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W.A. Nos.1789 and 1942 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos.1789 & 1942 of 2023 and C.M.P. Nos.15678 of 2023 & 16627 of 2023

1 Tamil Nadu State Transport
Corporation (Villupuram) Ltd.
represented by the Managing Director
3/137 Salamedu
Valudhareddy Post
Villupuram Post
Villupuram 605 602

2 Tamil Nadu State Transport
Corporation (Villupuram) Ltd.
represented by the General Manager
Kancheepuram Regional Office
Karapettai
Chennai – Bangaluru Highway
Kancheepuram 631 552

Appellants in W.A.No.1789/2023

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.
Kancheepuram Division
Kancheepuram District 631 552

Appellant in W.A. No.1942/2023

v

G. Srinivasan

Respondent in both appeals

Writ Appeals filed under Clause 15 of the Letters Patent challenging the
common order dated 25.01.2023 passed in W.P. Nos.7535 of 2022 and 16750 of



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2022, respectively.

For appellants in
both writ appeals Mrs. S. Pavithra

For respondent in Mr. N. Ishak
both writ appeals

COMMON JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

Inasmuch as the instant writ appeals arise from a common order passed in two writ petitions and also in view of commonality of the parties involved, these writ appeals are considered and decided by this common judgment.

2 For the sake of convenience and clarity, the appellants and the respondent will be adverted to as the Corporation and the workman, respectively.

3 Shorn off minute details, the germane facts necessary for deciding these writ appeals are stated thus:

3.1 The workman joined as a Driver in the Corporation on 03.06.1999. While so, on 07.09.2016, when he was driving the Corporation bus in the Puducherry – Chennai route, it hit a two wheeler, as a result of which, the pillion rider succumbed to the injuries. Hence, after following the procedure contemplated, he was dismissed from service *vide* order dated 06.03.2017.



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3.2 Thereagainst, he raised an industrial dispute before the Labour Court, Kancheepuram, in I.D. No.526 of 2018, which, by award dated 28.02.2020, set aside the dismissal order on the ground that there was no direct evidence to prove the rash and negligent driving of the workman, which, allegedly is the cause for the accident, and directed the Corporation to reinstate the workman with continuity of service and backwages.

3.3 Aggrieved, while the Corporation preferred W.P. No.16750 of 2022, the workman preferred W.P. No.7535 of 2022 seeking reinstatement with continuity of service and backwages, as ordered by the Labour Court.

3.4 The Single Bench considered both the writ petitions by a common order and observing that under Article 226 of the Constitution of India, the award of the Labour Court can be interfered with, only if it suffers from perversity and in the instant case, the award of the Labour Court not being perverse, the same cannot be interfered with, dismissed the writ petition filed by the Corporation and allowed the writ petition filed by the workman by directing the Corporation to reinstate the workman with continuity of service and backwages.



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3.5 Assailing the allowing of the writ petition filed by the workman and the dismissal of the writ petition filed by the Corporation, the Corporation has preferred the instant writ appeals.

4 Heard the learned counsel on either side and perused the materials available on record.

5 According to the Corporation, the workman had caused three fatal accidents earlier, besides the one for which he has been dismissed from service and had also been punished as per details below and since he is unfit to drive the Corporation bus and also given his bad past record, he was dismissed from service.

S.No.	Date of accident	Punishment
1	12.11.2002	Postponement of annual increment for 24 months
2	23.10.2004	Postponement of annual increment for 36 months
3	16.12.2004	Postponement of annual increment for 36 months

6 According to the workman, he was not responsible for the accident that occurred on 07.09.2016 and that the two wheeler in question suddenly took



an “U” turn and hit bus which resulted in the fatal accident; further, the preliminary enquiry report and the report of the Enquiry Officer would make it clear that the workman was not at all at fault; in the industrial dispute, the Labour Court has held that the finding of the Enquiry Officer that the workman was negligent in driving and was responsible for causing the accident, is not based on legally acceptable evidence and hence, it has got to be held as perverse; when the workman was not negligent and consequently, was not responsible for the accident, the dismissal order was rightly interfered with by the Labour Court with a direction to the Corporation to reinstate the workman with continuity of service and backwages.

7 Mrs. Pavithra, learned Standing Counsel for the Corporation, submitted that if the workman is reinstated, he may cause many such fatal accidents and hence, the award of the Labour Court, as confirmed by the Single Bench, is liable to be interfered with.

8 A reading of the preliminary enquiry report and enquiry report would make it clear that the workman was not solely responsible for the accident. That apart, the award dated 27.09.2019 passed by the Motor Accident Claims Tribunal, Chennai, (for short “the Tribunal”) in M.C.O.P. No.8 of 2017 filed by the legal heirs of the deceased seeking compensation, was produced before this Court.



reliance upon the said award and requested that it may be taken judicial note of.

