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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9309 OF 2005

Maharashtra State Road Transport Corporation .. Petitioner

Vs.

Maruti Bapu Pandhare .. Respondent

Mr. Priyal G. Sarda for the petitioner.

Mr. G.S. Hegde I/b. M/s. G.S. Hegde & Associates for the respondent.

CORAM : A.K. MENON, J.

DATED : 21ST FEBRUARY, 2019.

P.C. :

1. Called for final hearing and disposal.
2. The petition challenges the judgment and award dated 30th November, 2004 passed by the First Labour Court, Solapur, in Reference (IDA)no.20 of 1999. The petitioner is the Maharashtra State Road Transport Corporation which is engaged in the business of providing transportation throughout the State. The respondent was a driver working for the corporation who has dismissed from service as a result of an accident that took place on 9th May, 1989. It is the case of the corporation that the respondent was guilty of gross negligence as a result of which an accident was caused resulting in loss of life, serious loss to the corporation apart from inconvenience to the parties.

3. The facts in brief are as follows:

The respondent was appointed as a driver in November 1977. While on duty on 9th May 1989, he was driving the corporation's bus from Kole to Sangola when it collided with a tempo. The tempo driver died on the spot and other passengers in the tempo also sustained injuries. The respondent was suspended from 24th May, 1989. A charge sheet came to be issued on 27th July, 1989 in respect of the alleged misconduct and enquiry was held and the respondent was suspended from service w.e.f. 5th January, 1995. There is discrepancy in dates in the petition and the award. However, it is not in dispute that the petitioner was in service from 1977 and was dismissed from service as a result of accident which took place on 9th May, 1989. He was admittedly suspended prior to dismissal.

4. Proceeding on the basis of the averments in the petition and a narration of the facts in the impugned award both of which are not denied by either party, it is submitted by Mr. Hegde that as a result of gross negligence the unfortunate incident took place resulting in the death of the tempo driver. It is the case of the petitioner that the respondent filed Reference (IDA)no.20 of 1989 which came to be decided on 31st November, 2004. Mr. Hegde submitted that the award directs the petitioner to reinstate the respondent and pay full back wages with continuity of service from 24th July, 1989 till 31st May, 2003 along with all benefits. The main ground of challenge that has been urged today is that of gross negligence by the respondent while discharging his

duties as a driver. Mr. Hegde has invoked the doctrine of *Res Ipsa Loquitur* to support the case of the petitioner that the accident could not have taken but for the negligence of the respondent. The fact that the tempo driver died is not in dispute and the facts of the case speak for itself. Therefore attributing negligence to the respondent cannot be faulted. He submitted that there is an assumption against the respondent and in favour of the corporation which entitled the corporation to invoke clause 11 of the Disciplinary and Appeal Procedure. He submitted that there was no evidence whatsoever on behalf of the respondent to support his version of what had transpired and that it was not necessary for the corporation to establish all events that took place beyond all reasonable doubt since this was a departmental enquiry and would proceed on the basis of what was expected in the fact situation.

5. Mr. Hegde has taken me through the impugned award. The impugned award records that the respondent had an unblemished record. At about 12.45 p.m. near Udanwadi on 9th May, 1989, a tempo bearing registration no.MWE-2576 collided against the bus which the respondent was driving. The tempo driver died on the spot and the other passengers also suffered injuries but the passengers aboard in the bus did not suffer any injury. As a result of the accident, a police complaint came to be filed resulting in a criminal case being registered. However, the impugned award records that

after the trial, the respondent was acquitted. Meanwhile the departmental enquiry conducted was found to be prejudicial to the respondent and therefore perverse. The Court came to the conclusion that the damage to the bus was minimal but has been shown to be excessive. In the course of the enquiry, the respondent was acquitted and discharged in the criminal proceedings and therefore he pursued his claim against the corporation seeking reinstatement and continuity of service. The corporation contended that the respondent had driven the bus in a rash and negligent manner without following rules and regulations of traffic and collided with the tempo. After it was contended that the respondent was driving the bus on the wrong side and therefore he must have hit the tempo. Two issues were framed which are reproduced below:–

“1. Whether first party proves that the second party has committed misconduct as per the charge sheet dated 27th July, 1989?

2. Whether second party is entitled to the relief claimed?”

The first issue was answered in the negative as the corporation failed to prove the allegations of misconduct. The corporation examined one Anilkumar Sudhakar Gheware in support of the charges. Having considered the evidence, the Court found that no case of misconduct was established as against the respondent. The Court observed that the evidence led by Mr. Anilkumar Gheware was insufficient to prove negligence on the part of the respondent. The contents of charge sheet were also considered and the

award records that nothing was shown in respect of the existence of a bullock cart on the road when the bus is alleged to have overtaken the said bullock cart resulting in collusion with the oncoming tempo. In the absence of such evidence, the Court came to the conclusion that the attempt of the witness was to improve upon the statements made in the charge sheet in the first place. The corporation thus failed to prove the charges.

