

(2003) 06 KAR CK 0084

In the Karnataka High Court

Case No : W.A. No. 5762 of 2001 (L/K) C/W W.A. No. 7326 of 2001

Kashiram and Another

APPELLANT

Vs

Karnataka State Road Transport Corporation (Now NEKRTC)
and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2004) 1 LLJ 948

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Subba Rao and Co. and Puttige R. Ramesh, for the Appellant;

Judgement

R.V. Raveendran, J.—These two appeals arise from the common order, dated July 25, 2001 in W.P. No. 3994/2000 and 12100/2000. As the ranks of parties differ, we will refer to the appellant in W.A. No. 5762/2001 and respondent in W.A. No. 7326/2001 as the "workman" or the "driver"; and the respondent in W.A. No. 5762/2001 and appellant in W.A.No. 7326/2001 as "the Corporation".

2. The Corporation issued a charge memo dated April 2, 1990 alleging that on account of the rash and negligent driving by the workman of bus bearing No. MEF 1788 on the Hyderabad-Gulbarga Road on March 10, 1990, an accident occurred resulting in the death of a pedestrian. The workman filed detailed statement of objections dated April 16, 1990 denying the charge. An enquiry was held by an Independent Enquiry Officer (a retired District Judge). The Traffic Inspector who visited the accident spot long after the accident was examined as M.W. I and M-1 to M-5 were marked. On the basis of the evidence, the Enquiry Officer submitted a Report dated March 26, 1998 holding that the Charge of negligence against the workman was not proved.

3. A copy of the Enquiry Report was furnished by the Disciplinary Authority to the workman under cover of letter dated April 1, 1998 proposing to disagree with the findings of the Enquiry Officer. The workman again filed a detailed statement

dated April 6, 1998 requesting that the proceedings be dropped. The Disciplinary Authority, however, disagreed with the finding of the Enquiry Officer and by Order dated April 13, 1998, held the workman guilty of the charge and imposed the punishment of dismissal from service. Feeling aggrieved, the workman approached the Labour Court, Gulbarga, by filing a petition u/s 10(4-A) of the Industrial Disputes Act, 1947 in KID No. 144/1998.

4. The Labour Court, Gulbarga, by Order dated December 2, 1998, held that the Enquiry was not fair and proper in view of the inordinate delay in commencing the enquiry. Thereafter, the Management examined two witnesses. M.W. 1 who was a Traffic Inspector who after the accident, visited the accident site, prepared a sketch of the site and submitted the Report regarding the accident. M.W. 2 was the Disciplinary Authority who passed the order. The sketch prepared by M.W. 1 and the Report of M.W. 1 were marked as exhibits as also the Report of the Enquiry Officer, the show-cause notice, reply and the order imposing punishment. No other document was produced to prove the negligence on the part of the workman. Workman did not tender any evidence.

5. The Labour Court passed an award dated July 2, 1999 holding that the material placed by the Management clearly indicated that the incident was purely an accident and the workman was not responsible and that the management failed to establish that the workman was guilty of negligence. As a consequence, the Labour Court allowed the reference and set aside the order of dismissal and ordered reinstatement with continuity of service. The Labour Court did not however award full back wages. In view of an Article in the newspaper "The Hindu" about the financial difficulties of the Corporation, the Labour Court held that the Corporation was running under loss. It also found that the Corporation had paid Rs. 40,000 with 12% interest as compensation to the person who died in the accident. Therefore, the back-wages was restricted to only 50%.

6. Feeling aggrieved by the non-grant of entire back wages, the workman filed W.P. No. 3994/2000. Feeling aggrieved by the setting aside of the order of dismissal and direction for reinstatement with 50% back wages, the Corporation filed W.P. No. 12100/2000. The learned single Judge has heard and disposed of both the petitions by a common Order dated July 25, 2001. He upheld the finding of the Labour Court that the negligence was not proved. However, having regard to the fact that the Corporation had paid compensation of Rs. 40,000 to the L.Rs of the persons who died in the accident, the learned single Judge did not think it fit to interfere with the award of the Labour Court. As a consequence, both the Writ Petitions were rejected. Feeling aggrieved by the rejection of his Writ Petition, the workman has filed W.A. No. 5762/2001. Feeling aggrieved by the rejection of its Writ Petition, the Corporation has filed WA. No. 7326/2001.

7. On the contentions raised, two questions, therefore, arise for consideration:

(a) Whether the finding of the Labour Court exonerating the workman and holding that the Charge was not proved (affirmed by the Learned single Judge)

calls for interference.

