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**(2013) 06 MAD CK 0155**  
**In the Madras High Court**  
**Case No : Writ Petition No. 502 of 2007**

E. Maari

APPELLANT

Vs

The Managing Director and The Presiding Officer

RESPONDENT

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**Date of Decision :** 24-06-2013

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2A

**Citation :** (2013) 3 LLJ 492 : (2013) 4 LLN 705 : (2014) LLR 78

**Hon'ble Judges :** P.R. Shivakumar, J

**Bench :** Single Bench

**Advocate :** C. Manohar, for the Appellant; T. Chandrasekaran for R1, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.R. Shivakumar, J.—This writ petition has been filed praying for the issuance of writ of certiorarified mandamus calling for the records relating to the award of the Presiding Officer, Principal Labour Court, Chennai dated 19.09.2006 passed in I.D. No. 375 of 2001 upholding the order of dismissal issued by the first respondent dismissing the petitioner from service and to quash the same and consequently directing the first respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits . The petitioner was employed as a driver under the first respondent. On 08.03.1999, at about 20.30 hours, the bus bearing Registration No. TN-21-N-0122 with Route No. 86 of which the petitioner was a driver, met with an accident as the bus hit the passenger shelter and bunk shop near Chitteri. As a consequence of the said accident, three persons standing there were run over and died on the spot and three more persons got injured, out of them one succumbed to the injuries subsequently. In the accident the petitioner also got injured. Based on the report of Devendran, the Time Keeper, disciplinary proceedings were initiated against the petitioner in which three charges were framed. Before the Disciplinary Authority, the petitioner contended that the accident took place due to poor

maintenance and mechanical defect, namely breaking of the spring plate assembly of the front right side wheel, which caused the drifting of the vehicle towards the right leading to the unfortunate accident. However, the Disciplinary Authority held that the accident took place due to rash and negligent handling of the vehicle on the part of the petitioner and the petitioner was dismissed from service by order dated 02.12.1999.

2. As against the order of dismissal the petitioner raised an industrial dispute u/s 2-A of the Industrial Disputes Act in I.D. No. 375 of 2005 on the file of the Labour Court, Chennai. The Presiding Officer of the Principal Labour Court, Chennai, the second respondent herein, after enquiry in the Industrial Dispute, passed the impugned award dated 19.07.2006 upholding the order of dismissal passed by the first respondent and dismissing the industrial dispute. The said award of the Presiding Officer, Principal Labour Court dated 19.07.2006 made in I.D. No. 375 of 2001 is impugned in the present writ petition.

3. The arguments advanced by Mr. C. Manohar, learned counsel for the petitioner and by Mr. T. Chandrasekaran, learned counsel for the respondents were heard. The materials placed were also taken into consideration.

4. Learned counsel for the petitioner argued that the award of the Labour Court could not be sustained since the finding of the Labour Court that the charges against the writ petitioner stood proved was a perverse one as the same was based on unreliable evidence; that the Labour Court simply ignored the fact that there had been complaints by the duty drivers for replacing the spring plate assembly of the front right side wheel but the same was not done assigning non-availability of spares as the reason; that though the petitioner had demanded the production of the log sheets written by the drivers on the date of accident and prior to the date of accident to prove that the petitioner had reported the defect to the maintenance staff of the first respondent, but still he was compelled to take the bus for the trip, The first respondent had chosen to burk the log sheet dated 8.03.1999; that though the holder pin of the front right side spring plate assembly had come out and the spring plates had been broken, instead of replacing the spring plate assembly, the technical staff in the maintenance section, including the in charge engineer, simply made temporary adjustments by welding the broken spring plates and even welding the holder pin of the spring plate assembly; that welding over welding had been done and the drivers including the petitioner were asked to take the bus for the trips; that the petitioner and other drivers, being the employees of the first respondent, were not in a position to refuse to carry out the orders of their superiors, lest they would face charges of insubordination; that when the bus was nearing the place of accident, there was a big bang under the right side bottom part of the vehicle caused due to the breaking of the spring plate assembly of front right side wheel resulting in drifting of the bus towards the bus shelter which was on the right side of the road; that the said fact was not properly appreciated and on the other hand, it was totally ignored by the Labour Court; that the fact that vehicle was

