

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 17.03.2017

RSA No.1496 of 2017 (O&M)

State of Punjab & others

...Appellants

Vs.

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Sharma, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

The State of Punjab is in second appeal accompanied by two applications i.e. one for condoning the delay of 20 days in presentation of appeal and the other is for condoning the delay of 54 days in re-filing the appeal.

I would dismiss not only both the applications, as there is no sufficient reason to condone the delay, but the main appeal itself for the reasons stated hereinafter.

The plaintiff is the respondent herein. He was a driver of a bus of the Punjab Roadways. He met with an accident while driving the bus full of passengers. It was a fatal accident, which resulted in the death of a passenger. Due to the accident the Department faced a compensation case before the Motor Accident Claims Tribunal, Kinnaur (hereinafter to be referred as 'the Tribunal') which awarded compensation to the tune of ₹1,18,652/- against the Punjab Roadways. The plaintiff was charge-sheeted for causing pecuniary loss to the State due to negligence in driving. The

enquiry led to major penalty of withholding of two annual grade increments with cumulative effect. The order was issued on 02.11.2007, which was challenged in the suit presented on 20.05.2010 from where this appeal arises. The Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar by its judgment and decree dated 31.01.2015 dismissed the suit and upheld the order of punishment. The appeal to the District Judge, Shaheed Bhagat Singh Nagar was successful and the findings of the trial Court on Issues No.1 to 4 & 6 were reversed holding them to be not legally sustainable and the same have been set aside and the suit decreed. The appeal stands allowed vide judgment and decree dated 08.08.2016 declaring the impugned order as illegal, null and void and not operative against the plaintiff.

Mr. Anil Sharma appearing for the State has cited before me Single Bench judgment in Karnail Singh Vs. State of Punjab & others, 2012 (2) SCT 235, where the Court dealt with a minor penalty of recovery of financial loss caused in a motor accident by a driver. That was a case of pecuniary loss and minor penalty of recovery of money. However, on principle, removal from service on proof of the allegation that the Driver was found guilty of rash and negligent driving and thereby causing damage to property and pecuniary loss to the State would amount to double jeopardy. But that general rule does not apply to this case on judicial review of an order imposing major penalty of rash and negligent driving because the State in its pleaded defence before the Tribunal had stoutly defended its driver saying that his act which caused accident was neither rash nor negligent in driving the ill-fated bus. The accident was not deliberate in this case.

The learned District Judge read the Award passed by the Tribunal and found that Ganga Devi and her co-claimant petitioners accused the plaintiff Baldev Singh of having caused the death due to accident as a

result of his rash and negligent driving of bus leading to the death of Lanju Ram and that the State refuted this in unambiguous terms asserting in its written defence that plaintiff Baldev Singh had not driven the bus in a rash and negligent manner leading to the death of Lanju Ram. The State had defended its driver. Learned District Judge did very well in culling out an important question, which he correctly thought required to be determined which was that that all through the proceedings before the Tribunal, the employer State had claimed that Baldev Singh was not rash and negligent in driving the bus, for it to take a somersault and start the other way round in domestic setting saying that Baldev Singh was rash and negligent in driving which caused the accident and this the lower Appellate Court rightly reasoned that the changed stand was only because the Award had gone against all three of them i.e. the official defendants and the plaintiff Baldev Singh.

The lower Appellate Court rightly relied upon the decision of this Court in Sarwan Singh Vs. State of Punjab, (2010) 1 RCR (Civil) 488. In that case, the Tribunal passed an award against a driver of Punjab Police for causing an accident. The matter was investigated into by the police and the cancellation report was submitted. On facts, the learned District Judge found that in the case of plaintiff Baldev Singh, it stands even on a better footings since he had been acquitted of the charges of rash and negligent driving by the Court of competent jurisdiction vide judgment Ex.P7. This was a material circumstance in favour of the plaintiff upon which the entire superstructure of charge-sheet/enquiry and penalty order stands demolished. Only because the Tribunal found the Driver guilty of rash and negligent driving could not have been the driving force to initiate disciplinary proceedings when especially the employer emphatically pleading and

maintaining before the Tribunal that its Driver was not at fault or guilty of rash and negligent driving. The finding of the Tribunal going against the Roadways would not give right or permit the employer to change its stance to its convenience. In *Sarwan Singh's* case, as extracted in the impugned judgment and decree of the learned District Judge, this Court held as follows:-

“It has been the stand of the respondents that the petitioner, as per his duties, has done lawful acts by way of driving the vehicle correctly and properly, without negligent and rashness. The petitioner has not done any act which was disadvantageous to the interests of the respondent employer. Under these circumstances, at this juncture it does not behoove of the respondents to repudiate the acts of the petitioner and direct him to pay part of the compensation. The respondent-employer rather is required to indemnify the petitioner-employer against the consequence of the lawful acts done by the petitioner in exercise of authority conferred on him by the respondents for driving the vehicle.”

The learned District Judge referred to the case in Kulwant Singh, Driver Vs. Municipal Corporation, 2011 (3) RCR (Civil) 552, wherein it was held that the employer was independently required to hold as to whether act of negligence which caused accident constituted misconduct or not on the part of the employee who cannot be taken to task until the employer comes to the conclusion that employee had acted mala fide. In Amar Nath Vs. State of Haryana, 2001 (2) SCT 521, the Supreme Court held that an employee cannot be burdened with liability by the State, when the accident occurred during the course of performance of his duties. It is for these reasons that the appeal has been allowed by the learned District Judge and I concur with the reasoning and the findings recorded on the material issues and would dismiss the appeal in *limine* including the applications for

condoning the delay in filing and re-filing the appeal taking usual stock defences of red tape and file pushing from here to there in various offices before forming opinion to appeal, and which type of explanations are not sufficient to casually condone delay and which are severely criticized and rejected by the Supreme Court time and again which most noticeably and strongly deprecated in Chief Post Master General v. Living Media (India) Ltd., (2012) 3 SCC 563. I respectfully bow.

17.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>