

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 2581 OF 2013.

Maharashtra State Road Transport
Corporation.

.. Petitioner

Vs.

Shri Vishnu Tulshiram Khedkar.

.. Respondent

Mr.G.S.Hegde a/w Mr.C.M.Lokesh i/b Mr.G.S.Hegde & Associates,
for the Petitioner.

Mr.Yogendra Pendse, for the Respondent.

CORAM: N.M.Jamdar, J.

Wednesday 30 September, 2015

P.C.:

By this petition the Petitioner Corporation challenges the order passed by the Labour Court and the Industrial Court allowing the complaint filed by the Respondent and setting aside the show-cause notice of dismissal dated 27 December 2002.

2. The incident in question took place on 18 November 2000 when the Respondent, a driver with the Petitioner Corporation was driving the bus of the Petitioner Corporation from Panvel to Kalyan. At that time, the bus met with an accident and motorcyclist who was involved in the accident succumbed to injuries. A charge-sheet was issued to the Respondent on 18 July 2001. The inquiry was conducted and show-cause notice of dismissal was issued to the Respondent on 27 December 2002. The Respondent thereafter

filed a Complaint (ULP) No. 402 of 2002 and which was allowed by the order dated 21 December 2006. The Revision application No.75 of 2007 filed by the Petitioner was dismissed by the Industrial Court by order dated 17 May 2010.

3. The learned counsel for the Petitioner submitted that the Respondent who was the best person to explain the manner in which the accident took place has given contradictory statements. He submitted that there is clear variance in the statement made in the complaint and the cross-examination. He also submitted that the Respondent was driving a heavy vehicle on the middle of the road hence greater responsibility to drive the vehicle was upon the Respondent. He submitted therefore the finding rendered by both the Courts is perverse.

4. Both the Courts have examined the evidence on record. The Petitioner did not examine any eye-witness to the incident. No passengers have been examined. The Petitioner has examined one Prabhakar Gawde who has stated that the area where the incident took place there is a rush of traffic at night. He has stated that the motorcyclist who was riding his vehicle was in uncontrollable speed. He has also stated that in the map drawn the motorcyclist was shown in the middle of the road and the bus is shown proceeded on its side. The Court has examined the circumstances on record including the map drawn on the spot and has come to the conclusion that it was the motorcyclist who was at fault and the

Respondent did not drive the bus negligently. The Respondent has stated in his complaint that there was no dash of his bus to the motorcycle and the motorcycle itself slipped. But in the cross-examination as it is contended by the learned counsel for the Petitioner he has stated that there was an accident. However there is no conflict between the two statements of what the Respondent has stated that he did not voluntarily dash the motorcycle, it slipped and therefore there was a collision and the accident was caused.

5. When after considering the material on record both the Courts have arrived at a particular factual finding, it is not open for this Court to substitute the same by re-appreciating the evidence. The Respondent is in service since the year 1999 and the accident has occurred in the year 2002. In taking over all view of the matter, there is no perversity in view taken by both the Courts. The Writ petition is accordingly rejected.

(N.M.Jamdar, J.)

“Certified to be true and correct copy of original signed Order.”