

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.12602 OF 2008 AND 1867 OF 2009

COMMON ORDER:

These two writ petitions are being disposed of by this common order as they relate to the same Award in I.D.No.40 of 2002, dated 03.04.2007.

The petitioners in W.P.No.1867 of 2009 are the legal heirs of one M.Muneiah, who worked as a Driver in the Andhra Pradesh State Road Transport Corporation (APSRTC, 'the Corporation' for brevity) at Addanki depot. The petitioner in W.P.No.12602 of 2008 is the Corporation. The legal heirs filed the writ petition challenging that portion of the Award which went against them, whereas the Corporation filed the writ petition challenging the Award itself.

The said M.Muneiah, who is the husband of the first petitioner in W.P.No.1867 of 2009, joined the service of the Corporation as a Driver in May, 1986 and worked as such till 25.10.1993. He was kept under suspension by the Corporation on 25.10.1993 and he was issued a charge sheet on the same day. The main ground alleged in the charge sheet is that he caused an accident while driving vehicle bearing No.AP9Z 847, which collided with lorry bearing No.APC 9734, which was coming in the opposite direction, while overtaking a tractor with high speed on 04.10.1993 near Seetarampuram on the route Ongole to Addanki.

The charges leveled against the said M.Muneiah are as follows.

1. Due to lack of anticipation, you have met with an accident while driving the vehicle AP9Z 847 with a lorry APC 9734 which is coming in the opposite direction while overtaking the Tractor with High speed on 04.10.1993 at 15.30 hrs., near Seetharampuram on the route Ongole-Addanki resulting 3 passengers in the bus and lorry cleaner were died and 11 passengers sustained severe injuries, which constitute misconduct under Reg.28d(ix.B)(ixi) of APSRTC Employees Conduct Reg., 1963.
2. For having failed to take proper precautionary measures while driving the bus and caused major accident which constitutes misconduct under Reg.28(ix.a) of APSRTC Employees Conduct Reg., 1963.

M.Muneiah, the deceased driver, submitted his explanation, but having not satisfied with the explanation, the Corporation initiated domestic enquiry proceedings. The Enquiry Officer submitted his report and on the basis of the report of the Enquiry Officer, he was removed from service on 11.05.1994. The Appeal and Review Petition filed by the Driver was rejected by the competent authorities. In those circumstances, he filed I.D.No.40 of 2002. During the pendency of the said proceedings, the driver expired and his legal heirs represented the case and continued the proceedings. The Labour Court, Guntur, before whom the I.D., was raised, held that the findings were not passed on the material evidence and accordingly the charges were not established. The reasoning given by the Labour Court is as follows.

“Here, admittedly, two vehicles involved in the accident, admittedly, while the first petitioner was overtaking the tractor, it came into contact with lorry which come in its opposite direction. The findings of the Enquiry Officer is that the petitioner failed to maintain minimum distance of 30 Ft. being the tractor while lorry was coming in its opposite direction.

But the evidence of the first petitioner as well as the passengers before the Domestic Enquiry Officer is to the effect that the first petitioner after receiving signals from the Tractor driver tried to overtake. Hence, the findings of the enquiry officer that the petitioner has to maintain 30 Ft. minimum distance between the tractor and the bus is incorrect. The bus driver only after receiving the signals from the tractor driver, tried to overtake him, for over-taking, the driver cannot be expected to maintain 30 Ft. distance between these two vehicles. In order to overtake, necessarily, the bus driver has to pass the tractor which was going ahead of him. It seems that the lorry driver was under the impression that the Tractor driver gave signal to him for proceeding further. But it was incorrect. There was no necessity for the lorry driver to note down the signals of the tractor since the lorry was coming opposite to the tractor at that time. It is day time at 3.30 pm. Hence the lorry driver wrongly noted down the signals made by the tractor driver and proceeded further in rashness. On the other hand, the first petitioner having received the signals from the tractor driver tried to overtake him, while overtaking the tractor, it seems that the tractor driver did not reduce its speed. Apart from it, as the lorry driver came in its opposite direction, the bus driver applied brakes.

