

**CASE COMMENT ON****DELHI MUNICIPAL CORPORATION****V/S.****SUBHAGWANTI & OTHERS**

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**ABSTRACT**

The instant case is one of the most popular case of the Indian history. This case involved tragedy and excellent interpretation which has made the landmark case of the Indian history. This case is related to the negligence of the Municipal Corporation of Delhi. The municipal corporation was not accepted that it was the negligent in his part so after the judgement of the trial court municipal corporation went to the High court and the High court was used the doctrine of Res Ipsa Loquitur and proved that municipal corporation is guilty in his part. The doctrine Res Ipsa Loquitur means the thing speaks itself. After the judgement of the high court the municipal committee was not happy so again the corporation appealed to the Supreme court and the supreme court said that high court judgement is correct and the municipal corporation was negligent on his part and did not do his duty properly.

**INTRODUCTION:-** The very famous case of Delhi Municipal Corporation V/S. Subhgwanti & others. It is the most important case of the Indian history. This case is related to the negligence. In this case there are the three appeals are arise. Three suits are filed for the damages by the heirs of the three persons. In this case the court was held that the Delhi municipal corporation is negligent in his part. The negligence is a civil wrong and it is the part of the tort<sup>1</sup>.

Tort is a civil wrong other than breach of contract for which the court provided the remedy in form of damages. The torts are the private actions where the government is not directly involved. The cases of the torts are handled by the civil courts. The tort is divided into some categories like Intentional tort, unintentional tort and strict liability. The tort can be intentional or unintentional. The most common unintentional tort comes under the negligence. The peoples of the society have a duty to protect the rights and the unreasonable risks and harms of the others. If someone will be injured by the unreasonable act then there is the case of the negligence. Sometime it is very difficult to prove that the injury has be done after the failure of the defendant.<sup>2</sup>

<sup>1</sup><https://lawhandbook.sa.gov.au/ch29s05s01.php>, last visited on 15/01/2019 at 11:12

<sup>2</sup><https://injury.findlaw.com/accident-injury-law/negligence.html>, last visited on 15/01/2019 at 11:18

The court developed the doctrine which is known as the Res Ipsa Loquitur it means “The thing speaks itself”.

There are the several elements are required to prove the negligence to the plaintiff-

1. The defendant had a duty to take care towards the plaintiff.
2. The defendant breached that duty usually by acting negligently.
3. The plaintiff have suffered damages of some kind such as physical injury or the loss of the property. If injury will be happened by the plaintiff's own act then the doctrine Res Ipsa Loquitur is not applied.<sup>3</sup>

The principle of the burden of proof is also used by the court. The word burden of proof means the person who has asserted a fact or is making any claim.<sup>4</sup> When a person has proven the existence of a fact then the burden of proof belongs to such a fellow.

**BACKGROUND OF THE CASE:-** The instant case is one of the most popular case of the Indian history. This case involved tragedy and excellent interpretation which has made the landmark case of the Indian history. In this case the court was used the principle of negligence and the res ipsa loquitur. The principle res ipsa loquitur means the thing speaks itself. This case is related to the clock tower which was situated in the opposite of the town hall in the main Bazaar of the Chandni Chowk Delhi.<sup>5</sup> The three suits were filed by the injured party in the trail court of Delhi. The suits was filed for the damages by the heirs of the three persons who died as a result of the collapse of the clock tower of Delhi.

The trail court of Delhi was held that it was the duty of the municipal corporation to take a proper care of the tower because the buildings of the clock tower was 90 years old and the life of the mortar used could be only 40 to 45 years and the middle storey could be saved for another 10 years.<sup>6</sup> The trail court was rejected the plea of the municipal corporation and said that superficial examination of the clock tower from time to time it was the duty of the municipal engineers but no examination was ever made by the municipal corporation.

The trail court judge first class granted the decree to the Rs 25000, Rs.15000 and the Rs. 20000 respectively to the plaintiff's of all the three suits After the judgement of the court the aggrieved party municipal corporation filed appeal of the case in Delhi high court against the judgement of the trail court first class magistrate.

