

IN THE COURT OF CLAIMS OF OHIO

WILLIAM E. TURNER	:	
5875 Sampson Drive	:	
Girard, Ohio 44420	:	Case No. 2002-04062-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
 Department of Transportation
 1980 West Broad Street
 Columbus, Ohio 43223
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FINDINGS OF FACT

{¶1} On December 16, 2001, at approximately 6:45 a.m., plaintiff, William E. Turner, was traveling east on Interstate 80 in Trumbull County¹ when a street light pole, stationed adjacent to the roadway, fell onto the roadway in the path of plaintiff's vehicle and a resulting collision occurred. This collision caused substantial tire, wheel, and body damage to plaintiff's 1986 Cadillac Seville. Consequently, plaintiff filed this complaint seeking to recover \$595.27, his total cost of automotive repair associated with the December 16, 2001 incident. Plaintiff submitted the filing fee with the complaint. Plaintiff has alleged the collision between his car and the fallen light pole was the

¹ The general location of the fallen light pole was near milepost 227.15 on Interstate 80 at the Girard exit in Trumbull County.

sole cause of negligence on the part of defendant, Department of Transportation, in bearing responsibility for maintaining a defective light pole.

{¶2} Defendant has denied liability based on the fact it did not have notice of the downed light pole prior to plaintiff's property damage occurrence. Defendant indicated the light pole was inspected on November 12, 2001. The inspection report for light poles on Interstate 80 in Trumbull County designated the light poles as "not satisfactory" and provided comments that the light poles were "rusty/old."

CONCLUSIONS OF LAW

{¶3} After review of plaintiff's complaint, defendant's investigation report, and other evidence in the case file, the court makes the following determination. The circumstances of plaintiff's injuries raise the doctrine of *res ipsa loquitur* to support allegations that defendant breached its duty of care. The doctrine warrants an inference of negligence, such inference, however, may always be rebutted by defendant. *TaxiCabs of Cincinnati, Inc. v. Kohler* (1959), 111 Ohio App. 225, 165 N.E. 2d 244, syllabus.

{¶4} *Res ipsa loquitur* is a rule of evidence, not a rule of substantive law, and the court must analyze such evidence, along with all the other evidence offered in a case to determine liability. *Hake v. George Wiedemann Brewing Co.* (1970), 23 Ohio St. 2d 65, 66, 262 N.E. 2d 703, 705.

{¶5} "To warrant application of a rule, a plaintiff must adduce evidence in support of two conclusions:(1) That the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant; and (2) that the injury occurred under the circumstances that in the ordinary course of events it would not have occurred if ordinary care had been observed. (Citations omitted.)

{¶6} Whether sufficient evidence has been adduced at the trial to warrant application of the rule is a question of law to be determined * * * by the trial court * * *." Id. at 66-67, 262 N.E. 2d at 705. See, also, 70 Ohio Jurisprudence 3d (1986), 300-301, Negligence, Section 159. Therefore, the court is required to consider the facts and circumstances surrounding the situation to determine if res ipsa loquitur is applicable. See *Howard v. Pennsylvania Rd. Co.* (1930), 43 Ohio App. 96, 182 N.E. 663.

{¶7} The facts of this case concisely presented are: 1) plaintiff's vehicle was damaged by a falling light fixture under defendant's control; and 2) light fixtures do not normally fall unless negligence is involved. The doctrine of res ipsa loquitur, with its inference of negligence, applies under the facts of the instant claim. The inference of negligence remains and plaintiff is not required to exclude all possible causes of the accident. See *Fink v. New York Central Rd. Co.* (1944), 144 Ohio St. 1, 56 N.E. 2d 456; *Nanashe v. Lemmon* (1958), 82 Ohio Laws Abs. 97, 162 N.E. 2d 569.

{¶8} "The doctrine of res ipsa loquitur, is one of necessity, applicable where the agency or place of the accident is accessible only to the defendant and under his control, and raises an inference of negligence requiring the defendant to explain the accident, if he can, on grounds other than his negligence, when its nature is such as to make it probable that it would ordinarily not have happened except for his negligence. The doctrine is regarded as a qualification of the rule that negligence is not presumed or inferred from the mere fact of injury, and there is no necessity of establishing knowledge where the doctrine applies.

{¶9} The doctrine of res ipsa loquitur is founded on an absence of specific proof of acts or omissions constituting negligence, and the particular justice of the doctrine rests upon the foundation that the *true cause of the occurrence, whether innocent or culpable, is within the knowledge or access of the*

defendant and not within the knowledge or access of the plaintiff."
(Citation omitted.) (Emphasis added.) 70 Ohio Jurisprudence 3d
(1986), 296-297, Negligence, Section 157.

{¶10} Upon review of the circumstances concerning plaintiff's injuries, and in viewing the evidence most favorably to plaintiff, as the court must do in determining whether *res ipsa loquitur* applies (*Howard, Id.*), the court finds that said doctrine is applicable in the instant action. It is the opinion of this court that it may be inferred that plaintiff's damages were related to the maintenance of the light fixture by defendant's contractor. The court finds that the instrumentality involved, under the circumstances, i.e., was under the exclusive control of defendant and the property damage occurred under such conditions if proper precautions were observed, such an event would not have occurred. Plaintiff has no specific proof of acts or omissions to demonstrate defendant's negligence; however, the fact remains that the incident causing said property damage did occur. Therefore, the doctrine of *res ipsa loquitur* has been utilized in evaluating the evidence and given the proper weight it deserves. Defendant has failed to provide any evidence sufficient to rebut the inference of negligence provided by *res ipsa loquitur*. Evidence presented has shown the light pole was old and rusty. Consequently, the doctrine of *res ipsa loquitur* applies to the instant action and defendant is liable to plaintiff in the amount of \$595.27, plus the \$25.00 filing fee.

{¶11} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶12} IT IS ORDERED THAT:

{¶13} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶14} 2) Defendant (Department of Transportation) pay plaintiff (William E. Turner) \$620.27 and such interest as is allowed by law;

{¶15} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
7/26
Filed 8/16/02
Jr. Vol. 715, Pg. 158
Sent to S.C. reporter 8/16/02