

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 09.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A. No.2814 of 2012 and M.P. No.1 of 2012

V.Duraisamy ... Appellant

versus

1.The Management,
Tamil Nadu State Transport Corporation,
(Coimbatore Divn-1) Limited,
Mettupalayam Road,
Coimbatore-641 043.

2.The Presiding Officer,
Joint Commissioner of Labour,
(Conciliation), Chennai.

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.03.2012 in W.P. No.19838 of 2006. Writ Petition filed under Article 226 of the Constitution of India Praying that to issue a writ of Certiorari calling for the records of the second respondent in his order dated 9.12.2005 made in A.P.No.37/2004 and quash the same.

For Appellant : Mr.K.V.Shanmuganathan

For Respondents : Mr.A.Sundaravadhanan for R1
R2-Court

JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

This writ appeal has been directed against the impugned order dated 19.03.2012 passed in W.P. No.19838 of 2006, wherein the learned Single Judge, considering the gravity of the misconduct, committed by the appellant, Driver of the first respondent Tamil Nadu State Transport Corporation in taking away three innocent persons' lives, granted approval for the order of dismissal dated 19.11.2003, which was refused by the Joint Commissioner of Labour (Conciliation), Chennai, the second respondent. Aggrieved thereby, this appeal has been brought before us.

2.Mr.K.V.Shanmuganathan, learned counsel appearing for the appellant, assailing the impugned order, argued that when the Management, Tamil Nadu State Transport Corporation had taken a stand before the learned II Additional District Judge, Coimbatore/ Motor Accidents Claims Tribunal, by filing a counter statement in M.C.O.P. No.112 of 2003 in favour of the appellant that there was no rash and negligent driving on the part of the appellant, they cannot take a diametrical stand of negligent driving for which the appellant was found guilty of charges on the basis of findings given by the Enquiry Officer since the same cannot go together. However, while proceeding with the departmental enquiry for having caused accident, the Management first respondent came to the conclusion that the appellant was found guilty of charges and resultantly, an order of dismissal dated 19.11.2003 was passed against the appellant and thereafter, they have moved a belated Approval Petition No.37 of 2004 before the Joint Commissioner of Labour (Conciliation), Chennai/the second respondent for getting approval for the order of dismissal. The second respondent, considering the delay in moving the Approval Petition for passing the order of dismissal against the appellant holding that the first respondent, having come to the bonafide conclusion that the appellant was not responsible for the accident in their counter affidavit filed before the Motor Accidents Claims Tribunal, ought not to have taken a diametrical stand that the opposite party/appellant was guilty of rash and negligent driving, hence he could be found guilty of the charges framed against him, therefore, dismissal of the Approval Petition filed by the Management/first respondent by order dated 09.12.2005 cannot be found fault with. Aggrieved thereby, the first respondent has filed the above Writ Petition in W.P. No.19838 of 2006 and obtained an order of approval of dismissal order from the learned Single Judge.

3.Continuing his arguments, learned counsel for the appellant submitted that the order of approval granted by the learned Single Judge, disturbing the findings given by the second respondent, is not justifiable for the reason that the first respondent had not even fulfilled the mandatory conditions mentioned in Section 33(2) (b) of the Industrial Disputes Act.

4.In support of his submission, learned counsel for the appellant, relying upon a ratio laid down by the Hon'ble Apex Court in the case of Podar Mills Ltd. vs. Bhagwan Singh and others reported in AIR 1974 (3) SCC 157, argued that on the date of the alleged accident took place, namely, 05.11.2002, while the appellant was driving the bus bearing Registration No.TN-38-N-0509 at 06.40 p.m., when the vehicle was nearing Sidco LIC Colony at about 7.15 p.m., the deceased Venkitusamy suddenly crossed the main road without observing the traffic rules. When the appellant has turned the vehicle on its right side to rescue

