Basthi Kasim Saheb (dead) by Lrs

Vs

Mysore State Road Transport Corporation and Others

Civil Appeal No.2097-98 of 1974

(M.H. Kania, L.M. Sharma JJ)

12.11.1990

JUDGMENT

SHARMA J

1. These appeals by special leave are directed against the decision of the Mysore High Court rejecting the claim of the appellant, Basthi Kasim Saheb, for compensation u/S. 110A of the Motor Vehicles Act. After the death of the appellant his legal representatives have been substituted in his place.

2. The incident in question took place on 2nd July, 1964 at about 12.15 p.m. on the road between Mangalore and Bhatkal. The appellant was travelling by a bus belonging to the Mysore State Road Transport Corporation running on the route Bydnoor to Bhatkal. The bus was involved in an accident when it reached Suregahalla resulting in serious injuries to the appellant. After a considerable period of hospitalisation he recovered, but the recovery was not full and complete and he claimed a sum of Rupees 75,000/- (Rupees seventy five thousand only) as compensation. The application. was resisted both by the Road Transport Corporation and the Mysore Government Insurance Department, Motor Branch. Their case is that the accident did not happen as a result of rash and negligent driving of the driver, and in any event the claim was excessive.

3. The Motor Accidents Claims Tribunal accepted the case of the claimant that the accident took place on account of rash and negligent act of the driver but, did not agree with him on the amount to be decreed. The claim was partly allowed for a total sum of Rs. 35,000/- (Rupees thirty five thousand only) with costs and interest. Two appeals were filed against this 'judgment one by the Road Transport Corporation and the other on the question of quantum by the appellant.

4. According to the defence the road while approaching Suregahalla was on an upgradient and on reaching Suregahalla a down-gradient. The driver of the bus, while reaching the top point, has observed a bullock-cart standing unattended at some distance on the left side of the road, and he had, therefore, to take the bus towards right; and accordingly when wheels of the bus went beyond the metal portion of the road, they sank in the muddy soil due to the weight of the bus and the vehicle toppled on its right side. The plea is that the bus was not driven at a high speed as wrongly asserted in the claim petition and it was just a case of an unfortunate accident in which no responsibility can be fastened on anybody. The High Court agreed with the respondents and dismissed the claim petition. The appeal of the Corporation was accordingly allowed and that of the claimant dismissed. This judgment is now under challenge before this Court.

5. Mr. Javali, the learned counsel for the appellants has contended that the High Court wrongly assumed that the bus was not driven negligently and with a high speed, and claimed that the case of the claimant was fully established by the evidence on the record.

6. The sub-Inspector of police, P.W. 6, who visited the place of occurrence soon after the accident prepared a sketch map which has been admitted in evidence as Ext. A-4. He had also drawn up a panchanama attested by witnesses, Ext. A-5. The map shows that the unattended bullock-cart was standing on the left flank, sixteen feet wide and no part of it was on metalled portion of the road which was twelve feet in breadth. The right, flank was, however, only eight feet wide. The driver of the bus, R.W. 1, attempted to suggest that the bullock-cart occupied a portion of the tarred part of the road, which does not appear to be correct. However, even if we assume in favour of the respondents that in view of the bullock-cart being parked on the road it was necessary for the driver to have taken the bus on the right flank, the crucial question which remains to be answered is as to whether while so doing he had slowed down sufficiently for the vehicle to remain under control.

7. It has been established by the evidence in the case that in the rainy season the unmetalled portions of the road were used to be rendered slushy and muddy, and that, it had been actually raining for sometime. The driver, R.W. 1, was serving this route for about four months before the accident and it cannot, therefore, be suggested that he had no idea of the risk involved in driving down the vehicle on to the muddy portion, requiring special attention and considerable slowing down of the speed. The question as to whether the bus was being driven rashly or not must be answered in this context. While driving on a good wide multi-lane road, it may be permissible to drive a vehicle at a comparatively higher speed but, it will be highly unsafe to do so when circumstances are not favourable. The question whether a driver has been acting with due care is to be judged in that background. If the evidence in the present case is examined it leads to the irresistible conclusion that the driver was driving the bus rashly. The petitioner Basthi Kasim Saheb stated in his evidence that the bus was being driven at a high speed, which was not reduced by the driver after seeing the cart. The other evidence laid on behalf of the claimants also supports this version. Albert Dias, P.W. 10, opined that the bus was proceeding at a speed of forty miles per hour and that if the driver had slowed down putting the vehicle in a lower gear he could have passed without going over the mud portion of the road. It is also established by evidence that the fact that the mud portion of the road was soft and not well-settled was known to everybody. The driver of the bus, Alji Abdulla, R.W. 1, admitted in paragraph six of his deposition that he was driving the bus in the third gear right from the place the road proceeded on down-gradient and he continued driving in the third gear even at the time of the accident. This means that there was no attempt to slow down while going from the tarred portion to the mud portion. This part of the statement of the driver in the cross-examination supports .the petitioner's evidence which have been accepted by the trial court as proving rash and negligent conduct on the part of the driver.

8. The evidence in the case indicates that there was no traffic on the road at the time of the accident. No untoward incident took place like sudden failure of the brakes or an unexpected stray cattle coming in front of the bus and still the vehicle got into trouble. In absence of any unexpected development it was for the driver to have explained how this happened and there is no such explanation forthcoming. In such a situation the principle of res ipsa loquitur applies. The petitioner, in the circumstances, could not have proved the actual cause of the accident, and on the face of it was so improbable that such an accident could have happened without the negligence of the driver that the Court should presume such negligence without further evidence. The burden in such a situation is on the defendant to show that the driver was not negligent and that the accident might, more probably, have happened in a manner which did not connote negligence on his part, but the

defence has failed to produce any evidence to support such a possibility. We, therefore, agree with the finding of the trial court on this issue and set aside the judgment of the High Court.

9. The trial court has given good reasons supported by evidence for its assessment of the compensation amount and the learned counsel for the appellants has not been able to suggest any acceptable ground to interfere with the same. We, therefore, set aside the decision of the High Court and restore the decree passed, by the trial court. The appeal is accordingly allowed but, in the circumstances we direct that the parties shall bear their own costs of the High Court and of this Court.

Appeal allowed.

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