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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2022
Pronounced on : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.6307 of 2011

1. The Metropolitan Transport Corporation,
(Formerly called as Dr.Ambedkar Transport Corporation)
Dr. Ambedkar Transport Corporation,
Vysarpadi, Chennai - 600 039)
Anna Salai, Chennai-600 002.

Vs.

1. Thiru S. Jeyaraman,
No.56, Shastri Nagar First Street,
Vysarpadi, Chennai - 600 039.
2. The Presiding Officer,
III Additional Labour Court,
High Court Compound,
Chennai- 600 104.

... 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 pertaining to the award dated 05.08.2010 made in I.D.No.521 of 2003 on the file of the 2nd respondent herein and quash the same and pass orders.

For Petitioner : Mr.M. Chidambaram
For Respondent -1 : M/s.J. Soundari Chandrasekar
For Respondent - 2 : Labour Court

ORDER

This writ petition is filed against the order of the Labour Court in I.D.No.521 of 2003 insofar as the order of termination of service dated 28.08.2001 is set aside, directing re-instatement of the 1st respondent in service with back wages, continuity of service and other attendant benefits.



2. The 1st respondent was working as Driver in the petitioner's Corporation. He was originally engaged as a casual driver on 18.06.1996 and his services were confirmed on 31.12.1997. On 07.07.2000, at 1:55 p.m the bus in route No.16 plying between Kannadasan Nagar to High Court at Basin Bridge Road near Moolakothalam which the 1st respondent was driving met with a major accident in which a cyclist and a number of other vehicles including auto and car were damaged leaving the auto driver seriously injured. The bus was also heavily damaged. A case was registered with the Washermenpet police.

3. Immediately, on hearing about the accident, Accident Inspector went to the spot and noted the following aspects:

- a. Bus come from Kaviarasar Kannadasan Nagar to High Court
- b. From West to East direction.
- c. The bus dashed one Cyclist, Male Pedestrian, two stopped Autos, car and Telephone compressor.
- d. Cyclist and Male-Pedestrained died in the spot. Autos, Car are heavily damaged. Auto drivers were also wounded.
- e. Bus was heavily damaged.
- f. H1, Washermenpet Police registered the case.
- g. The involved vehicles are brought to H1, Police Station.
- h. There was no remark about the pre-cautionary steps taken by Driver, the 1st Respondent herein.
- i. All the officials from the petitioner's office and Police official have inspected the accident spot.
- j. The accident wing Inspector has drawn sketch and he has also received statements of the witness who has seen the incident.

4. The petitioner was suspended from 08.07.2000 and charge sheet was issued on 14.07.2000 to which the petitioner submitted his explanation. Consequent to the explanation, the 1st respondent was re-instated on 26.07.2000 without prejudice to the domestic enquiry. The enquiry was conducted on 17.04.2001 and petitioner participated in the enquiry with the assistance of his co-worker. Pursuant to the findings of the enquiry officer the Petitioner/Corporation issued a 2nd show cause notice to the 1st respondent on 25.06.2001, to which explanation was offered by the 1st respondent on 07.08.2001. The Petitioner/Corporation not finding the explanations satisfactory/convincing terminated the 1st respondent from services vide order dated 28.08.2001.

5. Aggrieved by the above order of termination, an appeal was preferred by the 1st respondent which stood rejected. The 1st respondent raised a dispute before the Labour Officer (Conciliation). However, the conciliation failed. Consequent thereto, the 1st respondent filed I.D.No.521/2003 before the Labour Court, Chennai praying for re-instatement with continuity



of services. The Labour Court directed re-instatement with 30% back wages and other attendant benefits.

6. The Petitioner/Corporation aggrieved by the above order of the Labour Court has challenged the same in this writ petition inter alia on the following grounds:

a. That the Labour Court failed to note that the 1st respondent failed to follow the rules and regulations of traffic and that the accident was caused only in view of rash and negligent driving resulting in the death of 2 persons who died on the spot while leaving several vehicles damaged including the bus belonging to the appellant.

b. The Labour Court ought to have seen there was no prior report of any mechanical defect particularly in relation to brake of the bus involved in the accident.

c. That the accident wing Inspector and the Police Inspector who went to the accident spot found that there was rash and negligent driving on the part of the 1st respondent which led to the accident and the same was not taken into account by the Labour Court.

d. The order of acquittal in the criminal case was only on the basis of benefit of doubt and not on merits which again was not taken note of by the Labour Court.

7. To the contrary, it was submitted by the learned counsel for the 1st respondent that the order of the Tribunal does not warrant any interference as it is made on a careful analysis of the facts and material on record. It is further submitted that the accident was not due to rash or negligent driving by the 1st respondent but in view of the sudden brake failure and as a matter of fact it was the expertise of the 1st respondent and his driving skills which minimized the damages and saved several lives including the passengers travelling in the bus.

