



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.1115 of 2018

and W.M.P (MD)No.1170 of 2018

The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Ltd.,
Nagarcoil Region,
Ranithottam, Nagarcoil.

... Petitioner

Vs.

1.The Presiding Officer,
The Labour Court,
Tirunelveli.

2.The General Secretary,
Kanyakumari District,
Bharathiya State Transport Employees Association,
Saithainium,
Vivakanandhar Street,
Ranithottam, Nagarcoil - 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari calling for the records relating to the impugned award passed by the first respondent Labour Court in I.D.No.98/2015 dated 09.05.2016 and quash the same.

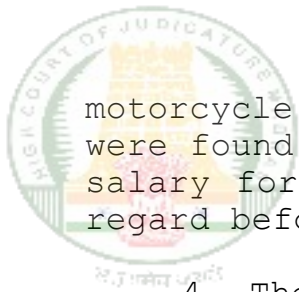
For Petitioner : Mr.K.Sathiya Singh
For R2 : Mr.T.Sakthi Kumaran
for M/s.Victory Associates

O R D E R

This Writ Petition has been filed by the Tamilnadu State Transport Corporation (Corporation/petitioner) challenging an order passed by the Labour Court/R1 dated 09.05.2016.

2. An employee, by name Shanmugam, who is a member of the Bharathiya State Transport Employees Association/R2 was driving a bus bearing Registration No. TN-74-N-1048 from Kanyakumari to Nedumangadu. Enroute, a motorcycle bearing Registration No. TN-74-Q-0210 had been involved in an accident with the bus and both the rider and the pillion rider of the motorcycle had passed away.

3. The Corporation issued a charge memo to the employee, to which he responded stating that the entire responsibility for the accident must be attributed to the rash and negligent driving of the



motorcycle rider. A domestic enquiry was ordered and all charges were found proved. Thereafter, he was punished with increment cut in salary for three(3) years, and raised a Industrial Dispute in this regard before the Labour Court.

4. The Labour Court, considering the rival contentions of the employee and the Corporation, cancelled the punishment, by order dated 09.05.2016 which order has been challenged by the Corporation in this Writ Petition.

5. One of the points that has found favour with the Labour Court is that the Corporation, in a counter filed in a claim for compensation by the family of the deceased victims before the Motor Accident Claims Tribunal (MACT), had taken a stand that the employee was not at fault and it was only the negligence of the victims that lead to the accident. Thus, the Labour Court, proceeding on the basis of the Corporation's own counter, came to the conclusion that the punishment imposed upon him was unsustainable.

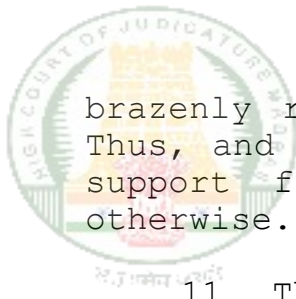
6. This is a matter where three(3) different fora have been seized of the very same set of facts, in the context of criminal charges, disciplinary proceedings and claim for compensation.

7. A criminal case had been filed in C.C.No.118 of 2010 before the learned Judicial Magistrate No.1, Nagercoil. After taking note of the facts and circumstances leading to the fatalities, the employee was acquitted. The charges laid had been in terms of Sections 27 and 304(A) of the Indian Penal Code relating to rash driving or riding on a public way and causing death by negligence. The order of the criminal court acquitting the petitioner has attained finality and is greatly relied upon by the employee before me.

8. On the other hand, the MACT, considering the same accident, had passed an award in M.C.O.P.No.47 of 2011, holding the Corporation and the employee liable for the accident and awarding compensation of a sum of Rs.2,73,000/- to be paid to the family of the victims. This order has been complied with by the Corporation. Award dated 26.03.2012 is detailed and takes note of the evidences presented on the side of the victims by way of eye witnesses.

9. Mr.K.Sathiya Singh, who appears for the Corporation relies upon the provisions of Section 163-A of the Motor Vehicles Act, 1988 (MV Act), which fastens joint and several liability over both the Corporation and the employee in meeting the claims of victims. It is thus that the Corporation normally supports its employees irrespective of whether they are guilty or otherwise, solely to protect their own interests.

10. This is a troubling situation. One would expect the Corporation to be fair in its assessment as to who should assume responsibility for an accident after a scientific evaluation of all facts and circumstances. However, before me, the Corporation



brazenly reveals that its approach is solely a self-serving one. Thus, and as a matter of rote, an employee of the Corporation finds support from the employer irrespective of his culpability or otherwise.

