

MOHAMMED AYNUDDIN @ MIYAM

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v.

STATE OF ANDHRA PRADESH

JULY 28, 2000

[K.T. THOMAS AND R.P. SETHI, JJ.]

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Indian Penal Code, 1860 : Section 304-A.

Causing death by culpable negligence—Driver—Negligent driving—Passenger falling down from bus while boarding it—Death—Liability of driver—No presumption of negligence can be drawn against driver of bus—To fasten liability on driver for negligent driving there should be evidence—Evidence must show that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

C

Negligent driving—Principle of Res Ipsa loquitor—Applicability of.

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The appellant was prosecuted under section 304-A of the Indian Penal Code, 1860. The prosecution case was that the appellant was driving a bus of the Andhra Pradesh State Road Transport Corporation on 17.12.1993. Because of his negligent driving an accident took place in which a passenger while boarding the bus fell therefrom and the rear wheel of the vehicle ran over her. The Trial Court, the Sessions Court and the High Court held him guilty of culpable negligence. Accordingly, he was convicted under section 304-A and sentenced to imprisonment for three years. Hence these appeals.

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Allowing the appeals and setting aside the conviction and sentence, this Court

HELD : 1. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature, as would *prima facie* show, that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because passenger fell down from the bus while boarding the bus no presumption of negligence

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A can be drawn against the driver of the bus. To fasten the liability with the driver for negligent driving in such a situation there should be evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. [18-D; 18-B]

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D 2. In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. Here no witness has said, including the conductor, that the driver moved the vehicle before getting signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable.[18-H; 19-A-C]

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F 3. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer. [18-E-F]

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H 4. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act, in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution. [18-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 584- A
585 of 2000.

From the Judgment and Order dated 1.11.99 of the Andhra Pradesh High Court in Crl.R.C. No. 515 of 1998 and Crl.R.P. No. 513 of 1998.

R. Santhanakrishnan and D. Mahesh Babu for the Appellant. B

Ms. T. Anamika and Guntur Prabhakar for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted. C

A passenger, while boarding a bus, fell down therefrom as the vehicle moved forward. The driver of the bus was held guilty of culpable negligence in that episode. He now stands convicted under Section 304A of Indian Penal Code and was sentenced to imprisonment for three months. All the three D
courts, the trial court, the Sessions Court and the High Court in revision - took the same stand. Hence these appeals.

The finding of facts cannot be disturbed now. The only question which survives for decision is whether on such facts a conclusion that the appellant is guilty of negligent driving must necessarily follow. The facts which the E
courts found to have been established in the case are these:

On 17.12.1993 the appellant was driving a bus of the Andhra Pradesh Road Transport Corporation. A passenger by name Agamma boarded the bus enroute at some point. When the bus moved forward she fell out of the vehicle and its rear wheel ran over her. She died of the injuries sustained in that F
accident.

The conductor of the bus was examined as PW3. He did not say how the accident happened. However, he admitted that while the bus was in motion he heard a sound of accident and the bus was then stopped. The only G
witness who spoke about the occurrence was PW4. What that witness has deposed in the examination-in-chief is the following:

“Agamma was boarding the bus and the bus was moved; and she fell down beneath the bus and died on the spot; the bus stopped at some distance. I saw the driver of the bus at that time.” H

A What is the culpable negligence on the part of the bus driver in the above accident? A passenger might fall down from a moving vehicle due to one of the following causes: It could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off of the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

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C A driver who moves the bus forward can be expected to keep his eyes ahead and possibly on the sides also. A driver can take the reverse motion when that driver assures himself that the vehicle can safely be taken backward.

D It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would *prima facie* show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus no presumption of negligence can be drawn against the driver of the bus.

E The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer.

F
G A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.

H In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be

so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. Here no witness has said, including the conductor, that the driver moved the vehicle before getting signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable.

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In the result, we allow these appeals and set aside the conviction and sentence and he is acquitted.

T.N.A.

Appeals allowed.