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THE PRINCIPLE OF RES IPSA LOQUITUR WITH RESPECT TO TORT OF NEGLIGENCE

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ABSTRACT

In common law jurisdiction, a tort is nothing but a civil wrong where there is an infringement of legal right giving the right of compensation against the wrongdoer. Torts can be classified into three broad categories, and one of them is Negligence. In simple terms, negligence can be understood as the Act of being careless. As a general rule, in the action for Negligence, the plaintiff has the burden of proof and they rely on direct evidence but in some cases like where the injury occurs to young children direct evidence may be lacking, in which case of Res Ipsa loquitur may come to aid the plaintiff. The doctrine Res Ipsa Loquitur in tort law is a rule of evidence, commonly referred to as Res Ipsa, meaning -"the thing speaks for itself". In personal injury law, the conception of Res Ipsa Loquitur (or "Res Ipsa") operates as an associate evidentiary rule that permits plaintiffs to determine a rebuttal presumption of negligence. The doctrine also allows a plaintiff to establish a prima facie case of negligence with circumstantial evidence. If the elements of Res Ipsa i.e. control, presence of negligence, and absence of proof are met, the burden automatically shifts to the defendant to show that he was not negligent. This research paper enlists and gives an insight into the principle of Res Ipsa Loquitur for the tort of negligence, taking into consideration its meaning, essential elements, and relevant case laws.

Keywords: Tort, Negligence, Res Ipsa Loquitur, Rebuttal Presumption, Prima Facie.

INTRODUCTION

Law as a body of rules is essentially anxious with the maintenance of social order by regulating the conduct of individuals in society. In the common law system, Tort, the term is found for civilly actionable harm or wrong, other than a breach of contract, for which courts provide a remedy in the form of an action for damages (Schubert, 2012), which can be defined as:

"*Tort means a civil wrong which is not exclusively a breach of contract or breach of trust*".[1]

And has the following categories:

- Intentional Torts;
- Negligence and;
- Strict Liability;

where the unintentional tort is nothing but commonly Negligence.

In everyday life, **Tort of Negligence** is legal wrongdoing where someone bears at the hands of another i.e. who breaks at taking proper care to avoid what a rational man would regard as a predictable risk. In more simple terms, it generally means:

"As the breach of a legal duty to take care which results in damage undesired by the defendant, to the plaintiff"[2] & also entails the existence of a *legal obligation to take care indebted to the plaintiff, damage resulting from the breach to the plaintiff and breach of that duty by the defendant* [3].

Generally, what happens is like, it is for the plaintiff who must prove by his / her evidence, regarding the defendant's conducts, proving that the defendant was negligent. But often the defendant only knows how and why the accident took place and it occurred. So, in such cases, the plaintiff has the right at sometimes that he/she can invoke the assistant of the **rule of evidence** *i.e Res Ipsa Loquitur*.

[1] LIMITATION ACT 1963, S 2(m).
[2] Winfield And Jolowiz On Torts (1st Edition, London: Sweet and Maxwell 1998) at p. 90
[3] Donoghue v Stevenson, 562 AC (1932).

RESEARCH PROBLEM

The problem of this study is intended to focus upon the issues related to the defendant and plaintiff regarding the shift of the burden of proof in various circumstances. As this doctrine is one of the most uncertain doctrines to be found in the area of negligence so this paper tries to identify that whether the presumption of this doctrine leads to injustice or not.

RESEARCH OBJECTIVES

The objective of this paper is to achieve the following:

- To study the effects, essentials, and importance of the application of the principle especially in a case of negligent actions in torts law.
- To identify whether the doctrine is likely to lead to any injustice or not.

RESEARCH QUESTIONS

1) What does the principle of *res ipsa loquitur* mean?
2) What is the nature and Purpose of Res ipsa loquitur?
3) How does the principle work?
4) How does the court execute this doctrine in negligent actions?
5) Does this doctrine is likely to result in any kind of injustice?

HYPOTHESIS

There are various situations where it can be observed that even if the doctrine applies then it doesn't mean that the total burdens shifts to the defendant rather it is still necessary that the plaintiff should prove the facts in such a way that from which conclusion of defendant's negligence may be logically drawn to. However, everything depends upon the situational facts of the case and it can be proved by various case laws.

SCOPE OF THE STUDY

The paper aims that this doctrine has always aided the honourable courts ensuring that the person who suffers any harm due to the careless fault of others is not only protected but also are compensated with respect of tort of negligence. Further, it briefly discusses that the doctrine doesn't lead to injustice.

