CASE NO.:
Appeal (civil) 4147 of 2006

PETITIONER:
Managing Director, NorthEast K.R.T.C.

RESPONDENT:
Devidas Manikrao Sadananda

DATE OF JUDGMENT: 15/09/2006

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
JUDGMENT

Kapadia, J.

Leave granted.

This civil appeal by grant of special leave to appeal is directed against the judgment of the Division Bench of the Kamataka High Court dated 14.3.2005 in Writ Appeal No.6521 of 2002 by which the writ appeal preferred by Northeast Karnataka Road Transport Corporation (hereinafter referred to as, "the Corporation") stood dismissed.

The short question which arises for determination in this civil appeal is: whether on the facts and circumstances of the case the Labour Court misdirected itself in not invoking the doctrine of res ipsa loquitur, namely, the facts speak for themselves.

The Corporation is an 'Undertaking' which is catering to the requirements of the travelling public in various parts of the State of Karnataka. It has more than 60,000 employees appointed under Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. The service conditions of each employee are governed by Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 (hereinafter referred to as, "the 1971 Regulations").

Respondent-workman was working as a driver in the Corporation. On 13.2.96 the bus which he was driving on the route from Basavakalyan to Hyderabad met with an accident while trying to overtake another bus of the Corporation. According to the management of the Corporation, in the process of overtaking the bus which was driven by respondent-workman collided with the hind portion of the other bus and consequent upon which the other bus went and dashed against a tree resulting in injuries to 56 passengers and death of 4 passengers. This was in addition to severe damage caused to the bus of the Corporation. On 10.6.96 the officials of the Corporation collected statements of the passengers in the preliminary enquiry and reported the matter to the Disciplinary Authority of the Corporation constituted under the 1971 Regulations. Based on the said report on which the respondent-workman also gave his reply, the departmental enquiry was instituted. On 11.8.97 the enquiry was conducted under the said 1971 Regulations. On receipt of the enquiry report, the Disciplinary Authority passed an order on the same day dismissing the respondent-workman from the services of the Corporation.

Aggrieved by the order of dismissal dated 11.8.97, the respondent-workman raised a dispute under Section 10(4A) of the Industrial Disputes Act, 1947 before the Labour Court, Gulbarga bearing number K.I.D. No. 147 of 1998. On receipt of the notice from the Labour Court the Corporation filed its written statement. On the preliminary issue as to whether the departmental enquiry held by the management was fair and proper, the Labour Court vide

its order dated 24.8.98 held that the domestic enquiry held by the management was fair and proper, that the enquiry conducted was in accordance with rules of natural justice and in accordance with the regulations; and that there was no vagueness or uncertainty in the proceedings so as to render the enquiry unfair. Accordingly, the contention of the respondent-workman that the enquiry was not fair and proper, stood rejected. This was Part-I Award. However, vide Part-II Award dated 19.10.99, the Labour Court held that there was no evidence whatsoever to show that the respondent-driver had not taken reasonable care in the process of driving. The Labour Court took the view in this connection that the management ought to have examined the driver of the bus against which the offending vehicle (bus) collided. According to the Labour Court non-examination of the said driver was fatal to the case of the management. According to the Labour Court there was no eye-witness to the accident. According to the Labour Court the reporting officer of the Corporation was not an eye-witness and the statements collected by him from the respective passengers cannot be considered as substantive evidence to say that the respondent-driver acted in a negligent manner. In the circumstances, the Labour Court set aside the order of dismissal and directed the respondent-driver to be reinstated with full back wages.