not inspected by the Motor Vehicle Inspector on the spot was also not properly appreciated by the Labour Court; that the admissions made by the management witnesses were not properly considered; that the approach made by the Labour Court to the issues was a biased approach and that the Labour Court would have come to the conclusion that there was no fault on the part of the petitioner and on the other hand, the unfortunate accident took place due to the mechanical defect caused by the poor maintenance of the vehicle, had it properly appreciated the facts in an objective manner. The learned counsel for the petitioner also contended that the assumption made by the Labour Court that the bus had traveled about 470 kms. would prove absence of mechanical defect and that such an assumption was made without considering the fact that a weak spring assembly might fail at any time and that more the distance covered, more the possibility of increase in wear and tear and failure of the spring plate assembly and that thus the Labour Court had rendered a perverse finding.

5. Per contra, Mr. T. Chandrasekaran, learned counsel for the first respondent has contended that the petitioner did not make any complaint regarding the mechanical defect on the date of accident when he was asked to take the bus for the trip; that if at all there was any such mechanical defect, the writ petitioner could have very well refused to take the bus for the trip risking his own life and asked for a spare bus till the defect found in the spring plate assembly could be rectified or that the defect should be rectified before he could take the bus for the trip; that the failure to record his protest would make his defence theory a story propounded as a result of after thought and that hence, the finding of the Enquiry Officer, which was upheld by the Labour Court, could not be termed infirm or defective, much less perverse. The learned counsel for the first respondent contended further that one of the witnesses examined on the side of the management spoke about the fact that a scootrist who came in the opposite direction suddenly turned towards his right and in an attempt to avoid hitting the scootrist, the petitioner swerved the bus towards right which resulted in the accident in question and that hence, the finding of the Labour Court that the accident was due to human error and not due to mechanical defect could not be termed perverse.

6. This Court paid its anxious considerations to the above said points urged on both sides.

7. The petitioner faced disciplinary proceedings based on the following charges:

1) On 08.03.1999 at about 20.30 hrs, the petitioner drove the bus bearing Registration No. TN 21-N-0122, Route No. 86 in a rash and negligent manner at a place called Chitteri and caused the accident by hitting the bus against the passenger shelter and a bunk shop;

2) The petitioner was thus responsible for the death of three persons on the spot and for the injuries caused to three more persons out of whom one subsequently succumbed to injuries; and

3) The petitioner had brought disrepute to the first respondent corporation among the public.

8. The petitioner in his defence statement did not dispute the fact that he was the driver on duty in the bus bearing Registration No. TN 21-N-0122 with Route No. 86 and that the said bus met with an accident at Chitteri at about 20.30 hrs on 08.03.1999 as the same hit against the passenger shelter and a bunk shop in which three persons died on the spot and three got injured. It was also not disputed by the petitioner that out of the three injured persons, one later on succumbed to the injuries taking the toll of death to four. If at all human error on the part of the petitioner in driving the vehicle or in other words rash and negligent driving by the petitioner was the cause of the accident, he would have been held responsible for bringing disrepute to the Transport Corporation. But the petitioner refuted the contention of the management stating that there was no rashness or negligence on his part and that on the other hand, the accident took place due to the mechanical defect on account of poor maintenance. It is his specific case that the right side front wheel spring plate assembly got broken pursuant to which he lost control of the steering and bus drifted towards the right and dashed against the passenger shelter and bunk shop resulting in the accident in question. It is also his clear contention that the duty drivers, including himself, made complaints about the weak spring plate assembly of the front right side wheel to the technical staff and engineer in the Maintenance Department; that the drivers were made to take the bus for trips without properly rectifying the defects by replacing the broken spring plate assembly with a new one and that on the other hand, welding over welding had been made and even the holder pin of the spring plate assembly was fixed with welding; that the same was done on the premise that the spares were not available; that the same led to the breaking of the spring plate assembly resulting in the accident and that the petitioner had to take the bus for the trip without the spring plate assembly being replaced with a new one because he would have faced a charge of insubordination in case he refused to take the bus for the trip as instructed by the junior engineer. It was also his contention that the defect in the spring plate assembly was reported by the drivers who had taken the bus for trip on previous days and the petitioner had also reported the same on the date of accident and that the same would be brought to light if the log sheets were produced before the Enquiry Officer.