RESEARCH METHODOLOGY

By the objectives of this study, the Doctrinal approach has been done primarily with the help of case laws and various judgments. The descriptive and analytical system has been done by the researcher all through the paper. Secondary sources like books, articles, sites have also been implied for the achievement of this undertaking research paper.

NATURE OF NEGLIGENCE: NEGLIGENT ACTIONS

'Negligence', a term is a concept of both the law of torts and an independent tort. As an independent tort, it may be an ingredient of some tort such as trespass and nuisance but it's a separate tort which was originated in the 19th century. In recent times, it is the most important of all torts; where more literature has been written on it than any other tort.

Therefore, not every act of carelessness is actionable under the tort of negligence. The term 'statutory negligence' was coined by *Lord Wright*, where he validated the need for 'damage' as an essential element of actionable negligence.[4]

ESSENTIAL ELEMENTS OF NEGLIGENCE**:**

To commit the tort of negligence all three main elements must be proved for the plaintiff to be successful in tort in negligence actions –,

- The defendant owes a duty of care to the plaintiff.
- Breach of that duty by the defendant.
- Damage to the plaintiff resulting from the breach.[5]

BRIEF EXAMINATION OF THE ESSENTIAL ELEMENTS:

1. The defendant owes a duty of care to the plaintiff

This element is known to be one of the most essential components in the negligence area especially to make a person liable. Universally, in a case of Negligence generally, the liability arises only in a situation where a defendant owes a legal duty to the plaintiff i.e. in the circumstance in which reasonable care must be taken. Therefore, in such circumstances, a lawful question arises i.e. whether in such situations a duty of care exists or not?

Today, the most important concept of the existence of a duty of care is contained in the judgment of **Lord Atkin** in ***Donoghue v.Stevenson***[6], a remarkable case where the honorable court held that a manufacturer

[4] Lochgelly Iron and Coal Co v. Mcmullan , A. C. 1 at p. 25 (1934).
[5] Royal Ade Ltd. v. National Oil and Chemical Marketing Company Plc, (2004) 117 LRCN 3899 S.C. 3904 (India).

owes care of duty to the ultimates costumer i.e it is their duty to look after the article manufactured by them causes no harm and is free from any kind of defect.

Furthermore, the house of Lords also went ahead in laying down the neighbor principle i.e the reasonable *foreseeability test* which guides the court in determining the situations of breach of duty.

2. The Breach Of Duty by the defendant:

This element of Negligence decides whether or not the defendant was negligent. The Law has set some sets of standards in considering whether or not the defendant falls in the breach of duty of care. This Standard is nothing but the standard of care which a reasonable layman could take in circumstances. This supports the opinion of *Anderson B.* in the case of *Blyth v. Birmingham Water Works Co.*, where he stated that:

> ***"****Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human attains, would do or doing something which a prudent and reasonable man would not do."*[7]

Again, the concept of foreseeability is relevant in estimating whether or not the conduct of the defendant lies below what is expected of the reasonable layman man. Though it is not the only factor, however, for the degree of care varies according to the circumstances which the law requires persons to observe in the conduct of their affairs.

3. Damage to the Plaintiff: Result of Breach

Negligence is not *actionable per se* but upon proof of actual damage. Thus, the plaintiff must prove that the defendant is liable for the damage he/she suffered in law. In other words, for every damage, a plaintiff does not recover compensation which he sustains due to the result of the defendants' breach of duty. The plaintiff will fail if the court estimates that the damage is too minute or that the injury he/she sustained was not a consequence of the defendant's breach of duty of care.

[6] [1932] AC 562.
[7] [1856] EX. 781.

NATURE AND APPLICATION OF THE PRINCIPLE OF RES IPSA LOQUITUR IN NEGLIGENCE ACTIONS

MEANING

The doctrine of **RES IPSA LOQUITUR** may appear simple on its face, but is one of the most uncertain doctrines to be found in the negligence area. In a simple concept, it is for the plaintiff to prove that the negligence was on the defendant's part. [8]

Res ipsa loquitur has been defined as:

"*A common-sense appraisal of the probative value of circumstantial evidence,*" [9]

This doctrine was first introduced into Anglo-American law in 1863 in the English case of *Byrne v. Boadle*.[10] which stated that this doctrine is a procedural device whereby the plaintiff need not need to factually establish a *prima facie* case of negligence, an inference of negligence is logically deduced from the *neutral circumstantial evidence* introduced.

