REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4010 OF 2010

ASHISH KUMAR MAZUMDAR ... APPELLANT (S)

VERSUS

AISHI RAM BATRA CHARITABLE HOSPITAL TRUST & ORS. ... RESPONDENT (S)

WITH

CIVIL APPEAL NOS. 4011-4012 of 2010

J U D G M E N T

RANJAN GOGOI, J.

1. Suit No. 3413 of 1991 filed by one Ashish Kumar Mazumdar (hereinafter referred to as 'the plaintiff') was decreed by a learned Single Judge of the High Court of Delhi awarding a sum of Rs. 7 lakhs with interest @ 12% per annum on account of damages for injuries suffered by the plaintiff while undergoing treatment in the Batra Hospital, Delhi. The aforesaid judgment and decree passed on

02.12.2008 was challenged in appeal before the Division Bench of the High Court by the defendant in the suit i.e. the trust managing the hospital (hereinafter referred to as 'the defendant'). The plaintiff had also filed a separate appeal challenging the quantum of damages awarded and seeking enhancement thereof. The Division Bench of the High Court by a common order dated 23.12.2009 dismissed the appeal filed by the defendant trust and allowed the appeal filed by the plaintiff enhancing the amount of damages awarded from Rs. 7 lakhs to Rs. 11 lakhs alongwith interest @ 12% per annum. Not satisfied, the plaintiff has filed Civil Appeal No.4010 of 2010, whereas aggrieved by the dismissal of its appeal, the defendant trust has filed the connected appeals (Civil Appeal Nos. 4011-4012 of 2010).

2. We have heard Mr. S.B. Upadhyay, learned senior counsel for the plaintiff and Mr. S.S. Khanjuda, learned counsel for the defendant.

3. According to the plaintiff, he was admitted as an indoor patient in the Batra Hospital on 27.10.1988 and was lodged in Room No.305 on the third floor of the hospital. He was

running high fever and was in a delirious state. In the night intervening 31.10.1988 and 01.11.1988, at about 2.20 a.m., the plaintiff's sister, one Kajal, who was staying with him in the room had noticed the absence of the plaintiff from the room. She promptly informed the staff nurse on duty and a search was conducted to trace out the plaintiff in the course of which a security guard, Hans Raj, found the plaintiff lying on the ground floor in the oncology gallery of the hospital and at a distance of 50 yards from a point immediately below the window of room No. 305. The plaintiff suffered multiple fracture of lumbar vertebrae with complete dislocation of the spinal cord and despite treatment he became a paraplegic i.e. 100% disabled below the waist. Though the plaint is silent on the circumstances in which the injuries were caused or the manner in which the same were sustained, according to the plaintiff, as at the time of the incident he was an indoor patient in the hospital it was the duty and responsibility of the hospital authorities to take care of the plaintiff who was suffering from high fever and was in a delirious state. The plaintiff had alleged that it is on account of the absence of due and reasonable care on the

part of the hospital authorities that the incident could occur disabling the plaintiff for the rest of his life. According to the plaintiff though the injuries suffered by him had not immediately affected his employment as a Junior Assistant in Punjab National Bank the same had severely affected his service prospects. Accordingly, the suit in question was filed seeking damages to the extent of Rs. 58 lakhs; the claim, however, was restricted to Rs. 25 lakhs on account of the plaintiff's inability to pay the requisite court fee on the rest of the amount.

4. The defendant trust, in its written statement, took the stand that the hospital had permitted the plaintiff's sister to stay in the room as an attendant and that the plaintiff had himself jumped out of the window of his room despite the presence of his sister leading to the injuries suffered. On the said broad facts the defendant denied the allegation of negligence and absence of due care on its part as claimed by the plaintiff in the suit.

5. On the basis of the pleadings of the parties, the learned Trial Judge framed four issues for trial in the suit. Five

witnesses including the plaintiff himself (PW-1), his sister (PW-2) and his brother (PW-3) were examined. One Dr. R.K. Srivastava (PW-5) was also examined to prove the disability certificate showing the extent of the disability of the plaintiff. To controvert the case of the plaintiff, the defendant had examined one Dr. Arun Dewan (DW-1) who had treated the plaintiff and the security guard Hans Raj (DW-2) who had found the plaintiff in an injured state.

6. The learned Trial Judge came to the conclusion that, having regard to the layout of the room and the location of the window and also having regard to the precarious health condition of the plaintiff on the day of the incident (he was running high fever), it was not possible to accept the contention of the defendant that the plaintiff had himself jumped out of the window resulting in the injuries sustained. On the contrary the learned Trial Judge came to the conclusion that the facts established by the evidence on record attracted the principle of *res ipsa loquitur* and, therefore, it was for the defendant to prove the absence of any negligence and due care and attention on its part.

