

J.Ramraj Vs. 1. the Management,

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Court : Chennai

Decided On : Feb-04-2015

Judge : V.Dhanapalan

Appellant : J.Ramraj

Respondent : 1. the Management,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

04. 02.2015 CORAM THE HONOURABLE MR. JUSTICE V.DHANAPALAN AND THE HONOURABLE MS. JUSTICE V.M.VELUMANI Writ Appeal (MD) No.16 of 2013 J.Ramraj ... Appellant/1st respondent Vs.

1. The Management, Tamil Nadu State Transport Corporation, (Madurai Division - V) Limited, Virudhunagar. ... 1st respondent/Petitioner 2. The Labour Court, Madurai, Rep. by the Presiding Officer. ... 2nd respondent/ 2nd respondent Writ Appeal filed under Section 15 of Letters Patents Act against the order dated 15.10.2012 made in W.P.(MD)No.6077 of 2009. !For Appellant : Mr.Ajmalkhan Senior Counsel for Mr.G.Kasinathadurai ^For 1st Respondent : Mr.A.Jeyaram Date of reserving the Judgment :

15. 12.2014 Date of pronouncing the Judgment :

04. 02.2015 :

JUDGMENT

Heard Mr.Ajmalkhan, learned Senior Counsel appearing for Mr.G.Kasinathadurai, learned counsel for the appellant and Mr.A.Jeyaram, learned counsel appearing for the 1st respondent.

2. This appeal is directed by the first respondent in the Writ Petition in W.P.(MD) No.6077 of 2009, challenging the order dated 15.10.2012 passed therein by a learned Single Judge.

3. The said Writ Petition was filed by the first respondent herein, i.e. the Transport Corporation, challenging the award dated 11.08.2000 passed by the second respondent-Labour Court, Madurai in I.D.No.31 of 2001, by which, the second respondent ordered reinstatement of the appellant with continuity of service from 18.03.2000 without backwages.

4. Facts of the case are as follows:

4. 1. The appellant was working as a Driver from 15.02.1993 and his service was regularised on 25.11.1993. According to the Writ Petitioner/Transport Corporation, on 07.05.1998, while the appellant was driving a bus belonging to their Corporation from Madras to Aruppukkottai, about 6.15 a.m., the bus dashed against two mile stones and consequently, a pedestrian died on the spot at Eliyarpathi. 4.2. According to the Transport Corporation, the appellant was driving the bus on the left hand side of the road and hit the pedestrian, who was at the right hand side of the road and dragged him to some distance and due to the said accident, the pedestrian died on the spot. Further, the appellant, who was in a drowsy state, drove the bus at a high speed in a rash and negligent manner and caused the accident. 4.3. It is the case of the appellant that the road at the accident spot was curved and he was driving the vehicle carefully. While so, to avoid a lorry which was coming at a high speed from the opposite direction, he took to the left side of the road and due to power steering, the bus hit the pedestrian. The appellant would plead that the accident was not due to the rash and negligent driving by him. 4.4. With regard to the accident, an Assistant Engineer of the Transport Corporation visited the spot and made enquiries. Based

on his report, a charge memo dated 16.05.1998 was issued to the appellant stating that the accident took place only due to his carelessness and negligence and that he was in a drowsy state. 4.5. To the said Charge Memo, the appellant submitted his explanation. Not being satisfied with the same, the first respondent/Transport Corporation conducted a domestic enquiry. The Enquiry Officer held that the charges levelled against the appellant were proved. The first respondent, furnishing a copy of the Report, issued a second show cause notice to the appellant, to which, he submitted his explanation. Pursuant thereto, the first respondent, on considering all the materials on record, dismissed the appellant from service, by an order dated 13.03.2000. Aggrieved over the same, the appellant filed an appeal and the same stood rejected vide proceedings, dated 28.04.2000. 4.6. Thereafter, the appellant approached the Conciliation Officer. As the issue was not settled, the Conciliation Officer reported failure. Hence, the appellant raised an Industrial Dispute before the second respondent/Labour Court, Madurai in I.D.No.31 of 2001, wherein, though no oral evidence was let in, Exhibits 1 to 4 were marked by the appellant and Exhibits 1 to 13 were marked by the first respondent. The second respondent considering all the materials on record, including the domestic enquiry proceedings, passed an award, dated 06.03.2008 in I.D.No.31 of 2001 holding that the first respondent/Transport Corporation did not prove the charges levelled against the appellant and that the first respondent did not deny that the bus being dragged to the right hand side of the road due to power steering as also the narration of the appellant as to how the accident took place could not be rejected. On these findings, the second respondent set aside the order of dismissal, dated 13.03.2000, ordering reinstatement of the appellant with continuity of service but without backwages on the ground that after 13.03.2000, there was no master-servant relationship, since the appellant would have worked elsewhere and earned wages. It was also observed in the award that the appellant could have avoided the accident had he been careful in driving the bus. 4.7. Aggrieved over the same, the first respondent/Transport Corporation filed W.P.(MD) No.6077 of 2009 challenging the award of the second respondent, dated 06.03.2008 passed in I.D.No.31 of 2001. The learned Single Judge, taking note of the observation in paragraph 10 of the impugned award of the second respondent that the appellant could have avoided the accident had he been

Careful in driving the bus, allowed the Writ Petition, setting aside the impugned award. Against the order dated 15.10.2012, allowing the Writ Petition, the appellant has filed the present Writ Appeal.

