

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.3307 of 2019

M.Chella Thambi ... Appellant/Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.The Management,
Pandian Roadways Corporation,
Bye-pass Road,
Madurai 625 016.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters patent against the order dated 31.10.2003 passed in W.P.No.2337 of 1997 on the file of this Court.

Prayer in WP.No.2337/1997 : Petition filed under Article 226 of the Constitution of India praying this Court pleased to call for the records in I.D.No.310 of 1991 on the file of the first respondent whereby award was passed on 12/04/1996.

For Appellant : Mrs.AL.Ganthimathi

JUDGMENT

(Order of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the driver of the Transport Corporation for having been rash and negligent in driving the vehicle, thereby causing accident resulting in loss of a precious life and also in the conductor of the Transport Corporation sustaining injuries and damaging the properties belonging to the co-operative society. The appellant was charged for having been rash and negligent while driving the Transport Corporation bus on 20.01.1989 at Silaiman.

2.According to the appellant, the place has got curves and when the mentally challenged lady suddenly crossed the road, to avoid dashing against the lady, the driver turned the bus

towards left and on seeing the lorry, again he turned to the extreme left which caused the accident. He had driven the vehicle very cautiously and inspite of that the accident occurred because of the sudden crossing of the road by the mentally retarded lady. The appellant was given a show cause notice and a charge memo on 15.02.1989 for which, he gave explanation on 09.03.1989. Not satisfied with the explanation, enquiry was conducted and after enquiry, the appellant was dismissed from service on 29.11.1990.

3.An application in I.D.No.310 of 1991 was filed by the appellant against the said dismissal order on the file of the first respondent herein. A preliminary award came to be passed with regard to the fairness of the enquiry on 04.01.1993 as the first respondent / Labour Court found that enquiry was not proper and since the management sought for particulars to let fresh evidence, dispute was posted again for enquiry. On the side of the management, ten exhibits were marked and Thiru M.Soundarajan was examined and gave oral evidence on behalf of the management.

4.The labour Court after examining the evidence held that non-employment of the appellant was fully justified and has dismissed the application of the appellant. The said award was challenged before this Court. The learned Single Judge, after going into the facts of the case, categorically gave reasons to confirm the award and has dismissed the petition. The said order is being challenged before this Court by way of an appeal.

5.Mrs.AL.Gandhimathi, learned Counsel for the appellant has made the following submissions. The appellant was acquitted from the criminal case regarding the accident which is the basis for the proceedings by which the appellant has been dismissed from service. Further, the very same evidence of M.W.1 which was not accepted by the Labour Court in its preliminary award has been relied upon to sustain the dismissal order and therefore, the same has to be set aside. The appellant's explanation was not considered.

6.This Court heard the arguments and has carefully perused the records.

7.It is evident that the accident occurred because of the rash and negligent driving of the appellant. On comparing the evidence of M.W.1 who is the officer of the Transport Corporation and who visited the accident spot immediately after the accident, is not in consonance with the version given by the appellant. The Labour Court found that the appellant drove the

vehicle at 40 km speed per hour. Moreover, it is found that the accident spot is near a curve and therefore the appellant should have been careful enough to slow down the vehicle.

8. In the matter of accident caused by the Transport Corporation driver, the Hon'ble Supreme Court has already held that the driver has to discharge the onus namely that the accident did not happen due to his rash and negligent driving but due to various reasons not attributable to him. The learned Single Judge has referred to the Judgments of the Hon'ble Supreme Court in the case of "Pushpabai Parshottam Udeshi Vs. Ranjit Ginning and Pressing Co. P. Ltd.," reported in "AIR 1977 SC 1735", in the case of "State of Karnataka Vs. Krishna Raju" reported in "AIR 1987 SC 861" and in the case of "Dilbar Singh Vs. State of Haryana" reported in "AIR 2000 SC 1677".

9. In the Judgment of the Hon'ble Supreme Court reported in "AIR 1987 SC 861", the Hon'ble Supreme Court has cautioned to the effect that where a driver of a public Transport Corporation is found to have caused a fatal accident, the same has to be looked at with certain amount of seriousness, since the public safety and convenience is paramount, the Court should not fall a prey to the plea of misplaced sympathy.

