[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

ACHILLEAS MORIDES,

Appellant-Plaintiff,

v.

CHRYSTALLA IOANNOU,

Respondent-Defendant.

(*Civil Appeal No.* 5047).

Negligence—Res ipsa loquitur *principle—Now embodied in section* 55 *of the Civil Wrongs Law, Cap.* 148*—Effect of the principle—Upper storey of a house in a ruinous condition falling on to appellant's house and causing damage—No evidence explaining how it came to fall as aforesaid—Only reasonable inference, on the balance of probabilities, is that it so fell due to its ruinous condition—Clear case where the principle of* res ipsa loquitur *should apply—Respondent (defendant) liable for damages for negligence to the appellant (plaintiff).*

Res ipsa loquitur—*Principle of—Meaning and effect—Section* 55 *of Cap.* 148 (supra)—*See* supra.

Words and Phrases—" Res ipsa loquitur ".

Civil Wrongs—Negligence—Res ipsa loquitur—*See* supra.

This is an appeal by the plaintiff in the action against the judgment of the District Court of Limassol, dismissing his claim for damages in respect of damage caused to his house when in January 1969, the upper floor of the adjoining house of the respondent (defendant) collapsed and fell on to the appellant's said house. The action was pleaded and fought as a case of negligence and so it was approached and dealt with by the trial Court.

The trial Court reached the conclusion that, in the circumstances of this case, the fact that the upper floor of the defendant's (respondent's) house collapsed on to the house of the plaintiff (appellant) did not constitute *prima facie* evidence of negligent conduct on the part of the respondent ; and that this was not an instance in which the principle of *res ipsa loquitur* could apply.

After reviewing the facts and legal principles involved in this case, the Supreme Court allowed this appeal by the

plaintiff and held that this was a case in which the principle of *res ipsa loquitur* (which is now embodied in our Civil Wrongs Law, Cap. 148, section 55, the text of which is quoted *post* in the judgment) should apply.

Held, (1) (*a*). Section 55 of the Civil Wrongs Law, Cap. 148 (see the full text *post* in the judgment) makes the *res ipsa loquitur* principle of the English Common Law part of our own statutory law.

(*b*) Regarding the effect of the principle in question useful reference may be made to *Lloyde* v. *West Midlands Gas Board* [1971] 2 All E.R. 1240, at p. 1246 where Megaw L.J. said. " I doubt whether it is right to describe *res ipsa loquitur* as a ' doctrine '. I think it is no more than an exotic, though convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff *prima facie* establishes negligence where : (i) (ii) " (see the full passage *post* in the judgment).

(2) In the light of the above stated legal considerations, we are of the view that in the absence of any evidence explaining otherwise how the upper storey of the house of the respondent (defendant) came to fall on to the house of the appellant (plaintiff), the only reasonable inference, on the balance of probabilities, is that it so fell due to its ruinous condition and that the trial Court had to find that the respondent (defendant) was, in the circumstances, liable for negligence to the appellant (plaintiff) ; there can be no doubt that with reasonable diligence the respondent would have known of, and could have put right, the condition of her house.

(3) Damages in the sum of £150 (agreed by the parties) awarded.

Appeal allowed with costs.

Cases referred to :

Lloyde v. *West Midlands Gas Board* [1971] 2 All E.R. 1240, at p. 1246 *per* Megaw L.J.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Hadjitsangaris, D.J.) dated the 5th January, 1972, (Action No. 3036/69) dismissing plaintiff's claim for damage caused to his house when the first floor of the adjoining house of the defendant collapsed and fell on to the plaintiff's house.

A. Neocleous with *G. Nicolaou*, for the appellant.

P. Pavlou, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P.: This is an appeal against the judgment of the District Court of Limassol by which there was dismissed an action brought by the appellant against the respondent in respect of damage caused to the house of the appellant when, at Akrotiri village, in January, 1969, the first floor of the adjoining house of the respondent collapsed and fell on to the appellant's house which, at the time, was being used as a store-room. The respondent had ceased to live in her house about fifteen years before it collapsed and nobody else was entitled to occupy it or use it at the material time.

Before the trial Court the action was pleaded and fought as a case of negligence and it was approached as such by the learned trial Judge in his judgment.

The trial Court reached the conclusion that, in the circumstances of this case, the fact that the upper floor of the respondent's house collapsed on to the house of the appellant did not constitute *prima facie* evidence of negligent conduct on the part of the respondent; and that this was not an instance in which the principle of *res ipsa loquitur* could apply.

