
(2016) 02 P&H CK 0288

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal 5869 of 2014 (O&M).

State of Punjab and another

APPELLANT

Vs

Jaswinder Singh

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Citation : (2016) 2 PLR 711

Hon'ble Judges : Sabina, J.

Bench : Single Bench

Advocate : Rahul Verma, AAG, Punjab, for the Appellant

Final Decision : Dismissed

Judgement

Sabina, J. - Respondent had filed suit for declaration challenging the order dated 30.05.2008, whereby his three annual increments were stopped with commutative effect and the order dated 27.07.2010, whereby his appeal was dismissed by the Appellate Authority.

2. Case of the respondent, in brief, was that he was working as a Driver with the Punjab Roadways. On 05.11.2003, a scootrist struck against the bus No. PB-12-AO- 9724 from behind while the bus was parked on the road (on account of break down). The respondent was on duty on the said bus as a Driver. Due to the accident, pillion rider suffered injuries and later died. The legal representatives of the deceased filed a claim petition and the same was allowed by the Motor Accident Claims Tribunal. The claimants were allowed compensation to the tune of Rs. 2,92,621/- along with interest. On the basis of the said award, charge-sheet dated 10.08.2005 was issued to the respondent. Respondent submitted his reply to the charge-sheet. However, the Inquiry Officer held that the charges levelled against the respondent were proved. Report of the Inquiry Officer was based on no evidence. The punishing authority, relying on the inquiry report, passed the punishment order and the same was upheld by the Appellate Authority. Hence, the suit was filed.

3. Defendants in their written statement averred that the impugned orders had been passed after following the due procedure of law.

4. On the pleadings of the parties, following issues were framed by the trial Court:-

"1. Whether the plaintiff is entitled for declaration as prayed for; OPP

2. Whether the plaintiff is entitled for mandatory injunction as prayed for; OPP.

3. Relief."

5. Parties led their evidence in support of their respective pleas.

6. Trial Court vide judgment/decreed dated 18.03.2013 dismissed the suit filed by the respondent. The First Appellate Court allowed the appeal filed by the respondent and decreed the suit vide judgment/decreed dated 17.05.2014. Hence, the present appeal by the State.

7. I have heard learned State counsel and have gone through the record available on the file carefully.

8. First Appellate Court while allowing the appeal filed by the respondent held as under:-

"I have gone through the file carefully. It is not disputed that the fund was created to meet the immediate liability on account of accidents and to pay compensation to the victims of accident from the fund. As far as the present case is concerned the enquiry report is based upon the order of Motor Accident Claims Tribunal. At page 2 it is mentioned that the bus was out of order and was parked near a bridge on 04.11.2003 at 12.35 p.m. and the accident had taken place on 05.11.2003 early morning at 5.00 a.m. and in the enquiry it was discussed that on 04.11.2003 the driver had given information to the Depot about the brake down and in the inquiry instead of giving finding by the Enquiry Officer himself he has drawn conclusion from the judgment of the Motor Accident Claims Tribunal and mentioned that as per judgment the accident had taken place on 05.11.2003 at 5 a.m. The Yard Master was also examined who deposed that the bus in question left for Amritsar at 12.00 and on account of technical fault the bus was out of order and the Radiator did not cool the engine and, therefore, it was out of order and the information in this regard was given by the driver on 04.11.2003 at 12.35 p.m. itself through telephone. The duty slip was also sent to Workshop Incharge and it was the duty of Workshop Incharge to attend the bus or to remove the same to the workshop and it was not disputed that SSI had signed the same. It was not disputed in the report that the telephone for information was received and in the concluding page the Enquiry Officer had mentioned that the scootrist struck behind the bus and during the inquiry it was not proved whether on account of brake down the bus was parked on the side of the road or not and the learned Enquiry Officer held driver of the bus responsible to prove this fact whereas it was the duty of the department to prove that it was

not parked on the side of the road and finally held him responsible.

After considering the facts and circumstances of the case it appears that the inquiry officer was in hurry to impose the liability. However, department did not examine conductor, the passengers, the site plan was not proved before the Enquiry Officer and it was not proved by the department that the bus was not parked on the side of the road, how come the official who is at the mercy of the department can prove his innocence when the guilt of the employee is not proved itself. Merely, an accident has taken place because it is not sufficient to constitute negligence *ifso facto*. The departmental enquiry is not to toe the line of the judgment passed by the Court and is to apply its mind during the course of enquiry. If the enquiry is cryptic, non speaking, illegal and logical, the Civil Court has the jurisdiction to decide the matter and lift the veil. This Court is of the firm opinion that imposing of liability upon the present appellant and to hold him guilty was illegal, logical and illegal. If the appellant had informed about the brake down it was the responsibility of the Depot to depute the staff or to toe the bus to the Workshop.

Who was responsible for toeing the bus or sending the staff for immediate repairs is not explained. It is not explained in the enquiry that the fault in the bus could have been set right with minor repairs which could have been arranged by the driver or the Conductor by seeking help from a mechanic. In this regard Conductor is not examined who can give the best answer to the question. It is not the case of the department that at the time of accident the parking lights were on and parking lights were in order or the parking lights were not on or the battery was fully charged to ignite the parking lights. It is not proved or explained if the reflectors in case of emergency were provided to put up on the road to the driver and he had not installed/set reflectors. Under the Motor Vehicle Act, it is the responsibility of motor vehicle owner and driver to carry the reflector to put up on the road in case the vehicle is out of order and cannot be removed to a safer place so that the person driving the other vehicle on the road is able to make out that some vehicle is out of order and the said person is able to negotiate the driving accordingly, this is not proved by the department. Therefore, I do not agree with the conclusions drawn by the learned lower Court. As such, the appeal is accepted and the judgment and decree of the learned lower Court are set aside and consequently, the suit filed by plaintiff Jaswinder Singh is decreed with costs to the effect that the order dated 30.05.2008 passed by the Director, State Transport, Punjab, Chandigarh through which penalty of stoppage of three annual grade increments with cumulative effect was imposed and order dated 27.07.2010 passed by the Secretary to Government of Punjab Transport Department and communicated to the appellant vide Endst. No. 11/242/08-3TI/6472 dated 04.08.2010 is illegal and for mandatory injunction directing the defendants to restore his said increments and to pay back his pay illegally deducted. Decree sheet be prepared accordingly. Copy of the judgment be sent with the lower court's record. Appeal file be consigned to the record room.

Pronounced in open court 17.05.2014."

9. The reasons given by the First Appellate court while allowing the appeal filed by the respondent are sound reasons. The Inquiry Officer had submitted the report against the respondent on the basis of the award passed by the Tribunal. Admittedly, the bus was parked on the road on account of technical fault. Respondent had duly informed the workshop incharge with regard to the break down of the bus. The Inquiry Officer was required to examine the case independently and give a finding as to whether respondent was guilty of the alleged misconduct.

10. No substantial question of law arises in this case, warranting inference by this court.