9. When such a plea of defence was taken by the workman (writ petitioner), the management chose to examine the following persons:

- 1) Devendran, the Time Keeper,
- 2) an injured passenger who traveled in the bus by name Narayanaswamy,
- 3) One Selvam, Driver,
- 4) Vaiyapuri, Conductor, and

5) Sivaraman, Junior Engineer.

Out of the above said persons, Selvam was the driver who drove the vehicle on the previous day. It was his evidence that the spring plate assembly of the right side front wheel was very weak and hence the bus, while driven on the road, was moving in a slanting position; that he reported the same to the junior engineer on duty in the depot and that the junior engineer asked him to adjust and take the bus for the trip stating that the spare spring plate assembly was not available. It was also his clear statement that he had noted the above said defect in the log sheet on 08.03.1999 when he left the bus in the Depot. It was also his statement that the hanger pin had been welded and the defects were also brought to the notice of the duty junior engineer by him in person. Vaiyapuri, who was on duty as conductor on 07.03.1999, when the said bus was driven by MW3 Selvam, totally corroborated the statement of Selvam regarding the fact that the right side front wheel spring plate assembly was weak and defective and that the same was written by the driver in the log sheet on 08.03.1999. Mr. Sivaramn, Junior Engineer, who figured as Management Witness No. 5 before the Enquiry Officer, also supported the version of Selvam and Vaiyapuri by stating that on 08.03.1999, the bus was brought to the depot for maintenance work; that the driver who was relieved informed him that the front right side spring plate assembly was weak and the same should be replaced and that the hanger pin had also come out which required immediate attention. However, while admitting that the spring plate assembly was weak, he would state that the same was in good condition. At the same time, he had also admitted that the hanger pin had come out and that the same was corrected by the technical staff. Among the other two, the first one is Devendran, the time keeper, who inspected the accident spot and submitted a report and the other one is Narayanaswamy, a passenger who got injured in the accident. In his statement before the Enquiry Officer, he stated that when the bus was nearing Chitteri after crossing Arakkonam, he heard a big bang below the engine; that pursuant to the same, the driver was struggling, unable to control the steering and that meanwhile the bus hit the passenger shelter. The evidence of Narayanasamy also supports the case of the petitioner that the spring plate assembly of the right side front wheel got broken which resulted in the drifting of the vehicle towards the right. However, the time keeper, who figured as the management Witness No. 1 alone, stated that the statement of Narayanasamy was recorded by him while he was taking treatment in the hospital and that in the statement he had stated that a scootariist who came in the opposite direction suddenly turned towards the right (to the left side of the bus); that the driver in order to avoid hitting the motor cycle, swerved the vehicle on the right and that in doing so he lost his control and dashed the bus against the bus shelter. The said Narayansamy, who figured as management witness No. 2, did not support the evidence of the time keeper. Still the Enquiry Officer chose to make an observation that the said Narayansamy disowned the statement allegedly given to the timekeeper and deposed in favour of the petitioner. If it was so, then the Enquiry Officer should have totally

disregarded the evidence of Narayanasamy.

10. Though the said Narayanasamy is said to have given a statement to the effect that the scootarist who came in the opposite direction suddenly turned towards his right and when the petitioner in an attempt to avoid hitting the scooter, swerved the bus to the right which resulted in the bus hitting passenger shelter, the alleged author of the said statement has denied having given such a statement. On the other hand, the said Narayanasamy in the enquiry before the Enquiry Officer stated in clear terms that while the bus was proceeding near the accident spot, a big bang was heard under the engine following which the petitioner lost steering control and meanwhile the bus hit the passenger shelter. It is totally in line with the defence theory of the petitioner. The other management witnesses, namely Selvam (Driver), Vaiyapuri (Conductor) and Sivaraman (Junior Engineer) also supported the defence story of the petitioner that the spring plate assembly was weak and despite complaints made by the drivers requesting replacement, minor repairs were done and the petitioner was asked to take the bus for the trip. Except the statement of the Time Keeper, there is no other evidence to show that any scooter, which came in the opposite side suddenly turned towards its right, which made the petitioner turn the bus towards its right which resulted in the accident. The Enquiry Officer also referred to the report of the Motor Vehicle Inspector in which, according to him, he had opined that that vehicle had no mechanical defect and the accident was not due to any mechanical defect. It must be noticed that Motor Vehicle Inspector's report was not produced and marked as a document before the Enquiry Officer. It should also be noticed that the Motor Vehicle Inspector, who inspected the vehicle, has also not been examined as a witness before the Enquiry Officer. However, relying on a document that was not marked in the enquiry and the author of which document was not examined before the Enquiry Officer, the Enquiry Officer gave a finding that the accident was not due to any mechanical defect and the spring plate assembly had not broken. In an attempt to justify the order of punishment, the management had chosen to examine the Timekeeper and the Junior Engineer as a management Witnesses 1 and 2 before the Presiding Officer, Labour Court. The copy of the Motor Vehicle Inspector's report has also been produced and marked as Ex. M3 before the Labour Court. As rightly contended by the learned counsel for the petitioner, except the production of Ex. M3, Motor Vehicle Inspector's report, the other evidence adduced through MW 1 and MW 2 had not made any improvement in the case of the management.

