

Neutral Citation No. - 2023:AHC:209399

A.F.R.**Court No. - 38****Case :-** WRIT - A No. - 25057 of 2008**Petitioner :-** Shiv Kumar Bajpai**Respondent :-** U.P.S.R.T.C. Thru Managing Director And Others**Counsel for Petitioner :-** Bhanu Bhushan Jauhari, Kuldeep Singh, Sachindra Dwivedi**Counsel for Respondent :-** A.K. Saxena, S.C.**Hon'ble Kshitij Shailendra, J.**

1. Third supplementary affidavit filed today is taken on record.
2. Heard Shri Bhanu Bhushan Jauhari, learned counsel for the petitioner, Shri A.K. Saxena, learned counsel for the respondents and perused the record.
3. The petitioner was Driver of a Bus run by the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as 'the U.P.S.R.T.C.'). An accident took place on 15.07.1995 and, raising allegations against the petitioner that he was negligent in driving the bus, departmental proceedings were initiated against him. At the same time, a Motor Accident Claim Petition, being Case No. 710 of 1995, was filed by the dependants of the deceased victim against U.P.S.R.T.C. before Motor Accident Claims Tribunal (hereinafter referred to as 'the M.A.C.T.'). An inquiry report was submitted by the inquiry officer of U.P.S.R.T.C. in the departmental proceedings recording no established guilt of the

petitioner, however, while awarding punishment to him in terms of deduction of a sum of Rs. 2,11,000/- from his payables and stoppage of two increments, the Regional Manager of U.P.S.R.T.C. placed reliance upon the judgment/award passed by the M.A.C.T. in the aforesaid compensation case, particularly, the statement of the petitioner who appeared as a witness on behalf of U.P.S.R.T.C. before the Tribunal and stated that accident had not taken place by his bus. The Tribunal took a view that the said statement was falsely made and, ultimately, passed award of compensation against U.P.S.R.T.C. on 27.01.1998.

4. It is contended by Shri Jauhari that the petitioner was not a party to the Motor Accidents Claim Petition and, though his statement was dis-believed by the M.A.C.T. , the U.P.S.R.T.C., in its written statement took a clear stand that the petitioner was not negligent in driving the bus and the reason behind occurrence of accident was presence of numerous passengers on the spot and that when the petitioner stopped the bus, a passenger, while trying to enter into it through window, fell down and came under the left rear tyre of the bus, got himself injured and was sent for medical treatment but, ultimately, died. It is further contended that a criminal case under Sections 279, 304-A I.P.C. was registered against the petitioner arising out of same accident and the Court of Judicial Magistrate-I, Shahjahanpur, by order dated 01.05.2008, acquitted him by recording a clear finding that the prosecution had failed to establish his guilt beyond doubt. Further contention is that after two days from the date of order of acquittal, the departmental Appellate Authority dismissed the appeal on 03.05.2008, however, copy of

the acquittal order could not be filed before the Appellate Authority as there was no sufficient time gap between acquittal and dismissal of appeal.

5. In sum and substance, the contention is that the petitioner, not being a party to the Motor Accident Claim Petition, he did not get opportunity to file an appeal against the award of Tribunal and, the U.P.S.R.T.C., on the other hand accepted the award of compensation and did not challenge the same before Appellate Court. The submission is that except the award of the M.A.C.T., there was no other material before the U.P.S.R.T.C. to hold the petitioner guilty and, once, in the criminal case, the petitioner's guilt has not been established, the orders impugned cannot sustain.

6. Shri A.K. Saxena, learned counsel for U.P.S.R.T.C. submits that the Punishing Authority has recorded dis-satisfaction against the inquiry report, inasmuch as, there was sufficient material before the Authorities, particularly, the judgment of M.A.C.T., to form an opinion that the petitioner was guilty and no contrary view could be taken by the Department against order of a Court of law. However, he does not dispute the fact that the petitioner has been acquitted in the criminal case by the Court of Judicial Magistrate after passing of the first punishment order and before dismissal of his departmental appeal.

