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W.P.No.36511 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/7/2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.36511 of 2023
a n d
W.M.P.No.36501 of 2023

The Management
Tamil Nadu State Transport Corporation
(Salem) Ltd
Dharmapuri Zone
Bharathipuram
Dharmapuri 635 705.

...

Petitioner

Vs

N. Sivakumar

...

Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records made in I.D.No.80 of 2015 dated 6/7/2023 passed by the Presiding Officer, Labour Court, Salem.

For Petitioner

...

Mr.M.Aswin

For respondent

...

Mr.V.Subramani

ORDER



W.P.No.36511 of 2023

WEB COPY

This writ petition is filed seeking for a writ of certiorari to call for the Award dated 6/7/2023 in I.D.No.80 of 2015 and to quash the same.

2. The facts in brief as per the affidavit are that the respondent has joined the petitioner/Tamil Nadu State Transport Corporation (Salem) Ltd., in the year 2007, as a Driver. On 20/1/2015, when he was driving a bus bearing No.TN55-N-4029 from Dharmapuri to Hogenakkal route at about 1.00 p.m., near Anjaneyar temple, an accident has taken place, wherein, 11 persons died and 53 passengers sustained grievous injuries. The bus was also damaged.

3. The respondent was suspended on 21/1/2015 and he was given a charge sheet on 30/1/2015. He has submitted an explanation on 11/2/2015, denying his charge. Originally, respondent was allotted with a bus bearing No.TN29-N-1947, however, when the bus was about to be taken out from depot, the Time Keeper M.Murugesan has asked the respondent to take another bus bearing No.TN55N-0429 which was a condemned vehicle and cannot be plyed on the hill road and requested to permit him to drive another vehicle.



4. The Management has not considered the explanation of the workman. The workman has also received injuries and he underwent surgery and finally, after conducting an enquiry, the respondent was dismissed from service. Aggrieved by the same, respondent has raised Industrial Dispute in I.D.No.80 of 2015 and after conducting an enquiry, labour Court has allowed the said I.D and directed the petitioner Corporation to reinstate the respondent with continuity of service and all other attendant benefits as per order dated 6/7/2023. Aggrieved by the same, the present writ petition is filed.

5. Heard Mr.M.Aswin, learned counsel for the petitioner and Mr.V.Subramani, learned counsel for the respondent.

6. It is submitted by the learned counsel for the petitioner that orders passed by the labour Court in I.D.No.80 of 2015 dated 6/7/2023 are erroneous and submitted further that even though the Management has taken the defence before MCAT case before the Tribunal that driver of the crime vehicle was not rash and negligent, petitioner Management can take contrary view during the course of enquiry. It is also further submitted by the learned counsel for the petitioner that as on the date of accident, bus was



having fitness certificate and therefore, driver can be found fault with for the accident.

7. The learned counsel for the respondent in the contrary submitted that Management cannot be permitted to take contrary view and the petitioner Corporation has to stick on to its defence taken before the Tribunal in MACT case that the Driver was not rash and negligent and further it is also submitted that bus which would ply was not really fit and brakes were not working. There was a leakage of oil and it was shivering and not having fitness certificate and therefore, Driver cannot be find fault that on account of mechanical problem, the accident has taken place.

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

9. On going through the impugned Award dated 6/7/2023 passed in I.D.No.80 of 2015, the labour Court has allowed I.D., on two grounds, viz., that the petitioner Corporation has taken a view before the Tribunal in MACT and filed counter in favour of the respondent Driver stating that Driver was not rash and negligent and he driven the vehicle by following the rules. The other ground for allowing the I.D by the labour Court is that the



bus was not in a fit condition and there was also no fitness certificate as on the date of accident.

10. In respect of first ground is concerned, the Law is very much settled. It is true that the petitioner Corporation has taken two different, contradictory and opposite views before the Tribunal in MACT case when compared to the enquiry before the Enquiry Officer against the respondent in respect of alleged misconduct of rash and negligent driving. To be more precise, the petitioner Corporation has taken a plea before the Tribunal in MACT case that Driver was not rash and negligent however, before the Enquiry Officer, Corporation has taken a plea that the respondent Driver was rash and negligent, thereby accident had taken place. Full Bench of this Court in ***V.SYRIL SUNDARARAJ Vs 1. THE PRESIDING OFFICER, LABOUR COURT, TIRUNELVELI AND 2 OTHERS (W.P.No.39563 of 2004)*** has held that the Management can take a plea before the Tribunal in MACT that Driver is not rash and negligent and that same Management can take a contrary view before the Enquiry Officer that Driver is rash and negligent and thereby res judicata will not apply. Relevant portion of the judgment is extracted hereunder:-



WEB COPY



W.P.No.36511 of 2023

“24. A proceeding before the MACT is only for the purpose of avoiding its liability as the tort-feaser. The proceedings between an employer and employee are initiated in terms of the Standing Orders or the Rules which govern the relationship between them. When such proceedings are initiated, by no stretch of imagination, the nature of defence taken in the MACT can be telescoped into the other. If an employer is satisfied that the conditions for initiation of disciplinary proceedings are available, it is always free to do so.

