
(2009) 05 DEL CK 0175

In the Delhi High Court

Case No : Writ Petition (C) No. 6964 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Sh. Gajender Pal Singh

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4A), 33(2)

Citation : (2009) 123 FLR 132 : (2009) 5 ILR Delhi 753 : (2010) 2 LLJ 688 :
(2010) 1 SLJ 426 : (2010) 6 SLR 471

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Uday N. Tiwari, for the Appellant; Ranjan Kumar, for the Respondent

Judgement

V.K. Shali, J.—The petitioner in this writ petition has challenged the award dated 26th August, 2004 passed by the learned Industrial Tribunal in O.P. No. 15/1997 in the case titled Delhi Transport Corporation v. Sh. Gajender Pal Singh. By virtue of the aforesaid award, the learned Tribunal had held that the petitioner/DTC was not able to establish that the respondent/driver had caused the accident by rash and negligent driving. Secondly, he had failed to inform the petitioner/DTC (which fact was admitted by him) about the factum of accident and accordingly the application u/s 33(2)(b) of the Industrial Disputes Act, 1947 of the petitioner/DTC was rejected.

2. Briefly stated the facts of the case leading to the filing of the present writ petition are that after holding a domestic enquiry for alleged misconduct against the respondent/driver, the petitioner/DTC filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947 for seeking approval of the learned Labour Court for the dismissal of the respondent/driver on the allegation given as under:

That on 7.3.1987 while you were on staff bus duty on bus No. DEP 8297 at about 13.30 hours, you drove the bus in rash and negligent manner near Brahampuri Road and dashed a cyclist who was expired later on.

3. It was alleged that this amounted to misconduct on the part of the respondent/driver within the meaning of clause 24 and 31 (vii) of the Executive Instructions Duties of a driver read with paragraph 19(h) and 19(k) of the standing orders governing the conduct of the DTC employees. It may pertinent here to mention another charge against the respondent/driver was that he had concealed the above factum of accident.

4. The petitioner/DTC instituted an enquiry which was conducted in accordance with law and the principle of natural justice. The Enquiry Officer came to a conclusion that the misconduct of the respondent/workman in causing accident and the consequent death of the injured and the factum of not informing the petitioner/DTC about the incident were proved. The petitioner/DTC accepted the enquiry report and imposed the punishment of dismissal on the respondent/driver which would not have effect without first getting the approval of the learned Tribunal.

5. Before giving the approval to the petitioner/DTC a preliminary issue was framed with regard to the legality and validity of the enquiry against the respondent/driver as to whether it was in accordance with the principles of natural justice. The said issue was decided against the respondent/driver after examination of management witnesses i.e. Tej Pal Singh, Deputy Manager as exhibit MW-I, Sanjay Saxena as exhibit MW-2 and the respondent/driver was examined himself as exhibit WW-I. The defence taken by the respondent/driver was that the accident had occurred due to the negligence of the cyclist and not due to his fault. A plea was also taken by the respondent/driver that he was proceeded in respect of criminal case of causing accident by the respondent/driver in which he was acquitted by the Metropolitan Magistrate and this fact was informed to the petitioner/DTC. The respondent/workman has stated that he had informed about the incident to the Depot Manager on 7th March, 1985.

6. Although the learned Tribunal upheld the legality and validity of the enquiry against the petitioner/DTC, however, with regard to the grant of approval of the learned Tribunal came to a finding that as no eye-witness to the incident was examined before the Enquiry Officer or before the Court, and therefore, it merely on account of the fact that an accident was caused resulting in the death of the cyclist, it could not be assumed that the respondent/driver was driving bus in a rash and negligent manner resulting in the accident and the consequence of which death of the deceased. The learned Tribunal also took into account the factum of respondent/workman having been acquitted in the criminal case and accordingly, did not grant approval u/s 33(2)(b) of the Industrial Disputes Act, 1947.

7. The main contention of the learned Counsel for the petitioner/DTC is that the learned Tribunal has fallen into grave error and has given a finding which is perverse on account of the fact that the factum of the accident having taken place is not denied by the respondent/driver. If that be the so then the learned Tribunal ought to have relied upon on the doctrine of *res ipsa loquitur* and the

onus had to be on the respondent/driver to prove that the accident was not caused because of his rash and negligent driving. The learned Counsel for the petitioner/DTC in support of his submissions placed reliance on The Managing Director, Northeast K.R.T.C. Vs. Devidas Manikrao Sadananda, .

8. Per contra the learned Counsel for the respondent/driver contended that the very fact that he had acquitted in a criminal case of the charge of rash and negligent driving, therefore, the onus was on the petitioner/management to establish by examining the eye-witnesses that the accident was caused on account of rash and negligent driving of the respondent/driver.