<sup>3</sup><https://www.legalmatch.com/law-library/article/what-is-a-strict-liability-tort.html>, last visited on 15/01/2019 at 11:24

<sup>4</sup><https://www.lawteacher.net/free-law-essays/tort-law/tort-of-negligence.php>, last visited on 16/01/2019 at 13:08

<sup>5</sup><https://indiankanoon.org/doc/706862/>, last visited on 16/01/2019 at 14:03

<sup>6</sup><https://www.coursehero.com/file/pnmanv/In-Municipal-Corporation-of-Delhi-Verses-Subhagwanti-a-clock-tower-situated-in/>, last visited on 17/01/2019 at 15:19

The high court was maintained the degree of the trial court for the amount Rs. 25000 and the other two degree for amount of Rs. 15000 and Rs. 20000 were reduced to Rs. 7200 and Rs.9000 respectively.<sup>7</sup>

The high court of Delhi was held that the principle of the Res Ipsa Loquitur and considered that it was the duty of the municipal corporation to carried out the periodically examination of the clock tower but the municipal corporation was failed to do his duty.

According to the view of the appellants the high court of Delhi was applying the wrong doctrine of the res Ipsa Loquitur in this case and fall of the clock tower was due to the inevitable accident.<sup>8</sup>

After the judgement of the high court the Delhi municipal corporation filed the complaint against the judgement of the high court of Delhi in the front of the Supreme Court of India and the Supreme Court of India was held that the view of the Delhi high court is correct and that is applying the correct doctrine.

**FACT OF THE CASE:-** In this case there are the three appeals are arise. Three suits are filed for the damages by the heirs of the three persons namely Shri Ram Prakash, Shrimati Panni devi and the last person who was filed the suits his name was Kuldeep Raj whose father Gopi Chand was died by the fall of the clock tower which was situated the opposite of the town hall in the main bazaar of Chandi chowk Delhi which was belonging to the Delhi municipal corporation.

The first suits was filed by the heirs of the Panni devi in year 1951, and the second suits was filed by the heirs of the Shri Ram Prakash in year 1952, and the last and third suits was filed by the Kuldeep Raj in year 1952. All the three persons are died after the fallen of the clock tower.<sup>9</sup>

The building of the clock tower was belonging to the Delhi municipal corporation. The building of the clock tower was 80 years old and the life of the structure of the top storey having regard to the type of mortar used could be only 40 to 50 years and the middle storey could be saved for another 10 years, this statement was disclosed by the Mr.Chakravarty. He was the municipal engineer of the corporation at that time.<sup>10</sup>

When the clock tower is collapsed then the Shri B.S. Puri retired chief engineer of P.W.D government of India. The municipal corporation was invited him to inspect the clock tower and produced him as the witness.<sup>11</sup> After the examination Ms. B.S. Puri was said that when he was took the mortar in his hands he found that it had deteriorated to such an extent that it was reduced to powder without any cementing properties.

<sup>7</sup>Ibid

<sup>8</sup>Supra Note 3

<sup>9</sup><http://www.sclt.in/content/municipal-corporation-delhi-vs-subhagwanti-otherswith-connected-appeals>, last visited on 20/01/2019 at 20:19

<sup>10</sup>ibid

<sup>11</sup>[https://www.lawsfeed.com/supreme-court-judgement/municipal\\_corporation\\_of\\_delhi\\_vs\\_subhagwanti\\_otherswith\\_connected\\_appeals\\_24-02-1966](https://www.lawsfeed.com/supreme-court-judgement/municipal_corporation_of_delhi_vs_subhagwanti_otherswith_connected_appeals_24-02-1966) last visited on 21/01/2019 at 13:19

**PRINCIPLE'S LAID DOWN:-** It is the very famous case the name of the case is Delhi municipal corporation v/s. Subhagwanti & others. It is the landmark case of the Indian history. In this case the court was held that there is the municipal corporation is negligent in his part of duty. The principle negligence is the civil wrong and it is the part of the tort. The tort is not codified in India. It is a civil wrong other than breach of contract. In the case of tort the court is provided the remedy in the form of damages. The cases of the tort is dealt by the civil courts. The most common unintentional tort is considered as the negligence. The principle of negligence is used in that situation when someone is injured by the act of another and which is unreasonable. Sometime it is very difficult to define that the injury has been done after the failure of the defendant.

