

(2002) 12 KAR CK 0013

In the Karnataka High Court

Case No : W.A. No's. 7700 of 2001 and 700 of 2002

North West Karnataka Road Transport Corporation

APPELLANT

Vs

B.U. Doni

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Citation : (2003) 3 KCCR 1874 : (2003) 3 LLJ 962

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : P.R. Ramesh, for the Appellant; V.S. Naik, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka J.

1. The Road Transport Corporation is the appellant herein. It has questioned the validity of the award passed by the Labour Court as also the order of the learned single judge by which, the respondent who was serving as driver with the appellant, has been directed to be reinstated despite the fact that he was found to be involved in a fatal accident.

2. The respondent was working as a driver with the appellant- Corporation. On December 27, 1992, he was driving the vehicle of the Corporation bearing registration No. KA 09/F 1185, which was plying from Haliyal to Manki. Near Manchikeri village, the bus met with an accident resulting in death of a doctor who was coming from the opposite direction in a motor cycle. The Assistant Traffic Inspector of Corporation investigated the incident and submitted his report. Based on the report, disciplinary proceedings were initiated against him, and the inquiring officer based on materials placed before him, held that the respondent was guilty of rash and negligent driving. Consequently, the disciplinary authority dismissed the respondent from service. Thereafter, the respondent instead of availing of the appellate or revisional remedies under the statutory regulations raised a dispute before the Labour Court questioning the

legality of the punishment awarded against him.

3. Before the Labour Court, the respondent raised a preliminary issue regarding fairness of the domestic enquiry conducted against him. The Corporation in support of its case placed all the relevant documents to support its stand that not only the enquiry was fair and proper but the respondent was rightly held to be guilty of misconduct. The Labour Court not being satisfied with the plea of the Corporation decided the preliminary issue in favour of the respondent. After so deciding, the Labour Court granted opportunities to both the sides for leading evidence to prove their case.

4. The Corporation relied on the documents, which were produced and marked as exhibits M-1 to M-16. Anyhow, it could not lead any oral evidence for the reason that no eye witness to the accident except the delinquent driver was available to narrate the circumstances under which the fatal accident occurred. The respondent who could have explained the reason and manner of the accident, for reasons best known to him, avoided to come in the witness box. He did not find it necessary even to examine any witness in his defence or to produce any documents in support of his case.

5. Keeping in view the above facts, the Labour Court directed reinstatement of the respondent with 50 per cent back-wages, According to the Labour Court, though causing of accident and death of the motor cyclist in the accident was not in dispute since the Corporation has failed to adduce any oral evidence to prove that the fatal accident had taken place because of rash and negligent driving of the respondent, it came to the conclusion that the Corporation has failed to prove its case. The Labour Court further held that in a case of present nature, even if the factum of accident is not disputed by the respondent, no onus lies on him to lead evidence in support of his defence, namely, that the fatal accident had not occurred because of his rash and negligent driving.

6. In our opinion, the question involved herein regarding onus of proof in cases involving-motor accident is of wider consequence and public interest, therefore, it requires to be deliberated in depth and appropriate detail. In the present case, as already noticed above, involvement of the respondent in the fatal accident is not at all in dispute. Further, it is a matter of record and as is evident from the report of the Inspector of Motor Vehicles, there was no mechanical defect in the vehicle. This being the situation, can it not be said that the Corporation has discharged its initial onus and so the onus shifted to the respondent to lead evidence to show that he was not guilty of rash and negligent driving.

7. The Supreme Court in the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, has held that:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it

happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words "*res ipsa loquitur*" is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will be then for the defendant to establish that the accident happened due to some other cause than his own negligence."

8. In our considered opinion, the above rule of evidence, which is based on rule of prudence and public policy, certainly have full application in departmental proceedings as well. The reasons which have prevailed with the Courts for adopting the above rule of evidence in tort cases equally holds good in departmental proceedings as well where the Corporation beyond a particular limit cannot lead any evidence to prove negligence of a driver employed by it in driving vehicle entrusted to him. It is the driver who can only explain as to how and why the accident occurred and further that negligence cannot be attributed to him. In the present case, the respondent driver has consciously and without any good reason and despite opportunities, advisedly refrained from explaining the reasons causing accident. In our opinion, the Labour Court was wrong in taking the view that the respondent-driver did not have any obligation to lead evidence to dispel charge of negligence.

9. Coming to the facts of the present case, the history sheet of the respondent-driver shows that even earlier he was found involved in four accidents and was subjected to certain penalties. It has also to be remembered that in departmental proceedings, charges are not required to be proved to the hilt. Existence of reasonably acceptable material is sufficient to infer misconduct. This has been well clarified by the Supreme Court in several cases including the case of *State of Haryana and Another Vs. Rattan Singh*, wherein it has been held that at p. 47 of LLJ:

"4. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular Court proceedings but in a fair commonsense way as men of understanding and worldly way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record..."

10. It has also come on record that the Motor Accidents Claims Tribunal, Sirsi, in MVC No. 519 of 1995 has given a finding that the accident had occurred because of rash and negligent driving of the respondent. It has awarded compensation in a sum of Rs. 10,29,184 against the Corporation. Learned counsel for the Corporation states that despite repeated reminders, the respondent did not appear before the Tribunal as a witness to show that there was no negligence on his part.

11. In view of the caution expressed by the Supreme Court in the case of State of Karnataka Vs. Krishna alias Raju, the Courts are necessarily to bear in mind that where a driver of a public transport corporation is found to have caused a fatal accident, the same has to be looked at with certain amount of seriousness. The Courts while dealing with such misconduct on the part of the drivers of heavy vehicles and that too of a public road transport corporation, which is established to ensure public safety and convenience, cannot fall prey to the pleas of misplaced sympathy. Awarding of punishment has to be weighed keeping in view the interest of the public at large and the travelling passengers. The disciplinary actions are taken more as preventive measure so that it may work as an effective warning against other employees to behave befitting their duties and maintaining due discipline in the establishment.

12. In the case of Krishna Raju (supra) while holding that the drivers found guilty of rash negligent driving should be subjected to severe punishment, had held that "consideration of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal judicial system".

13. Again, recently, in the case of Dalbir Singh Vs. State of Haryana, , it has been held that:

"A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and, lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial-Courts, for lessening high rate of motor accidents due to callous driving of automobiles."

14. Keeping in view the facts and circumstances of this case, in our opinion, neither the Labour Court nor the learned single judge was justified in substituting the order of dismissal from service with that of reinstatement with back wages. Accordingly, we set aside the order dated August 9, 2001, passed by the learned single judge and quash the award dated October 1, 1999, passed by the Labour Court. The order of the appellant-Corporation dismissing the respondent from service is restored.

15. In the result, the appeal filed by the Corporation is allowed and that of respondent-driver is dismissed. However, there will be no order as to costs.