

(2012) 04 MAD CK 0109
In the Madras High Court
Case No : Writ Petition No. 10414 of 2012

R. Rajan

APPELLANT

Vs

Presiding Officer, Labour Court, Salem and Another

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2A(2)

Citation : (2012) 4 MLJ 903

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K.V. Shanmuganathan, for the Appellant; V.R. Kamalanathan, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The petitioner has come forward with this writ petition challenging the award dated 12.4.2011 passed by the first respondent/Labour Court in I.D. No. 1 of 2003. The petitioner joined as Driver in the second respondent/transport corporation on 4.5.1993. According to the petitioner, on 28.6.2002, while he was driving the transport corporation bus bearing Registration No. TN 27 N 1060 from Rasipuram to Salem at 10.15 a.m., when the bus was nearing Poimaankaradu, in order to give way to the oncoming lorry, the petitioner turned the bus towards the left side and at that time, according to the petitioner, the steering got locked and he immediately applied brake, with the result, he lost control, and the bus dashed against the parapet wall of a well situated near the road. Out of panic, the passengers in the bus attempted to get down from the bus from all the possible exists, with the result, the bus fell into the well. In the said accident, 8 passengers died on the spot and about 20 passengers sustained injuries. It is the contention of the petitioner that the accident happened beyond his control and he cannot be made responsible for the said accident.

2. The petitioner was issued with a charge memo dated 4.7.2002 by the second respondent, for which he submitted his explanation on 31.7.2002 denying the charges. Not satisfied with the explanation offered by the petitioner, an enquiry officer was appointed to conduct domestic enquiry. According to the petitioner, he could not participate in the enquiry due to his illness and therefore, he sent a representation to the second respondent to postpone the enquiry on medical grounds. However, the second respondent conducted the enquiry by setting the petitioner ex parte. The enquiry officer submitted his report on 14.8.2002 which was also sent to the petitioner along with a second show cause notice dated 28.8.2002 for which the petitioner submitted his explanation on 5.9.2002. Ultimately, the petitioner was dismissed from service by the second respondent by an order dated 6.9.2002. Challenging the order of dismissal, the petitioner raised I.D. No. 1 of 2003 before the first respondent/Labour Court u/s 2A(2) of the Industrial Disputes Act, 1947 and the Labour Court, after hearing both sides and after appreciating the oral and documentary evidence available on record, dismissed the I.D. No. 1 of 2003 by an award dated 12.4.2011. Aggrieved by the same, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner submitted that due to mechanical defect only, the accident had occurred and that the petitioner is not responsible and prayed for setting aside the award and for reinstatement of the petitioner with backwages.

4. I have perused the materials on record. It is seen from the award dated 12.4.2011 of the Labour Court that the petitioner has not opted to lead any oral evidence. In the counter statement filed by the second respondent before the Labour Court, it is stated that the second respondent was willing to lead evidence and the petitioner has not chosen to avail the said procedure. The damage caused to the bus due to the accident was estimated at ` 11 lakhs by the second respondent/corporation. It is also seen that due to the accident, 8 passengers died on the spot and 20 passengers sustained grievous injuries. A criminal case was also registered against the petitioner in Crime No. 586 of 2002 on the file of Mallur Police Station. It is also seen that Claim Petitions have been filed by the injured as well as the legal heirs of the deceased passengers against the transport corporation claiming compensation. It is also seen from the award passed by the Labour Court that a specific finding was given to the effect that the contention of the petitioner that there was a mechanical defect in the bus at the time of accident has not been proved by the petitioner through oral or documentary evidence. Further, in the report filed by the Motor Vehicle Inspector, marked as Exhibit R-4 before the Labour Court, it is clearly stated that there was no mechanical defect in the bus at the time of accident. Even as per Exhibit R-6, Log Sheet of the Accident, no mechanical defect was mentioned by the petitioner. Further, the enquiry officer gave a clear finding under Exhibit R-16 that the fitness certificate for the vehicle was issued only on 25.6.2002 i.e., three days before the date of accident and therefore the petitioner cannot contend that there was a mechanical defect and shift the burden on the management. In

motor accident cases, the burden is on the petitioner, who is pleading that he was not at fault.

5. (a) Similar issue as to whether it is the duty of the driver of the Transport Corporation to prove, if the accident not happened due to the rash and negligent driving, was considered by this Court in the judgment *M. Chella Thambi v. Presiding Officer, Labour Court, Madurai* and Another 2004-4-LLJ (Supp)-362 and in paragraph 8 it is held thus,

8. Insofar as such conduct of the drivers of a public transport corporation are concerned, time and again, it has been repeatedly held that the doctrine of *res ipsa loquitur* would apply, that is, the accident speaks for itself. In other words, when it is in the exclusive knowledge of the driver, who caused the accident, it is but proper that he discharges the onus, namely, that the accident did not happen due to his rash and negligent driving, but due to various other reasons not attributable to him. In fact, in the Division Bench judgment cited by the learned counsel for the second respondent, reference has been made to three decisions of Hon'ble Supreme Court *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, *State of Karnataka Vs. Krishna alias Raju*, and *Dalbir Singh Vs. State of Haryana*, . In the judgment *State of Karnataka v. Krishna* (supra), the Hon'ble Supreme Court has cautioned to the effect 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, since the public safety and convenience is paramount, the Court should not fall a prey to the plea of misplaced sympathy. The Hon'ble Supreme Court has also held that award of punishment has to be weighed keeping in view the interest of the public at large and the travelling passengers and the disciplinary actions are taken more as preventive measure so that it may work as an effective warning against other drivers to behave befitting their duties and maintaining due discipline in the establishment.