11. All the management witnesses, especially the junior engineer in charge of the Maintenance Section, have clearly admitted the fact that the right side front wheel spring plate assembly was weak and the same was reported by the duty drivers. It is pertinent to note that the petitioner wanted the production of the log sheets to show that the spring plate assembly of the front side wheel was weak and it needed replacement. The bus was given to the petitioner for taking the trip on 08.03.1999. The driver, who drove the vehicle on the previous day, namely 07.03.1999 and left the vehicle in the Depot on 08.03.1999 at 10.30 am

had given clear testimony before the Enquiry Officer that he wrote about the defect in the Spring Plate Assembly of the right side front wheel in the log sheet given by him on 08.03.1999. He has also been supported by Vaiyapuri, who was the conductor in that bus on the previous day. Even as per the Enquiry Report, the petitioner took the bus for the trip on 08.03.1999 at about 12 Noon. The records, showing the report made by Selvam, the driver of the previous trip and the steps taken by the technical staff for rectification of the mistakes pointed out in the log sheets submitted by Selvam, have not been produced either before the Enquiry Officer or before the Labour Court. Curiously when the petitioner had sought for a direction for the production of the log sheets submitted by the drivers prior to the date of accident, they have chosen to produce some log sheets wherein serial Nos. 7 and 9 alone were produced and Serial No. 8 was missing. The same was brushed side by the learned Presiding Officer of the Labour Court stating that the log sheet containing the report of Selvam (driver) alone was relevant and that the defects pointed in the said log sheets were rectified before the bus was handed over to the petitioner. What were the actual defects and how the defects were rectified have not been spoken to clearly by the management witnesses. The learned Presiding Officer of the Labour Court, relying on Ex. M3 Motor Vehicle Inspector's report, has stated that the foot break and hand break were found to be in good condition and that the accident was not due to any mechanical defect, to arrive at a conclusion that the accident occurred due to the rashness and negligence on the part of the petitioner.

12. In this regard, Motor Vehicle Inspector was not examined. The time keeper, who deposed before the Enquiry Officer, had admitted that the vehicle was not inspected and road tested by the Motor Vehicle Inspector on the spot and on the other hand, the bus was sent to the Motor Vehicle Inspector's office through Accident Recovery Vehicle. There is no reliable evidence as to whether any road test was made by the Motor Vehicle Inspector and whether the vehicle was capable of being tested on road. The very fact that the vehicle was towed from the accident place to the Motor Vehicle Inspector's office by the Accident Recovery Vehicle coupled with the admission of the witnesses that the front right side suspension assembly had broken will show that the right side suspension had been broken. There is no denial of the fact that the right side front wheel suspension assembly had been broken. The witnesses have clearly spoken about the failure of the right side front wheel suspension assembly due to which the driver lost steering control and the vehicle drifted towards right leading to the accident. On the other hand, there is no proof that while the suspension assembly was in good condition, due to the human error on the part of the writ petitioner, the bus dashed against a bus shelter and only in that impact, the suspension assembly of right side front wheel got damaged. There is no evidence on the part of the management that the spring plate assembly of the right side front wheel had not been broken. On the other hand, clear evidence has been adduced on the side of the petitioner to the effect that the spring plate assembly had been broken. The same has also been supported and corroborated by the

management witnesses. Those witnesses, who were examined on the side of the management, have spoken about the fact that there was a big bang under the engine pursuant to which steering control was lost and the vehicle drifted towards the right and hit against the passenger shelter. The same will clearly show that the weak right side front wheel spring plate assembly had broken and it led to the unfortunate accident. The learned Presiding Officer of the Labour Court seems to have acted on surmise stating that since the vehicle had run about 470 kms on that day, the same would speak of the strength of the spring plate assembly and that the spring plate assembly could not have broken as spoken to by the petitioner. The said observation made by the learned Presiding Officer is totally perverse.