The principle of Res Ipsa Loquitur was also used in this case. The principle Res Ipsa Loquitur means the thing speaks itself.<sup>12</sup> In this case the court was also used another principle that is the burden of proof.

The principle of burden of proof means the person who has asserted a fact or is making any claim when a person has proven the existence of the fact of the case the burden of proof belongs to such a fellow.

The principle burden of proof are contained in the concept of onus probandi and factum probans. The explanation of the word onus means liability or the obligation to prove the fact which can shift between parties in the case.

**JUDGEMENT OF THE CASE:-**The case was filed by the respondents there are the three suits filed by the respondents for the damages. The suits were filed because it is the result of the died of the persons of the collapse of clock tower which was situated the opposite of the town hall in the main bazaar of Chandi chowk Delhi which was belonging to the Delhi municipal corporation.

In this case the trial court was held that it was the duty of the municipal corporation to take proper care of the buildings of the clock tower so that should not prove a source of danger to persons using the highway as a matter of rights<sup>13</sup>. The trial court of Delhi was rejected the plea of the municipal corporation. The owner of the building was held liable in the case of negligence. The buildings of clock tower was belonging to the Delhi municipal corporation so it was held liable by the trial court of Delhi. The municipal corporation was not take a proper care and do not maintained the buildings of the clock tower. The court was granted the decree against the municipal corporation of Delhi and said that it was the duty of the municipal corporation to provided the damaged to the aggrieved party. The amount of the degree was Rs. 25000, Rs.15000 and Rs.20000 respectively to the plaintiff's in each of the three suits.

<sup>12</sup><http://notesforfree.com/2017/12/16/res-ipsa-loquitur-law-torts-notes/>, last visired on 22/01/2019 at 15:09

<sup>13</sup><https://www.casemine.com/judgement/in/5609ad5be4b01497114112a9> last visited on 23/01/2019 at 17:03

After the judgement of the trial court the municipal corporation of Delhi was filed the appeal in the high court of Delhi.<sup>14</sup> The high court of Delhi was applied the principle of Res Ipsa Loquitur and considered that it was the duty of the municipal corporation to carry out the periodical examination of the building of the clock tower and the high court was maintained the decree of the amount Rs. 25000 and the decrees of the amount of the Rs.15000 and Rs. 20000 were reduced to Rs. 7200 and Rs. 9000 respectively.

After the judgement of the high court the corporation went to the Supreme Court of India for the appeal against the judgement of the Delhi high court. In his appeal the appellant was held that the Delhi high court was wrong in applying the doctrine of the Res Ipsa Loquitur into this case and the fall of the clock tower was due to the inevitable accident which could not have been prevented by the exercise of reasonable care of caution. The appellant could not held guilty for the act of the negligence.

The Supreme court of India was held that the high court of Delhi was right to applying the doctrine of the Res Ipsa Loquitur as in the circumstances of the case the mere fact that was fall of the clock tower which was come under the ownership of the appellant so the appellant was negligent in his part. There is the special obligation of the owner of the adjoining of the premises for the safety of the structures which he keeps besides of the highway. If these structure fall into disrepair then the owner of the building will be held liable. It was held by the Supreme Court of India.

**CONCLUSION:** - This case is a fascinating one. It involves tragedy and the surprisingly dedication for a society. After this case and this tragedy it is the duty of the owner to bound to maintain their property or buildings which is belonging to the besides of the highway.

The owner is legally responsible irrespective of whether the damage is caused by a patent or latent defect. In our opinion this principle is applying in Indian law that is correct because it is protected the rights of the peoples of the society.

After applying this principle to the present case, it is manifest that the appellant is guilty of negligence because of the potential danger of the clock tower maintained by it having not been subject to a careful and systematic inspection which it was the duty of the appellant to carryout.

Whenever the death of the person shall be caused by the wrongful act, neglect or default and the act neglect or default is such as would have entitled the party injured to maintain an action and recover damages.

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<sup>14</sup><https://indiankanoon.org/docfragment/706862/?formInput=negligence> last visited on 24/01/2019 at 16:01