9. I have carefully considered the submissions made by the respective sides and perused the record.

10. There is no dispute about the fact that no eye-witness was examined either before the Enquiry Officer or before the learned Labour Court with regard to the accident having been caused by the rash and negligent driving of the respondent/workman. It was also not in dispute that in matters of accident the Apex Court has very frequently applied the doctrine of *res ipsa loquitur* and if that be so, then in the instant case also even though the petitioner/DTC may not have examined any eye-witness either before the Enquiry Officer or even before the learned Tribunal, the learned Labour Court was under an obligation to apply the doctrine of *res ipsa loquitur* and examine on the basis of the said doctrine, it could be said the accident was caused because of the rash and negligent driving of the respondent/driver. On the contrary, the learned Tribunal straight away observed that as no eye-witness has been examined, therefore, the accident having been caused by the rash and negligent driving of the respondent/driver is not established. This in my view is not a correct position in law. Even if no eye-witness was examined, the learned Labour Court was bound to take note of the aforesaid doctrine and apply the same and the onus to establish that the accident had not been taken place because of his rash and negligent driving should have shifted on to the respondent/driver. The fact that the accident was not caused because if his negligence was a fact which was specially in his knowledge and he ought to have established the same. To that extent the finding of the learned Labour Court suffers from perversity and deserves to be set aside. Reliance can also be placed on the case titled North-East KRTC (supra).

The respondent was a driver in the employment of the appellant Corporation. While driving a bus, he tried to overtake another bus of the Corporation and in that process the bus which he was driving collided with the hind part of the other bus. Consequently, the other bus dashed against a tree resulting in injuries to several passengers and death of several others. Moreover, severe damage was caused to the latter bus. The Corporation instituted a departmental enquiry which culminated in the dismissal of the respondent. The respondent then raised an industrial dispute u/s 10(4-A) (as in force in Karnataka) of the Industrial Disputes Act, 1947. The Labour Court held, inter alia, that there was no eyewitness to the accident and there was no evidence to show that the

respondent had not taken reasonable care in the process of driving. The Labour Court, therefore, set aside the order of dismissal and direct reinstatement with full back wages. A Single Judge of the Karnataka High Court upheld that order albeit he reduced the back wages to 50%. Dismissing the Corporation's appeal, a Division Bench held that in the absence of evidence the doctrine of *res ipsa loquitur* was not applicable to the facts of the present case. The Corporation then filed the present appeal by special leave.

The question before the Supreme Court was whether the view taken by the Division Bench was correct or not. While allowing the appeal and remitting the matter to the Labour Court, the Supreme Court observed:

The impact of the offending bus running into the other bus was so great that the other bus went and dashed against a tree resulting in injuries to 56 passengers and death of 4 passengers. No attempt was made by the delinquent driver to show that the cause of the accident could not have been avoided by exercise of ordinary care and caution. The Labour Court therefore, erred in not considering the maxim *res ipsa loquitur*.

11. On applying the doctrine of *res ipsa loquitur* in the instant case also, the learned Labour Court ought to have considered the implications of the said doctrine.

12. Another aspect on which the learned Labour Court has gone wrong and against the record is the fact that one of the charges against the respondent/driver was that he had failed to intimate the petitioner/DTC about the accident. This is also stated by the learned Labour Court in its penultimate paragraph that the respondent/driver admitted in his cross-examination that he failed to intimate the petitioner/DTC about the accident, therefore, this also constitute a misconduct and since this was established at least a part of the charge against the respondent/driver was fully established for which the learned Labour Court was not correct to have refused the approval sought by the petitioner/DTC u/s 33(2)(b) of the Industrial Disputes Act, 1947 on this ground also the order of the learned Labour Court suffers from arbitrariness and perversity. Apart from this, the general principle of proof is that a fact which is admitted need not be proved. The respondent/workman has himself admitted the factum of accident, therefore factum of accident having taken place need not be established.

13. For the reasons mentioned above, I accordingly, set aside the order dated 26th August, 2004 passed by the learned Labour Court and remand the matter back to the learned Labour Court with the direction to decide the application of the petitioner/DTC for grant of approval u/s 33(2)(b) of the Industrial Disputes Act, 1947, in the light of the misconduct alleged against the respondent/driver afresh after taking into account the doctrine of *res ipsa loquitur* as enunciated by the Apex Court in the aforesaid judgment. With these observations, the award dated 26th August, 2004 is set aside. The parties are directed to appear before the learned Labour Court on 11th May, 2009 whereupon the learned Labour

Court shall decide the said application afresh. It is hoped that the learned Labour Court shall endeavour to decide the application as expeditiously as possible.