11. The present case is no exception and the Corporation has filed counter before the MACT supporting the employee, in full. This counter is referred to by the Labour Court in setting aside the punishment imposed. In such circumstances, where the Corporation is seen to be taking contradictory stands in the counter affidavits filed before different fora, I am of the categorical view that the counters must simply be eschewed and no credence attached to the same.

12. One must assimilate the facts involved independently in support of one's conclusion. The Hon'ble Supreme Court in *Sunita and others Vs. Rajasthan State Road Transport Corporation and others* (2020 (13) SCC 486) holds that once the foundational basis in regard to the actual occurrence of the accident has been established, the role of MACT is to marshal the facts, fix responsibility and if negligence of the driver of the vehicle has been established, calculate quantum of just compensation. In doing so, the Tribunal would not be bound strictly by pleadings of parties. This is what MACT has done in the present case, eschewing the counter filed and proceeding on the basis of the evidence before it.

13. On the other hand, I find that the Criminal Court has exonerated the employee in full. The judgment of the Criminal Court, dated 19.10.2012 has been referred to by the Labour Court in the order impugned though no credence is attached to the conclusion.

14. Upon an assimilation of the three orders, I am of the considered view that the order of the MACT is a detailed and well reasoned order, which takes into account the facts in entirety and as seen from all perspectives.

15. In *Tamil Nadu State Transport Corporation and another Vs. P.Karuppusamy* (2008 (3) L.W 90) a Division Bench of this Court considered the standard of proof to be adopted qua orders passed in domestic enquiry reiterating that they are distinct and different from criminal proceedings.

16. In that case, MACT had absolved the employee. In the present case, it is the reverse and compensation has been awarded to the victims which has been paid. The Division Bench refers to a judgment of the Hon'ble Supreme Court in *G.M. Tank Vs. State of Gujarat and another* (2006 (3) CTC 494) for the proposition that merely because the accused had been acquitted, departmental enquiry would not automatically lapse and neither is the power of the authority to continue such enquiry, in any way, fettered.



17. Departmental and criminal proceedings are entirely different, operate in different fields, and reiterate different objects. While the object of criminal proceedings is to inflict appropriate punishment upon the offender, the purpose of departmental proceedings is to deal with the lapses committed by the delinquent in rendition of official duties and to impose suitable punishment in accordance with service Rules.

18. In that case, no criminal case has been initiated, whereas in the present case, criminal proceedings had been initiated and have resulted in favour of the employee. However, I apply the settled preposition that the conclusion in one, while it might have a bearing on the other, would not have automatic application in the other. To conclude this issue, the judgment in the criminal case does not tip the balance in favour of the petitioner before me.

19. I also find support in this conclusion from a recent judgment of the Hon'ble Supreme Court in *Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay* (2022 SCC online SC 1). The Corporation had challenged an order of the Labour Court ordering reinstatement, though without back wages, but with continuity of service. The High Court dismissed the Writ Petition, as against which, the Maharashtra State Road Transport Corporation approached the Supreme Court.

20. The question before the Supreme Court was a vexed one, concerning the difference in appreciation between disciplinary enquiry and criminal proceedings. The court held that acquittal in a criminal trial would have no bearing upon the conduct of, or conclusion in disciplinary proceedings. Judgments in the cases of *Samar Bahadur Singh Vs. State of Uttar Pradesh* (2011 (9) SCC 94) and *Union of India Vs. Sitaram Mishra* (2019 (20) SCC 588) were cited in support of the aforesaid preposition and the appeal of the Transport Corporation was allowed.

21. In the result, and for the detailed reasoning as aforesaid, this Writ Petition is allowed and the impugned order is set aside restoring the punishment imposed on 09.05.2016. No costs. Consequently, connected miscellaneous petition is closed.

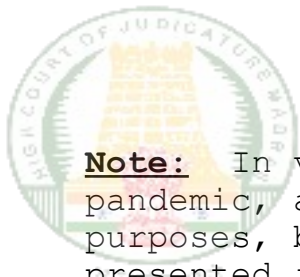
Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Presiding Officer,
The Labour Court,
Tirunelveli.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-4030[F] dated 03/02/2022)

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-4064[F] dated 03/02/2022)

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02.02.2022

ck (CO)

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