The Part-II Award of the Labour Court was challenged by the Corporation by filing writ petition before the learned Single Judge of the Kamataka High Court who took the view that in absence of any evidence before the Labour Court, reinstatement was rightly awarded. At this stage, it may be pointed out that the learned Single Judge directed reinstatement initially without back wages. On an application for review, the learned Single Judge, however, granted reinstatement with 50% back wages. It is interesting to note that while refusing the petition of the Corporation, the learned Single Judge has observed that he was reducing the back wages so that in future the respondent-driver would perform his duties satisfactorily keeping in view the safety of the general public. This order by implication finds respondent-driver guilty of rash and negligent driving. Be'-that as it may, the matter was carried in appeal by the Corporation to the Division Bench of the High Court. As stated above, by the impugned judgment the Division Bench held that in the absence of evidence the doctrine of res ipsa loquitur was not applicable to the facts of the present case. Accordingly, by the impugned judgment the writ appeal stood dismissed. Hence this civil appeal.

As stated above, the short question which arises for determination in the present case is: whether the Labour Court had erred in the facts and circumstances of this case in not invoking the doctrine of res ipsa loquitur.

The facts, as narrated above, show that the offending bus collided with the hind portion of the other bus. That other bus was running in front of the offending bus. The impact of the offending bus running into the other bus was so great that the other bus went and dashed into a tree resulting in injuries to 56 passengers and death of 4 lives. In such circumstances, was the Labour Court not required to apply the doctrine of res ipsa loquitur, is the question which we have to answer.

In the case of Shyam Sunder and Ors. v. The State of Raiasthan, [1974] 1 SCC 690, this Court held that the maxim "res ipsa loquitur" does not embody any rule of substantive law nor a rule of evidence. It is resorted to when the accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the driver. It was held that the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages from the defendant if the proper inference to be drawn from- the circumstances which are known is that the accident was caused by the negligence of the defendant. It was held that the fact of the accident may constitute evidence of negligence and in such cases the above maxim applies. The principal function of the maxim is to prevent injustice which would result if the management is compelled to

prove the precise cause of the accident, particularly, when the respondent-driver has knowledge of the cause of the accident This judgment has not been considered by the Division Bench of the Karnataka High Court.

In the case of Pushpabai Purshottam Udeshi and Ors., v. M/s. Ranjit Ginning & Pressing Co. (P.) Ltd. and Anr., [1977] 2 SCC 745, this Court held that where the evidence shows dashing of the vehicle against the tree was so violent that it caused the death of the passengers then the burden rests on the opposite party to show that the cause of the accident could not have been avoided by exercise of ordinary care and caution [See: para 5}. In the present case no such attempt was made by the driver to show the plea of inevitability, therefore, the Labour Court had erred in misdirecting itself in not invoking the maxim "res ipsa loquitur".

In the case of Cholan Roadways Ltd. v. G. Thirugananasambandam, [2005] 3 SCC 241, this Court held that in certain cases the accident speaks for itself; that in such cases the management has only to prove the accident and nothing more; and that in such cases the driver has to establish that the accident happened due to some cause other than his own negligence. Once the maxim "res ipsa loquitur' is found to be applicable, the burden of proof would shift on the delinquent In such cases, the nature of impact has to be seen because it indicates that the vehicle was being driven rashly and negligently. In such cases, the burden of proof was on the driver to show that the offending vehicle was not driven by him rashly and negligently. In the said case, it was further held that the learned Single Judge of the High Court in that case had erred in observing that unless witnesses (passengers) were examined by the management it was not possible to draw any inference of misconduct against the workman. In this connection, it was held that the principles of Evidence Act have no application in a domestic enquiry. It was observed that the principles of natural justice are required to be complied with in a domestic enquiry, however, they cannot be stretched too far nor can they be applied in a vacuum. In the case of Cholan Roadways (supra) this Court came to the conclusion that in cases of accident of the above nature it was not necessary as a relevant factor to examine before the enquiry officer passengers of the bus and that the Labour Court had failed to apply the correct standard of proof in relation to the domestic enquiry, which is "preponderance of probability" and thus a case for judicial review stood, clearly made out by the Corporation.

Accordingly the matter is remitted to the Labour Court to decide whether on the facts and circumstances of this case the above maxim "res ipsa loquitur" applies or not.

We, accordingly, allow the civil appeal with no order as to costs.