The workman relied upon it in support of his contention that he was not responsible for the accident for which he was dismissed from service. The Corporation relied upon it to show that the Tribunal came to the conclusion that the workman was also responsible for the accident.

9 At this juncture, it would be apropos to extract the finding of the Tribunal *qua* Point No.1, *viz.*, whether the accident was due to the rash and negligent driving of the workman.

“Therefore, it is seen that there is “contributory negligence” on the part of the de facto complainant/motor cyclist in causing the death of the deceased Prakasam. It is also unnecessary for the petitioner to have added the owner as well as the insurer of the motor cycle as parties to the claim petition. Therefore, this Court is inclined to fix 50% of the negligence on the part of the two wheeler rider and the pillion rider deceased Prakasam who was also not wearing helmet at that time. Records reveal that he had suffered head injuries which caused his death. The petitioners own sketch marked as Ex.P.23 also reveals that it is the motor cyclist who had taken a “U” turn and dashed against the bus. As such, this Court finds it fair and reasonable to apportion their liability and place 50% of negligence on the deceased and the point is answered accordingly.”

Thus, even going by the preliminary report, the Enquiry Officers' report and the judgment of the Tribunal, it is clear that the workman also was equally responsible



10 The learned Standing Counsel for the Corporation made an alternative submission that even if this Court is to mould the relief, given the gravity of the charge, a major punishment like stoppage of increment for a period of three or four years with cumulative effect may be imposed on the workman and that he shall not be ordered to be taken back in the service of the Corporation as a bus driver, since the lives of the public will be in peril, more so, when he has caused three fatal accidents earlier and also suffered punishments for the same.

11 In this context, it is worth pointing out that not even a single document was marked by the Corporation and none entered the witness box to substantiate the Corporation's case and on the other hand, the workman had entered into the box, besides marking as many as 15 exhibits in support of his case and the Labour Court, after analysing the evidence on record, had come to the conclusion that there is no legal evidence to substantiate the charges levelled by the Corporation against the workman. At the same time, the fact that the workman has not disputed the fatal accidents caused by him, the details of which have been set out in paragraph 5, *supra*, should not be lost sight of.

12 Further, it is to be noted that the Corporation has taken a stand before the Tribunal that the accident in question was caused due to the negligence of the rider of the two wheeler and not owing to the fault of the workman. Having taken



such a stand, the Corporation cannot be heard to contend to the contrary. Of course, there is a possibility that the Corporation could have taken such a stand before the Tribunal to avoid excess payment to the claimants. In the case on hand, the Labour Court has come to the conclusion that the finding of the enquiry officer that the workman was responsible for the accident is perverse as it is not based on legally acceptable evidence. Superadded, sufficient documents have been marked by the workman before the Labour Court to prove that he is not guilty. However, the Corporation has not produced any evidence, be it oral or documentary, to substantiate its case.

13 Thus, though this is a fit case for being remanded to the Labour Court for consideration afresh, by taking note of the pleadings made by the Corporation before the Tribunal and going into the contradictions and render a finding, the Corporation being an instrumentality of the State within the meaning of Article 12 of the Constitution of India and in the light of the undisputed bad past record of service of the workman, the observation made by the Tribunal that the rider of the two wheeler is equally responsible for the accident and the fact that the Corporation has paid nearly Rs.10 lakhs as its share as compensation to the claimants, we hold that:



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- i. since the workman is deemed to be in service as per the award of the Labour Court, as confirmed by the Single Bench, the Corporation shall reinstate him in service, of course, certainly not as a heavy duty driver, but as a driver in commensurate with his experience as a bus driver, on or before 01.09.2023, failing which, he shall be paid salary every month on par with his counterparts till he is actually reinstated in service;
- ii. the workman is not entitled to backwages from 06.03.2017 being the date of his dismissal, to 25.01.2023 being the date of the order passed by the Single Bench as undertaken by him to forego the same vide affidavit dated 08.09.2023 and that he shall be paid salary from 26.01.2023 till 31.08.2023;
- iii. the entire period of his service shall be treated as a continuous one for the purpose of calculating terminal and other benefits.

These writ appeals stand disposed of with the modification of the award of the Labour Court, as confirmed by the Single Bench, as indicated above and the direction, as aforesaid. Costs made easy. Connected C.M.Ps. are closed.

(S.V.N., J.) (K.R.S., J.)
09.08.2023

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Note: Issue order copy by 18.08.2023



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Common judgment in
W.A. Nos.1789 and 1942 of 2023

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