8. Heard both sides and perused the materials on record.

9. Before proceeding further it may be necessary to set out briefly the finding of the Tribunal. The Tribunal has found the following facts:-

a. That the place where the accident occurred is congested and therefore the allegation of rash and negligent driving appears to be hard to believe.

b. That the brake pedal had given away/broken and it was difficult to control the brake without the brake pedal.



c. The 1st respondent to mitigate the seriousness of the accident steered the bus to the right hand side where there were comparatively few vehicles and pedestrians.

d. It was found by the brake inspector that the brake pedal was broken further the brake Inspector had stated that it is difficult to state conclusively whether the brakes were working/functioning.

e. It was also found by the Tribunal that neither the conductor nor any of the passenger has been examined. The Petitioner/Corporation has chosen to place reliance solely on the report of the Accident Wing Inspector and has failed to examine any of the passengers or the conductor.

f. The Tribunal found that if there is a brake failure then however good and well trained a driver may be it is impossible to control the vehicle and in such a situation one cannot find fault with the driver.

g. The finding of the Criminal Court wherein, it was found that there is nothing conclusive to show that the petitioner was guilty of rash and negligent driving and that the accident had occurred due to brake failure could not be discarded.

h. Though the enquiry report stated that the past records of the 1st respondent was not satisfactory. However, the Tribunal found that there was no adverse remarks against the petitioner previously.

On an overall view, the Tribunal concluded that the plea that accident had occurred not due to rash and negligent driving, but because of brake failure cannot be rejected.

10. The above findings of the Tribunal are essentially findings of fact. Importantly, in the grounds raised in support of the writ petition there is not even a submission that the order of the Tribunal suffers from any perversity. In any view, on examination of the order of the Tribunal, I find that the conclusion of the Tribunal cannot be stated to be perverse. It has been found as a matter of fact that the brake pedal was broken and there was a brake failure or certainly a deficiency of the brake. There has been new reports wherein the 1st respondent was appreciated for being alert in averting a major accident which could have otherwise resulted in loss of more number of lives. If one take all this into account cumulatively one cannot find fault with the order of the Tribunal. Further it is well settled that the order of the Tribunal when it relates to finding of fact will not be interfered unless it is shown to be perverse which I am afraid is not the case here. Assuming a different conclusion is possible however unless it is shown that the conclusion arrived at is wrong and not merely because it is not right or a different view is possible, the order of the Tribunal shall not be interfered under Article 226 of the



Constitution of India. In this regard, it may be relevant to refer the following Judgments:

a. Interference with finding of fact :- Article 226 of Constitution of India - Courts exercise restraint:

In Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd. [Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd., (2014) 6 SCC 434 : (2014) 2 SCC (L&S) 291] , it was held as under : (SCC pp. 440-41, paras 15-16)

"15.The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice."

b. Interference only when decision shown to be wrong:-
In the case of Dollar Co. v. Collector of Madras reported in (1975) 2 SCC 730 at page 732, it was held as under:

"..... A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. These twin principles serve as backdrop to our approach to the rival contentions in the case."

c. State of Tamil Nadu v. Krishna Oil Mills, reported in 1998 SCC OnLine Mad 1487:

"14. Appropriate it is, at this juncture, we rather feel, to refer to a few decisions emerging from the apex Court of this country on this aspect of the matter.

(i) In Dollar Company v. Collector, Madras, (1975) 2 SCC 730 : AIR 1975 SC 1670, what their Lordships of the Supreme Court observed in paragraph 4 (at page 1671), is relevant and it reads as under:

".....A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong"

(ii) In S.V.R. Mudaliar v. Mrs. Rajabu F. Buhari, (1995) 4 SCC 15 : AIR 1995 SC 1607, we may get the relevant observations made by their Lordships in paragraphs 14 and 15 and they read as under:

"14..... Though the appellate court is within its right to take a different view on a question of fact, that



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should be done after advertting to the reasons given by the trial judge in arriving at the finding in question. The appellate court should interfere with the judgment under appeal not because it is not right, but when it is shown to be wrong, as observed by three Judge Bench of this Court in *Dollar Co. v. Collector of Madras*, 1975 Supp SCR 403; (1975) 2 SCC 730 : AIR 1975 SC 1670

15..... the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath*, (1906) 10 Cal WN 630, wherein while regarding the appellate judgment of the High Court of Judicature at Fort William as 'careful and able', it was stated that it did not 'come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge'."

11. The conclusion of the Tribunal that the 1st respondent is not guilty of rash or negligent driving but the accident was only in view of the brake failure is a finding of fact and based on evidence and is neither perverse nor arbitrary.

12. For all the above reasons, this Court finds no merits in the writ petition and the same stands dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

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To:

The Presiding Officer,
III Additional Labour Court,
High Court Compound,
Chennai- 600 104.

+1cc to Mr.M. Chidambaram, Advocate, S.R.No.32158

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NSK/24/06/2022