



W.P(MD)No.21771 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.21771 of 2015

and

M.P(MD).Nos.1 and 2 of 2015

M.Selvam,

: Petitioner

Vs

1. Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Rep. by its Managing Director,
Head Office,
Palanganatham Bye Pass Road,
Madurai 625 010.

2. The General Manager,
Tamil Nadu State Transport
Corporation(Madurai) Ltd.,
Dindigul Region,
Bye-Pass Road,
Collectorate Post,
Dindigul 624 001.

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,



W.P(MD)No.21771 of 2015

praying this Court to issue a Writ of Certiorari to call for the records relating to the orders passed by the second respondent bearing Ref. No.Sa.Thu.A1:853 dated 31.10.2015 and office order No.Sa.Thu.A2/853 dated 31.05.2014 issued by the first respondent and quash both the orders.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

The Writ Petition had been filed for writ of Certiorari to quash the order passed by the second respondent bearing Ref. No.Sa.Thu.A1:853 dated 31.10.2015 and office order No.Sa.Thu.A2/853 dated 31.05.2014 issued by the first respondent.

2.The petitioner was appointed as driver on 01.06.1988 and thereafter after completion of 240 days of service the petitioner was confirmed on 07.03.1989. On 30.04.2013, at about 09.30 p.m., while the petitioner was driving the bus near Parasuramapuram Village at Palapatti, a passenger was standing on the rear foot board fell down from the bus and sustained injuries.



W.P(MD)No.21771 of 2015

The petitioner slowed down the vehicle on seeing another bus coming from the opposite side without dipping the head light. The petitioner was not aware of the said passenger, who was standing on the foot board and he came to know subsequently that the said passenger wanted to get down from the bus, which is near to his residence. Immediately, the injured person was taken to hospital and admitted in Government Hospital, Batlagundu. In spite of medical assistance, the said passenger died in the hospital. Thereafter, the petitioner was placed under suspension by order dated 03.05.2013 and a charge memo dated 09.05.2013 was issued. The second respondent, vide order dated 31.05.2013, revoked the suspension order with effect from 02.06.2013 and directed the petitioner to report to duty. The petitioner submitted his explanation dated 18.06.2013 to the charge memo, denying all the charges. Thereafter, an enquiry officer was appointed, where the charges were held to be proved vide enquiry report, dated 18.09.2013. The second respondent issued a second show cause notice, dated 25.02.2014 proposing the punishment of stoppage of increment for five years with cumulative effect. The petitioner submitted his explanation on 18.03.2014 and the respondents were not convinced with the same. Therefore, the final order, dated 31.05.2014 was passed, imposing punishment of stoppage of increment



W.P(MD)No.21771 of 2015

for five years with cumulative effect. Aggrieved over the same, the present petition had been filed.

3.The respondents have filed a counter stating that the petitioner was responsible for the accident since the petitioner has taken the bus while the passengers were alighting from the bus. The foremost duty of the driver is that he should stop while the passenger was getting down from the bus. When the petitioner was driving the vehicle, he had slow down the speed of the vehicle in order to facilitate the passenger to get down from the bus, but when the passenger was getting down, the petitioner has taken the bus immediately without checking whether the passenger had got down from the bus. But the passenger fell down and sustained injuries and subsequently he died in the hospital. Since the passenger died, MCOP claim was filed in MCOP.No.1380 of 2016, whereby, Rs.20,00,000/- was awarded as compensation and the corporation incurred huge loss because of the petitioner's attitude. Therefore, the respondents pleaded to dismiss this petition.

4. Heard Mr.M.Kannan, the Learned Counsel appearing for the petitioner and Mr.J.Senthil Kumaraiah, the Learned Standing Counsel



W.P(MD)No.21771 of 2015

appearing for the respondent and perused the records.

WEB COPY

5. On a perusal of records it is seen that the respondents have not produced any witness, who witnessed the accident. Moreover, the respondents have not produced any spot inspection report or photos.

6. The contention of the petitioner is that while he was driving the vehicle, a vehicle, which came before him did not dim the brightness of the light. Therefore, the petitioner had slowed down the bus and the petitioner was unaware about the passenger, who stood in the foot board and tried to get down from the bus. Even according to the enquiry report, the passenger has used the rear end foot board while he was getting down from the bus. In the suspension order the respondents have stated that the accident has occurred because the passenger has got down from the bus while the bus was running.

7. The Learned Counsel appearing for the petitioner submitted that the present punishment is punishment is unwarranted and illegal and has relied on the judgment rendered by the Hon'ble Supreme Court in *Mohammed*



Aynuddin Alias Miyam Vs. State of A.P reported in (2000) 7 SCC 72 and the

relevant portion runs as follows:

'5.What is the culpable negligence on the part of the bus driver in the above accident? A passenger might fall down from a moving vehicle due to one of the following causes: It could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off of the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

...

...

...

10.In the present case the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. Here no witness has said, including the conductor, that the driver moved the vehicle before getting signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable.'

8.In the present case, the bus was not stopped at all and there was no



W.P(MD)No.21771 of 2015

bus stop also. The bus was moving at slow speed because the opposite vehicle driver did not dim the light of his vehicle. In order to get clear visibility, the petitioner has driven the vehicle at slow speed. In that circumstances, the passenger has got down from the bus. Hence this Court is of the opinion that the petitioner is not negligent at all. Hence the impugned punishment order is liable to be quashed and this Court is quashing the impugned order.

9. At this juncture the Learned Counsel for the petitioner submitted that the petitioner has already attained superannuation. The respondents shall implement this order and shall pay all the monetary benefits and other benefits applicable to the petitioner, within a period of eight weeks, from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

26.10.2022



W.P(MD)No.21771 of 2015

Index : Yes / No

Internet : Yes/ No

lr

To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Head Office,
Palanganatham Bye Pass Road,
Madurai 625 010.

2. The General Manager,
Tamil Nadu State Transport
Corporation(Madurai) Ltd.,
Dindigul Region,
Bye-Pass Road,
Collectorate Post,
Dindigul 624 001.



WEB COPY



W.P(MD)No.21771 of 2015

S.SRIMATHY, J.

lr

W.P(MD).No.21771 of 2015

26.10.2022