who contributes towards the costs of running of the scheme evolved with a benevolent eye in order to appease the social conscience. We are, therefore, of the opinion that the accident had occurred in the course of employment."

For the reasons aforementioned, the appeal is allowed. The order of the Employees Insurance Court is set aside and the orders dated October 10, 1982 and November 5, 1982 are quashed. The respondents are directed to release all the benefits payable to the appellant under the Act within one month from the date of receipt of this order. The parties are directed to bear their own costs.

P.C.G.

Before : G. R. Majithia, J.

RANDHIR KAUR AND OTHERS,—*Appellants.*

versus

BALBIR SINGH AND OTHERS,—*Respondents.*

First Appeal from the order No. 198 *of* 1985.

31st August, 1989.

Motor Vehicles Act, 1939—*S.* 110-*A*—*Bus driver on the main road could not control his vehicle and crushing the scooterist under front wheel—Deceased entering main road from opposite direction—Negligence of bus-driver—Maxim of* res ipsa loquitur *applies.*

Held, that in fact, it was the result of the negligence of the bus driver. He was already on the main road and could not control the vehicle when the deceased, after negotiating the bend of the filling station was in the process of getting on the road leading to the Industrial Area. The deceased appeared to have already entered the main road. The bus was coming from the opposite direction. The driver could not control the vehicle and he crushed the scooterist under he left front wheel of the vehicle. In these type of cases, the maxim *res ipsa loquitur* applies. The doctrine of *res ipsa loquitur* applies to person who is oposing the claim petition. He has failed to discharge the onus. This bald assertion cannot be believed. He has concealed material facts. On the material brought on record, it is possible to hold that the accident took place as alleged by the driver.

(Paras 4 & 5)

First Appeal from the order of the Court of Shri B. S. Nehru, Presiding Officer, Motor Accident Claims Tribunal, Chandigarh, dated 6th November, 1984, dismissing the claim petition and leaving the parties to bear their own costs.

Claim :—*Application under Section 110-A of the Motor Vehicles Act, for the grant of compensation.*

Claim in Appeal :—*For the reversal of the order of Lower Court.*

L. M. Suri, Advocate, with Ravinder Arora, Advocate and Anjali Kapoor, Advocate, *for the Appellants.*

None, *for the Respondents.*

JUDGMENT

G. R. Majithia, J.

(1) This appeal is directed against the award of the Motor Accident Claims Tribunal, Chandigarh, dated 6th November, 1984, whereby the claim petition filed by the appellants was dismissed.

(2) The facts :

On May 20, 1982, at 7. A.M. Ram Singh deceased reported for his duty with M/s Punjab Beverages (P) Ltd. 180, Industrial Area, Chandigarh. He was deputed to go and survey the market requirement of Sector 22, Chandigarh. After conducting the survey, he was returning to the Industrial Area at about 8.00 A.M. He got his scooter replenished with petrol at Emm Pee Motors and Filling Station, Bajwara Road, Sector 22, Chandigarh. While negotiating the bend of the said filling station, he was in the process of getting on the road leading to the Industrial Area when bus, bearing registration No. CHW 9033 driven by respondent No. 1 in a rash and negligent manner came from the opposite direction on the wrong side of the road and dashed against the scooter as a result of which deceased Ram Singh came under the right front wheel of the said bus. The bus dragged him and his scooter for a distance of about 10/12 feet causing multiple injuries on his person compound fracture of the right leg, which led to its amputation after he was removed to the P.G.I. Chandigarh. He remained under treatment there from 20th May, 1982 to 24th May, 1982 but eventually succumbed to his

injuries. Respondent No. 1 filed written statement controverting the allegations made in the petition. He, *inter alia,* pleaded that one way traffic road leading from Ambala to Chandigarh was blocked on account of repairs and the traffic was diverted to the road leading from the intersection of Sectors 22, 23, 35 and 36 towards Ambala side. At the time of accident, he was coming from Ambala side and the accident did not take place due to his negligence. Respondent Nos. 2 and 3 filed joint written statement taking almost identical pleas as were taken by respondent No. 1.

(3) On the pleadings of the parties the following issues were framed :—

1. Whether Ram Singh died in a motor vehicle accident on 20th May 1982 as a result of rash and negligent driving of bus No. CHW-9033 by Shri Balbir Singh respondent No. 1 ? If so, to what effect ?
2. If issue No. 1 is proved, to what amount of compensation are the claimants entitled and if so, from whom ? O.P.P.
3. Relief.

Under issue No. 1, the Tribunal held that the accident took place as a result of the negligence of the deceased. Under issue No. 2 he found that the claimants are entitled to Rs. 1,53,600 by way of compensation from the respondents but in view of his finding under issue No. 1, he dismissed the claim application.