NATURE AND PURPOSE OF THE DOCTRINE OF RES IPSA LOQUITUR

Unlike negligence per se, Res Ipsa Loquitur does **NOT** conclusively governs whether the defendant is liable for negligence or not. Res Ipsa Loquitur should be thought in deciding of liability as purely a form of circumstantial evidence. The maxim is nothing more than just a rule of evidence affecting the onus of proof. It is just based on common sense, and *its purpose is to ultimately provide justice* which is to be done when the facts bearing on causation and the care are at the outset unknown to the plaintiff exercised by the defendant and are, or should to be within the understanding of the defendant. [11]

Furthermore, the doctrine of Res Ipsa Loquitur is the result of that when the thing is shown to be under the control of the defendant, and the accident is such as in the normal course of things does not happen if those who have control use proper care, it supplies reasonable evidence, in the truancy of clarification by the

[8] Narayan Puno v. Kishore Tanu, (1979) A.I.R. Goa 17 (India).
[9] *Galbraith v. Busch*, 267 N.Y. 230, 234, 196 N.E. 36, 38 (1935).
[10] 159 Eng. Rep. 299 (Ex. 1863). See BULMAN, RES IPSA LOQUITUR- WHEN DOES IT APPLY? 1961 INs. L.J. 20, 21.
[11] Per Adefarasin Ag. C.J. in Akintola v. Guffanti & Co. Ltd,. 5 CCHC 671 at 673 (1974).

defendant, that the accident arose from the want of care.[12]This highlights certain requirements that the plaintiff must prove before he/she can successfully rely on the doctrine[13].

To depend on this doctrine, the plaintiff must prove

- that an accident has been taken place;
- that the defendant had complete control of the instrumentality which caused the accident both before and at the time of the accident, and
- that if the defendant would have used ordinary care, the accident would not have happened. [14]

From the above points, it is a question of fact in each case as to,

Whether the thing causing the accident was under the defendant's control or not?

It does not mean that the doctrine is restricted to circumstances wherein the defendant has actual control but includes that circumstances where the defendant has the right to the power of the instrumentality. Negligence driving is the most case, where the motor vehicle's driver will be presumed to have plenty sufficient power of control over his/her vehicle and the surrounding circumstances will lead to the attraction of this doctrine.

Again, in a circumstance where the activity causing the damage was under the power of one of the servants of the defendant and where it is difficult or the plaintiff is unable to find that the particular servant had the control, then, he/she may still invoke the Res Ipsa loquitur doctrine to make the defendant vicariously liable.

For example, one of the authorities of a hospital is held liable for his/her negligent treatment of the patient even though the patient failed at showing which hospital staff was responsible.[15]

On the other hand, negligence will be assumed where the common meet of mankind shows that the type of accident that has occurred would not ordinarily have happened unless the defendant had been inattentive.

[12] Wacc Ltd. v. Caroline Poultry Farms , 2 NWLR P. 205 (2000).
[13] Res ipsa loquitur: the extent to which plaintiff may establish, negligence , 42 ST. JOHN'S LAW REVIEW (January, 1968).
[14] Gerhart v. Southern Cal. Gas Co., 56 Cal. App. 2d 425, 132 P.2d 874 (1942).
[15] Compare Kassidy v. Ministry Of Health, 2 KB 343 (1951).

APPLICATION OF THE DOCTRINE OF RES IPSA LOQUITUR IN NEGLIGENT ACTIONS

The doctrine of Res Ipsa Loquitur has been victoriously applied in some cases like where the maxim applies, it shifts the onus/burden of proof from the plaintiff to the defendant to show either that the coincidence was due to a specific cause which did not involve negligence on his part or that he had used rational care in the matter.[16]

Furthermore, the effect of the acknowledgment of the doctrine is to afford prima facie (at first sight), proof of negligence. Thus, in *Ibekendu v. Ike*,[17] the respondent as plaintiff sued the appellant at the High Court profess compensation for injuries suffered in a mishap caused by the negligence of the appellants. The said mishap occurred when the haice-bus driven by the appellant skewed from its side of the road to the other side and hit the respondent who was walking by the side of the highway. The bus eventually ended up in a trench along the road. The court held that these facts raised a prima facie, presumption of negligence which automatically brings in to take part in the doctrine of Res Ipsa Loquitur, thereby shifting the burden on the appellant to provide an acceptable and trustworthy explanation to show why it happened.

