



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.23880 of 2017
and
WMP(MD).No.20013 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periyamilaguparai,
Tiruchirapalli.

(Erstwhile Tamil Nadu State Transport
Corporation (Kumbakonam Division-2)
Limited)

... Petitioner/Respondent

Vs.

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. P.Thirunavukkarasu

... Respondents/Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the award passed by the first respondent herein dated 23.06.2015 in I.D.No.25 of 2006 and quash the same.

For Petitioner	: Mr.D.Sivaraman, Standing Counsel.
For R-2	: Mr.G.Purushothaman
For R-1	: Labour Court

O R D E R

The second respondent was appointed as a driver in Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Thiruchirapalli, in the year 1995. He caused a fatal accident on 01.03.2003. There persons died in the said accident. Therefore a disciplinary action was initiated against him. He was found guilty of the charges framed against him and dismissed from service by order dated 24.07.2003.

2. The second respondent raised an Industrial Dispute in I.D.No.25 of 2006 on the file of the Labour Court, Thiruchirapalli. The Labour Court by award dated 23.06.2015 allowed the Industrial Dispute and set aside the order of dismissal and directed



reinstatement of the second respondent with continuity of service and with full backwages. The same is assailed in this Writ petition.

3. Heard the learned counsel on either side.

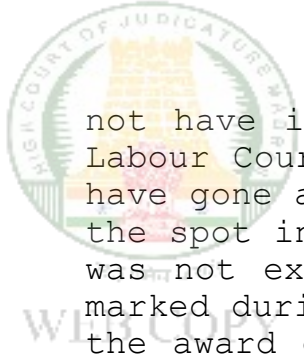
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4. The Labour Court had allowed the Industrial Dispute in toto principally on two grounds. One ground is that the Management having taken a stand in support of the employee in the claim proceedings before the Motor Accidents Claims Tribunal, cannot resile from its stand and initiate disciplinary action. But propounding the theory of estoppel in such cases has been framed upon by me in W.P.(MD)No.21575 of 2017, dated 12.02.2018. Paragraph No.5 of the said order reads as under:-

"5. This Court is of the view that the theory of estoppel cannot be pressed into service. Section 115 of the Indian Evidence Act, 1972, 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 I.D. on this sole ground."

5. Mr.D.Sivaraman, learned counsel appearing for the Management also submitted that the Hon'ble Division Bench of this Court, in the decision reported in (2009) 2 M.L.J. 849 (Sevugaperumal V. Superintendent of Police) also refused to accept a similar contention raised by an aggrieved employee. Further, the learned Standing counsel for the Management pointed out that the Labour Court after holding that the domestic enquiry was not fairly conducted, permitted both the parties to adduce evidence.

6. On the side of the employee, apart from himself one <https://hcservices.ecourts.gov.in/hcservices/> Abbas Khan was examined as W.W.2. But then, the said Abbas Khan did not figure anywhere in the picture. Therefore, his deposition could



not have inspired the confidence of the Court below. In fact the Labour Court also did not accept his evidence. But what appears to have gone against the Management was that the official who conducted the spot inspection immediately after the occurrence of the accident was not examined as a witness, nor the sketch prepared by him was marked during the proceedings. But then, it cannot be disputed that the award dated 24.12.2007 was made in M.C.O.P.No.84 of 2005. The claims Tribunal had clearly held that the delinquent herein was guilty of rash and negligent driving. It is not the case of the second respondent that he was not aware of passing of the award in favour of the claimants and against the Management. Even though the delinquent was not a party to the award proceedings before the claims Tribunal, he ought to have taken steps to question the finding rendered against him by filing Civil Miscellaneous Appeal. It is true that this award was not marked before the Labour Court. But the learned Standing counsel made available a copy of the same for my perusal. The said award is not in dispute. But when a finding was rendered against the delinquent, he was bound to file an appeal to vacate such a finding.

7. This is a case in which as many as three persons died. The specific case of the Management is that the bus had gone to the extreme right side of the road. Therefore, in this case the theory of *res ipsa loquitur* deserves to be applied. However, in view of the fact that the Management did not mark the award before the Court below and did not examine the vital witness, namely, the official who had conducted the spot inspection and who prepared the sketch, this Court is not inclined to interfere with the award of the labour Court in directing reinstatement with continuity of service. Since this Court is convinced that the second respondent was guilty of rash and negligent driving which caused the unfortunate death of three persons, he will have to suffer a cut in backwages. The labour Court has awarded reinstatement with full backwages. This Court is of the view that the second respondent should be entitled to only 40% in respect of the backwages. In all other aspects, the relief granted by the labour Court is confirmed. The Writ petition stands partly allowed, accordingly.

8. At this juncture learned Standing counsel for the Management submits that the delinquent had already retired on reaching the age of superannuation.

9. The retirement benefits payable to the second respondent shall be disbursed speedily. The period of non-employment shall be taken for pensionary purposes, because continuity of service has been ordered. If any contribution has to be made by the employee, the same can be recovered from the backwages. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The Presiding Officer,
Labour Court,
Tiruchirapalli.

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+1cc to M/S.D.Sivaraman, Advocate SR.No. 52647
+1cc to M/S.G.Purushothaman, Advocate SR.No. 52709

ORDER MADE IN
W.P.(MD).No.23880 of 2017
and
WMP(MD).No.20013 of 2017
02.03.2018

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