7. Having heard learned counsel for the parties, I find that merely because the petitioner appeared a witness of U.P.S.R.T.C. in the proceedings before the M.A.C.T. and a statement was made by him

that accident had not been caused by his bus and the said statement was disbelieved by the M.A.C.T., the petitioner, not being a party to the Claim Petition, had no occasion to file an appeal against the award. Apparently and significantly, the U.P.S.R.T.C. came up before M.A.C.T. shielding the act of its driver not only by filing written statement stating that the petitioner was not negligent in driving the bus, but also explained the circumstances under which the accident had taken place and also produced the petitioner as its own witness to avoid its liability to pay compensation by denying accident. Therefore, U.P.S.R.T.C. could not take a final contrary view in the departmental proceedings to the detriment of the interest of the petitioner. Even otherwise, no contrary view was taken in the departmental inquiry report which was in favour of the petitioner. What persuaded the Authorities to punish the petitioner was simply and only the judgment of M.A.C.T.

8. Now to examine the effect of Award passed by M.A.C.T. on the departmental proceedings, I find that there are two final judgments before this Court, as on today, one is the award passed by the M.A.C.T. and the other is the judgment of acquittal passed by the Court of Criminal Jurisdiction.

9. The Motor Vehicles Act, 1988 was enacted as AN ACT TO CONSOLIDATE AND AMEND LAW RELATING TO MOTOR VEHICLES and, as per Section 168 of the Act, the Tribunal is empowered to hold inquiry into the claims arising out of use of motor vehicles involved in an accident. The Claims Tribunals

function under the provisions of Act, 1988 and are competent to award compensation in a given case of accidental injuries or death. During the course of exercise of power to determine appropriate compensation, even if a finding is arrived at by the Tribunal that the Driver was negligent in driving the vehicle, it would be read only for the purposes of awarding compensation against the employer and not beyond that and certainly not in a service matter where the department proceeds against its own driver to award punishment on the allegation/charge of misconduct. The Court is of the considered opinion that the scope of judgment of M.A.C.T. is only to fix the liability of compensation either upon owner of the vehicle or the concerned insurance company, as the case may be. There is no other scope of that judgment.

10. Insofar as the judgment of criminal court is concerned, punishment under Sections 279, 304-A I.P.C. can be awarded, only when death is caused by negligence. For a ready reference, Sections 279 and 304-A I.P.C. are reproduced as under:-

“279. Rash driving of riding on a public way.-

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

304A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11. In the present case, alleged negligence on the part of the petitioner was certainly attributable to driving of bus and the acquittal order clearly shows that prosecution failed to establish the guilt of the petitioner beyond doubt i.e. to say that he was not found negligent in driving the bus which infact was the stand of U.P.S.R.T.C. itself before M.A.C.T.

12. As regard the law of admission and the significance attached to any admission made during any proceedings, reference to Sections 17 and 31 of the Indian Evidence Act, 1872 can be made. The same are reproduced below:-

“17. Admission defined.—An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.”

31. Admissions not conclusive proof, but may estop.- Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

13. In view of Section 17 of the Act, 1872, the statement/admission contained in the written statement filed by U.P.S.R.T.C. before M.A.C.T. would suggest an inference as to “NO NEGLIGENCE” of the petitioner which was a fact in issue or

a relevant fact during the course of proceedings before the M.A.C.T., and, though, the said admission may not be treated to be a conclusive proof, it would certainly operate as estoppel against U.P.S.R.T.C., the employer in the departmental proceedings judging allegation/charge of misconduct against the petitioner. Hence, the U.P.S.R.T.C. is bound by its admission contained in the written statement that the driver (petitioner) was not negligent in driving the bus and, as such, it cannot use the finding of the Tribunal alone to hold the petitioner as guilty of misconduct. In the opinion of the Court, more strict proof of negligence was required to be established by the U.P.S.R.T.C. to hold the petitioner as guilty in departmental proceedings, if, at all, it was serious to award major or minor penalty. No such exercise was carried, rather departmental inquiry report too reads in favour of the petitioner. In overall circumstances, if, at all, weight to any judgment can otherwise be attached, this Court would give more significance to the judgment of acquittal of the petitioner in comparison to the award interpreting his statement recorded before M.A.C.T., particularly when, U.P.S.R.T.C. did not assail the award but accepted the same as per its own wisdom and choice. There being no other material before the Court, I find that the orders impugned cannot sustain.

14. The writ petition succeeds and is allowed. The orders impugned dated 31.05.2007 and 03.05.2008 are hereby quashed.

15. Since the amount directed to be deducted under the punishment order has already been deducted, the respondents are directed to

refund the same to the petitioner within a period two months from today, alongwith simple interest @ 6% p.a. from the date of deduction till the date of payment.

Order Date :- 1.11.2023

Jyotsana