

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 618 OF 2009

ORDER:

The Award dated 18.03.2008 in I.D.No. 111 of 2005 on the file of the Industrial Tribunal –cum- Labour Court, Visakhapatnam, whereby the 1st respondent driver was directed to be reinstated into service with 50% backwages, is under challenge in this Writ Petition.

The undisputed facts of the case are as follows:

The 1st respondent, who was employed as a driver of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') attached to its Tuni Depot, on 08.06.2003, while plying the bus bearing Registration No. AP 9Z 5350 belonging to the Corporation from Kakinada to Tuni via Beach Road, *en route* near Gavarraiah Koneru, caused accident, resulting in death of a six-year-old child. During the course of the domestic enquiry, the following charge has been framed against the petitioner:

“ For having driven the vehicle No. AP 9Z 5350 with lack of anticipation without taking proper precautionary measures, with considerable speed in a negligent manner though observed the running child (6 years) from NH-5 extension road at a height of 5' at Ramakrishnapuram as a result the child has fallen down due to came into contact with the left side body of the said bus after passing rear wheels, received grievous injuries on throat and above the right ear and expired on the spot, while you were performed duty on the route Kakinada - Tuni (beach) on 08.06.2003, which constitutes misconduct vide Reg.28(ix)(a)(b), (xix), (xxxi) and (xxxii) of APSRTC Employees'(conduct) Regulations, 1963.”

The said charge was held proved and the petitioner was therefore, removed from service on 04.11.2003. The Appeal and the Revision preferred there against also came to be dismissed on 15.12.2003 and 11.05.2004 respectively. Hence, the 1st respondent raised I.D.No. 111

of 2005, wherein the Industrial Tribunal-cum-Labour Court, Visakhapatnam passed an Award dated 18.03.2008, setting aside the order of removal and directed reinstatement of the 1st respondent into service with 50% of back wages and with continuity of service. To come to the said conclusion, the Tribunal had believed the statement of the Conductor, who is the eye witness to the accident, that there is fault on the part of the child, who was playing on extended road and suddenly, with a view to cross the road, got down the road very close to the bus and the accident occurred. In the Award, it has also been observed that it is not the case of the Corporation at any point of time that it had paid the compensation to the deceased inasmuch as the accident occurred due to the negligent driving of the petitioner.

Sri S.V. Ramana, learned Standing Counsel for the petitioner Corporation submits that as a matter of fact, the Corporation had paid the compensation for the death of the child. The learned Standing Counsel finds fault with the Award of the Industrial Tribunal on the ground that it has taken into account and consideration the statement of the Conductor, in isolation, though there are concurrent findings recorded by the domestic as well as appellate and revisional authorities. He questions the direction to pay 50% of the back wages as totally unsustainable, particularly in view of the fact that the Corporation was forced to pay the compensation for the death of the child.

On the other hand, learned counsel appearing for the 1st respondent driver maintains that there is no negligence on the part of his client, hence, withholding of 50% of back wages itself is not justifiable, more so in view of the findings recorded by the Tribunal, all through, that there was no fault on the part of the driver and it is only on account of the child, who came in contact with the subject vehicle, the accident had occurred. Therefore, contends the learned counsel that

the Award challenged in this Writ Petition need not be interfered with in any manner.

Considering the respective submissions and the factum of the limited scope of interference by this Court, the Award of the Industrial Tribunal insofar as it directed reinstatement of the 1st respondent cannot be found fault with. Now, it is also brought to the notice of this Court that pursuant to the Award passed by the Industrial Tribunal, the 1st respondent was reinstated into service. Therefore, the challenge that has been made in this Writ Petition is only to the extent of allowing back wages of 50%.

The very charge, which has been framed against the 1st respondent itself would indicate that the child had come in contact with the left side body of the bus and fell down before the rear side wheels, thereby suffered grievous injury on throat and above the right ear. If the accident had occurred in the front side of the vehicle, it can be said that there would have been some negligence on the part of the driver. Further, the case of the Corporation is that the 1st respondent driver lacks anticipation and hence, did not take proper precautionary measures. In this context, it is apt to quote the definition of the word '*accident*', which means:

“ An unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury”

Hence, the contention of the learned Standing Counsel that the 1st respondent driver lacks anticipation cannot be accepted.

However, taking into account and consideration the fact that nearly five years have elapsed from the initiation of domestic inquiry to culmination of the proceedings before the Industrial Tribunal and also the plight of the Corporation, being a commercial organization, in order to strike a balance between the competing claims of both the parties, this Court finds it expedient in the interests of justice to modify the

Award dated 18.03.2008 to the extent of awarding back wages of 30%.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the Miscellaneous Applications, if any shall also stand disposed of.

CHALLA KODANDA RAM, J.

29th August 2016

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