Reciprocally, the doctrine will not apply where the facts proved are equally steady with the mishap as with negligence and where there is evidence of how the accident happened and the difficulty arises merely from an inability to allocate blame[18]. Therefore, where the cause of the accident is known, the doctrine of Res Ipsa Loquitur will not apply. In such a case, the plaintiff will only be required to plead and prove the particulars of the defendant's negligence.[19] However, a plaintiff may plead and rely upon the doctrine of Res Ipsa Loquitur in the alternative to the particulars of negligence already pleaded which was confirmed by the Court of Appeal in the case of *Flash Fixed Odds Ltd. v. Akatugba*,[20]

Additionally, it is ordinary for the defendant to attempt to rebut the reasoning of negligence by contending that the mishap was caused by some factors beyond his control; such as a skid, tire burst, or a latent defect in his vehicle, etc. Thus in, *Aniechebe v. Onyekwe*,[21] the defendant's plea that the U-bolt of his vehicle suddenly broke because of a latent defect also failed. The court held, in that case, that for the plea to succeed, the defendant had to go further to show that he had taken all reasonable precautions to ensure that the U-bolts were in satisfactory condition and that the vehicle was in a fit mechanical state to be on the road.

[16] Compare Moore v. Fox & Sons Ltd., 1 QB 596 (1956).
[17] [1993] 5 NWLR (Pt. 299) 287.
[18] W.A.C.C. Ltd. v. Caroline Poultry Farm Ltd., 2 NWLR 197 (2000),
[19] I. J. Udofa, "Law Of Torts In Nigeria" UYO: ESQUIRE PUBLISHERS, 118-119 (2005).
[20] [2001] FWLR (Pt. 76) 709 at 727.
[21] [1967] 1 All NLR 311.

DOES THE DOCTRINE IS LIKELY TO RESULT IN ANY INJUSTICE?

Once every essential element of the doctrine are satisfied, then the court is allowed to deduce negligence on the part of the defendant in the truancy of a satisfactory explanation in the circumstances of the case.

Due to this very reason, it is noted that the doctrine of res Ipsa Loquitur does not likely to result in any kind of injustice as it is evidential presumption sometimes turn to in truancy of evidence but it is not to be applied in the availability of evidence. Furthermore, it is not applicable in cases where there is an unexplained accident that may be attributable to one of several causes for some of which the defendant is not responsible. This was seen in the case of ***Cooper v. Horn***[22]**.**

CIRCUMSTANCES UNDER WHICH THE PRESUMPTION OF RES IPSA LOQUITUR WILL RESULT

INTO INJUSTICE: The doctrine would result in injustice if there would be contributory negligence on the part of the plaintiff. In the case of *Stillman v Norfolk & Co*[23] , it was held that if the plaintiff contributed to the accident, the accident, the inference that the negligence leading to it was the defendant's is undermined besides; res ipsa loquitur dates from the era of contributory negligence when any negligence by the plaintiff barred recovery even if the defendant was negligent.

If we find from your reflection of all the corroboration that the defendant has proved both of the premise required of him, and if you find that the plaintiff's contributory negligence was greater than the total coming cause of the injury or damage for which retrieval is sought, then the adjudication shall be for the defendant[24].

Might be so clear that no sensible person could break to accept it. If the defendant is hushed, the court can direct a judgment for the plaintiff if the deduction is so powerful that sensible jurors could not reach any further closure. Where the court considers the question of negligence, it can choose that the reality does not

[22] [1994] 248 Va. 417, 448 S.E.2d 403.
[23] [1988] ALL ER 268.
[24] Arafat Makamba Jr., 'Does the doctrine of Res ipsa loquitur likely to result in any Injustice?', https://www.academia.edu/6997271/Does_the_doctrine_of_Res_Ipsa_Loquitur_and_its_applicability_likely_to_results_into_Injustice.

analytically lead to a reasoning of the defendant's negligence, even if the defendant did not offer any proof in her/his defense. If the defendant presents proof that makes it improbable that she/he has acted negligently, then, the plaintiff will mislay his/her case unless he can rebut the evidence or proof, since such evidence destroys the conclusion of negligence created by *res ipsa loquitur*. The court of law holds that *res ipsa* loquitur creates a rebuttable presumption of negligence. Unless the defendant offers sufficient proofs to counter it, the court must direct a judgment for the plaintiff. Some states have gone as far as to shift the onus of proof to the defendant, requiring him/ her to introduce evidence/proof of greater weight than that of the plaintiff[25].

CONCLUSION

However, if the doctrine of *res ipsa loquitur* is applied in a particular case then it doesn't mean that the onus or the burden of proof will be shifted to the defendant rather it is still necessary for the plaintiff to prove the defendant's negligence based on the facts so that the inference may be reasonable drawn. Therefore, in conclusion, it doesn't result in any kind of injustice because it not only binds the defendant but also the plaintiff to establish the arguments. Furthermore, although this doctrine places the responsibility of coming forward to free the inference of negligence on the defendant, the doctrine's procedural application doesn't shift the onus or burden of proof, instead, it only shifts the responsibility of moving forward with evidence to the defendant.

[25] Michael G., 'Res' Of The Story', LOS ANGELES DAILY JOURNAL, (16 July, 2001).