

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 106

Regular Second Appeal No.3953 of 2017 (O & M)
Date of Decision: August 16, 2017

State of Punjab & others

..... APPELLANTS

VERSUS

Surjit Singh

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

. . .

Jaspal Singh, J

CM No.10010-C of 2017

For reasons given in the application, delay of 55 days in
filing the appeal is condoned.

CM is allowed.

RSA No.3953 of 2017 (O & M)

1. The instant appeal has been preferred by the State of Punjab
challenging judgment dated February 23, 2017 passed by the Additional
District Judge, Chandigarh whereby judgment & decree dated February 09,
2016 passed by the Civil Judge (Senior Division), Chandigarh has been
upheld and appeal filed by the appellants has been dismissed.

2. The facts giving rise to the instant appeal are that respondent

2010 and July 02, 2012 are arbitrary, against the rules & regulations and deserve to be declared illegal as well as mandatory injunction directing the defendants to release all the monetary benefits which have been withheld by virtue of aforesaid orders alongwith interest @ 12% per annum from the date of its accrual till realization. Plaintiff was chargesheeted on November 16, 2004 on the allegation that MACT has awarded a sum of ₹ 3,74,825/- as claim to kin of accident victims in which bus of plaintiff was involved. Plaintiff alleged that though he has been acquitted by the Additional Chief Judicial Magistrate, Panipat vide judgment dated April 01, 2004, yet an Inquiry Officer was appointed by the Department. On the basis of inquiry report, a show cause notice was issued to plaintiff and penalty of stoppage of two increments with cumulative effect was imposed upon him by defendant No.2 – Director, State Transport, Punjab vide order dated June 23, 2010. Appeal against the said order was also dismissed by the appellate authority vide order dated July 02, 2012, which necessitated the plaintiff to institute the instant suit.

3. Defendants filed joint written statement taking preliminary objections that suit is not maintainable. On merits, it was submitted that plaintiff was held guilty by MACT, Sonapat vide order dated August 01, 2003 for causing an accident due to rash and negligent driving and a huge loss of amount of ₹ 3,74,825/- was caused to the State Exchequer. Plaintiff was chargesheeted. On the basis of inquiry report, plaintiff's two annual increments with cumulative effect were stopped vide order dated June 23, 2010. Appeal against the said order was also dismissed by the appellate authority vide order dated July 02, 2012.

4. On the basis of pleadings of parties, issues were framed by the trial court. Parties were given opportunity to lead evidence in support of

their case. After hearing learned counsel for the parties and appraisal of evidence, suit of plaintiff was partly decreed and impugned orders were set aside by the trial court vide judgment & decree dated February 09, 2016. However, the defendants were given liberty to pass a fresh order in accordance with law after holding a proper inquiry within six months from the date of judgment, failing which defendants were directed to release all the consequential benefits to plaintiff which were withheld in pursuance of impugned order(s). Appellants – State of Punjab went up in appeal against the judgment & decree dated February 09, 2016 which has also been dismissed by the lower appellate court vide judgment & decree dated February 23, 2017. Now, appellants have approached this Court challenging the aforesaid judgments & decrees passed by the courts below.

5. Learned counsel for the appellants has argued with vehemence that impugned judgments & decrees are absolutely against the evidence available on record and settled canons of law. Misappreciation of evidence as well as legal proposition has resulted into miscarriage of justice. Learned MACT, while awarding compensation, has held the plaintiff – respondent to be guilty of causing accident due to his rash and negligent driving of the bus. Learned counsel has prayed that judgments & decrees passed by the courts below suffer from serious infirmities and are liable to be set aside by way of acceptance of the instant regular second appeal.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellants – State but does not find any legal or factual substance therein.

7. Undisputably, the findings of inquiry officer were based on the award passed by the MACT. No eye witness appeared on behalf of the

respondent. The findings cannot be passed merely on the basis of the award of MACT. In support of this finding, we can have reference to decision rendered by this Court in case **Amar Nath vs. State of Haryana, 2001(2) SCT 521** wherein it has been held that finding of guilt based on no evidence cannot be sustained. In **Nazar Singh vs. State of Punjab & others, 2014 (5) RCR (Civil) 162**, it has been observed by this Court that award of Tribunal *ipso facto* could not have formed the basis of recovery from driver. Moreover, in **CWP No.12969 of 1996** titled '**Punjab Roadways Drivers Ekta Union vs. State of Punjab & others**' decided on September 11, 2014, it has been held by this Court as under:-

“.....the Government of Punjab, vide its memo No. 9/40/2001-IT2/2350 dated 18.11.2011 (Annexure R-1) has categorically instructed that no recovery of compensation be effected from drivers, who are not held guilty in criminal cases. Only departmental enquiries be initiated against such drivers. It has been further stated that in pursuance of the aforesaid instructions, no recovery of compensation has been effected from the drivers, who are held guilty in Criminal Courts. However, after holding regular departmental enquiries against the delinquent drivers, if they are in service, then their increments with or without cumulative effect are being stopped and if, they have retired from services, then only cut in pension thereof, is imposed.”

8. According to the spirit of the observations of this Court, departmental inquiry should have been conducted without being influenced by the award passed by the criminal court/MACT, whereas, in the case in hand, findings of inquiry officer are based on the award passed by the MACT only. No independent witness was examined. Even before MACT, it

case **Sarwan Singh vs. State of Punjab & others, 2010(1) RCR (Civil) 488**, this Court has categorically held that reprobating from its own stand is not permissible. Accordingly, the impugned orders were rightly set aside by the trial court vide its judgment & decree which has been upheld by the lower appellate court.

9. In the light of what has been discussed above, judgments & decrees passed by the courts below do not suffer from any infirmity or perversity. The instant appeal being devoid of merits is dismissed.

10. No order as to costs.

August 16, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No