

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2016

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No. 14987 OF 2009

The Management of Metropolitan Transport
Corporation Chennai (Division-I) Ltd.
Now M.T.C.(Chennai) Ltd.,
rep. by its Managing Director .. Petitioner

vs.

1.V.Sivakumar
2.The Presiding Officer
Principal Labour Court
Chennai 600 104. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the Award dated 26.11.2008 made in I.D.No.481/03 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.R.Jaikumar - R1
Court - R2

ORDER

The petitioner is the Management of the Metropolitan Transport Corporation, and the challenge in this writ petition is to the Award of the Principal Labour Court, Chennai in I.D.No.481 of 2003 dated 26.11.2008.

2.The first respondent raised the Industrial Dispute challenging the order of termination from service. The Labour Court by the impugned order set aside the order of termination, directed reinstatement of the first respondent with continuity of service, backwages and all other benefits.

3.The first respondent was working as a Driver in the petitioner Corporation and on 08.08.1999, while driving the bus, an accident occurred involving an auto rickshaw in which , two

people died and nine people were injured. Based on that, a criminal case was registered against the 2nd respondent in which subsequently the second respondent was acquitted. In the proceedings before the Motor Accidents Claims Tribunal in M.C.O.P.Nos. 4489 and 4562 of 1999, the petitioner/Management took a stand that the employee was driving the vehicle very carefully and it was on account of the rash and negligent driving of the Auto, the accident occurred.

4. Be that as it may, after the date of accident, the first respondent was denied employment for a short period and subsequently an order of reinstatement was passed on 20.01.2000. It is only thereafter, departmental action was proceeded with. The cross examination of the Management witnesses in the domestic enquiry has been filed by the learned counsel for the first respondent in the typed set of papers, from which, it is seen that the Management witnesses admitted that there were 11 persons travelling in the Auto Rickshaw, when number persons authorised to travel is only 3. Further, in the cross examination, when the Management witnesses admitted that the petitioner had reported about the complaint relating to the Bus that the breaks were not very effective. Thus, considering the oral and documentary evidence placed before the Labour Court, the Labour Court came to the conclusion that the termination was not sustainable. Before the Labour Court, the Management took a stand that the Doctrine of *res ipsa loquitur* is attracted. However, the said contention was rightly rejected by the Labour Court in the impugned Award.

5. On a perusal of the oral and documentary evidence and after considering the records relating to the domestic enquiry and the deposition of the Management witnesses, there is no error in the impugned award nor there is any perversity, for this Court to interfere. However, it has to be noted that the first respondent was working as a Driver and as a result of the accident, two people lost their lives. Furthermore, the claimants have been paid compensation. Therefore, there should be a deterrent on the first respondent, failing which it may amount to giving a wrong signal and may embolden other persons who may be involved in such similar cases. Therefore, this Court is of the view that a portion of backwages should be denied to the workman.

6. In the result, the Writ Petition is partly allowed. While confirming the award of the Labour Court directing reinstatement with continuity of service and all other attendant benefits, the first respondent/workman is entitled to only 50% of the backwages. Since during the pendency of the writ petition a direction was issued to the Management to deposit a sum of Rs.1,00,000/- and on such deposit, the first respondent was permitted to withdraw a sum of Rs.50,000/-, the first respondent /workman is now permitted to withdraw the balance amount also by filing appropriate application before the Court below.

To this extent, the Writ Petition is allowed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rpa

To

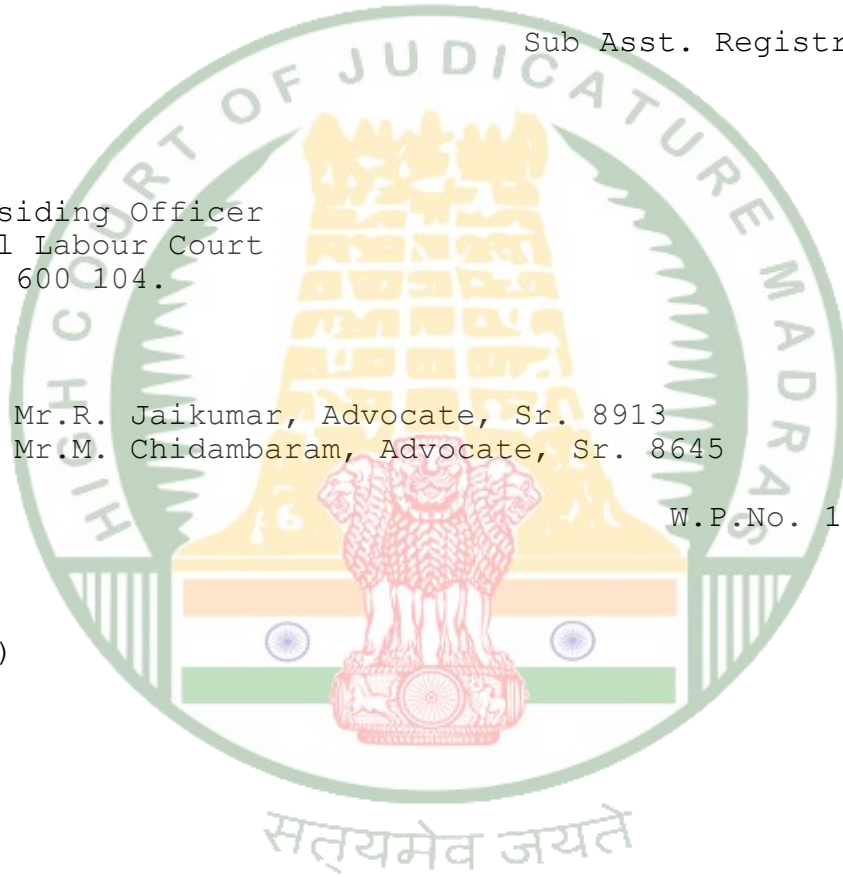
The Presiding Officer
Principal Labour Court
Chennai 600 104.

1 cc to Mr.R. Jaikumar, Advocate, Sr. 8913

1 cc to Mr.M. Chidambaram, Advocate, Sr. 8645

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VSN (CO)
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