

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1911 of 2002
and Cross Objection No.31 of 2006

The Management,
Rep by its Managing Director
Tamil Nadu State Transport Corporation
Villupuram - 605 602.

... Appellant

Vs.

S.P.Sahadevan

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against the judgment and decree dated 09.10.2001 made in MCOP. No.71 of 2001 on the file of the Workmen Compensation, Commissioner (I), Chennai-6.

For Appellant : No Appearance
For Respondents : Mr.J.Dhanyakumar

JUDGMENT

The appellant is the Tamil Nadu Transport Corporation and has come forward with this appeal challenging the award of compensation under the Workmen Compensation Act to its driver. This appeal came up for hearing on 18.1.2017 and this Court was informed by the counsel whose name was printed in the cause-list that he ceased to be in the panel of the appellant/Corporation and that he had handed over all the papers even way back in the year 2003. Hence this case is posted today.

2. It is not a case where the counsel reports no instruction from his client, in order, this Court should contemplate issuing Court notice on the appellant.

When a certain counsel ceases to be in the panel and the Corporation takes back its papers from the counsel, it is its responsibility to engage another counsel of his choice or ought to take such measures as are necessary for the due prosecution of this appeal. Neither has been done by the appellant. The learned counsel for the respondent was present and heard. Since this appeal is about 15 years old now, I consider it appropriate to dispose of this appeal on merit.

3. The case of the claimant/respondent is that he was a driver in the appellant/Corporation. On 01.05.2000, he was driving a bus bearing registration No.TN32-N-1322 belonging to the appellant and while in the course of the said employment, the bus met with an accident, consequent to which some six passengers had died and eighteen persons including the claimant had suffered injuries. He therefore, moved the Commissioner under the Workmen Compensation Act with a claim of Rs.1,55,268/-, whereas the Commissioner vide his impugned order dated 09.10.2001 passed an award for Rs.82,810/-. At the time of admission, following substantial questions of law were raised :

1. Whether the first respondent is right in holding that there is a master and servant relationship between the appellant and the second respondent?

2. Whether the first respondent is right in holding that the second respondent is entitled to compensation?

3. Whether the first respondent is right in holding that the accident was not caused due to the rash and

negligence of the second respondent herein.

4. Before the Commissioner, the appellant has conceded the fact that the respondent was his employee and the only contention he raised was that the accident had occurred owing to his negligence and he has been terminated from service. This, the Commissioner has not considered as worthy enough to deny him compensation under Workmen Compensation Act. As to the substantial questions of law raised, it is conceded even in the counter of the appellant that at the relevant time the claimant was in his pay role as an employee, so this question is answered against the appellant. As to the other two substantial questions raised, on going through the materials available on record, I find there is no merit in the appeal. Under Section 3 of the Workmen Compensation Act, an employer is duty bound to compensate his employee for any injury caused to the latter in an accident arising out of and in the course of employment. There are two sets of provisos provided to the said provision, by which the employer is exempted from paying compensation, of which proviso (b) is relevant. According to proviso(b) to Section 3, the exemption from paying compensation operates (i) when the workmen was under influence of alcohol or other drugs or (ii) if the accident could be attributable to wilful disobediences to the express orders given or rules expressly framed, which are intended for securing the safety of a workmen (iii) if the cause of accident could be attributable to wilful removal or disregard by the workmen in any safety care or other device which he know to have been provided for the purpose of his safety.

<http://www.judis.nic.in> 5. The nature of the defence raised and the manner of contest offered by the

appellant do not clearly make out a case as to under which of the three clauses that exempts the employer from paying compensation the present case falls. I therefore find that the second and third questions framed too should be decided against the appellant.

6. In the result, I find no merit in this appeal and the same is dismissed without costs. Since the cross-objection is not pressed, it is also dismissed. The learned counsel for the respondent submitted that the claimant/respondent had withdrawn 50% of the amount deposited and he is now permitted to withdraw the balance 50% with all accrued interest if any as well. Consequently, connected miscellaneous petition is closed.

19.01.2017

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Index : Yes/No
Internet:Yes/No

To

- 1.The Commissioner
Workmen Compensation
Coimbatore.
- 2.The Section Officer,
VR Section, High Court, Madras.



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