1949 *Present :* **Canekeratne J. and Gratiaen J.**

PERERA, Appellant, *and* GAMINI BUS CO., LTD., Respondent

S. C. 281—D. C. Colombo, 17,078

Negligence—Passenger alighting from bus—Run over by rear wheel—Res ipsa loquitur—*Want of proper care—Damages.*

An omnibus stopped at a halting place to enable passengers including plaintiff to alight and the plaintiff was later found run over by the rear wheel of the bus.

Held, that the maxim *res ipsa loquitur* applied and that in the absence of an explanation the defendant was liable.

APPEAL from a judgment of the District Court, Colombo.

N. E. Weerasooria, K.C., with *H. A. Koattegoda*, for plaintiff appellant.

H. W. Jayewardene, for defendant respondent.

Cur. adv. vult.

March 25, 1949. GRATIAEN J.—

On June 22, 1945, the plaintiff, an elderly lady of 59, was a passenger in an omnibus belonging to the defendant Company. The omnibus stopped at a halting place in Pamankadde to admit new passengers and also to enable certain passengers, including the plaintiff, to alight. According to a witness whose evidence has been accepted by the learned District Judge, "there was a rush of people trying to board the bus; there was no queue at the halting place, and everybody was crowding round the bus". In this state of things the situation clearly demanded special caution from the driver of the omnibus before he drove the vehicle away. He should have realised the possibility that someone who was either pressing forward to board the omnibus or who was attempting to alight might be jostled into a position of danger when the vehicle resumed its journey. It was therefore incumbent on him not to drive off without eliminating the risk of running over members of the undisciplined crowd or over others who, like the plaintiff, had unwillingly been caught up, so to speak, in the tide. What actually did take place illustrates what any reasonable person should have anticipated and made it his business to avoid. According to the case as presented at the trial on behalf of the Company, when the omnibus eventually drove off, its rear wheels ran over the plaintiff who had been knocked down by some persons who wanted to get into the omnibus. To quote a witness called by the Company, "as the plaintiff fell, the bus started and the rear wheels ran over her".

The plaintiff's version of the incident is rather different, but it was rejected by the learned Judge and I will therefore assume for the purposes of this appeal that the Company's version represents the truth. But I do not think that this can avail the Company, because the Company's version discloses an equally strong *prima facie* case of negligence against the driver. In the ordinary course of things the rear wheels of an omnibus which is carefully and competently handled do not run over a person who has just alighted from the vehicle at a prescribed halting place. The doctrine of *res ipsa loquitur* clearly applies to such a case, because "where the accident was such as does not normally happen if those that have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident rose from want of care"—*Scott v. London Dock Company* [1]. In the present case the driver has signally failed to give or even to suggest an explanation which can be regarded as sufficient to rebut the presumption of negligence raised against him. Indeed, he unblushingly confessed to almost complete ignorance of what had happened. "I did not see how the accident occurred", he said, "I saw the plaintiff alighting from the bus. The conductor gave me the signal to start and I started the bus. When the bus travelled about two or three feet the people shouted that a woman was run over. I stopped the bus and saw that this woman had been run over". Far from serving to rebut the presumption of negligence, this frank admission by the driver seems to me to strengthen the case against him. If the driver of an omnibus is content to surrender his judgment to the conductor on the question whether it is safe to drive on without risk to the persons who were known, in an atmosphere of chaos and confusion, to be in very close proximity to the vehicle, he does so at his peril. To drive "in blinkers" on such an occasion is to my mind an act of gross and unpardonable negligence. It shows callous disregard for the safety of others.

In my opinion there is no evidence to justify the learned Judge's view that the accident occurred "due to some cause beyond the control of the Company's driver". I would accordingly hold that the Company is liable to compensate the plaintiff for the damages sustained by her by reason of the driver's negligence.

There remains the issue of damages. In addition to other injuries the plaintiff sustained a compound fracture in her left leg. She had been employed as an attendant in a Government Hospital, and it is clear that apart from the very considerable pain and discomfort which she must have experienced, she has incurred a great deal of expense and also been deprived of income for many months. The learned trial Judge did not record his findings on the issue of damages in view of his decision that negligence had not been established against the driver. It is I think more satisfactory for a trial Judge to express his opinion on all the issues of fact in the event of his judgment on the major issue of liability being reversed in appeal. As this has not been done, the case should normally be sent back for retrial on the issue of damages. The accident occurred, however, nearly four years ago, and I am very reluctant to put the

[1] *159 E. R. 665.*

parties, and particularly the plaintiff, to further expense and inconvenience if it can be avoided. The plaintiff is now 63 years old, and it would be wrong to deprive her any longer of the compensation which is her due. I prefer in all the circumstances to assess the damages on the materials which are already before us. Considering that part of the evidence on this issue which the defendant Company has not disputed, I am satisfied that the trial Judge could not reasonably have awarded the plaintiff a sum of less than Rs. 2,500 as damages. This seems in all the circumstances of the case to be a fair award. I would accordingly set aside the judgment of the learned District Judge and enter decree in favour of the plaintiff against the defendant Company for the sum of Rs. 2,500. The plaintiff is also entitled to her costs of appeal and in the Court below.

CANEKERATNE J.—I agree.

Appeal allowed.

1949 *Present* : **Basnayake J.**

HANIFFA, Appellant, *and* PACKEER (S. I. Police), Respondent

S. C. 68—M. C. Batticaloa, 6,958

Penal Code—Insult—Provocative of breach of peace—No actual provocation—Offence—Section 484.

An offence under section 484 of the Penal Code is committed where the insult is provocative of a breach of the peace even where the person insulted is not actually provoked or where he shows restraint.
Frazer v. Sinnaiya (1910) 14 N. L. R. 3 followed.

APPEAL from a judgment of the Magistrate's Court, Batticaloa.

G. E. Chitty, with *Vernon Wijetunge*, for accused appellant.

A. E. Keuneman, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

April 11, 1949. BASNAYAKE J.—

This appeal is from a conviction of the appellant on the following charge :—

" That you did within the jurisdiction of this Court at Badulla Road, Koddamunai, on November 21, 1948, intentionally insult J. Armstrong, Excise Inspector of Batticaloa, by using the following words to wit : ' Onta Pendilai Thada Pundai Magane ' intending or knowing it to be likely that such provocation will cause him to break the public peace and thereby you have committed an offence punishable under section 484 of the Penal Code. "

Shortly the facts are as follows : On November 21, 1948, Excise Inspector Armstrong was driving his car along the Badulla Road with his mother and children as passengers. He was not in uniform at the time. Near the office of the Eastern Bus Company he heard someone