 1951 was filed by the heirs of Smt. Panni Devi and suit No. 20 of 1952 was filed by Kuldip Raj whose father, Gopi Chand was killed by the fall of the Clock Tower. All the suits were tried by the Court of Subordinate Judge, Ist Class, Delhi who disposed of all the suits by a common judgment dated July 9, 1953. The Subordinate Judge granted a decree for a sum of Rs. 25,000 to Shrimati Subhagwanti and other heirs of Ram Parkash in suit No. 552 of 1952, a sum of Rs. 15,000 to the heirs of Shrimati Panni Devi in suit No. 930 of 1951 and a sum of Rs. 20,000 to Kuldip Raj in suit No. 20 of 1952. It was held by the trial court that it was the duty of the Municipal Committee to take proper care of buildings, so that they should not prove a source of danger to persons using the highway as a matter of right. The trial court rejected the plea of the Municipal Committee that in the case of latent defects it could not be held liable and the Municipal Committee, as the owner of the buildings abutting on the highway, was liable in negligence if it did not take proper care to maintain the buildings in a safe condition. It was submitted against F G H

A the Municipal Committee before the trial court that, apart from superficial examination of the Clock Tower from time to time by the Municipal Engineer, no examination was ever made with a view to seeing if there were any latent defects making it unsafe. Aggrieved by the decree of the trial court, the Municipal Committee filed appeals in the High Court in all the three suits. On
B November 27, 1959 the High Court disposed of all the appeals by a common judgment. The decree for Rs. 25,000 in suit No. 552 of 1952 was maintained, the amount of Rs. 15,000 awarded in suit No. 930 of 1951 in favour of Munshi Lal and others was reduced to Rs. 7,200, and the amount of Rs. 20,000 awarded in suit No. 20 of 1952 was reduced to Rs. 9,000. The High Court held that the
C principle of *res ipsa loquitur* applied to the case. The High Court considered that it was the duty of the Municipal Committee to carry out periodical examination for the purpose of determining whether deterioration had taken place in the structure and whether any precaution was necessary to strengthen the building. The High Court mainly relied on the evidence of Shri B. S. Puri, Retired Chief Engineer, P.W.D., Government of India who was invited
D by the Municipal Committee to inspect the Clock Tower after its collapse and who was produced by them as their witness. The facts disclosed in his statement and that of Mr. Chakravarty, the Municipal Engineer were that the building was 80 years old and the life of the structure of the top storey, having regard to the type of mortar used, could be only 40 to 45 years and the
E middle storey could be saved for another 10 years. The High Court also took into consideration the statement of Mr. Puri to the effect that the collapse of the Clock Tower was due to thrust of the arches on the top portion. Mr. Puri was of the opinion that if an expert had examined this building specifically for the purpose he might have found out that it was likely to fall. The witness
F further disclosed that when he inspected the building after the collapse and took the mortar in his hands he found that it had deteriorated to such an extent that it was reduced to powder without any cementing properties.

These appeals are brought by the Municipal Corporation of Delhi against the decree of the High Court dated November 27,
G 1959 in First Appeals No. 69-D of 1953, No. 71-D of 1953 and No. 85-D of 1953.

The main question presented for determination in these appeals is whether the appellant was negligent in looking after and maintaining the Clock Tower and was liable to pay damages for the death of the persons resulting from its fall. It was contended, in the
H first place, by Mr. Bishen Narain on behalf of the appellant that the High Court was wrong in applying the doctrine of *res ipsa loquitur* to this case. It was argued that the fall of the Clock Tower was due to an inevitable accident which could not have been prevented

by the exercise of reasonable care or caution. It was also submitted that there was nothing in the appearance of the Clock Tower which should have put the appellant on notice with regard to the probability of danger. We are unable to accept the argument of the appellant as correct. It is true that the normal rule is that it is for the plaintiff to prove negligence and not for the defendant to disprove it. But there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part. The principle has been clearly stated in Halsbury's Laws of England, 2nd Edn., Vol. 23, at p. 671 as follows:

> "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part."

In our opinion, the doctrine of *res ipsa loquitur* applies in the circumstances of the present case. It has been found that the Clock Tower was exclusively under the ownership and control of the appellant or its servants. It has also been found by the High Court that the Clock Tower was 80 years old and the normal life of the structure of the top storey of the building, having regard to the kind of mortar used, could be only 40 or 45 years. There is also evidence of the Chief Engineer that the collapse was due to thrust of the arches on the top portion and the mortar was deteriorated to such an extent that it was reduced to powder without any cementing properties. It is also not the case of the appellant that there was any earthquake or storm or any other natural event which was unforeseen and which could have been the cause of the fall of the Clock Tower. In these circumstances, the mere fact that there was fall of the Clock Tower tells its own story in raising an inference of negligence so as to establish a *prima facie* case against the appellant.

