

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**SATURDAY, THE TWENTY SEVENTH DAY OF AUGUST,
TWO THOUSAND AND SIXTEEN**

**Present
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.8657 of 2011

Between:

The Depot Manager, APSRTC, Hyderabad-I Depot, Hyderabad.

.. Petitioner

AND

Sri G. Venkat Reddy, s/o.G.Chandra Reddy, E.271851, Ex-Driver,
C/o.Plot No.89, H.No.452, Alkapuri, Hyderabad-035 and another.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.8657 of 2011****ORDER**

First respondent was assigned to drive the bus bearing registration No.AP 11 5622 operated between Mumbai and Hyderabad. In the early hours of 22.12.2007, bus reached near Maitrivanam, Ameerpet. After some of the passengers got down from the bus, bus moved further, at that stage, it is alleged that the first respondent hit a girl, aged about 21 years, who was crossing the road from left side to right side of the bus, which caused grievous injuries resulting in her death. A preliminary enquiry was conducted and the enquiry officer submitted his report pointing out *prima facie* case of rash and negligent driving of the first respondent. The police have also registered a case in Cr.No.1144/2007 in S.R.Nagar Police Station. Police investigated into the allegations and filed charge sheet. First respondent was shown as accused in C.C.No.199 of 2011 on the file of XVI Special Magistrate, Hyderabad. The Special Magistrate rendered judgment on 15.04.2014 acquitting the driver of the bus on the allegation of rash and negligent driving. The trial Court observed that no witness was produced and examined to prove the case of the prosecution that accident occurred due to rash and negligent driving of the first respondent. Therefore, he was found not guilty.

2. On 28.01.2008, charge sheet was made levelling two allegations. The sum and substance of the allegation in both the

charges is, rash and negligent driving and not taking precautions to avoid fatal accident resulting in the death of lady pedestrian. In the domestic enquiry, the enquiry officer held charges as proved. Based on the findings of the enquiry officer, the disciplinary authority passed orders on 21.06.2008 removing the first respondent from service. Appeal and the revision preferred by the first respondent against the order of removal were rejected. Aggrieved thereby, first respondent raised industrial dispute. The Labour Court-I at Hyderabad registered the dispute as I.D.No.36 of 2009. By order dated 08.07.2010, Labour Court passed award holding the charge of rash and negligent driving as not proved; there exist no material to hold the petitioner therein as guilty, directed reinstatement into service with continuity of service and with 50% back wages.

3. This Court, by order dated 06.04.2011, after noting the fact that the first respondent was already reinstated on 18.01.2011, stayed payment of back wages.

4. Heard learned Standing Counsel for petitioner and learned counsel for first respondent and learned Government Pleader for Labour for second respondent.

5. Learned Standing Counsel for petitioner submits that in the domestic enquiry, the Assistant Traffic Manager has clearly stated in his evidence that the preliminary enquiry conducted after the accident proved that because of rash and negligent driving of first respondent, the accident occurred. In view of the said categorical deposition of the Assistant Traffic Manager, who conducted

preliminary enquiry, it cannot be said that the finding of the enquiry officer is not based on the material available on record. Since it is a case of road accident, it is difficult to secure the witnesses, who were present at the scene of offence. However, the Assistant Traffic Manager rushed to the spot soon after the accident and therefore, he has categorically stated the rash and negligent driving of first respondent resulting in accident. Therefore, his evidence ought to have been believed. Learned counsel would submit that the Labour Court erred in not accepting the evidence of Assistant Traffic Manager and accepting the statement of the first respondent. He would submit that once the disciplinary proceedings were held as validly conducted, the Labour Court erred in going into the merits of the findings of the domestic enquiry and recorded independent finding, on that ground also, the order of the Labour Court is vitiated. He would further submit that once the charge of rash and negligent driving is proved, the punishment of removal was warranted and the Labour Court erred in setting aside the punishment. In support of his contention, learned Standing Counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **Union of India Vs. P. Gunasekaran**¹.

6. Sri M. Dilip Kumar, learned counsel for the first respondent, would submit that no witness was examined to support the alleged incident and causing of accident by the first respondent. In the absence of clear proof of first respondent causing accident, the defence of the first respondent that the girl did not cross the road but

¹ 2015(2) SCC 610

she was lying at the road side and not involved in the accident has to be accepted as valid. The enquiry officer erred in not accepting the defence of the first respondent, more particularly, when there was no other evidence on record to sustain the allegation. He would, therefore, support the award of the Labour Court.

7. As seen from the award and the original record of the Labour Court, no evidence was placed on behalf of the petitioner Corporation to sustain the allegation of rash and negligent driving by the first respondent. Submissions were made by the Law Officer based on the averments made in the counter affidavit. In the absence of material on record, the Labour Court accepted the defence of the first respondent that he did not cause the accident and that girl did not fall under the vehicle and succumb to the injuries as alleged. As noted by the Labour Court, there was no evidence who has witnessed the incident. No one was brought on record to show that the first respondent was negligent in driving the vehicle which resulted in accident. Thus, unless it is proved with cogent evidence that alleged accident was on account of rash and negligent driving of the first respondent, he cannot be held responsible.

8. As seen from the judgment in C.C.No.199 of 2011, the prosecution could not secure the presence of complainant and two eye witnesses. Even though several adjournments were granted to the prosecution and since it failed to produce any evidence, the Criminal Court held that first respondent was not guilty of the offence alleged against him.

9. Assuming what is contended by the learned Standing Counsel for the petitioner may be true, even in the domestic enquiry, the only material available with the disciplinary authority was the report of Assistant Traffic Manager. Even his report is based on hearsay evidence. He did not witness the alleged accident. In that analysis, it cannot be said that finding of the Labour Court is perverse.

10. Having regard to the same, I do not see any error in the award of the Labour Court warranting interference by this Court. The Writ Petition is accordingly dismissed. The petitioner Corporation is directed to pay the back wages to the first respondent as awarded by the Labour Court, within a period of 3 months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

27th August, 2016
sj

P.NAVEEN RAO, J