
(1992) 08 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 12954 of 1992

Jeeva Transport Corpn. Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 27-08-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1994) 2 LLJ 350 : (1993) 1 MLJ 337

Hon'ble Judges : M. Srinivasan, J

Bench : Single Bench

Advocate : Bhagirathi Narayanan, for the Appellant;

Final Decision : Dismissed

Judgement

M. Srinivasan, J.—The petitioner filed an application u/s 33(2)(b) of the Industrial Disputes Act for approval of the order of dismissal

passed by the petitioner against the second respondent herein, who is a driver, for act of misconduct. According to the petitioner, the second

respondent drove the bus in a rash and negligent manner and caused an accident whereby two persons were killed and one person was seriously

injured. According to the second respondent, the accident took place not on account of any negligence on his part but when he was driving the bus

along the left side of the road a buffalo crossed the road all of a sudden and he applied the brakes in order to avert dashing against it At that time, a

motorcyclist and a scooterist, who were coming in the opposite direction, were riding their vehicles rashly and negligently and when the buffalo hit

against the motor cyclist, he fell down and he was caught under the bus. The buffalo's horn was broken and fell on the road. It is also the case of

the driver that the negligence was only on the part of the motor cyclist and

scootcrisr and he had been driving the vehicle carefully in accordance with the road rules.

2. In the domestic enquiry held by the petitioner, the only witness examined by the management was an Engineer by name Ganesan to whom the conductor of the bus was said to have given a report as soon as the accident took place on October 15, 1989. It is stated by the said Engineer that when he got the report of accident, he went to the spot and saw the tyre marks on the road and according to him, the driver would have turned the bus to the right and he would not have applied the brakes as stated by him. According to the Engineer's evidence, the bus was stopped on the right side of the road and the dead bodies were lying there near the bus. No other person who could have given evidence about the accident was examined.

3. The conductor of the bus was not examined as a witness. He was a person present at the spot of the accident and he could have given direct evidence as to how the accident happened. Apart from the conductor, there was another person who had witnessed the accident as is evident from the first information report given to the police. One Vijayagopal son of Viswanatha Konar claimed to have come driving a TVS 50 and he was going from West to East at some distance behind the scooter and the motor cycle and witnessed the accident. He gave information to the police even before the petitioner's people went there. He could have been examined as a witness. Instead of doing so, the management relied only on the evidence of the Engineer, who was not an eye witness. The Engineer was only drawing inferences from the tyre marks on the road and other physical features.

4. It is contended vehemently that the fact that the bus stopped on the right side of the road and the Engineer was not cross-examined by the driver as regards the van coming from the opposite direction will show that a prima facie case has been made out against the driver. According to learned counsel it is sufficient for an applicant u/s 33(2)(b) of the Act to make out a prima facie case for passing of an order of dismissal. According to her, in this case the evidence on record is more than ample to justify the same.

5. The Tribunal has found, after discussing the evidence on record, that the evidence is totally insufficient to hold that the charges are proved. Thus,

the Tribunal has considered the evidence on record and come to the conclusion that the findings recorded by the domestic enquiry officer are perverse. That, the tribunal is entitled to do.

6. Reliance is placed on the judgment in *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . The Supreme Court held that there is no defect in procedure in a domestic enquiry against an employee, the Tribunal, while granting or withholding permission u/s 33 does not sit as a court of appeal, weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is, in order to find out either whether there is a prima facie case or if the findings are perverse. Thus, the Supreme Court has held that the Tribunal is entitled to consider whether the finding of the domestic enquiry officer is perverse or not. The judgment really does not in any way support the petitioner herein. In this case, the Tribunal has further taken into account all the relevant facts and come to the conclusion that the finding of the domestic enquiry officer is perverse.

7. The order of the Tribunal does not suffer from any error apparent on the face of the record and does not warrant interference under Article 226 of the Constitution of India.

8. The writ petition is dismissed.