.....

31. In the light of the above discussion we would answer the question as follows:

(i) That the Management having filed a counter in the MACT proceedings defending its driver, it does not preclude it from initiating disciplinary proceedings against the driver.



W.P.No.36511 of 2023

(ii) The position to the contra as laid down in

TNSTC vs. Karuppusamy stands over ruled.”

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11. Therefore, considering the Full Bench judgment of this Court, it is clear that the view taken by the labour Court in the impugned order that because the petitioner Corporation has filed counter before the Tribunal stating that Driver was not rash and negligent, the petitioner Corporation cannot take a contrary view in the enquiry, cannot be accepted and therefore, this finding of the labour Court is required to be set aside.

12. The other ground on which the petitioner Corporation was harping upon is that the finding of the labour Court that the bus which was driven by the respondent was not fit to be driven and further, there was no proper valid fitness certificate. In respect of the vehicle not being fit enough to be driven on the road is concerned, it is submitted that the petitioner was originally asked to drive the bus bearing Registration No.TN29-N-1947 however, when he was about to take the vehicle out of the depot, the concerned Officer have asked him to take the bus bearing No.TN55-N-0429. The respondent was stated to have protested that bus bearing No.TN55-N-0429 is not in a fit condition, stating that brakes were not properly working, oil was leaking,



bus was shaking etc., and that he could not able to stop the vehicle where he intended to stop. If at all the bus was not in a fit condition, he should have refused to take the vehicle by explaining the same. He cannot put the lives of the people by driving the vehicle which is not in a fit condition. He has not examined any of his colleagues or any other person to show that bus which was being driven by him was defective. Therefore, once the second respondent has taken the bus out from the depot and once he has driven for some time, he cannot now take a plea that bus was not in a good condition. Even though the buses were in good condition at the time of taking the vehicles out of the depot, the bus may develop some mechanical difficult. At that time, drivers of the vehicles will stop on the route and seek for an alternative bus for transporting the passengers. Therefore, the contention of the respondent driver that the bus was not in a good condition cannot be accepted.

13. The other important ground on which the labour Court has come to the conclusion against the petitioner Corporation is that as on the date of accident, bus was not having fitness certificate. However, the learned counsel apparing for the petitioner Corporation has filed a copy of the certificate in Form No.38, Certificate of Fitness (62) (1) to show that bus



W.P.No.36511 of 2023

bearing No.TN55-N-0429 is certified as complying with the provisions of Section 56 of the Motor Vehicles Act, 1988 and Rules made thereunder. The certificate was given by the competitive authority to show that vehicle was in a fit condition and the validity of the certificate will expire on 4/2/2015. However, the accident has taken place on 20/1/2015 that means 14 days prior to the expiry of the fitness certificate, accident has taken place. Therefore, finding of the labour Court that bus was not having fitness certificate and bus was not in a fit condition thereby accident had taken place and that driver was not rash and negligent cannot be accepted.

14. When the matter was taken up by the labour Court, initially, finding was given that enquiry was not conducted in a free and fair manner, thereby, an opportunity was given to both sides to adduce evidence in respect of the mis conduct committed by the driver. On behalf of Corporation, two witnesses were examined. One of the witnesses of the Corporation is not an eye witness, however, the Conductor of the bus who met with the accident was examined as Management witness as M.W.2 wherein, the Conductor has deposed clearly that driver was rash and negligent and while taking a turn, he has committed accident. However, the labour Court has made a comment that eye witness was not examined. The



conductor obviously who was travelling in the bus on the fateful day is certainly an eye witness and perhaps, before the labour Court, independent witness was not examined.

15. It is to be noted that conductor who was examined as Management witness No.2 cannot be said to be biased in favour of the Management. In fact, he is the colleague of the respondent driver. Added to it in a domestic enquiry, what all required is a prima facie material. The evidence to be produced by the Corporation shall not be “beyond all reasonable doubt”, as required in a criminal case. It is sufficient if the probabilities are proved before the Enquiry Officer about the alleged mis conduct by the respondent. On going through the entire material placed before the Court, this Court is of the opinion that the petitioner Corporation has placed sufficient material to hold that driver was driving the vehicle in a rash and negligent manner at the time of accident.

16. In view of the above, this Court is of the opinion that the finding of the labour Court that there is no material to show that driver was rash and negligent is perverse. Therefore, the order of the labour Court passed in I.D.No.80 of 2015 are required to be interfered with.



W.P.No.36511 of 2023

WEB COPY

17. In the result, this writ petition is allowed and the impugned order dated 6/7/2023 passed in I.D.No.80 of 2015 is set aside and the finding of the Enquiry Officer that the respondent has committed default while driving the vehicle in a rash and negligent manner is hereby accepted. Accordingly, dismissal of the respondent from service is hereby confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

23/7/2024

mvs.

Index: Yes/No

NCC: Yes/No

Dr.D.NAGARJUN,J

mvs.



WEB COPY



W.P.No.36511 of 2023

W.P.No.36511 of 2023

23/7/2024