The evidence adduced did establish that the respondent's house was, at the time concerned, in a ruinous condition ; it was stated by a witness called by the appellant that it was in need of repair and that, in particular, the doors and the windows of the first floor were being blown open by the wind. The appellant testified that the respondent's house was in a dangerous condition and when he was cross-examined as to why it collapsed he said that it did so because it was not being properly repaired.

This evidence remained uncontradicted and, actually, no evidence was given or called by the respondent.

The defence was based mainly on the contention that the collapse of the respondent's house was caused by an act of God. But the evidence shows that there did not occur any natural event which could be treated in law as an act of God ; it was stated specifically that for the previous ten days it had not rained at all.

Section 51 (1) of the Civil Wrongs Law, Cap. 148, makes provision about the civil wrong of negligence and subsection (2) of the same section provides, *inter alia*, that the occupier of any immovable property owes a duty not to be negligent to the owner of any property which is so near to such immovable property as in the usual course of things to be affected by negligence ; and " occupier " is defined in section 2 of the same Law as meaning the " owner " if there does not exist a person entitled as against the owner to occupy or use the property concerned.

Section 55 of Cap. 148 makes the *res ipsa loquitur* principle of the English Common Law part of our own law ; this section reads as follows :—

> " 55. In any action brought in respect of any damage in which it is proved—
>
> (*a*) that the plaintiff had no knowledge or means of knowledge of the actual circumstances which caused the occurrence which led to the damage, and
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> (*b*) that the damage was caused by some property of which the defendant had full control,
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> and it appears to the Court that the happening of the occurrence causing the damage is more consistent with the defendant having failed to exercise reasonable care than with his having exercised such care, the onus shall be upon the defendant to show that there was no negligence for which he is liable in connection with the occurrence which led to the damage."

Regarding the effect of the principle in question useful reference may be made to *Lloyde* v. *West Midlands Gas Board* [1971] 2 All E.R. 1240, where (at p. 1246) Megaw L.J. said the following :—

> " I doubt whether it is right to describe *res ipsa loquitur* as a ' doctrine '. I think it is no more than an exotic, though convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of

the effect of evidence in certain circumstances. It means that a plaintiff *prima facie* establishes negligence where : (i) It is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident ; but *(ii) on the evidence as it stands at the relevant time* it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety.

"I have used the words 'evidence as it stands at the relevant time'. I think this can most conveniently be taken as being at the close of the plaintiff's case. On the assumption that a submission of no case is then made, would, the evidence, as it then stands, enable the plaintiff to succeed because, although the precise cause of the accident cannot be established, the proper inference on balance of probability is that that cause, whatever it may have been, involved a failure by the defendant to take due care for the plaintiff's safety? If so, *res ipsa loquitur*. If not, the plaintiff fails. Of course, if the defendant does not make a submission of no case, the question still falls to be tested by the same criterion, but evidence for the defendant, given thereafter, may rebut the inference. The res, which previously spoke for itself, may be silenced, or its voice may, on the whole of the evidence, become too weak or muted. That the question of *res ipsa loquitur* has to be tested on an assessment of evidence is, I think, confirmed by a passage in the judgment of Lord Evershed M.R. in *Moore* v. *R. Fox & Sons Ltd.* He said :—

> 'It must, as I venture to think, always be a question whether, on proof of the happening of a particular event, it can with truth be said that the thing speaks for itself. The event or 'thing' may, or may not, produce that result. Not every accident has, without more, that effect. If, on a closer analysis of the happening and its circumstances, it does not in truth appear fairly to follow that the proper inference is one of negligence, then the case is not one of *res ipsa loquitur* at all.'

The plaintiff must prove facts which give rise to what may be called the *res ipsa loquitur* situation."

In the light of the above stated legal considerations we are of the view that, in the absence of any evidence explaining otherwise how the upper storey of the house of the respondent came to fall on to the house of the appellant, the only reasonable inference, on the balance of probabilities, is that it so fell due to its ruinous condition and that the trial Court had to find that the respondent was, in the circumstances, liable for negligence to the appellant ; there can be no doubt that with reasonable diligence the respondent would have known of, and could have put right, the condition of her house.

Judgment, therefore, should be given in favour of the appellant and this appeal succeeds accordingly ; the amount of damages payable by the respondent to the appellant is £150, such amount having been agreed to by the parties.

We think that in the circumstances of this case there is no reason not to order the respondent to pay the appellant's costs both at the trial and before this Court.

Appeal allowed with costs.