Proceeding, the learned Trial Judge was also of the view that duty of a hospital is not limited to diagnosis and treatment but extends to looking after the safety and security of the patients, particularly, those who are sick or under medication and therefore can become delirious and incoherent. Adverting to the facts before him, the learned Judge took the view that it is evident that in the present case the plaintiff, who was suffering from high fever, had gone out for a stroll in the middle of the night being unable to sleep. His absence from the room on being noticed by his sister (PW-2) a search was organized and the plaintiff was found lying on the ground floor in the oncology gallery of the hospital with the injuries in question. On the said basis, the learned Trial Judge concluded that, in the present case, the hospital should be held liable for not maintaining the necessary vigil in the hospital premises to ensure the safety of its patients and it is on account of the absence of such vigil that the plaintiff, despite his poor health, was able to walk around and in the process had sustained the injuries in question. So far as the quantum of damages is concerned,

the learned Trial Judge quantified the same at Rs.7 lakhs along with interest at 12% per annum thereon.

7. In appeal, the Division Bench reiterated the findings recorded by the learned Trial Judge holding the same to be justified in the totality of the facts proved in the case. Additionally, the Division Bench was of the view that the plaintiff was entitled to a total amount of Rs.11 lakhs by way of damages which was quantified in the following manner :

(i)	For loss of future prospects in employment	Rs. 4,00,000.00
(ii)	For keeping an attendant	Rs. 4,00,000.00
(iii)	For non-pecuniary loss including pain and suffering, loss of limb etc.	Rs. 3,00,000.00

The aforesaid amount of damages was directed to carry interest @ 12% from the date of filing of the suit i.e. 29.10.1991.

8. The maxim **res ipsa loquitur** in its classic form has been stated by Erle C.J.

(1) **"……..where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."[1]**

The maxim applies to a case in which certain facts proved by the plaintiff, by itself, would call for an explanation from the defendant without the plaintiff having to allege and prove any specific act or omission of the defendant.

9. In **Shyam Sunder and Others vs. The State of Rajasthan[2]** it has been explained that the principal function of the maxim is to prevent injustice which would result if the plaintiff was invariably required to prove the precise cause of the accident when the relevant facts are unknown to him but are within the knowledge of the defendant. It was also explained that the doctrine would apply to a situation when the mere happening of the accident is more consistent with the negligence of the defendant than with other causes.

[1] Scott v. London & St. Katherine Docks, (1865) 3 H & C 596, 601
[2] 1974 (1) SCC 690

10. We have considered the case of the respective parties and the evidence adduced in support thereof; the judgment under appeal as well as the view taken by the learned Trial Judge besides the arguments and contentions advanced before us. The learned courts have applied the principle of *res ipsa loquitur* to the present case to cast the burden of proving that there was no negligence on the defendant. Thereafter, the learned Trial Judge as well as the Division Bench of the High Court has held the defendant liable for negligence and failure to take due care of the plaintiff who was an indoor patient in the hospital. The aforesaid conclusions reached is on an elaborate consideration of the evidence and materials on record and after a detailed discussion of the stand of the rival parties. On a consideration of the facts of the present case we do not find any error in the application of the principle of *res ipsa loquitur* to the present case. In so far as the findings of negligence and absence of due care of the defendant is concerned, we are of the view that such findings being concurrent findings of fact the same ought not to be reopened by us in the appeal filed by the defendant-hospital

under Article 136 of the Constitution. Any such exercise would be wholly inappropriate to the extraordinary and highly discretionary jurisdiction vested in this Court by the Constitution. Even otherwise, we do not find anything inherently improbable or outrageously illogical in the conclusions reached by the learned Trial Judge as affirmed in appeal. The appeals filed by the defendant-hospital are, therefore, dismissed.

11. Insofar as the quantum of compensation is concerned, we are of the view that the three broad heads considered by the Division Bench for award of damages are sufficiently representative of the claim of the plaintiff. The precise quantum of compensation that should be awarded in any given case cannot and, in fact, need not be determined with mathematical exactitude or arithmetical precision. So long the compensation awarded broadly represents what could be the entitlement of a claimant in any given case the discretion vested in the trial court and the regular first appellate court ought not to be lightly interfered. Taking into account the facts before us and having regard to the

basis on which damages have been awarded, we do not consider the same to be either inadequate or inappropriate so as to justify interference. Accordingly, the appeal filed by the plaintiff is also dismissed.

12. Consequently and in the light of the aforegoing discussions, both sets of appeals are dismissed.

.....CJI.
[P. SATHASIVAM]

.....J.
[RANJAN GOGOI]

.....J.
[N.V. RAMANA]

NEW DELHI,
APRIL 22, 2014.