(b) Whether full back wages ought to have been awarded instead of only 50%.

Re: Point (a):

8. The fact that the Bus bearing No. MEF 1788 driven by the workman on March 10, 1990 was involved in an accident resulting in the death of a pedestrian is not in dispute. The workman has however denied the charge and contended that pedestrian walking on the extreme left side of the road in the opposite direction suddenly jumped in front of the bus and therefore, he could not avoid the pedestrian. He also stated that though a case was registered against him in Crime No. 12/1990, subsequently a "B" report was submitted by the police stating that the accident was not caused by any negligence on his part and said "B" report was accepted by the JMFC, Kodangal, by Order dated April 9, 1991. The Enquiry Officer also on the basis of the evidence let in before him found that there was no negligence.

9. We find that there was no valid reason or ground for the disciplinary authority to disagree with the findings of the Enquiry Officer as there was absolutely no evidence in regard to negligence of the driver. The Disciplinary Authority has reached a finding of guilt merely on the ground that (1) the M.W. Report did not disclose any mechanical defect, (ii) existence of tyre marks (Brake marks) on the Road; and (iii) the workman had not adduced any evidence in the enquiry. But it was not for the workman to prove that he was not negligent. It was for the employer to establish the guilt in the enquiry. Be that as it may. The Labour Court found the enquiry to be not fair and proper. On the basis of evidence placed before it, the Labour Court held that the workman was not guilty of the charge and exonerated him from the charge.

10. Learned counsel for the Corporation vehemently submitted that this is a case where the Labour Court ought to have held, by applying the principle of *Res Ipsa Loquitur*, that negligence of the workman was proved. Reliance is placed on the decision of the Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , wherein it was held that though the general rule is that burden of proof is on the person who approaches the Court, if on the facts already established, the proper and natural inference immediately arising therefrom is that the accident occurred on account of the defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous, the maxim *res ipsa loquitur* applies. This was reiterated in *State of Punjab Vs. Modern Cultivators, Ladwa*, . There can be no doubt about the said principle. The question is whether the said principle is of relevance in this case?

11. As noticed above, both the Enquiry Officer and the Labour Court have held that the incident was purely an accident and there was negligence on the part of the driver. Reliance is sought to be placed on the evidence of the Disciplinary Authority who on the basis of the Brake marks, and absence of mechanical

defects reached a conclusion that the accident occurred due to the negligence of the driver. It is understandable as to how the evidence of the disciplinary Authority who passes an order holding that the driver was negligent, can itself be proof of negligence. It is unnecessary to examine this matter in greater detail in view of the concurrent finding of the Enquiry Officer, the Labour Court and the learned single Judge that there was no negligence on the part of the driver. No error is made put. First point is answered in the negative accordingly.

Re: Point (b):

12. When the Labour Court exonerated the driver, from the charge, in the absence of any plea, or evidence of any other gainful employment, reinstatement with back wages should have followed as a matter of course. The Labour Court has acted on the basis of a paper cutting which showed that KSRTC (now "NEKRTC") which is a public sector undertaking was running under loss. No evidence was let in by the Corporation in regard to its alleged unsound financial position. A newspaper cannot be the basis for denying full back wages.

13. The Labour Court and the learned single Judge were persuaded to deny 50% back wages to the workman on account of the fact that KSRTC had made a payment of Rs. 40,000 with interest to the Legal Representatives of the deceased. That by itself cannot be a ground for denying the back wages to the workman, in the absence of negligence on the part of the workman.

14. Learned single Judge felt that the denial of back wages to the extent of 50% was done in exercise of the discretion u/s 11-A and therefore, it could not be interfered with. Exercise of discretion u/s 11-A would arise where a workman having been found guilty the Labour Court finds that the punishment imposed is excessive. The discretion u/s 11-A cannot be used to deny consequential benefits, when a workman has been exonerated of the charge and the Labour Court holds that the workman is entitled to reinstatement.

Conclusion:

15. We accordingly dispose of the appeals as follows:

(i) W.A. No. 5762/2001 is allowed and the order of the Labour Court and the learned single Judge in so far as they deny 50% back wages to the workman is set aside and it is ordered that the workman will be entitled to full back wages. As a consequence the workman will be entitled to reinstatement with continuity of service and full back wages.

(ii) Writ Appeal No. 7326/2001 filed by the Corporation is dismissed.

(iii) The Workman will be entitled to costs in both matters throughout.

16. Sri Puttige R. Ramesh is permitted to file Vakalath for Respondent in W.A. No. 5762/2001 in four weeks.