

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.27487 of 2008

The Management of
Tamil Nadu State Transport Corporation
(Coimbatore Division - II) Ltd.,
Chennimalai Road, Erode -1,
Rep. By its Managing Director. .. Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.P.Rajendran ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records made in I.D.No.546 of 2004 dated 22.01.2008 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For R2 : Mr.R.M.D.Nasrullah,
for M/s.K.V.Shanmuganathan

R1 : Court

O R D E R

This Writ Petition is filed to issue a writ of Certiorari calling for the records made in I.D.No.546 of 2004 dated 22.01.2008 on the file of the 1st respondent and quash the same.

2.The 2nd respondent joined as a Driver in the petitioner Transport Corporation on 19.11.1997. While he was driving the vehicle belonging to the petitioner Transport Corporation, he caused fatal accident. The petitioner-Transport Corporation dismissed the 2nd respondent on the ground that the 2nd respondent drove the bus in a rash and negligent manner and caused fatal accident and the bus belonging to the petitioner Transport

Corporation and the TVS 50 driven by the deceased were damaged. The 1st respondent in I.D.No.546 of 2004 raised by the 2nd respondent set aside the order of dismissal and ordered reinstatement with continuity of service, but without backwages.

3.The learned counsel appearing for the petitioner contended that the award of the 1st respondent is perverse for following reasons:

(i) The 1st respondent failed to see that the 2nd respondent drove the bus at high speed without minding on coming vehicle and on seeing the TVS 50, the 2nd respondent swerved the bus to the right side which resulted in fatal accident.

(ii) The 1st respondent failed to see that if the 2nd respondent had driven the bus at moderate speed and drove it to left hand side, the accident could have been averted.

(iii) The 1st respondent failed to consider the past records of the 2nd respondent i.e., on two occasions, the punishment of recoveries were ordered towards damages caused by the 2nd respondent and on three occasions, his increments were ordered to be postponed for causing two fatal accidents and one misbehaviour offense. The 2nd respondent also remitted the amount for the damages caused, without any protest.

(iv) The petitioner has examined the Junior Engineer who spoke as to how the accident had occurred and the 1st respondent on erroneous reason, rejected the said contention.

(v) The witness examined by the 2nd respondent deposed contrary to the stand taken by the 2nd respondent.

(vi) The 1st respondent failed to see that in the Domestic Enquiry, strict proof of evidence like criminal proceedings is not necessary.

(vii) The petitioner had conducted Domestic Enquiry following the principles of natural justice and the 1st respondent having held that the enquiry was fair and proper, ought to have dismissed I.D raised by the 2nd respondent. The 1st respondent erred in holding that the finding of the Enquiry Officer was perverse.

(viii) The petitioner proved that the 2nd respondent was responsible for the accident and prayed to quash the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 2nd respondent contended that:

(i) accident has occurred not due to rash and negligent driving by the 2nd respondent. The accident occurred only due to rash and negligent riding by the rider of the TVS 50 who drove the TVS 50 at high speed in the middle of the road.

(ii) The 2nd respondent swerved the bus to the right hand side and stopped the bus on seeing the TVS 50 coming at a high speed. The deceased drove the TVS 50 at a high speed and dashed

against the stationary bus.

(iii) The witness examined by the petitioner was not an eye witness and his evidence is only a hearsay evidence. The witness examined by the petitioner has not stated on what basis he prepared the rough sketch when both the vehicles were not there at the accident spot when he visited the place of occurrence.

(iv) There was a speed braker before the accident spot and the 2nd respondent did not drive the bus at high speed.

(v) The petitioner failed to prove in the Domestic Enquiry or before the 1st respondent that the accident occurred only due to rash and negligent driving by the 2nd respondent and that he drove the vehicle at a high speed.

(vi) The 1st respondent has considered all the materials on record in proper perspective and set aside the order of dismissal and ordered reinstatement with continuity of service, and even erred in not awarding backwages. Hence, prayed for dismissal of the Writ Petition.

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

6. From the materials on record, it is seen that the petitioner has examined the Junior Engineer to prove the charges leveled against the 2nd respondent. The said witness has deposed that the 2nd respondent was driving the bus at a high speed in the middle of the road. He also stated that the 2nd respondent on seeing the TVS 50, swerved the bus to the right hand side and stopped the bus. The contention of the petitioner is that, had the 2nd respondent turned the bus to the left hand side, the accident could have been averted. The said contention is not acceptable. Admittedly, the TVS 50 is driven by the deceased at high speed in the middle of the road. In view of the same, the 2nd respondent turned the bus to the right hand side and stopped the bus. The accident occurred only when the rider of the TVS 50 dashed against the stationary bus. Further, from the award of the 1st respondent it is seen that there was speed braker before the place of accident spot and therefore, the 2nd respondent could not have driven the bus at high speed. The learned counsel appearing for the petitioner has not disputed this portion of the award of the 1st respondent.

6(i) The contention of the learned counsel appearing for the petitioner that accident could have been averted had the 2nd respondent swerved the bus to the left hand side is only a hypothetical one and it is not supported by any acceptable evidence placed by the Enquiry Officer. The witness examined by the petitioner has admitted that when he visited the place of occurrence of accident, both the vehicles were not there and therefore, the rough sketch prepared by him is not a reliable

one. The petitioner failed to produce the rough sketch prepared by the Police, which may be supported by the contention of the learned counsel for the petitioner and prove the rough sketch prepared by the Management Witness, M.W.1 is correct. From the materials on record, it is seen that the petitioner failed to prove that the 2nd respondent was solely responsible for the accident. It is true that in the Domestic Enquiry strict proof of evidence as that of any criminal proceedings is not required, but there must be some evidence for the Enquiry Officer to conclude that the charges leveled against the delinquent employee is proved. In the present case, there is no evidence at all to hold that charges leveled against the 2nd respondent are proved. The 1st respondent considering all the materials placed before it, has given cogent and valid reason for setting aside the order of dismissal and ordering reinstatement with continuity of service. There is no error in the said reasoning of the Tribunal warranting interference by this Court.

7. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.T.Chandrasekaran, Advocate sr.62755

W.P.No.27487 of 2008

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