

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.38452 of 2003
and W.P.M.P.No.46676 of 2003

The Management
Metro Transport Corporation
(Chennai-Division) Ltd.,
(Formerly known as Pallavan
Transport Corporation Ltd.)
Pallavan House
Anna salai, Chennai-600 002. .. Petitioner

Vs.

1.The Presiding Officer
Principal Labour Court
Chennai.

2.Chockalingam .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records pertaining to the award dated 05.06.2003 made in I.D.No.143 of 1997 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.V.Gunasekar
for Mr.V.R.Kamalanathan

For R2 : Mr.V.Ajoy Khose

O R D E R

Writ Petition is filed challenging the award of the 1st respondent dated 05.06.2003 made in I.D.No.143 of 1997 setting aside the order of dismissal and ordering reinstatement with full backwages, continuity of service and all other attendant benefits.

2.The learned counsel appearing for the petitioner contended that the 2nd respondent due to his rash and negligent driving, caused fatal accident, which resulted in death of four year old boy. The petitioner in the domestic enquiry conducted against the 2nd respondent for the charges levelled against him, examined

traffic inspector, who inspected the accident spot within short time of accident and on enquiry, found that the accident occurred due to rash and negligent driving by the 2nd respondent. The learned counsel further contended that place of occurrence is a crowded one and had the 2nd respondent driven the bus cautiously, he could have avoided the accident. The 1st respondent without properly appreciating the evidence of traffic inspector let in before the Enquiry Officer as well as before the 1st respondent, erroneously rejected the same. The 1st respondent failed to see that the 2nd respondent did not let in any evidence to prove his statement that the accident did not occur due to his negligence and that the accident occurred only due to negligence of the deceased boy, who suddenly came behind the bus, which was coming in the opposite direction and tried to cross the road. The 2nd respondent has not pleaded and proved that he was not gainfully employed from the date of dismissal, the 1st respondent erred in awarding backwages and prayed for allowing the writ petition.

3. Per contra, the learned counsel appearing for the 2nd respondent contended that M.W.1 traffic inspector was not an eye witness and he has not given any particulars of the witnesses, who were present in the place of occurrence, examined by him to come to the conclusion that the accident occurred only due to negligence on the part of the 2nd respondent. Before the Enquiry Officer, the 2nd respondent gave evidence to the effect that the accident occurred only due to the negligence of the deceased boy, who suddenly came in the opposite direction behind the bus, which was coming in the opposite direction and tried to cross the road. The Enquiry Officer has not given any reason for not accepting the evidence of the 2nd respondent. The 2nd respondent produced 23 documents, which were marked as Exs.W1 to W23 and proved that the accident occurred only due to negligence on the part of the victim. The 2nd respondent was not gainfully employed from the date of his dismissal and 1st respondent has rightly awarded backwages. The petitioner has not taken into consideration the past records of the 2nd respondent while imposing punishment without putting the 2nd respondent on notice about the same and without mentioning the same in the order of dismissal. The 1st respondent has considered all the materials available on record and by giving valid reasons set aside the order of dismissal and ordered reinstatement with full backwages, continuity of service and all other attendant benefits and prayed for dismissal of the writ petition.

4. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5.The issue to be decided in the writ petition is whether the accident occurred due to negligence on the part of the 2nd respondent and whether the petitioner proved the charges levelled against the 2nd respondent. In the domestic enquiry as well as before the 1st respondent, the traffic inspector was examined by the petitioner to prove the charges levelled against the 2nd respondent. Admittedly, he was not an eye witness, but he inspected the accident spot immediately. According to the petitioner, the traffic inspector enquired the people present therein who informed him that the accident occurred due to negligence on the part of the 2nd respondent. As rightly pointed out by the learned counsel appearing for the 2nd respondent that the traffic inspector has not furnished the names and address of the persons whom he enquired to come to a conclusion that the accident occurred only due to negligence of the 2nd respondent. The learned counsel appearing for the petitioner contended that the accident occurred in a crowded place and had the 2nd respondent driven the bus cautiously, he could have avoided the accident. The learned counsel appearing for the 2nd respondent has not denied that the accident occurred in a crowded place. Considering these aspects, the findings of the 1st respondent exonerating the 2nd respondent fully of his negligence is not correct. It is also pertinent to note that the 2nd respondent did not examine himself before the 1st respondent to prove his contention that he is not responsible for the accident. Considering the above facts, it cannot be ruled out that the 2nd respondent was also negligent to an extent for the accident.