13. The Junior Engineer in the Technical Section of the first respondent at its Tiruvallur Depot has clearly admitted the fact that the spring plate assembly was weak and the hanger pin also had come out and that the same had been reported by the drivers. However, he would state that before the vehicle was handed over to the petitioner, the defect was rectified. What were the actual defects and how the defects were rectified had not been elaborated. Clear evidence has been adduced on the side of the petitioner that spring plate assembly was in a bad condition and needed replacement, but the Junior Engineer, after making some minor repairs, asked him to take the vehicle for the trip stating non-availability of spares as the reason for non-replacement. That itself will show that it was the technical staff and Junior Engineer in the Maintenance Section who took the risk by sending the vehicle for the trip without fully rectifying the defect.

14. Of course, for the sake of argument it can be contended that the petitioner after test driving the vehicle in the depot could have refused to take the bus for the trip and asked for a spare bus. But the fact remains that the defects reported by the previous driver was some how rectified by doing welding work and thereafter, the petitioner was asked to take the bus for the trip. As rightly pointed by the learned counsel for the petitioner, the petitioner could not have refused to take the bus when the technical staff including the junior engineer wanted him to take the bus for the trip stating that the defect pointed out by the previous driver was rectified and any refusal on the part of the petitioner would have landed him in trouble as he would be proceeded against for insubordination. This aspect was not properly considered by the learned Presiding Officer of the Labour Court. When a vehicle with weak suspension assembly is driven on the road for quite a long distance, there is every possibility of the suspension assembly being broken. Such an event will happen due to the wear and tear and the jolts in the road. The mere fact that with such defective suspension assembly the vehicle had run more than 400 kms will not justify the opinion that there was no defect in the suspension assembly.

15. For the said reasons, this Court comes to the conclusion that the finding of the learned Presiding Officer of the Labour Court in this regard is nothing but a

perverse finding. A perusal of the report of the Enquiry Officer would clearly show that there was a biased approach and the finding was perverse. The learned Presiding Officer of the Labour Court also has not approached the problem with open mind and the fact that three persons died on the spot and three persons were injured, out of whom one later on succumbed to injuries, weighed with the Presiding Officer of the Labour Court to hold that the accident was not due to any mechanical defect but due to rash and negligent driving of the vehicle. The said finding of the Presiding Officer of the Labour Court is not based on any legally reliable evidence and on the other hand, it is based on surmises. Proper approach would have resulted in a finding that the accident occurred due to mechanical defect on account of poor maintenance which lead to the failure of the front right side wheel suspension and that the same was not due to any rash and negligent act on the part of the petitioner. The learned Presiding Officer of the Labour Court ought to have held that the charges against the petitioner were not proved. There cannot be a better case than this to show perversity in finding. Since the finding of the Enquiry Officer and the finding of the Presiding Officer of the Labour Court are perverse, the writ petition is bound to succeed. For all the reasons stated above, this Court comes to the conclusion that the petitioner is entitled to the issuance of Certiorarified Mandamus as prayed for. In view of the forgoing discussion, this Court comes to the conclusion that the award passed by the learned Presiding officer of the Labour Court confirming the order of dismissal is liable to be quashed. Since, the charges against the petitioner have not been proved, the punishment imposed on him is not justified, and that hence the petitioner is entitled to a direction for reinstatement with continuity of service, back wages and other attendant benefits.

In the result, the writ petition is allowed and the impugned order of the second respondent dated 19.07.2006 made in I.D. No. 375 of 2001 upholding the dismissal order issued by the first respondent is quashed and the first respondent is directed to reinstate the petitioner with continuity of services, back wages and other attendant benefits. No costs.