

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.1285 of 2009

-

Between:

1. The managing Director, APSRTC, Mushirabad, Hyderabad, and others.

PETITIONERS

AND

1. Sri S. Bhojya, S/o. Late Ramulu, Ex-Driver, E.270202, R/o. 1-39, Tyellamma Thanda (V), Rangapoor (P), Manchal (M), Ranga Reddy District, and another.

RESPONDENTS

ORDER:

This writ petition is filed by the petitioners-Corporation challenging the Award dated 26.07.2007 passed in I.D.No.161 of 2005 by the Labour Court-I, Hyderabad published on 06.11.2007 in G.O.Rt.No.2115, dated 14.09.2007.

The brief facts of the case are that the 1st respondent was appointed as casual driver on 05.12.1989 and later his services were regularized w.e.f. 01.12.1990. It is submitted that on 01.01.2005 while the 1st respondent was driving the bus bearing No.AP11Z 4580 on the route Charminar to Patancheru at 14.40 hours, caused accident resulting the death of a cyclist, who was coming from right side after crossing road divider. The 1st respondent was issued charge sheet, which reads as follows.

“For having driven the vehicle bearing No.AP11Z 4580 in a negligent manner and lack of anticipation on route No.225 C/A Charminar to Patancheru, resulting in death of Cyclist near Chanda Nagar who was coming from right side after crossing road divider, came into contact with the bus and fell down and came under rear right side tyre and sustained head injuries and succumbed to injuries, which constitutes misconduct in terms of Regulation 28 (ix)(b) and 28 (xxxi) of APSRTC Employees (Conduct) Regulation 1963.”

In response to the charge the 1st respondent submitted his explanation. Since the explanation was not satisfactory, a detailed enquiry was conducted wherein the 1st respondent was found guilty of the charge and accordingly he was removed from service. The 1st respondent questioned the removal order by filing I.D.No.161 of 2005. The Labour Court on appreciation of the facts and evidence on record, recorded the findings, which read as under:

“The incident was occurred during day time i.e., at 14.40 hours at the place at Chanda Nagar which is a busy locality and it is densely populated. The facts of the case are that the deceased cyclist was crossing the road by scaling over the divider with his cycle and as he lost balance he fell down at the rear side wheel of the bus. Normally the cyclist or pedestrian moving on the road are not expected to cross the road when there is a divider fixed on the road. One has to go to the circle and make an attempt to cross the road. In the present case the deceased cyclist has taken a risk of crossing the road by scaling over the divider with his cycle. As I have already said that the movement of traffic at Chandanagar is overwhelmingly increased. It is a very difficult task for the commuters to cross the road or pass through the road. A very slow movement is only pressed at the place at Chanda nagar, as admitted by both parties at the time of arguments. The petitioner submitted in his explanation vide Ex.M-3 to the charge that he was going on his side with a normal speed but the cyclist who tried to cross the road had himself slipped and fell on the road had himself slipped and fell on the road and sustained head injuries. Therefore, he is not responsible for the act of rash and negligent driving etc. In such situation if deceased cyclist make an attempt to cross the road with his cycle he must take more precautions and look for his safety. On perusal of the rough sketch prepared by the Traffic Inspector clearly indicates that the bus bearing No.AP11 Z 4580 driven by the petitioner/driver moved completely towards left. This shows that on seeing the cyclist who made his attempt of crossing the road by scaling over the divider, he suddenly taken the bus to his extreme left but still he could not avoid the incident as the cyclist might have hit to the bus at the rear side and he fell down on the road. Positively the petitioner/driver may not notice at his behind at the rear side of his bus. It is only on shouting of the passengers that the incident had taken place, he stopped the bus in as it is position. There is a contributory negligence on the part of the deceased cyclist. If the deceased cyclist would not have ventured to cross the road by scaling over the divider, this incident would not have occurred. It is therefore the rash and negligent can only be attributed to the deceased cyclist but not to the petitioner/driver. The bus driven by the petitioner did not hit to the cyclist, on the other hand, the deceased cyclist himself taken a risk to cross the road and touched to the rear wheel of the bus and fell. The learned enquiry officer did not properly appreciate the movement of the

deceased cyclist and he wrongly concluded that the petitioner driver is responsible for rash and negligent driving which in my considered view is perverse. I am therefore of the view that the order of removal of the petitioner from service dated 13.05.2005 is to be set aside and the petitioner is directed to be reinstated however in the circumstances he is not entitled for back wages.”

Heard Sri N. Vasudeva Reddy, learned counsel for the petitioners-Corporation and learned Government Pleader for Labour for the 2nd respondent, and perused the material available on record.

The contention of the petitioners-Corporation is that the Labour Court having recorded that there is contributory negligence on the part of the deceased-cyclist, did not exonerate the 1st respondent thereby confirming that the 1st respondent was guilty of the charge. In view of the same, the Labour Court ought not to have directed reinstatement of the 1st respondent with continuity of service along with other contingent benefits. It is also contended that on account of the finding of the Labour Court the Corporation incurred expenditure towards compensation payable to the victim, which is purely on account of the negligent act of the 1st respondent-driver.

Though the 1st respondent has been served with notice, there is no representation on his behalf.

The findings of the Labour Court, as extracted above, leave no manner of doubt that it is on account of the negligence on the part of the deceased-cyclist while crossing the road by maneuvering the road divider, the accident has been occurred. It is also on record that the area was densely populated and on seeing the cyclist, who was crossing the road by scaling over the divider, the 1st respondent, who is the driver of the bus, suddenly taken the bus to his extreme left obviously to avoid the accident, but still he could not avoid the same. As a matter of fact, the cyclist came under the rear side of the bus.

These facts leave no manner of doubt that all precautionary steps have been taken by the driver to avoid the accident.

In the facts of the present case, the view taken by the Labour Court cannot be said to be arbitrary or unauthorized. As a matter of fact, the driver was imposed the punishment of denial of back wages nearly for a period of two years i.e., from May, 2005 to July, 2007. In that view of the matter there being no illegality in the order of the Labour Court, either on facts or in law, the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

28th December, 2015
Js.