



W.P.(MD).No.7979 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.7979 of 2022
and
W.M.P(MD)No.5971 of 2022

The Management,
Tamil Nadu State Transport Corporation,
Nagercoil Division,
Ranithotam,
Kanyakumari District.

... Petitioner

Vs.

The General Secretary,
The State Transport Employees Union,
Registration No.176/84/KKM,
Ranithotam, Nagercoil,
Kanyakumari District,
For Workman D.Vaikundadoss(W.No.7896)

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, by calling for the records relating to the impugned order passed by the Labour Court, Tirunelveli, dated 21.11.2019 passed in I.D.No.85 of 2018.

For Petitioner : Mr.R.Rajamohan
For Respondent : Mr.S.Vashik Ali



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ORDER

The present writ petition is for a Writ of Certiorari, calling for the records relating to the impugned order passed by the Labour Court, Tirunelveli, dated 21.11.2019 passed in I.D.No.85 of 2018.

2. The petitioner is the General Manager of the Tamil Nadu State Transport Corporation, Nagercoil Division, Kanyakumari District. This writ petition is filed on behalf of the Management of the said Corporation and the respondent is the General Secretary of a Union, namely, "The State Transport Employees Union" for its members and in the present case representing a workman, namely, D.Vaikundadoss, a Driver in the petitioner Management in Duty No.7896. On 29.04.2011, the said D.Vaikundadoss was assigned to drive a passanger bus in the route 564 B which has to be plied with passangers from Nagercoil to Tirunelveli. While the bus was nearing ISRO Propulsion Complex(IPRC), Kavalkinaru at 8.55 am, the Driver applied sudden brake, when he saw a cyclist crossing the road swiftly from left to right. To avoid any massive hit on the cyclist, he was left with no other option rather to stop the bus by applying sudden brake. As a result of which, the Conductor slipped from the



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front entrance of the bus and fell down out of the bus and sustained severe injuries. Despite all possible medical assistance, the Conductor died. The petitioner Corporation contends that the rash driving and negligent act of the Driver has caused the death of the Conductor and a monetary loss to the petitioner Corporation to a tune of Rs.22,96,536/-.

3. The legal heirs of the deceased Conductor had filed M.C.O.P.No.38 of 2017 on the file of the II Additional District Court, Namakkal and claimed compensation as against the petitioner for the rash and negligent driving of the respondent driver D.Vaikundadoss. In the said M.C.O.P.No.38 of 2017, negligence was found to be on the part of the respondent and hence, the compensation was decreed to be paid by the petitioner Management vide award, dated 01.10.2018. The claim was allowed. A compensation to a tune of Rs.22,96,536/- was decreed. A criminal case in C.C.No.385 of 2011 was also registered against the said Vaikundadoss before the learned Judicial Magistrate, Valliyoor. After due trial, the respondent was acquitted by an order, dated 03.04.2014. A parallel domestic enquiry was also initiated by the petitioner Management as against the respondent. An enquiry officer was appointed and he submitted an enquiry report by concluding that the charges levelled against



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the delinquent was proved. Therefore, a show cause notice was issued to the respondent on 16.07.2012 calling upon him why a punishment of stoppage of increment for three years with cumulative effect be inflicted on his for the proven mis-conduct of him. The respondent Driver submitted his reply on 04.08.2012. Since the reply was unsatisfactory, disciplinary authority passed an order awarding punishment of stoppage of increment for three years with cumulative effect on 11.04.2013. The respondent sought conciliation proceedings but the conciliation failed by order, dated 02.12.2014. Therefore, the said Driver Vaikundadoss filed I.D.No.85 of 2018 before the learned Labour Court, Tirunelveli challenging the punishment awarded by the disciplinary authority, dated 11.04.2013. The learned Labour Court after elaborate consideration has set aside the order of punishment awarded vide order, dated 11.04.2013 in the said I.D. Challenging the said order of the learned Labour Court, this writ petition came to be filed.

4. The learned Counsel for the petitioner submitted that the order passed by the learned Labour Court is fully erroneous and the learned Labour Court ought not to have set aside the punishment inflicted by the Department on the said delinquent. The entire episode cannot be negated as a sheer Act of God



and it happened only due to the rash and negligent driving of the driver and this was not the first incident, which happened in his service, on the basis of which the learned Counsel for the petitioner sought for allowing this writ petition.