10. With regard to the attack on the evidence of M.W.1, the learned Counsel for the appellant would contend that it was not found to be proper in the preliminary award and the same cannot be relied upon to sustain the dismissal order. However, it is the case of the appellant that there was no proper enquiry conducted and the fairness of the enquiry was questioned as the appellant was not served with the enquiry report and that is the reason for which the preliminary award was passed and parties were asked to adduce evidence.

11. With regard to the merits of the evidence of M.W.1 while passing the preliminary award is concerned, the learned Single Judge very correctly held that the passing of preliminary award should be confined only to the fairness of the enquiry and merits of the witnesses and the case should not be gone into. Therefore, any observation or finding given by the Labour Court while passing preliminary award has to be eschewed.

12. Since the enquiry was not properly conducted with fairness, the preliminary award was passed and the parties were directed to adduce evidence. The very same M.W.1 was examined afresh whereas the appellant who has got direct knowledge about the manner and cause of the accident did not choose to adduce evidence either by examining himself or by any other witnesses.

There is no justification to eschew or to find fault with M.W.1 evidence, merely because his evidence was not viewed by the Labour Court while passing preliminary award.

13.As already stated, unnecessarily Labour Court went into the details and the merits, while passing the preliminary award and therefore, the observations made in the preliminary award are not sustainable. Even there after it is not known as to why the very same evidence of M.W.1 who adduced in enquiry was relied upon by the Labour Court. Nevertheless, M.W.1 was again called upon to speak about the accident afresh and the appellant had opportunity to cross examine and further got opportunity to adduce evidence on his behalf.

14.As already stated, the version given by M.W.1 and P.W.1 are not in consonance with each other and therefore, the accident is admitted and the manner in which the accident occurred is only due to the rash and negligent driving of the driver. When there is a curve, the appellant should have taken care and should have driven carefully. The Labour Court has categorically come to the conclusion that the bus was driven at 40 Km speed per hour and on the application of brake in the curved area, the accident had occurred as he was unable to control the vehicle at that high speed.

15.Therefore, the finding of the Tribunal was found to be valid and non-perverse. Therefore, there is no need to interfere with the finding reached by the Labour Court. Factual finding reached by the Labour Court cannot be interfered with, as the Labour Court is the authority to decide and the factual finding was given based on the evidence and the learned Single Judge has also confirmed the same under Article 226 of the Constitution of India based on facts and by relying upon the Judgments of the Hon'ble Supreme Court.

16.With regard to the acquittal given in the criminal case filed against the appellant is concerned, it is based on proof beyond doubt. Moreover, the Corporation does not have any role in the prosecution case. Moreover, the finding given by the criminal court is not binding on the other courts. Therefore, merely because appellant was acquitted from criminal case, it will not lead to automatic discharge from departmental proceedings initiated against the appellant which is the settled position of law.

17.Moreover, the prosecution has to furnish the materials to prove that the accident occurred because of the rash and negligent driving whereas here it is the action taken for having

not properly and cautiously driven the vehicle. What has to be considered by this Court is that a precious life is lost and another Transport Corporation worker viz., the conductor of the bus was injured and the properties of the co-operative society were damaged. If the appellant had been cautious enough in driving the vehicle, the entire accident could have been avoided. Further, rash and negligent driving has been proved before the Labour Court and a finding has been reached and therefore, the finding given by the Criminal Court will not have any effect on this proceedings and therefore, the contentions raised by the appellant fail and the same are rejected.

18.It is further seen that the accident occurred in the year 1989 and the appellant was dismissed in the year 1990. Thereafter, the appellant raised the dispute before the Labour Court in the year 1996 and award was passed rejecting the claim of the appellant in the same year which was challenged before this Court. The learned Single Judge passed the order dismissing the claim of the appellant in the year 2003.

19.However, the appeal has been moved only now even though it has been filed in the year 2004. This would show that the appellant was not serious in prosecuting the case especially when the appellant's rights have been affected. Therefore, there is delay and laches in prosecuting the appeal. Hypothetically, if the appellant had been reinstated in service, by this time, he would have reached his superannuation.

20.Hence, the appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Madurai.

+1 cc to M/s.AL.Ganthimathi,Advocate Sr.No. 84333

AKM/20.11.19/5P-3C /

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