6.The 2nd respondent has not pleaded in the claim petition that he was not gainfully employed from the date of dismissal and did not let in any oral evidence before the 1st respondent to the effect that he was not gainfully employed. Only in the affidavit filed in support of the petition for payment of last drawn salary under Section 17B of the Industrial Disputes Act, the 2nd respondent has stated that he was not gainfully employed. Further, the 2nd respondent attained superannuation on 31.07.2005. Considering the above materials, it will be in the interest of justice to award a sum of Rs.4,50,000/- as compensation to the 2nd respondent in lieu of reinstatement in service, backwages, continuity of service and attendant benefits. Accordingly, the 2nd respondent is entitled to a sum of Rs.4,50,000/- as compensation in lieu of reinstatement in service, backwages, continuity of service and attendant benefits.

7.With the above modification, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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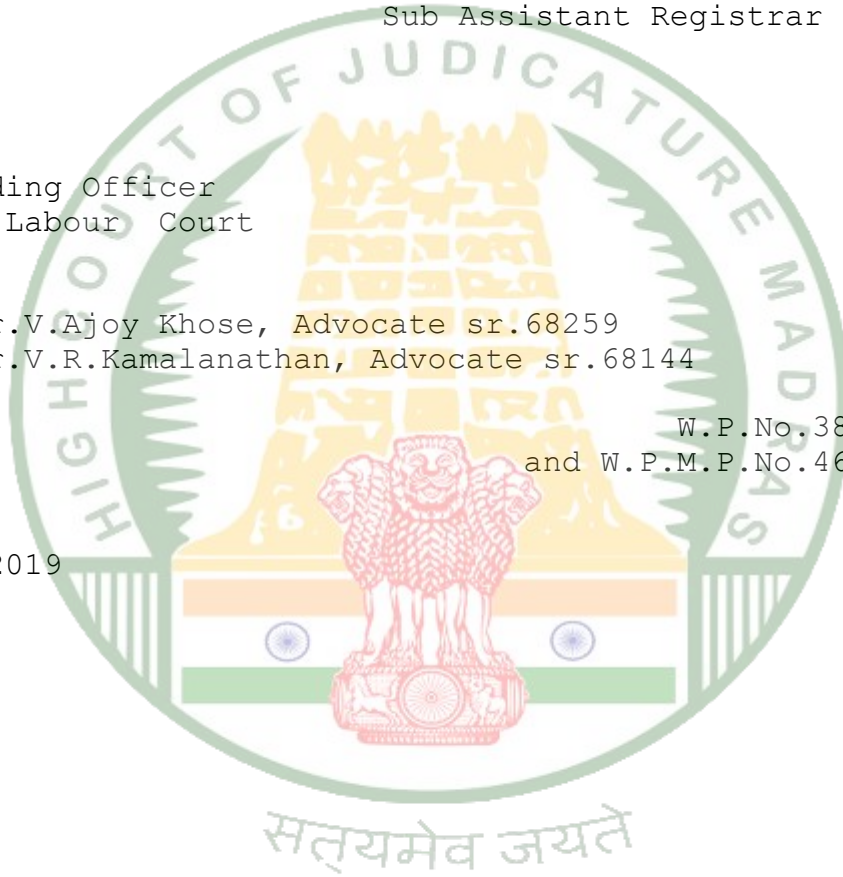
The Presiding Officer
Principal Labour Court
Chennai.

+1cc to Mr.V.Ajoy Khose, Advocate sr.68259

+1cc to Mr.V.R.Kamalanathan, Advocate sr.68144

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