5. Per contra, the learned Counsel for the respondent submitted that at the time of contesting the M.C.O.P proceedings in M.C.O.P.No.38 of 2017 on the file of the II Additional District Munsif Court, Namakkal, the petitioner Management supported the case of the respondent and claimed innocence and fully submitted before the Motor Accident Claims Tribunal that it was an act of God and now taking an 'U' turn, they have initiated a parallel disciplinary proceeding as against the petitioner and such an exercise is not permissible. He relied upon the order passed by the Hon'ble Division Bench of this Court in W.A.No.2399 of 2003, dated 23.11.2007, which dealt with a similar case. The relevant portion of which is extracted as follows:

“24. The principles laid down in the aforestated rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of



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proof in both the proceedings before the criminal Court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings.....”

6. He further submitted that the learned Labour Court has rightly concluded that the respondent is innocent and negligence cannot be attributed to the Driver's conduct. He also drew my attention to the following paragraphs of the order passed by the learned Labour Court:

“8. The documents filed in on either side carefully perused. The allegation against the petitioner is that since he was driving the transport bus in a rash and negligent manner, he was sole responsible for the death of the conductor who slipped from the front entrance of the bus and died. Though it is contended by the petitioner that no fair opportunity was given in the domestic enquiry, Ex.M3 has clearly established the participation of the petitioner in it. The petitioner was cross examined two of the management witnesses and he was also examined by the respondent management. The petitioner had not adduced any witnesses in the enquiry on his side. After giving proper and fair opportunity only the enquiry finding was given under Ex.M4. Based on the findings the punishment was imposed on the petitioner. Therefore as contended by the respondent counsel for



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the petitioner that there is a irregularity or illegality committed in the domestic enquiry cannot be accepted. As far as the domestic enquiry is concerned we need not go in depth, because no perversity attached to it.

9. Now let us decide whether the respondent is right in imposing the punishment against the petitioner. On the fateful day, while the conductor was in his occupation, the petitioner in order to avoid the accident and to save the cyclist who suddenly cross the road from left to right, he applied break suddenly. The conductor seems to have stood in side the bus without grip, unexpectedly fell down in the front entrance step of the bus and sustained injuries and died without responding to the treatment. As rightly pointed out by the learned counsel for the petitioner that except the driver no one in the bus sustained any kind of injuries. Even during the cross-examination the management witnesses replied positively that the bus was moved slowly and further he had admitted in the counter should have been careful and vigilant while attending the duty towards the passengers. Even in a criminal case after elaborate trial, the criminal Court acquitted the petitioner and given a clear and categorical findings that the petitioner was not responsible for the accident that took place on the fateful day i.e., seen from Ex.W4. Even in the said judgment it has been clearly found that the petitioner in order to avoid the accident i.e., to save the cyclist who crossed the road suddenly, which resulted the conductor fell down from the bus.



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Moreover, even in the department enquiry nothing has been elicited or proved or brought home with necessary materials that the petitioner was responsible for the accident by driving the vehicle in a rash and negligent manner. But on the contrary it was proved by the petitioner before the enquiry officer that because of a cyclist who suddenly crossed the road unmindful of the road discipline he applied the break. This particular fact not denied by the respondent. Moreover even in the enquiry finding also the enquiry officer who is not eye witness come to the conclusion that the quantum of the negligent on the part of the petitioner is 25%, quantum of the negligent on the part of the deceased couductor is 75%. the fixation of the quantum of negligence by the enquiry officer is not supported by any material and its purely based on presumptions and assumptions.....”

7. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and carefully perused the materials available on record.

8. This is a case where an accident happened in the course of duty of the Driver of the petitioner Transport Corporation, in which the Conductor of the particular bus fell down from the bus by slipping from the footboard, when the Driver applied a sudden brake to avoid hitting a cyclist, who suddenly crossed the road. The Conductor, who slipped down from the footboard sustained



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severe injury and he died, in due course of time after medication. It is a clear case of Act of God, where the negligence cannot be attributed to the driver's fault and that has been rightly held by the learned Labour Court, Tirunelveli and the judgment relied upon by the learned Counsel for the petitioner is fully applicable to the facts and circumstances of this case. The petitioner Management having supported the case of the respondent completely while contesting the M.C.O.P case before the Motor Accident Claims Tribunal at Namakkal cannot take an 'U' turn and proceed with a parallel disciplinary proceeding against the Driver attributing the negligence on the Driver for the death caused and also to the monetary loss whatever is incurred by the petitioner Management by payment of the award amount to the deceased employee's family.

9. In view of the same, this Court is of the considered view that there is no error or illegality in the order passed by the learned Labour Court, Tirunelveli in I.D.No.85 of 2018 and hence, this writ petition is not maintainable and is liable to be dismissed.



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10. In the result, this writ petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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L.VICTORIA GOWRI, J.

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