

Basthi Kasim Saheb (Dead) By L.Rs vs Mysore State Road Transport ... on 12 November, 1990

Equivalent citations: 1991 AIR 487, 1990 SCR SUPL. (2) 658, AIR 1991 SUPREME COURT 487, (1990) 4 JT 371 (SC), (1991) 1 APLJ 63, 1991 (1) SCC 298, 1991 SCC(CRI) 184, 1990 (4) JT 371, (1991) 1 TAC 715, (1991) SC CR R 67, 1991 CRILR(SC MAH GUJ) 360, (1990) 2 GUJ LH 549, (1991) 2 MAHLR 769, (1991) 1 PAT LJR 58, (1991) 1 PUN LR 304, (1991) 1 LJR 104, (1991) 2 ACC 5, (1991) 1 ACJ 380, (1990) 16 ALL LR 986, (1991) 1 ALL WC 188, (1991) 2 CIVLJ 208, (1991) 1 CURLJ(CCR) 210

Author: L.M. Sharma

Bench: L.M. Sharma, M.H. Kania

PETITIONER:

BASTHI KASIM SAHEB (DEAD) BY L.RS.

Vs.

RESPONDENT:

MYSORE STATE ROAD TRANSPORT CORPORATION ANDORS.

DATE OF JUDGMENT 12/11/1990

BENCH:

SHARMA, L.M. (J)

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SHARMA, L.M. (J)

KANIA, M.H.

CITATION:

1991 AIR 487

1990 SCR Supl. (2) 658

1991 SCC (1) 298

JT 1990 (4) 371

1990 SCALE (2) 982

ACT:

Motor Vehicles Act : Section 110A--Res ipsa loquitur--Applicability of--Whether driver of vehicle acts with due care--To be ascertained from facts of case.

HEADNOTE:

The appellant was travelling in a bus belonging to the Mysore State Road Transport Corporation when the bus was

involved in an accident resulting in serious injuries to the appellant.

The appellant claims Rs.75,000 as compensation. The respondents resisted the claim inter alia on the ground that the accident did not happen as a result of rash and negligent driving, but was just a case of an unfortunate accident in which no responsibility could be fastened on anybody.

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 allowed the claim for Rs. 35,000 only.

Both the appellant and the Road Transport Corporation filed appeals. The High Court, however, agreed with the respondents that the bus was not driven at high speed and it was just a case of an unfortunate accident in which no responsibility could be fastened on anybody.

Before this Court it was contended on behalf of the appellant that the High Court wrongly assumed that the bus was not driven negligently and with a high speed.

Allowing the appeal, setting aside the judgment of the High Court and restoring the decree passed by the Trial Court, this Court,

HELD: (1) 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.

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The question whether a driver has been acting with due care is to be judged in that background. [661D-E]

(2) 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 following. In such a situation the principle of *res ipsa loquitur* applies. [662A-B]

(3) 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. [662C]

JUDGMENT: