



WP.(MD).No.8485 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.8485 of 2022
and
W.M.P.(MD)No.6235 of 2022

The Management,
Tamil Nadu State Transport Corporation,
Tirunelveli Region,
Nagercoil,
Ranithottam,
Kanyakumari District.

... Petitioner

Vs.

The State Transport Employees Munnetra Sangam,
Represented by its General Secretary,
Registration No.176/84/KKM,
Ranithottam,
Nagercoil,
Kanyakumari District,
for Workman M.Gopi (Driver No.1958)

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the Labour Court, Tirunelveli dated 30.06.2020 in I.D.No.17 of 2019 and quash the same.

For Petitioner
For Respondent

: Mr.R.Rajamohan
: Mr.R.Murugan



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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order in I.D.No.17 of 2019 passed by the Labour Court, Tirunelveli dated 30.06.2020.

2.The Management of the Tamil Nadu State Transport Corporation, Tirunelveli Limited, Tirunelveli region is the petitioner in this Writ Petition. The respondent is the General Secretary of a Union namely the State Transport Employees Munnetra Sangam for its members, the employees in the petitioner Management. The respondent in the present case represents a Driver Workman namely Thiru M. Gobi (Driver No.1958). On 04.10.2012, the said M. Gobi had driven a passenger bus bearing Registration No.TN-74-N-1056 in the route number 85D/A. While the bus was driven by the said Gobi in a rash and negligent manner, the bus capsized into a 7 feet ditch on the left side of the road, in his effort to avoid hitting a two wheeler bearing Registration number KL-21-A-4843. In the result of such rash and negligent driving and diving of the said person, several passengers were injured and the bus was also badly damaged.



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3.Following which, a disciplinary proceeding was initiated against the said Gobi by the petitioner Corporation. The delinquent was visited with a charge memo on 27.01.2013. The charge against the delinquent was that the delinquent had negligently drove the bus and had caused accident causing loss of income to the Management and also damaging the reputation of the Corporation among the common public and had committed misconduct under Order 16(14)(18) of the Standing Order. On receipt of the same, the delinquent submitted his reply on 22.02.2013. Not being satisfied by his explanation, further domestic enquiry was initiated as against the delinquent M. Gobi and the same was conducted on 17.06.2013. The management not being satisfied with the conduct of the delinquent, on 24.09.2014 concluded the enquiry as against the delinquent and called for seeking explanation on the proposal of the Management as to the imposition of the proposed punishment of stoppage of increment for 3 years with cumulative effect. The same was received by the delinquent and was duly replied by him on 08.10.2014. Not being satisfied by the explanation given by the delinquent, the Enquiry Officer held that the charges levelled as against the delinquent stood proved by his



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order dated 15.12.2014, thereby imposing the delinquent M. Gobi with a punishment of stoppage of increment for 3 years with cumulative effect. The delinquent did not prefer any appeal before the Appellate Authority. However, the respondent sought conciliation proceedings in respect of the order of punishment dated 05.12.2004, but the same failed. Hence, the respondent had caused the Industrial Dispute in I.D.No.17 of 2019 before the learned Labour Court, at Tirunelveli.

4.In the meanwhile, the persons injured in the said accident have filed claim petitions in M.C.O.P.Nos.510 to 515, 522, 558, 559 of 2013 before the learned Motor Accident Claims Tribunal, Neyyatinkara and had obtained an award for Rs.6,06,000/-. The entire amount of award was totally borne out by the petitioner's Management Corporation with interest. The delinquent had miserably failed to make out his case before the learned Motor Accident Claims Tribunal to disprove the negligence on his part and thereby, made the petitioner Corporation vicariously liable for his cause of accident and as a result of which, the petitioner Corporation has incurred severe loss.



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5. That apart the delinquent has also spoiled the reputation of the petitioner Corporation among the public and passengers. While so, the learned Labour Court while considering the dispute without rejecting the case of the delinquent had set aside the order of punishment dated 05.12.2014 imposed as against the delinquent by the petitioner Corporation. Challenging the same that is the order of the Labour Court in I.D.No.17 of 2019 dated 03.06.2020, this Writ Petition came to be filed.

6. The learned Standing Counsel for the petitioner Corporation submitted that the impugned order of the learned Labour Court is illegal and bad in law. He further submitted that the learned Labour Court failed to see that the delinquent is a repeated offender and law breaker and the presumption that the accident was caused only due to his negligence and rash driving is automatic. That apart he insisted that the learned Labour Court failed to appreciate the doctrine of *res ipsa locutor* which would apply to the facts and circumstances of the present case.