(4) Learned counsel for the appellants assailed the finding under issue No. 1 and contended that the view taken by the Tribunal is erroneous. I find that there is substance in the submission of the learned counsel. The accident took place when the deceased was trying to get on the road leading to the Industrial Area. There is no eye-witness to the occurrence. It appears that after the accident some people assembled at the spot and one of them conveyed the information to the Administrative Officer of M/s Punjab Beverages (P) Ltd. The driver of the vehicle appeared as RW.1 and stated that a motor cycle suddenly came out of the precinct of the petrol pump in front of the bus and struck against his vehicle. He removed the injured to the Hospital. In cross-examination he stated thus :—

> "That the deceased had come on the motor cycle. The petrol pump is at a distance of about one yard. In fact the deceased was coming on scooter."

It makes no sense when the witness stated that the petrol pump is at a distance of about one yard. In fact, what he means is that the petrol pump is at a distance of about one yard from the place of accident. The occurrence appears to have taken place immediately when the deceased was trying to come on the main road after getting the petrol. This circumstance alone belies the version of respondent No. 1 that the accident took place as a result of the negligence of the scooter driver. In fact, it was the result of the negligence of the bus driver. He was already on the main road and could not control the vehicle when the deceased, after negotiating the bend of the filling station, was in the process of getting on the road leading to the Industrial Area. The deceased appeared to have already entered the main road. The bus was coming from the opposite direction. The driver could not control the vehicle and he crushed the scooterist under the left front wheel of the vehicle. In these type of cases, the maxim *res ipsa loquitur* applies. It means when it is so improbable that such an accident would have happened without the negligence of the defendant that a rasonable jury could find without further evidence that it was so caused. [See Salmond on the Law of Torts (15th Edition) Page 30]. The following passage from Halsbury's Laws of England (3rd edition) at page 77 is very inceptive :—

> "An exception to the general rule that the burden of proof of the alleged negligence is in the first instant on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous.

In *Pushpabai* v. *Ranjit* G. & P. Co. (1), reported as referring to the doctrine of *res ipsa* loquitur, the Appex Court at page 346 observed thus :—

> The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the the accident is not known to him but is solely within the knowledge of the defendant who caused it, the

(1) 1977 A.C.J. 34.

plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa* loquitur. The general purport of the words *res ipsa* loquitur is that the accident "speaks for itself" or tells its own story. 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. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligent."

It is further observed thus :

"Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might probably have happened in a manner which did not connote negligence on his part."

Some times a thing may take place in such circumstances as to render it practically impossible for any one to speak to its happening just like in a case of accident on a highway where there are no witnesses or where persons who could speak to the occurrence are not available for whatever reason it be. The doctorine of *res ipsa* loquitur does not dispense with the need to prove a fact alleged by a person. It only effects the mode of proof. With a view to mitigating the rigour of proof of negligence under certain circumstances, the common law invoked the aforesaid doctrine.

(5) RW.1 is the only person who had the knowledge of the accident and the manner of its occurrence. The doctrine of *res ipsa loquitur* applies to person who is opposing the claim petition. He has failed to discharge the onus. This bald assertion cannot be believed. He has concealed material facts. On the material brought on record, it is not possible to hold that the accident took place as alleged by the driver.

(6) The Tribunal has already held that the claimants are entitled to Rs. 1,53,600 by way of compensation. No meaningful arguments were addressed by the counsel nor either of the parties that the finding recorded under issue No. 2 is wrong and calls for interference. I affirm the same.

(7) As a result thereto, the appeal is allowed, the claimants' application succeeds. The claimants are entitled to a sum of Rs. 1,53,600 with interest at the rate of 12 per cent per annum from the date of accident till the date of realisation. All the respondents are jointly and severally liable to pay the compensation. No costs.

P.C.G.

Before : G. R. Majithia, J.

THE NEW INDIA ASSURANCE CO. LTD., CHANDIGARH, —*Appellant.*

versus

VIJAY KUMAR AND OTHERS,—*Respondents.*

First Appeal from Order No. 9 of 1984.

31st August, 1989.

Code of Civil Procedure, 1908 (V of 1908)—O. 6, Rl. 15—Motor Vehicles Act, 1939—S. 110-A—Verification of written statement—No indication as to which para based on knowledge and belief—Written statement not correctly verified—Statement of claimant that he possess a valid driving licence—No cross-examination—Claimants statement accepted as correct.

Held, that the contents of the written statement were verified to the best of the knowledge and belief of the person verifying. It is not decipherable from the written satement that the person who verified the written statement was competent to do so. The written statement has to be verified under O. 6 Rl. 15 (As amended by the Punjab and Haryana Amendment) of the Code of Civil Procedure. It has to be verified with reference to the numbered paragraphs of the pleadings and the person verifying has to state what portion he verified from his own knowledge and what portion on information received and believed to be true. A verification is a matter of great importance. The verification does not reveal that on what basis the person verifying had made the averments in the written statement. The written statement filed by the appellant will not be deemed to be correctly verified and it is no written statement in the eye of law.

(Para 9)