



W.P(MD)No.20863 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.20863 of 2022

and

W.M.P(MD)Nos.15129 & 15130 of 2022

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

... Petitioner

Vs.

The General Secretary,
Tamil Nadu State Transport Employees
Union 176/84/KKM,
Ranithottam, Nagercoil,
Kanyakumari District
For M.Arikrishnan Employee.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for all records relating to the award of the Honble Labour Court (FAC), Tirunelveli in ID No.34/2019, dated 20.07.2021 and quash the same.

For Petitioner : Mr.D.Jebaraj



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For Respondents : Mr.S.Vashik
for Mr.R.Murugan

ORDER

The present writ petition has been filed to call for all records relating to the award of the Labour Court (FAC), Tirunelveli in ID No.34/2019, dated 20.07.2021 and quash the same.

2. The petitioner is the General Manager of the Tamil Nadu State Transport Corporation, Tirunelveli 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, M.Arikrishnan, a Driver in the petitioner Management in Employee No.9016. On 14.02.2016, the said M.Arikrishnan was assigned to drive a passenger bus in the route 349/564 which has to be plied with passengers from Nagercoil to Tirunelveli. While the bus was nearing Jothipuram Royal Enfield show room at 11.30 am, the Transport Corporation bus by over taking another vehicle met with an accident and dashed against a motor cycle and caused grievous injury to the motorist and the pillion rider.



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3. F.I.R.No.36 of 2016 has been filed as against the driver and charge sheet has been filed under C.C.No.1 of 2017 and trial was conducted before the Special Judicial Magistrate, Tirunelveli. The injured motorist has filed M.C.O.P.No.728 of 2016 on the file of Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli and claimed compensation as against the petitioner for the rash and negligent driving of the respondent driver M.Arikrishnan. In M.C.O.P.No.728 of 2016, 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 08.07.2020. The claim was allowed. A compensation to a tune of Rs.3,47,260/- was decreed. A criminal case in C.C.No.1 of 2017 was also registered against the said M.Arikrishnan before the learned Special Judicial Magistrate, Tirunelveli. After due trial, the respondent was acquitted by the Labour Court. A show cause notice was issued to the respondent on 15.03.2016 and the respondent Driver submitted his explanation on 24.08.2016. Since the reply was unsatisfactory, the departmental action was continued. The respondent Driveer participated in the enquiry on 15.02.2017. The preliminary report was given on 18.07.2017 and the delinquent gave his reply on 06.09.2017. The second opportunity was given to the delinquent on 07.10.2017 on the proposed punishment of two increment



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cuts with cumulative effect came to be passed. The various punishments and disciplinary action against the delinquent revealed that, he had earlier been departmentally punished for causing fatal accident on 08.12.2007 and for another incident. The delinquent submitted his reply to the proposed punishment on 25.10.2017. The disciplinary authority passed an order awarding punishment of stoppage of increment with cumulative effect for two years by an order, dated 20.11.2017. The respondent sought conciliation proceedings but the conciliation failed. Therefore, the said Driver M.Arikrishnan filed I.D.No.34 of 2019 before the learned Labour Court, Tirunelveli challenging the punishment awarded by the disciplinary authority, dated 20.11.2017. The learned Labour Court after elaborate consideration has set aside the order of punishment awarded vide order, dated 20.11.2017 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



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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.728 of 2016 on the file of Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli, the petitioner Management supported the case of the respondent and claimed innocence and fully submitted before the Motor Accident Claims Tribunal that the driver of the respondent bus drove the bus slowly and carefully and following the traffic rules. The police wrongly registered the case against the driver of the bus. The accident had happened only due to the negligence of the rider of the motor cycle. 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



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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 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:

“13. Therefore, the management cannot take two mutually different stands when the fact is that the accident took place on the service road which is an one way and the vehicle coming in the opposite direction alone is on the wrong side and therefore responsible for the accident. Therefore, the driver of the bus cannot be found fault with. Though sufficient opportunity and principles of natural justice has been observed in the disciplinary proceedings conducted by the enquiry officer, the facts and available evidences have not been correctly appreciated by the Enquiry Officer and he has given an one sided report. Therefore, this Court is inclined to allow this industrial dispute and ordered to set aside the order, dated 20.11.2017. These points are answered accordingly.”



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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, the Transport Corporation bus met with an accident with the motor cycle which came from the opposite side, in which the driver of the motor cycle had sustained injuries. It is a case 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 / Special Sub Court, Tirunelveli cannot take an 'U' turn and proceed with a parallel disciplinary proceeding against the Driver attributing the negligence on the Driver for the injury caused and also to the monetary loss whatever is incurred by the petitioner Management by payment of the award amount to the injured person.



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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.34 of 2019 and hence, this writ petition is not maintainable and is liable to be dismissed.

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

21.03.2024

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

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To

The General Secretary,
Tamil Nadu State Transport Employees
Union 176/84/KKM,
Ranithottam, Nagercoil,
Kanyakumari District
For M.Arikrishnan Employee.



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L.VICTORIA GOWRI, J.

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