7. He further submitted that the learned Labour Court failed



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to see that the Hon'ble Apex Court has repeatedly held that the disciplinary actions are taken more as a preventive measure so, that it may work as an effective warning against other drivers to behave befitting their duties and maintaining due discipline in the establishment. He also submitted that the learned Labour Court failed to appreciate that it is quite natural that the Management certainly defend their employees before the learned Motor Accident Claims Tribunal to absolve from its liabilities as such the Manager having taken two different pleas before two Forums would not appreciate the punishment order passed in the domestic enquiry.

8.Relying upon the judgement of the Hon'ble Apex Court in the case of ***J.D.Jain v. State Bank of India***, reported in ***1982 AIR 673***, the learned Standing Counsel submitted that in a domestic enquiry, guilt need not be established beyond reasonable doubt that proof of misconduct would be sufficient and further that the law is well settled that the strict rules of evidence are not applicable in a domestic enquiry. He further submitted that learned Labour Court miserably failed to consider that the delinquent could have stopped and prevented the accident from occurrence, if he had been diligent and careful while driving and on that basis, pressed for



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allowing the Writ Petition thereby, setting aside the award of the learned Labour Court in I.D.No.17 of 2019 dated 30.06.2020.

9.The respondent has filed a counter and the learned counsel for the respondent Mr.R.Murugan submitted that on 04.10.2012 when Thiru.M.Gopi drove the bus belonging to the Corporation from Aarukani to Marthandam and while the bus approached near Kootappu bend, a two-wheeler bearing Registration No.KL-21-A-4843 crossed in the opposite direction. Only in order to avoid accident causing the death of the person riding the two wheeler, the delinquent Gopi applied sudden brake. As a result of which, the bus capsized and fell into a seven-feet ditch, so that, several persons sustained injuries. However, any loss of life was promptly averted by the delinquent's timely handling of the situation. However, the petitioner Corporation had suspended the delinquent and had visited the delinquent with a charge memo and also initiated a disciplinary proceeding as against the delinquent Mr.M.Gopi and after conclusion of the enquiry, a punishment of stoppage of increment for two years with cumulative effect was inflicted on the delinquent.



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10. Aggrieved over the same, the delinquent had preferred an appeal and the same was modified and the punishment was reduced to one year. Hence, since the punishment was not fully done away by the petitioner Corporation, the delinquent had raised an Industrial Dispute in I.D.No.17 of 2019 before the learned Labour Court, Tirunelveli to set aside the order passed by the Management. As a consequence to the said accident, M.C.O.P.Nos. 510 to 515, 522, 558, 559 of 2013 came to be filed by the persons injured before the learned Motor Accidents Claims Tribunal, Neyyatingara, thereby, arraying the delinquent as the second respondent and the petitioner Management as the first respondent for rash and negligent driving and after a full fledged trial, the learned Motor Accidents Claim Tribunal awarded the claimants with a decree and a compensation of Rs.6,06,000/-, which was fully borne by the petitioner Corporation. That apart a criminal case in C.C.No.1113 of 2011 on the file of the First Class Magistrate-III, Neyyatingara was also initiated as against the delinquent and after a full fledged trial, he was acquitted from the said criminal case on 28.09.2021. Hence, it is absolutely clear that there is no guilt on the part of the workman/delinquent for the alleged act committed by him for rash and negligent driving. Accordingly, he pressed for



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dismissal of the Writ Petition.

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11.Heard the learned Standing Counsel appearing for the petitioner, the learned counsel appearing for the respondent and carefully perused the materials available on record.

12.Challenging the award passed by the learned Labour Court, Tirunelveli in I.D.No.17 of 2019 dated 03.06.2020, the petitioner Corporation has filed this Petition. While on duty on 04.10.2012, the delinquent Thiru.M.Gopi, who was plying the bus belonging to the petitioner Management met with an accident near Kootapu bend, while he was plying along Aarakani-Marthandam route while he promptly tried to prevent hitting a two-wheeler bearing Registration No.KL-21-A-4842, which crossed in the opposite direction, thereby causing the death of the person who was riding the two wheeler. The delinquent had to apply sudden brake for the said purpose, as a result of which the bus capsized and fell into a seven feet ditch. As a result of which, several passengers sustained injuries, though none of them lost their life. In the disciplinary proceeding for the said purpose initiated as against the delinquent, a punishment of stoppage of increment for



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two years with cumulative effect came to be issued by the petitioner Corporation as against the delinquent M.Gopi. The delinquent M.Gopi preferred an appeal before the respondent. The punishment was not fully done away by the Management but was modified by reducing the punishment to stoppage of increment with cumulative effect for one year.