5. Learned Senior Counsel for the appellant would contend that the finding of the second respondent/Labour Court that the accident could have been avoided had the appellant been careful in driving the bus, is without any evidence. On the other hand, the second respondent has given a categorical finding on evidence that the charges levelled against the appellant were not proved. It is his further contention that the first respondent failed to examine the other driver, who was in the bus at the time of accident and two witnesses. But, the first respondent examined only the report of the Assistant Engineer, who inspected the accident spot and gave a report. 5a. Learned Senior Counsel would submit that the discretionary power under Section 11-A of the Industrial Disputes Act is wider than the discretionary power under Article 226 of the Constitution of India and considering the past conduct of the appellant while imposing punishment, separate notice apart from the second show cause notice is necessary and that the first respondent cannot consider the past records without issuing specific notice in that regard. It is also his contention that the learned Single Judge ought to have seen that negligence, by itself, cannot be held as a misconduct, when it is not proved by evidence. In support of his case, learned Senior Counsel appearing for the appellant relied on a judgment of this Court in Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd., Periyamilaguparai, Tiruchirappalli and another vs. P.Karuppusamy [W.A.No.2399 of 2003, dated 23.11.2007].

6. Per contra, learned counsel appearing for the first respondent contended that the second respondent having held that the appellant could have avoided the accident had he been careful in driving the bus, committed illegality in setting aside the order of dismissal and directing reinstatement of the appellant with continuity of service. He would submit that the learned Single Judge has allowed the Writ Petition after considering all the judgments rendered in respect of negligence of a driver in accident cases. He would further submit that the criminal case filed against the appellant was dismissed for non-prosecution and that the appellant was not acquitted after a full fledged trial and on merits. It is his

contention that the evidence to prove the charges in a domestic enquiry is entirely different from proving the guilt of the accused in a criminal case.

7. We have given careful consideration to the submissions of the learned counsel on either side and the materials available on record.

8. On a perusal of the records, it is seen that on 07.05.1998, about 6.15 a.m., the Transport Corporation bus driven by the appellant met with an accident at Eliyarpatti. The bus hit two mile stones on the left side of the road and hit the pedestrian, dragged him to some distance, due to which, he died. At the time of accident, another driver of the first respondent/Transport Corporation was in the bus. Two persons, who were with the deceased, witnessed the accident. The Assistant Engineer of the first respondent went to the accident spot, enquired the driver and two eyewitnesses and gave a report. A criminal case was registered against the appellant.

9. Based on the report of the Assistant Engineer, the first respondent issued a charge memo dated 16.05.1998 to the appellant alleging that the appellant drove the bus in a rash and negligent manner in a drowsy state and caused the accident. Though the appellant submitted his explanation to the charge memo, not being satisfied with the same, the first respondent conducted a domestic enquiry. The Enquiry Officer, in his report, held that the charges levelled against the appellant were proved. After the second show cause notice, by an order dated 13.03.2000, the appellant was dismissed from service. Against the order of dismissal, the appeal filed by the appellant was also dismissed. After failure of conciliation proceedings, the appellant raised an Industrial Dispute before the second respondent. On consideration of the pleadings and evidence, the second respondent held that the charges levelled against the appellant were not proved and set aside the order of dismissal. The second respondent came to such a conclusion that the charges against the appellant were not proved on the basis that in the domestic enquiry, though the Assistant Engineer, who visited the spot and made the enquiry, was examined, neither the other driver of the first respondent nor any one of the eyewitnesses were examined. During cross-examination, the Assistant Engineer, admitted that the eyewitnesses did not

depose that the accident took place due to the drowsiness of the appellant.

10. Though the award of the Labour Court was in favour of the appellant ordering his reinstatement with continuity of service but without backwages, the observation made by the Labour Court that the accident could have been avoided had the appellant been careful while driving the bus is the ground on which the learned Single Judge allowed the Writ Petition in W.P.(MD) No.6077 of 2009 filed by the Transport Corporation.

11. Now, the point for consideration in this appeal is whether the appellant is really guilty of negligence in causing the accident.

