



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.02.2018
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.21575 of 2017
and
W.M.P. (MD) No.17845 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periyamilaguparai,
Tiruchirapalli

: Petitioner

Vs.

P.Radha (Deceased)
1.R.Malarkodi
2.Jeyalakshmi
3.R.Rajmohan
4.Kosalai

: Respondents

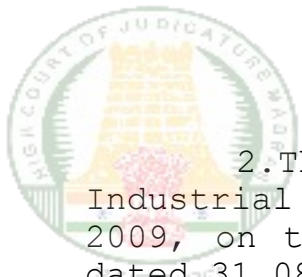
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the award passed by the Labour Court, Trichy in ID No.46 of 2009 dated 31.08.2015, quash the same.

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.R.Chandrasekaran

O R D E R

One R.Radha was employed as a Driver in the writ petitioner Corporation. He was on duty on 12.01.2004, in a Trichy bound bus from Chennai. When attempting to overtake a cart proceeding ahead of him, he went to the wrong side and dashed against the bus coming on the opposite direction. Three passengers travelling in the Transport Corporation bus and two persons travelling in the private bus died and many others suffered grievous injuries. He was suspended from service on 13.01.2004. He was issued with a charge memo dated 27.01.2004. An enquiry was conducted. The enquiry officer submitted his report holding that the charges levelled against the said driver stood proved. The employee was served with a copy of the said enquiry report dated 15.06.2004, along with notice dated 16.06.2004, calling upon him to offer his objections. Second show cause notice was issued on 05.07.2004 and the disciplinary authority by order dated 26.08.2004, imposed the punishment of dismissal from service. Approval under Section 33(2) of the Industrial Disputes Act, was also granted. The said workman passed away soon thereafter.



2.The legal heirs of the deceased dismissed employee raised Industrial Dispute and the same was taken on file as I.D.,No.46 of 2009, on the file of Labour Court, Trichy. By the impugned award dated 31.08.2015, the Labour Court set aside the order of dismissal. Since, the said workman Radha had passed away, back wages were directed to be paid from 26.08.2004, namely, from the date of dismissal to the date of death. The other benefits were directed to be disbursed to the legal heirs. This is under challenge before this Court.

3.Though, the learned Standing Counsel for the Transport Corporation contended that I.D.No.46 of 2009 was not maintainable because it was lodged not by the aggrieved workman but by his legal heirs, this Court is of the view that in this case, the maxim, "Personal claim dies with the person" will not apply. This Court holds that the private respondents herein were very much entitled to question the correctness of the order of dismissal passed by the management against the said Radha. It is seen that the Labour Court chose to allow the Industrial Dispute, principally because the management, while contesting the claim for compensation filed before the Motor Accident Claims Tribunal in connection with the said accident, had taken a stand that its driver namely, Thiru.Radha was not at fault. The labour Court has referred to some of the orders passed by this Court in this regard. The Labour Court therefore, concluded that the Management having consciously pleaded before the Claims Tribunal that its driver Radha was not rash and negligent in his driving, cannot take a contrary stand in the disciplinary action.

4.The pleadings of the management before the Tribunal was that the accident had occurred on account of the rash and negligent driving of the driver of the private bus. This counter filed by the management was marked as Ex.W3, before the Labour Court. The Labour Court found that this counter was lodged on 11.10.2004. The order of dismissal is dated 26.08.2004. But, the application for approval under Section 33(2) (b) was filed later and approval was obtained on 21.11.2005. The Labour Court invoked the theory of estoppel and held that the management could not have dismissed the said Radha from service. In that view of the matter, the order of dismissal was set aside.

5.This Court is of the view that the theory of estoppel cannot be pressed into service. Section 115 of the Indian Evidence Act, 1872, deals with estoppel. Only when a person has intentionally caused or permitted another person to believe the thing to be true and to act upon such plea, he cannot later resile from his position. In this case, no doubt, the management had filed its counter seeking to fasten the entire negligence on the driver of the private bus in the Claims Tribunal proceedings. But, on that ground, Thiru.Radha, did not alter his position. The affected parties filed a claim for damages before the Tribunal. They wanted to fasten the liability on



the petitioner Corporation. The petitioner Corporation in order to avoid the consequences took a stand that its Driver was not at fault. This stand taken by the management was not acted upon by Thiru.Radha, later. Therefore, the principle of estoppel cannot be applied against the management. In any event, filing of such a pleading cannot take away the prerogative of the employer to take action. The Labour Court had chosen to allow the ID on this sole ground.

6.The enquiry against the dismissed employee was very much fair and valid. The deceased workman had taken full part in the said enquiry. In fact, the Labour Court itself passed a preliminary award to that effect. Eventhough before the Labour Court the pleading of the Corporation alone was marked as evidence, in the affidavit filed in support of this writ petition, it has been specifically contended that the Claims Tribunal after a full-fledged trial came to the conclusion that the deceased workman Radha alone was found to be negligent. It is this finding that will have a greater bearing and relevance and not the counter filed by the petitioner Management. This Court will have to bear in mind that as a result of the negligence of the deceased workman, as many as five lives were lost. It is true that the said Radha passed away and that the legal heirs of the deceased workman are before the Court. Taking an indulgent view on this ground will only be an exhibition of misplaced sympathy. A serious accident that is fatal in nature had occurred. After a full-fledged and proper enquiry, it was found that the delinquent driver was at fault. Such a factual finding could not have been casually dislodged by merely citing the stand of the management in the Claims Tribunal.

7.In this view of the matter, this Court is of the view that the award passed by the Labour Court is perverse in nature. The award impugned in this writ petition stands set aside. This writ petition is allowed. It is needless to mention here that even a dismissed employe will be entitled to certain benefits. It is not known as to whether those monetary benefits have been duly disbursed to the private respondents herein. If the same have not been disbursed, the petitioner shall disburse the amount forthwith without any delay. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To
The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Perryambur,
Tiruchirapalli



+1CC to Mr.R.Chandrasekaran, Advocate, SR.No.48093

+1CC to Mr.D.Sivaraman, Advocate, SR.No.48041

W.P. (MD) No.21575 of 2017
12.02.2018

WEB COPY

MR/NS

ES/JC/SAR 3/21.06.2018/4P/4C