(emphasis supplied)

(b) In *B.C. Chaturvedi Vs. Union of India and others*, , the Honourable Supreme Court in paragraph 18, it is held as follows:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases,

impose appropriate punishment with cogent reasons in support thereof.

(c) The burden of proof in the accident cases is on the side of the driver of the bus was the view taken by the Supreme Court in the decision in Managing Director, North East K.R.T.C. v. Devidas Manikrao Sadananda 2007 (2) SLR 441 : LNIND 2006 SC 738 : (2007) 7 MLJ 726. In paragraphs 10 and 11 it is held as follows:

10. In the case of Shyam Sunder and Others v. The State of Rajasthan, (1914) 1 SCC 690, this Court held that the maxim "res ipsa loquitur" does not embody any rule of substantive law nor a rule of evidence. It is resorted to when the accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the driver. It was held that the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages from the defendant if the proper inference to be drawn from the circumstances, which are known is that the accident was caused by the negligence of the defendant. It was held that the fact of the accident may constitute evidence of negligence and in such cases the above maxim applies. The principal function of the maxim is to prevent injustice which would result if the management is compelled to prove the precise cause of the accident, particularly, when the respondent-driver has knowledge of the cause of the accident. This judgment has not been considered by the Division Bench of the Karnataka High Court.

11. In the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , this Court held that where the evidence shows dashing of the vehicle against the tree was so violent that it caused the death of the passengers then the burden rests on the opposite party to show that the cause of the accident could not have been avoided by exercise of ordinary care and caution (See para 5). In the present case no such attempt was made by the driver to show the plea of inevitability, therefore, the Labour Court had erred in misdirecting itself in not invoking the maxim "res ipsa loquitur"

(d) In Cholan Roadways Limited Vs. G. Thirugnanasambandam, , it is held as follows:

21. Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. As noticed hereinabove, the enquiry officer has categorically rejected the defence of the respondent that the bus was being driven at a slow speed.

22. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd. this Court observed: (SCC pp. 750-51, para 6)

6. 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 then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

23. The said principle was applied in *Sarla Dixit v. Balwant Yadav*.

24. In *A.T. Mane* this Bench observed: (SCC p. 257, paras 5-6)

5. ... Learned counsel relied on a judgment of this Court in support of this contention of his in the case of *Karnataka SRTC v. B.S. Hullikatti*. That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time he was found guilty and bearing that fact in mind this Court held thus: (SCC p. 576, para 5)

Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

6. On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the above case and the law laid down therein apply to the facts of the present case also.

25. In *Thakur Singh v. State of Punjab* this Court observed: (SCC p.209, para 4)

4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation, the doctrine of *res ipsa loquitur* comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.

26. The burden of proof was, therefore, on the respondent to prove that the vehicle was not being driven by him rashly or negligently.

(e) The same is the view taken by the Division Bench of this Court in the decision in *K. Ayyavu v. Management of Thiruvalluvar Transport Corporation Ltd., Chennai* 2003 (3) LLN 713 : 2003 4 LLJ 663. The very same view was also taken by this Court in the decision in *S. Arumainathan v. The Managing Director, T. Nadu State Transport Corporation (Villupuram Division-II) Limited, Vellore and Another* and refused to interfere with the order of the Labour Court dismissing the petitioner therein from service by holding that the accident occurred due to the rash and

negligent driving of the petitioner.

6. In the decision in R.S. Saini Vs. State of Punjab and Others, the Supreme Court considered the scope of the writ Court in interfering with the findings of the Enquiry Officer. It is held in that case that the High Court cannot review the evidence and arrive at its own independent finding. Paragraphs 16 and 17 of the judgment (in SCC) read as follows:

16. ...we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

(emphasis supplied)

7. The petitioner raised a plea that due to "act of God" the accident had occurred, for which he cannot be penalised. Such a contention raised by the petitioner is negatived by the Labour Court by stating that it is only due to the rash and negligent driving of the petitioner the accident had occurred in which 8 passengers died and 20 passengers sustained serious injuries. Thus, there is a factual finding given by the Labour Court and the same cannot be termed as a perverse finding. Considering the magnitude of the accident and the findings given by the Labour Court that due to the rash and negligence driving of the petitioner the accident had occurred, I do not find any reason to interfere with the award passed by the Labour Court. At this juncture, it would be appropriate to mention that day by day, road accidents are on the increase due to multifarious reasons. As per the latest information available, number of persons travelled in different types of vehicle in the year 2011 are 1.53 crores and the death due to various motor vehicle accidents are reported as 15,422, apart from

several persons sustaining grievous injuries. The State Government is also taking effective measures to reduce such occurrence of accidents. In fact, in the year 2011 alone, about 3,211 driving licences were temporarily suspended and 275 driving licences were cancelled by the authorities concerned. Thus, it is manifest that earnest efforts are being taken to minimise the number of motor accidents. If any indulgence is shown to drivers who committed accidents, killing passengers or others, it will give wrong impression to persons who are driving motor vehicles without any concern for others precious lives. The Labour Court/Tribunal and Courts are duty bound to bear in mind the public interest than extending misplaced sympathy to the drivers, who commit accident. License granted under the Motor Vehicles Act is only to drive motor vehicles and the same is not a licence to kill people, either passengers or pedestrians, by driving the motor vehicles in a rash and negligent manner. The Labour Court has applied that principle in this case rightly and no interference is called for in this writ petition and the writ petition is dismissed in limine. No costs.

Petition dismissed.