No such right has been conferred by the Opium Act. In the absence of any such right being conferred on the accused under the Opium Act, the trial has to proceed against her in accordance with the provisions of the Criminal Procedure Code.

(13) For the reasons stated, we find no merit in this revision petition and dismiss the same.

S.C. Mital, J.—I agree.

K. T. S.

APPELLATE CIVIL

Before R. N. Mittal, J.

MELA RAM—(*Claimant*)—*Appellant.*

versus

MOHAN SINGH, ETC.—*Respondents.*

F.A.O. No. 358 *of* 1971

April 3, 1978.

Motor Vehicles Act (IV of 1939)—Section 110-D—Rule of 'res ipsa *loquitur'—Meaning of—Accident due to bursting of tyre—Negligence—Whether to be proved by the claimant.*

Held that in claims for damages, in accident cases, normally the rule is that it is for the claimant to prove negligence. In some cases the above principle may cause hardship to the claimant, because it may be that the true cause of the accident lies solely within the knowledge of the respondent who caused it. This hardship is, however, avoided to a considerable extent by the maxim of *res-ipsa loquitur*. The maxim means that an accident may by its nature be more consistent with its being caused by negligence for which the respondent is responsible than by any other causes, and that in such a case the mere fact of the accident is *prima facie* evidence of such negligence. In such cases it is sufficient for the claimant to prove accident and therefrom a presumption of negligence arises. The onus then shifts on the respondent to show that the accident could not be avoided at any cost.

(Para 4)

Held that in the case of trye bursts it is not possible for the claimants to give reasons as to how the accident took place. It is for the respondents to prove that the tyre was in good condition and the accident could not be avoided.

(Rules 3 and 4)

First Appeal from the order of the court of Shri Udham Singh, Motor Accidents Claims Tribunal, Hoshiarpur, dated 12th October, 1971, dismissing the claim petition and leaving the parties to bear their own costs.

H. S. Toor Advocate, *for the appellant.*

L. M. Suri Advocate, *for respondent No. 3.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) This appeal is directed against the judgment of the Motor Accident Claims Tribunal, Hoshiarpur, dated October 12, 1971.

(2) Briefly, the facts of the case are that on June 17, 1971, Sohan Singh, a junior basic trained teacher was going to Mahilpur on a bicycle. It is alleged that Mohan Singh respondent came from opposite side driving truck No. PND 1431, rashly and negligently and struck against him (Sohan Singh). The occurrence took place on a bridge. Sohan Singh received fatal injuries and died at the spot. Mela Ram claimant, father of the deceased, filed a claim petition for recovery of Rs. 40,000 from the respondents. The claim petition was contested by the respondents who inter-alia pleaded that the accident did not take place on account of the rash and negligent driving of Mohan Singh driver but had taken place on account of bursting of a front tyre. It is further pleaded that on account of bursting of the tyre, the truck went out of control and hit the cyclist. The Tribunal held that the accident took place on account of bursting of tyre and, therefore, the respondents were not liable to pay any damages. It, in view of the aforesaid observation, did not give any finding regarding the quantum of damages. Consequently, it dismissed the claim petition.

(3) It is contended by Mr Tur, learned counsel for the appellant, that the respondents did not disclose as to what was the condition of the tyre when it burst. According to him, it was for them to prove that the tyre was in good condition and the accident could not be avoided. The learned counsel further submits that in a case of this type it is not possible for the claimants to give the reasons as to how the accident took place. He also submits that no evidence was given by the respondents that the tyre was checked occasionally and it was in a perfect condition. In the circumstances, he forcefully urges that the negligence of the respondents is to be inferred.

(4) I have given thoughful consideration to the arguments of the learned counsel and find force in it. In claims for damages, in accident cases, normally the rule is that it is for the claimant to prove negligence. In some cases the above principle may cause hardship to the claimant, because it may be that the true cause of the accident lies solely within the knowledge of the respondents, who caused it. This hardship is, however, avoided to a considerable extent by the maxim of *res ipsa loquitur*. The maxim means that an accident may by its nature be more consistent with its being caused by negligence for which the respondent is responsible than by any other causes, and that in such a case the mere fact of the accident is *prima facie* evidence of such negligence. In such cases it is sufficient for the claimant to prove accident and therefrom a presumption of negligence arises. The onus then shifts on to the respondent to show that the accident could not be avoided at any cost. Adverting to the facts of the present case, it is evident from the evidence of the respondents that the accident took place on account of bursting of the tyre. The main question that requires consideration is that at the time of accident in what condition the tyre was. This fact could be within the knowledge of the driver and the owner of the truck. They, however, led no evidence to show that the tyre was in a perfect condition and it was being examined periodically.