6. On behalf of the respondent, documentary evidence was submitted in the form of his service record to prove his date of birth, in support of his contention that he was entitled for reinstatement. The award proceeds on the basis of correctness of the contents of service record. Nothing was shown to the contrary. It is on that basis that the award grants reinstatement in service with full back wages. The reference was thus allowed in part and it was held that the respondent was entitled to receive full back wages and continuity of service from 24th July, 1989 with all benefits. However, his claim for reinstatement was rejected. The respondent has not challenged the award which is partially in his favour. The corporation has done so being aggrieved and on the grounds that are set out in the petition.

7. At the hearing today, although Mr. Hegde has placed into service the doctrine of *Res Ipsa Loquitur* and I find that doctrine was not urged by the corporation before the Labour Court nor which was in contemplation of the

petitioner in this petition. The ground on which the petition challenges the impugned award is that the learned Judge of the Labour Court had erred in considering that the charges of negligence was not proved. The ground also alleged before the Court was not properly appreciated and that the issues were not properly framed. Furthermore, the corporation has contended that the reliance placed on the past service record was without considering the fact that the respondent was punished by stoppage of increment. Save and except this ground, no other grounds were canvassed.

8. In the course of submissions today it is one of the contentions of the petitioner that the respondent led no evidence. Mr. Sarda has however produced before me a copy of the deposition of the respondent as of 7th March, 2002. The depositions by way examination in chief and the cross examination tendered today are admitted by Mr. Hegde on behalf of the petitioners. The respondent has deposed in detail as to the accident that took place on 9th May, 1989. He has described the fact that his vehicle was 200 ft away from Udanwadi and at that stage the oncoming tempo hit his vehicle on the conductor's side although his bus was at a slow speed. He has given a description of how the accident took place and also the fact that the tempo driver did not have the licence at that time. He has deposed to the fact that none of the passengers of the bus had sustained any injury whereas the tempo driver succumbed to his injuries and other persons aboard the tempo

also sustained injuries. The deposition further records that the respondent had applied to the Enquiry Officer to supply him the list of witnesses whom the corporation was desirous of examining during the course of enquiry to prove the charges but he was not supplied such a list. No statement was recorded on the spot in his presence. He has further deposed that he had informed the corporation and the Enquiry Officer of the witnesses he desired to examine but the corporation had not called those witnesses that he wished to examine. He has relied upon the letter dated 4th August, 1989 marked during the course of proceedings at Exhibit C-12.

9. In his deposition he has admitted that the spot map supplied to him was in respect of bus being registration no. MTD 9066 whereas the bus which he was driving is MTD-9068. He has denied the contention that the corporation suffered a loss of Rs.10,000/-. He has also deposed that the Enquiry Officer was a member of a rival union and they did not share a cordial relationship since the Enquiry Officer had often alleged that the respondent was late in attending to his duties and he had displayed ill will towards the respondent. It is on this basis of the deposition that the respondent was cross examined by the Advocate for the corporation. The notes of cross examination also do not reveal the nature of the accident. No eye witness has been examined. The respondent has denied various suggestions made by the petitioner's Advocates during the cross examination. He has reiterated the fact that the respondent

and Enquiry Officer did not share a cordial relationship and the respondent denied that he did not inform the corporation the names of the witnesses that he proposes to examine during the enquiry.

10. It is pertinent to mention here that in cross examination the respondent has deposed that even in the criminal case no witnesses were examined on behalf of the corporation. In this background, in my view, there is nothing to demonstrate any perversity or illegality in the award. The petitioner has led evidence. He has been cross examined extensively but nothing has been brought on record to implicate him and to hold him guilty of negligence and that too negligence of a serious nature and having caused any serious loss to the corporation. Even according to the cross examination, the loss caused to the corporation about Rs.10,000/-, there is no evidence of any compensation having been paid although it was submitted in the award that loss has been caused by way of payment of compensation. This Court had directed the respondent to deposit the entire amount owing to the respondent by virtue of the impugned order and had even permitted 25% of the amount to be withdrawn. Nothing on record suggests that the corporation was required to pay any compensation either to the tempo driver's family or any of the injured persons. In the absence of any evidence to the contrary, I find no reason to interfere with the impugned award. In view of the above, the challenge must fail and I pass the following order;

- (i) Writ petition is dismissed.
- (ii) The impugned order is upheld. As a consequence, the respondent is at liberty to withdraw the balance amount lying deposited in Court and if invested along with accrued interest. Premature withdrawal is permitted subject to the respondent bearing the charges in this respect.
- (iii) Office to act on an authenticated copy of this order.
- (iv) No costs.

(A.K.MENON,J.)

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