13.Hence, the delinquent raised an Industrial Dispute in I.D.No.117 of 2019 before the learned Labour Court, Tirunelveli seeking to set aside the order of punishment issued by the petitioner Management. Consequently, the injured persons as claimants filed M.C.O.P.Nos.510 to 515, 522, 558, 559 of 2013 before the learned Motor Accident Claims Tribunal, Neyyatingara by arraying the delinquent as second respondent and the petitioner Management as the first respondent for the rash and negligent driving of the delinquent. In the said case, the petitioner Management had filed a written statement and more particularly in Para 9 of the same, the petitioner Management contended that there was no negligence or rashness on the part of the workman and he drove the bus with care and caution by following traffic rules and the workman is not liable for the accident which



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happened. Further, it was categorically stated in the said written statement that the accident happened only to save the rider of the two wheeler and thereby, some persons sustained minor injuries and it was also reiterated by the Management that there was no negligence on the part of the workman/delinquent. Having taken a favourable view in favour of the delinquent before the learned Motor Accident Claims Tribunal, Neyyatingara, now taking a U-turn, the writ petitioner Corporation has filed this Writ Petition seeking to quash the award passed by the learned Labour Court, Tirunelveli. That apart in the connected criminal case in C.C.No. 1113 of 2011 on the file of the First Class Magistrate-III, Neyyatingara in which the delinquent Mr.M.Gopi was an accused was also concluded by acquitting him on 28.09.2021. The Hon'ble Division Bench of this Court in a case of ***Tamil Nadu State of Transport Corporation (Kumbakonam Division II) v. P.Karuppusamy*** reported in ***2008 1 MLJ 694*** has dealt with a similar case and the relevant portion of which, is extracted as follows:-

“The transport Corporation having taken a plea before learned Tribunal, that their employee (bus driver) was not responsible for the accident, cannot dismiss him after domestic enquiry by holding that he is guilty of the



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charges”.

14.The Hon'ble Supreme Court in the case of **Venkatappa @ Moody v. Abdul Jabbar** reported in **2006 9 SEC 235** has dealt with a similar case and the relevant portion of which is extracted as follows:-

“In which it was decided that the parties are bound by the pleadings in the statements filed by them and they cannot be permitted to put forth a new case”.

15.The Hon'ble Division Bench of this Court in the case of **Tamil Nadu State of Transport Corporation (Kumbakonam Division II) v. P.Karuppusamy** reported in **2008 1 MLJ 694** has dealt with a similar case and in para 24 has held as follows:-

“The principles laid down in the aforesaid 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 proof in both the proceedings before the criminal Court and the domestic enquiry Officer are



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entirely different. However, since the corporation has consciously raised the contention in favour of the bus driver before the judicial forum it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of the delinquency in the matter of departmental proceedings, the Management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial forum and accepting the findings of the learned Motor Accident Claims Tribunal. Further in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalized at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean."

16. Fully fortified by the discussions in the judgments extracted supra, this Court is of the considered view that even in this case, the Management Corporation having taken a favourable stand in favour of the delinquent Mr.M.Gopi before the learned Motor Accidents Claims Tribunal during the conduct of M.C.O.P.Nos.310 to 515, 522, 558, 559 of 2013 before the learned Motor Accidents Tribunal, Neyyatingara should not by making a U



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turn should have filed this petition challenging the award passed by the learned Labour Court, Tirunelveli, in I.D.No.17 of 2019 by which the learned Labour Court has set aside the punishment imposed on the delinquent by the petitioner Management. That apart the acquittal of the delinquent M.Gopi in the criminal case registered as against him with respect to the accident dated 04.10.2012 in C.C.No.1113 of 2011 on the file of the learned First Class Magistrate-III, Neyyatingara, which concluded in acquittal in favour of the delinquent should also be taken into consideration.

17.In view of the same, this Court is not inclined to interfere with the impugned order passed by the learned Labour Court, Tirunelveli dated 30.06.2020 in I.D.No.17 of 2019.

18.Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
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L.VICTORIA GOWRI, J.

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