A

RAMZAN

v.

JAGDISH CHAND GOSAI

[COURT OF APPEAL, 1968 (Hammett P., Gould J.A., Trainor J.A. 1st, 30th May] B

Civil Jurisdiction

Negligence—motor vehicle—injuries to passenger through overturning—cause of accident—nail in rear tyre—whether driver negligent—doctrine of res ipsa loquitur not applicable. C

The appellant was a passenger in a motor vehicle driven by the respondent and suffered injuries when the vehicle overturned. It was clear on the evidence that the vehicle, which had been travelling on a straight and clear road at a speed between 45 and 55 miles per hour, developed sway as a result of a four inch nail having become embedded in a rear tyre: despite the respondent's efforts to control it with steering wheel and brake, it overturned. In the Supreme Court it was held that there was no negligence on the part of the driver. On appeal — D

Held: 1. It was not a case in which the doctrine of *res ipsa loquitur* applied, as there was ample evidence of the facts surrounding the accident and its cause. E

2. While a very highly skilled or a luckier driver might possibly have emerged with safety it could not be validly asserted that the respondent was guilty of negligence if, in the agony of the moment, he was unable to exert exactly the appropriate amount of pressure on the steering wheel or brake. The finding of the Supreme Court was correct.

Case referred to: *Barkway v. South Wales Transport Co. Ltd.* [1950] A.C. 185; [1950] 1 All E.R. 392. F

Appeal from a judgment of the Supreme Court dismissing a claim for damages for personal injury.

S. M. Koya for the appellant.

R. G. Kermode for the respondent. G

The facts sufficiently appear from the judgment of *Gould J.A.*

The following judgments were read:

GOULD J.A.: [30th May, 1968]—

This is an appeal from a judgment of the Supreme Court of Fiji at Lautoka dismissing a claim for damages brought by the appellant against the respondent. The appellant, who was a passenger in a motor car owned and driven by the respondent, suffered injuries when the car overturned on the Nadi-Lautoka Road near the village of Lawaki. H

The learned judge in the Supreme Court, who had inspected the scene of the accident, made the following findings of fact —

> "On the afternoon of the 8th September, 1964 the Defendant was driving the Plaintiff, with three other passengers, along the Queen's Road, from Nadi to Lautoka. The Plaintiff was a passenger in the rear seat. Immediately before the accident the Defendant's speed was between 45 and 55 m.p.h. It was a dry afternoon and the road ahead was straight and clear. Unknown to the Defendant a 4" nail had, somewhere along the road, become embedded in one of the rear tyres. This mischance was entirely unforeseeable and unavoidable. As a result of the consequent tyre deflation, the vehicle developed a tail-sway and began to swerve from side to side. The Defendant attempted to control this firstly with the steering wheel and then by applying the foot-brake. Upon the application of the brake, however, the vehicle finally careered across the road to the right and up-turned in the culvert.
>
> As a result the Plaintiff sustained severe injuries.
>
> It is the finding of the Court that there was no negligence on the part of the Defendant. There is no substance in any of the Particulars of Negligence alleged against the Defendant. In my view there was no departure by the Defendant from the standard of care, namely that of an ordinary prudent driver, which he owed to the Plaintiff. The fact the an especially skilled driver, such as a racing driver, might have used more successful measures to control the tail-sway does not affect my conclusion that here the Defendant maintained such standard of care as was expected of him as an "ordinary" prudent driver."

In argument before this court counsel for the appellant made submissions which may be summarized —

(a) That the evidence fell short of establishing that the nail which was found after the accident embedded in one of the rear tyres got there "somewhere along the road."

(b) That, though the speed of the car prior to the accident could not be said to be excessive, the driving of the appellant after the car started to sway, was not that of a prudent driver.

(c) That the doctrine of *res ipsa loquitur* applied and it was for the respondent to explain the overturning of the car.

I find nothing in any of these submissions which would induce or entitle me to differ in any way from the findings of the learned judge in the Supreme Court. As to (a) it is common ground that the motor car in question swayed or zigzagged for a comparatively short distance before it overturned and the rear tyre in which the 4" nail was embedded, was found, not very long after the accident to be deflated to about 5-10 pounds pressure and still deflating. Meanwhile there were people gathered around and the injured were being removed. The only conceivable inference is that the nail was "picked up" at some stage prior to the swaying and did not become embedded by some unknown agency at the time of or after the accident.

As to (b) the evidence showed that the vehicle was being driven normally up to the time when the swaying commenced. According to Brij Mohan, a witness for the appellant, the distance between the point at which the car started to travel in an erratic manner and the point when it capsized, was about one and a half chains. The respondent's estimate of that distance as disclosed by the record of his evidence, is somewhat obscure, but appears to have been thirty-five yards. The respondent's evidence was that the car twice swerved to the right, and he corrected it to the left on each occasion; the wheels (presumably on the near side) left the tarmac. He then applied the brake and the car went again to the right and overturned in a drain. Graham Charles Dewes, a witness for the respondent with some expert qualifications examined the car and marks on the road; he gave evidence that there was a 2" drop from the kerbing of the road to the verge and in his opinion the respondent in trying to correct the car's move off the carriage way, ran up against this 2" section of kerbing and veered across the road.

On these facts I take the view that the learned judge's finding that negligence had not been establishd was correct. The time that elapsed between the commencement of the swaying and the overturning of the vehicle would be short indeed. The initial speed of something in the vicinity of fifty miles per hour would diminish to some extent, even before braking, but the whole episode must have been completed within a very few seconds. A very highly skilled driver, or a luckier driver might possibly have emerged with safety, but it cannot, in my opinion be validly asserted that the respondent was guilty of negligence if, in the agony of the moment, he was unable to exert exactly the appropriate amount of pressure on steering wheel or brake. The argument on this ground does not therefore, in my opinion avail the appellant.

The third submission is that the learned judge ought to have applied the principle of *res ipsa loquitur*. There is no merit in this suggestion. The doctrine may well have applied if the motor car had overturned from an unknown cause, or even if the accident had been due to the unexplained bursting of a tyre. But in the present case there was ample evidence of the facts surrounding the accident and its cause. As Lord Porter said in *Barkway v. South Wales Transport Co. Ltd.* [1950] 1 All E.R. 392, at 395 — " . . . if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found in determining whether, on the facts as established, negligence is to be inferred or not."

For these reasons I would dismiss the appeal with costs.

HAMMETT P.:

I concur and have nothing to add. The appeal is dismissed with costs.

TRAINOR J.A.:

I also concur.

Appeal dismissed.