The witnesses in the Domestic enquiry categorically stated in their evidence that on seeing lorry coming in its opposite direction and the bus driver stopped the bus. Apart from it, they categorically stated the bus driver was driving slowly while overtaking a tractor. Hence, the findings of the enquiry officer that the first petitioner was driving the bus with high speed while overtaking the tractor is incorrect. Apart from it, the rough sketch does not indicate the presence of skid marks. If the bus driver drove the bus with high speed and applies brakes, definitely there would have skid marks. But here the bus driver was driving slowly and applied brakes on seeing the lorry in its opposite direction with high speed. Hence, the bus did not leave skid marks; therefore it was quite clear that the bus driver was driving the bus very slowly. But the lorry

driver without watching the bus to overtake the tractor came into contact with the bus and dashed the bus. Apart from it, the impact of the accident is such that 11 passengers received injuries and 4 persons died. This shows that with heavy speed, the lorry driver drove the lorry and dashed the bus. In fact the criminal case ended in acquittal. It is an aiding factor to say that the first petitioner was not responsible for the accident. The findings of the enquiry officer are simply based on the rough sketch produced into the court as well as the evidence of the preliminary enquiry officer who conducted preliminary enquiry. But all the passengers who were present at the time of the incident gave evidence in the presence of enquiry officer, that the lorry came and dashed the bus. Hence it cannot be said that the first petitioner was responsible for the accident. Their evidence clearly show that the first petitioner took all precautionary measures while overtaking the tractor. On seeing lorry, he applied brakes. But in the meanwhile, the lorry driver came in high speed, he tried to swerve the vehicle towards right side towards tractor and after the tractor passed, the lorry dashed the left side portion of the bus. This also shows that the bus driver applied brakes on seeing lorry. Hence, I hold that the bus driver took all the precautionary measures. It cannot be said that he drive the bus with lack of anticipation. He is neither guilty of rashness nor guilty of anticipation. The findings of the enquiry officer are not based on material evidence. Hence, I hold that both the charges have not been established against the first petitioner. Hence, this issue is found in favour of the first petitioner and against the respondents."

The Labour Court accordingly passed the Award setting aside the order of removal and directing the Corporation to treat the services of the erstwhile driver as if he was in service till the date of his death, and also to be treated as if he was reinstated into service with continuity of service, but without back wages and without consequential benefits such as increments. The legal representatives were held to be entitled to the benefit, which would be accrued to the deceased upto the date of his death. The Award was passed on 03.04.2007. Challenging the said award, the Corporation filed W.P.No.12602 of 2008, whereas the legal representatives filed W.P.No.1867 of 2009 with regard to denial of backwages and consequential benefits.

The learned standing counsel for the Corporation submits that the evidence of the witnesses were not properly appreciated by the Labour Court and the Labour Court came to a wrong conclusion in holding that the charges against the deceased were not proved. The learned counsel appearing for the legal representatives on the other hand submits that when the Labour Court held that the charges against the deceased were not proved, it ought to have awarded backwages and all the consequential benefits.

I have carefully gone through the record and the statements of the witnesses along with the nature of the charges and it cannot be held that appreciation of evidence by the Labour Court is improper. This is a case of collision between two vehicles. It is very difficult to pinpoint on the date of accident whether the deceased took proper precautions or not. The findings can be recorded only on the basis of the circumstantial evidence. The circumstantial evidence though created some doubt in the mind of the Court, in view of the finding of fact recorded by the Labour Court, this Court is not inclined to disturb the said findings. However, taking into consideration of the facts and circumstances of the case, and also the fact of the driver being dead during the pendency of the proceedings, this Court feels that it is a fit case where both the writ petitions should be dismissed by upholding the Award of the Labour Court. At this stage, learned counsel appearing for the legal representatives submits that the retirement benefits were not properly calculated and paid to the legal representatives, though some amount was paid. In view of the dismissal of W.P.No.12602 of 2008, it is needless to observe that the Corporation shall pay the retirement benefits as per the Award in I.D.No.40 of 2002, dated 03.04.2007 within a period of three months from the date of receipt of copy of this Order.

The writ petitions are accordingly dismissed. Consequently, miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

A.RAMALINGESWARA RAO, J

19.07.2017
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