

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 246 of 2014 (O&M)

Date of decision : **July 23, 2015**

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State of Punjab and another

.....Appellants

Versus

Randhir Singh

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vaibhav Sharma, Deputy Advocate General,
Punjab for the appellants.

Mr. M.S Rana, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

C.M No. 11481-C of 2014

C.M is allowed.

For the reasons mentioned in the application, delay of
420 days in filing the present appeal is condoned.

RSA No. 246 of 2014

The State of Punjab appellant no.1.-defendant no. 1
(hereinafter referred to as 'the defendant no.1') has come up in this
regular second appeal against the judgment dated 13.8.2010

passed by the Civil Judge (Senior Division) Jalandhar and the judgment dated 11.8.2012 passed by the Additional District Judge, Jalandhar whereby an appeal against the judgment of the trial Court was dismissed. Vide the trial Court judgment the suit of the plaintiff-respondent (hereinafter referred to as 'the plaintiff') was decreed to the effect that the order dated 25.10.2007 passed by appellant no.2-defendant no.2 (hereinafter referred to as 'the defendant no.2')-Director, State Transport, Punjab, Chandigarh communicated to the plaintiff vide letter dated 13.11.2007 vide which four annual grade increments of the plaintiff were stopped with cumulative effect was held to be illegal, null and void and the same was hereby set aside and the plaintiff was also held entitled to four annual grade increments from the due date as if the order of punishment had never been passed. The defendants were directed to release the four annual grade increments along with interest @ 12 % per annum from the date of withholding the increments till actual realization of the decretal amount.

The plaintiff was working as driver bearing no. 06 in Punjab Roadways Depot no.2 in Jalandhar. An accident took place on 10.6.2000 with the bus No. PB-12-C-9661 driven by the plaintiff. The Motor Accident Claims Tribunal passed an Award dated 3.12.2004 after holding the plaintiff guilty of causing accident by his negligence. On the basis of that Award, the General Manager of Punjab Roadways issued a charge sheet No. 4052/TA dated 5.7.2005. The charge sheet was issued to get the recovery effected

from the plaintiff by mentioning that legal heirs of the deceased had filed a case of compensation and that the compensation had been awarded and Government of Punjab suffered a loss to the tune of Rs. 4,88,577/-. After conducting the enquiry in accordance with the procedure, the impugned order was passed.

As per enquiry file Ex D-1, the enquiry officer examined Raghvir Singh, Senior Clerk, Punjab Roadways and Aldev Gill, E.C.D, Punjab Roadways, Jalandhar. None of them was witness to the occurrence. They simply produced the record i.e award passed by MACT regarding duty of the plaintiff on the day of accident. In the MACT claim case, plaintiff took the plea that the accident took place due to a mechanical default in the bus but the enquiry officer did not examine the Mechanic. During the proceedings of the enquiry by the department, the conductor of the bus had appeared as a witness, who specifically stated that three kilometers behind Shahkot, loud voice came from the bus which dragged the bus towards left side and the bus struck the pulli and turned turtle. Despite this statement of conductor, the enquiry officer did not bother to examine the mechanic to ascertain whether there was any mechanical fault in the bus or not. Disciplinary authority issued a show cause notice before passing the final order. Without seeking reply of the plaintiff, punishment order was passed on the basis of recommendation of recommendation committee.

After going through the record of the enquiry file, the trial court found that no reply of the plaintiff was on the record rather a

request was made by the plaintiff to supply him some documents. The punishment order was passed on the report of the recommendation of the Committee. Even the report of recommendation committee had not been supplied to the plaintiff. The plaintiff who was the driver of the bus had also received injuries in that accident and had remained admitted in the hospital. The object of holding a departmental enquiry was to find out whether the driver was negligent or the accident took place due to some other reasons. The Trial Court held that the enquiry officer did not hold the enquiry independently and the suit was decreed and the order dated 25.10.2007 was set aside.

On appeal, appellate Court affirmed the findings recorded by the trial Court and observed that before passing the final order, a show cause notice was issued but the plaintiff was not supplied the copy of the report enquiry committee as well as the copy of the recommendation of the committee by which the amount of compensation was sought to be recovered from the defaulting driver. The enquiry suffered from a great illegality

Counsel for the respondent has placed on record the report of the departmental enquiry. As per the report of the departmental enquiry, the plaintiff had got recorded his statement that in the accident one passenger had died. Punjab Police Mechanic Sh. Krishan Kumar No. 1938 recorded his statement on 28.3.2001 in a criminal case filed against him (the driver) before the court and he stated that the reason of the accident was the breaking

of main road spring (Kamani) and the driver had no fault in it. MACT had decided to give compensation to the legal heirs of the deceased. The copy of the statement of the mechanic was produced before the Committee. The plaintiff was also injured in the accident and was hospitalized and that is why he could not get any information from the passengers or any other person. The State Witness Sh. Aldev Gill appeared before the enquiry officer and stated that in view of the MACT award, the plaintiff was negligent and careless in driving and compensation of Rs. 4,25,250/- with interest @ 6% was decreed. It has been observed in the report that the police mechanic had appeared and made a statement with regard to the breaking of the main road spring (Kamani). However, his deposition was not considered by the MACT. The deposition of Rattan Singh, the Conductor of the Bus which was driven by the plaintiff was that 3 KM before Shahkot a sudden loud sound came out and the bus dragged itself to left side and overturned by striking the small bridge (Pully). Despite observing that the photocopy of the recorded evidence of the mechanic was produced a finding was recorded that the accident had taken place due to rash and negligent driving of the driver.

The deposition of the mechanic Krishan Kumar is Annexure A-1 in which he stated that he had mechanically tested the bus of Punjab Roadways of Jalandhar-II RC No. PB-12C-9661. In cross-examination he stated that *the main patta of the bus was broken which could be the result of jumps and breakage of U bolts.*

U bolts can get broken due to jumps, speed is no criteria for causing of U bolts and main patta. This is correct that in case main patta and U bolts are broken driver has no control over the bus or the starting system. This is correct that on the main patta gets broken, the heavy Kamanies and the suspension systems that can cause the turning of the bus. In this case the driver had exerted his full control and kept the starting in his grips otherwise accident would have been more disastrous. In this case there is no negligence on the part of driver, this was due to breakage of main patta.

Annexure A-2 is the written statement filed by the department-respondents, in which in paragraph 24, it is stated that *when the bus reached at about 5:00 p.m near Shahkot then the bus met with an accident as there were holes on the road and the condition of the road was deteriorated. The front main leaf of left side suddenly broke as result the bus thrashed towards left side and struck against the pully shed and turned turtle towards left side in this way that accident did not take place due to fault of the bus driver but happened due to the holes on the road and due to deteriorated condition of the road.*

A perusal of the departmental enquiry report, statement of the mechanic (Annexure A-1) and the written statement filed by the Department (Annexure A-2) shows that the accident had taken place on account of the mechanical fault of the bus which the driver as per his best abilities could not control. It was the duty of the enquiry officer to call the mechanic who was the employee of the department

to reiterate his statement made before the MACT as is evident from Annexure A-1. The enquiry officer has failed to conduct the enquiry in an independent manner and proceeded to pass the impugned order against the plaintiff without any valid reason.

After going through the enquiry reports and the information placed on record by respondents (Annexures A-1 and A-2), the judgments passed by the appellate Court and trial Court do not require any interference as the impugned order has not been passed after taking into consideration the statement made by the mechanic where he had categorically stated that after mechanically testing the bus, it was found that the bus had mechanical defect which led to the accident.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 23, 2015
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(RITU BAHRI)
JUDGE