A We shall proceed to consider the main question involved in this case namely, whether the appellant, as owner of the Clock Tower abutting on the highway, is bound to maintain it in proper state of repairs so as not to cause any injury to any member of the public using the highway and whether the appellant is liable whether the defect is patent or latent. On behalf of the appellant B Mr. Bishen Narain put forward the argument that there were no superficial signs on the structure which might have given a warning to the appellant that the Clock Tower was likely to fall. It is contended that since the defects which led to the collapse of the Clock Tower were latent the appellant could not be held guilty of negligence. It is admitted, in this case, that the Clock Tower C was built about 80 years ago and the evidence of the Chief Engineer is that the safe time-limit of existence of the building which collapsed was 40 or 45 years. In view of the fact that the building had passed its normal age at which the mortar could be expected to deteriorate it was the duty of the appellant to carry out careful and periodical inspection for the purpose of determining whether, in fact, deterioration had taken place and whether any precautions D were necessary to strengthen the building. The finding of the High Court is that there is no evidence worth the name to show that any such inspections were carried out on behalf of the appellant and, in fact, if any inspections were carried out, they were of casual and perfunctory nature. The legal position is that there is a special obligation on the owner of adjoining premises for the safety of the structures which he keeps besides the highway. If these structures E fall into disrepair so as to be of potential danger to the passers-by or to be a nuisance, the owner is liable to anyone using the highway who is injured by reason of the disrepair. In such a case it is no defence for the owner to prove that he neither knew nor ought to have known of the danger. In other words, the owner is F legally responsible irrespective of whether the damage is caused by a patent or a latent defect. In *Wringe* v. *Cohen* (1) the plaintiff was the owner of a lock-up shop in Proctor Place, Sheffield, and the defendant Cohen was the owner of the adjoining house. The defendant had let his premises to a tenant who had occupied them for about two years. It appears that the gable end of the defendant's house collapsed owing to a storm, and fell through the roof of the G plaintiff's shop. There was evidence that the wall at the gable end of the defendant's house had, owing to want of repair, become a nuisance, *i.e.*, a danger to passers-by and adjoining owners. It was held by the Court of Appeals that the defendant was liable for negligence and that if owing to want of repairs premises on a highway become dangerous and, therefore, a nuisance and a passer-by or H an adjoining owner suffers damage by the collapse the occupier or the owner if he has undertaken the duty of repair, is answerable

(1) [1940] 1 K.B. 229.

whether he knew or ought to have known of the danger or not. At page 233 of the Report Atkinson, J. states:

> "By common law it is an indictable offence for an occupier of premises on a highway to permit them to get into a dangerous condition owing to non-repair. It was not and is not necessary in an indictment to aver knowledge or means of knowledge: see Reg. v. Watson [(1703) 2 Ld. Raym. 856]. In Reg. v. Bradford Navigation Co. [(1865) 6 B. & S. 631, 651] Lord Blackburn (then Blackburn J.) laid it down as a general principle of law that persons who manage their property so as to be a public nuisance are indictable. In Attorney-General v. Tod Heatley [(1897) 1 Ch. 560] it was clearly laid down that there is an absolute duty to prevent premises becoming a nuisance. 'If I were sued for a nuisance, 'said Lindley L. J. in Rapier v. London Tramways Co. [(1893) 2 Ch. 588, 599], 'and the nuisance is proved, it is no defence on my part to say and to prove that I have taken all reasonable care to prevent it.' "

The ratio of this decision was applied by the Court of Appeals in a subsequent case in *Mint* v. *Good* (1) and also in *Walsh* v. *Holst and Co. Ltd.* and *Ors.* (2) In our opinion, the same principle is applicable in Indian law. Applying the principle to the present case it is manifest that the appellant is guilty of negligence because of the potential danger of the Clock Tower maintained by it having not been subjected to a careful and systematic inspection which it was the duty of the appellant to carry out.

The last question is regarding the quantum of damages which requires separate consideration in each case.

Section 1 of the Fatal Accidents Act, 1855 (Act XIII of 1855) reads:

> "Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.
>
> Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action the court

(1) [1951] 1 K.B. 517. (2) [1958] 1 W.L.R. 800

A may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."

This section is in substance a reproduction of the English Fatal Accidents Acts, 9 and 10 Vict. Ch. 93, known as the Lord Campbell's Acts. The scope of the corresponding provisions of the English Fatal Accidents Acts has been discussed by the House of C Lords in *Davies* v. *Powell Duffryn Associated Collieries Ltd.* (1) At page 617 of the Report Lord Wright has stated the legal position as follows:

"It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased D was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' E purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

F The same principle has been reiterated by Viscount Simon in *Nance* v. *British Columbia Electric Railway Company Ltd.* (2) In the present case of Subhagwanti etc. there is evidence that Ram Parkash deceased was 30 years old at the time of the accident, his widow Subhagwanti being aged about 28 and his son 14 and daughters 12 and 2 years old. The evidence adduced regarding the income of Ram Parkash and the amount of loss caused to his widow G and children was not satisfactory but the High Court considered that the widow and children must have been receiving at least a monthly sum of Rs. 150 for their subsistence and for the education of the children from the deceased Ram Parkash. The income was capitalised for a period of 15 years and the amount of Rs. 27,000 which was arrived at was more than what the trial court had awarded. H The High Court accordingly saw no reason for reducing the amount of damages awarded by the trial court. In the case of Tek Chand and his four children, the High Court has estimated that the pecuni-

(1) [1942] A.C. 601. (2) [1951] A.C. 601.

ary loss caused by the death of his wife should be taken to be Rs. 40 p.m. and if a period of 15 years is taken for the purpose of calculating the total sum, the amount will come to Rs. 7,200. Lastly, in the case of Kuldip Raj, the High Court has calculated the pecuniary loss at the rate of Rs. 50 p.m. and the amount of damages calculated for a period of 15 years would come to Rs. 9,000. In our opinion, the High Court has applied the correct principle in estimation of the damages in all the three appeals and learned Counsel has been unable to show that the judgment of the High Court on this aspect of the case is vitiated for any reason.

For the reasons expressed, we hold that there is no merit in these appeals which are accordingly dismissed with costs.

Appeals dismissed.