(5) Faced with this difficulty the learned counsel for respondents sought to argue that the photographs of the accident were on the record and from them it was evident that the tyre which burst was in good condition. I am not convinced with this argument. It is not possible for me to hold by looking at the photographs that tyre was in perfect condition. Some evidence should have been led to prove the

aforesaid fact. Harnam Singh, Mechanic. RW 1, was produced by the respondents, who deposed that he found that the front tyre of the truck had burst and the vehicle went out of control due to its bursting. No question was put to him by the respondents about the condition of the tyre. He could give us some idea about its condition. Mohan Singh driver, RW 4, also did not state about the condition of the tyre and mileage done by it. There is no evidence that the tyre was being checked at regular intervals in order to find whether it was in a fit condition to be used. It is needless to say that the tyres of the vehicles ought to be in a perfect condition so that the vehicle may not endanger the lives of others travelling on the road. In the above circumstances I am of the opinion that the respondents have failed to discharge the burden of proving that the tyre which burst was in perfect condition and the accident took place solely on account of vis major.

(6) In the above view I am fortified by observations in *Barkway* v. *South Wales Transport Co. Ltd.* (1). In that case the appelant's husband was killed while travelling as a passenger in the respondent's omnibus, which at the time of the accident was being driven at a speed of some twenty-five miles per hour in a "black-out". After the offside front tyre had burst, the omnibus veered across the road and fell over an embankment. Evidence was given that the cause of the bursting of the trye was an impact fracture due to one or more heavy blows on the outside of the tyre leading to the distintegration of their inner parts, Such a fracture might occur without leaving any visible external mark, but a competent driver would be able to recognise the difference between a blow heavy enough to endanger the strength of the tyre and a lesser concussion. The appellant contended that in the circumstances the speed at which the omnibus was driven was excessive and caused it to be thrown off the road when the tyre burst, that the defect in the tyre would have been revealed had adequate steps been taken regularly to inspect it, and that the respondents were negligent in not requiring their drivers to report occurrences which might result in impact fractures. The respondents contended that they had a satisfactory system of tyre inspection, which took place

(1) 1950 All England Reports 392.

twice a week and that impact fractures were so rare as to be negligible risk which the public using their vehicles must take. It was held:—

(a) the application of the doctrine of *res ipsa loquitor,* which was no more than a rule of evidence affecting onus of proof of which the essence was that an event which, in the ordinary course of things was more likely than not to have been caused by negligence was by itself evidence of negligence, depended on the absence of explanation of an accident, but, although it was the duty of the respondents to give an adequate explanation, if the facts were sufficiently known the question ceased to be one where the facts spoke for themselves, and the solution must be found by determining whether or not on the established facts negligence was to be inferred;

(b) despite the statements of the respondents' witnesses that their system of tyre inspection was satisfactory and accorded with the practice of other omnibus companies, the evidence showed that the respondents had not taken all the steps they should have taken to protect passengers because they had not instructed their drivers to report heavy blows to tyres likely to cause impact fractures;

(c) the cause of the accident was a defect of the tyre which might have been discovered by due diligence on the part of the respondents, and the respondents were liable although it was not possible to affirm that the fracture would have been discovered by the exercise of due diligence."

(7) After taking into consideration all the facts of the case, I am of the view that it was for the respondents to show that they were not liable for the accident but they have failed to do so.

(8) It is next contended by the learned counsel for the appellant that the learned Tribunal did not give any finding regarding the quantum of damages. He submits that the deceased was a young man of 21 years of age and was working as a teacher in a school. The appellant, according to him, was solely dependent upon the deceased. In the circumstances, the counsel argues that an amount of Rs 40,000 be awarded as damages to the appellant.

(9) I have given a deep thought to the argument of the learned counsel. The appellant produced Mr Hans Raj Sharma, Headmaster, Government Middle School, Mahtabpur (A.W. 5) to prove that the deceased was working as a teacher and was drawing Rs. 223 per month as total emoluments. The witness proved both the facts. He further stated that the deceased was 21 years of age and was enjoying good physique. Mool Raj, Sarpanch (AW 6) corroborated Mr Hans Raj Sharma (AW 5). He further stated that the appellant was depending, for his living, upon the deceased and that he had no other property or means of livelihood. He was too old to work as a labourer. Mela Ram appellant deposed about all the aforesaid facts. He also stated that he had a poor physique and could not see properly. His two other sons live separately from him with their respective families. According to the appellant, the deceased was spending on the household expenses and on him (appellant) about Rs. 125 P.M.

(10) From the aforesaid statements, it is evident that the deceased was drawing Rs 223 per month and the appellant was living with the deceased. The other two sons of the appellant have large families and are living separately as is evident from the statement of Mela Ram, appellant. They are working as labourers. One of them has got four sons and a wife; and the other one has two children and a wife. From the circumstances, it can be safely said that the other two sons may not be in a position to support their aged father. The deceased out of his income might be spending some amount, on himself and the balance for family expenses. The appellant might be getting benefit of Rs 80 per month from the deceased. The appellant was 65 years of age in July, 1971, when his statement was recorded. He is still alive, in the circumstances, I am of the view that he may live for another about two years. If the compensation is worked out at the rate of Rs 80 per month a period of ten years, it comes to Rs 9,600. Thus, the appellant is entitled to a compensation of Rs 9,600 from the respondents.

(11) For the reasons recorded above, I partly accept the appeal with proportionate costs, and grant Rs 9,600 to the appellant as compensation. Counsel fee Rs 150.

H.S.B.