the deceased, another two wheeler came from the opposite direction in a rash and negligent manner, dashed against the appellant's vehicle. Due to the same, the pedestrian, the driver of the motor bike and pillion rider sustained head injuries and died. Although the appellant has carefully driven the vehicle, due to the reasons mentioned above, the aforementioned accident took place and as a result, the fatal accident took place. This was also properly explained to the Management and the same was accepted by them and therefore, they have also filed a counter statement before the Motor Accidents Claims Tribunal supporting the case of the appellant that there was no rash and negligent driving on the part of the appellant which clearly shows that the appellant cannot be held liable. When the Motor Accident Claims Tribunal has proceeded with the matter, without waiting for the final award from the Tribunal, the first respondent Management issuing the charge memo and consequently dismissing the explanation offered by the appellant and appointing an Enquiry Officer, who finally finds him guilty of causing accident, is un-justified because the first respondent Management has passed an order of dismissal on 19.11.2003. Since the Management has not filed proper petition before the second respondent within the reasonable time as per the mandatory conditions laid down by the Apex Court in the aforementioned judgment, the second respondent has rightly dismissed the Approval Petition and as against which, the Management has approached this Court and obtained an order of approval, which cannot be allowed to stand. Therefore, the impugned order passed by the learned Single Judge is liable to be interfered with.

5. But we are not able to find any justification to interfere with the well speaking order passed by the learned Single Judge. The reason being that when the appellant had driven his bus bearing Registration No. TN-38-N-0509 on 05.11.2002 at about 6.40 p.m., a two wheeler came from the opposite direction, said to have dashed against the appellant's vehicle. Due to the said accident, one Venkidusamy, the pedestrian, the driver of the motor bike and the pillion rider died on sustaining head injuries. Without even attempting to stop the bus when the poor pedestrian coming in front of the appellant, the appellant has caused the accident and due to which, the old pedestrian, poor cyclist and the pillion rider died. Since three innocent lives were taken away by his careless, rash and negligent driving, the Management, doubting his competency to continue him as a Driver, has framed charges against him. Finally, he was put to face enquiry before the domestic enquiry officer, who has given a finding that the appellant was found guilty of charges. Therefore, the Management passed an order of dismissal from service on 19.11.2003 and thereafter, with the delay of 13 days, they moved an Approval Petition before the second respondent seeking approval of the order of dismissal. The reasons given by

the second respondent, refusing to accept the Approval Petition, are extracted as under:

'1.The Applicant had not come to a bonafide conclusion that the Opposite Party was guilty of the charges framed against him.

2.The Applicant had not applied to this Authority for the approval of the dismissal of the Opposite Party either simultaneously or within such reasonably short time as to form part of the same transaction.'

6.We are not impressed by the reasons given by him. When the appellant had driven the vehicle on 05.11.2002, he should have attempted to stop the vehicle, but he has not done so. Due to the same, the poor pedestrian became victim and thereafter, the cyclist and the pillion rider also became victims. It cannot be disputed that multiple death of three persons was caused by careless and rash driving of the driver of the bus. Therefore, without waiting for the Award from the Tribunal, the Management has rightly proceeded with the departmental enquiry and ultimately, dismissed the appellant from service by order dated 19.11.2003 finding him guilty of charges. But, the second respondent without considering the above aspects, has refused to accord approval for the dismissal of the appellant. However, the learned Single Judge holding that all the essential requisites of the proviso to Section 33(2)(b) of the Act are complied with by the Management, has rightly set aside the order passed by the second respondent and allowed the writ petition filed by the Management and granted the order of approval. Therefore, we are not inclined to interfere with the order passed by the learned Single Judge. For the above reasons, this writ appeal stands dismissed. Consequently, M.P. No.1 of 2012 stands closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vga

To

The Presiding Officer,
Joint Commissioner of Labour,
(Conciliation), Chennai.

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.32458

W.A. No.2814 of 2012 and M.P. No.1 of 2012

UM(CO)

SB(10/08/2021)