12. On the above question, a perusal of the material records would show that the learned Single Judge failed to consider the finding of the Labour Court in paragraph No.9 of the award, wherein, it is stated that the first respondent failed to prove the charges levelled against the appellant. Also, the learned Single Judge has ignored to consider the dismissal of the criminal case initiated against the appellant. Moreover, the first respondent in their counter filed in M.C.O.P.No.955 of 1998 has taken a stand that the accident was not due to the negligence of the appellant. Having taken such a stand in the said claim petition filed by the appellant for compensation, it is not open to the first respondent to hold in the domestic enquiry that the appellant is guilty of negligence in causing the accident.

13. For better appreciation of the case, relevant portion of the award of the Labour Court is extracted hereunder: ?9/ tpgj;ij fz;Dw;w ,uz;L rhl;rpfis rk;gt ,lj;jpy; itj;J vjph;kDjhuh; jug;gpy; tprhhpj;Js;s epiyapy; mth;fspd; xUtuahtJ cs;sf tprhuizapy; rhl;rpak; mspf;f bra;J vjph;kDjhuh; jug;g[Tw;iw epU:gpf;f tha;g;gpUe;Jk; mjlw;fhd eltof;iffis vjph;kDjhuh; jug;gpy; vLj;Jf; bfhs;stpy;iy/ Mfnt cs;sf tprhuiz mjpfhhp jPh;khdpj;Js;sJ rhpahdjy;y vd;gija[k; nkw;fz;l Ma;t[fs; bjspt[gLj;JtjhYk;. bjh/rh/M/3 ,d;go kDjhuh; k PJ gjpt[bra;ag;gl;l Fw;w';fSf;Fk; nky;eltof;if vLf;fg;glhky; Kof;fg;gl;L tpl;ljhYk; kDjhuUf;F tH';fg;gl;Ls;s gzp ePf;f jz;lid uj;J bra;aj;jf;fJ vd;W jPh;khzpf;fpnwd;/ 10/ gzp ePf;f ehs; Kiy; kDjhuUf;Fk;. Vjph;kDjhuUf;Fk; ,ilna bjhHpyhsp Kjyhsp cwt[,y;iy vd;gija[k; kDjhuh; ntW gzp bra;J tUkhdk; bgw;wpUf;f tha;g;g[cs;sJ vd;gija[k;. kDjhuh; ftdkhf ngUe;ij Xl;or; brd;wpUe;jhy; tpgj;ij jtph;j;jpUf;f Koa[k; vd;gija[k; ftdj;jpw;bfhs;Sk; bgh GJ.

kDjhuUf;F ntiy ,He;j ehl;fSf;fhd Cjpak; fpilg;gjw;fpy;iy vd;w Kot[bra;J kDjhuUf;F gzp bjhLh;r;rpa[lD; Toa gzp tH'[,Ftijg; bghWj;J ,e;j kDit gFjpahf mDkjpf;fyhk; vd;W Kot[bra;J ,e;j gpur;rpidf;F jPh;t[fhz;fpd;nwd;/ ?.

14. At this stage, it would be useful to refer to paragraph 24 of the judgment rendered by this Court in the case of Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd., Periyamilaguparai and another Vs. P.Karuppusamy], which would read thus:

"4. 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 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. Though the extent of proof is sufficient to the commission of 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 fora and accepting the findings of the Motor Accident Claims Tribunal, Karur."

15. The ratio laid down in the said judgment relied on by the learned Senior Counsel appearing for the appellant is squarely applicable to the facts of this case. Here again, when the first respondent/Transport Corporation has consciously raised the contention in favour of the appellant in M.C.O.P.No.955 of 1998, it is precluded from proceeding against him in departmental proceedings.

16. For the reasons that the first respondent/Transport Corporation has not proved the charges levelled against the appellant and that the second respondent/Labour Court has considered all the materials on record in a proper perspective and as the learned Single Judge failed to consider the findings of the second respondent in paragraph No.9 of the award and failed to see the findings of the second

respondent in paragraph 10 of the award relating to grant of backwages and the same findings were rendered without any evidence, the Writ Appeal has to be allowed, setting aside the order dated 15.10.2012 passed by the learned Single Judge in W.P.(MD) No.6077 of 2009 and the award of the second respondent, dated 06.03.2008, passed in I.D.No.31 of 2001 to be restored and confirmed. In view of the above, the Writ Appeal is allowed setting aside the order dated 15.10.2012 passed by the learned Single Judge in W.P.(MD) No.6077 of 2009 and confirming the award dated 06.03.2008 passed by the second respondent/Labour Court in I.D.No.31 of 2001. No costs. (V.D.P.,J.) (V.M.V.,J.) 04.02.2015 Index : Yes Internet : Yes smn2/abe To :

1. The Management, Tamil Nadu State Transport Corporation, (Madurai Division - V) Limited, Virudhunagar.

2. The Presiding Officer, Labour Court, Madurai. V.DHANAPALAN, J.

AND V.M.VELUMANI, J.

smn2/abe Pre-delivery Judgment in W.A.(MD) No.16 of 2013 Dated:

04. 02.2015

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