

**(2000) 02 KAR CK 0086**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 29289 of 1999**

The Divisional Controller, KSRTC

APPELLANT

Vs

Sri. Raja Ali

RESPONDENT

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**Date of Decision :** 08-02-2000

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11 A

**Citation :** (2000) 2 KCCR 808

**Hon'ble Judges :** Kumar Rajaratnam, J

**Bench :** Single Bench

**Advocate :** Shireen Zafrullah, for the Appellant; V.S. Naik, for the Respondent

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## Judgement

Kumar Rajaratnam, J.—The writ petition is taken up with the consent of parties.

2. The KSRTC is the Petitioner. The Petitioner-management has preferred this writ petition challenging the award passed by the Labour Court at Annexure-E. By the said award the Labour Court set aside the dismissal of the Respondent and granted full back wages with continuity of service. Aggrieved by this, the management has preferred this writ petition.

3. The Respondent was a driver under the Petitioner-Corporation. On 1.11.1996 around 15-30 hours the driver caused an accident which claimed the life of a pedestrian. The left side of the bumper hit the pedestrian who sustained grievous injuries and was rushed to the Government Hospital, Yemmiganoor, where he succumbed to his injuries.

4. Thereafter Articles of charges were issued to him, which are as follows:

(1) That on 1.11.1996 while you were performing the scheduled duties on route No. 8/9 from Bangalore to Lingasugur via Mantralayam in the bus No. KA 36/F 191, you have utterly failed to exercise proper care and cautions and driving the bus in a rash and negligent manner subsequently a pedestrian came in contact with the left side bumper of the said bus and fell down near Adoni at Peddakalbur

village, and he sustained injuries, who was admitted in the Government Hospital, Yammiganoor, later he succumbed to his injuries.

(2) That due to your sheer negligent and rash driving of the bus a tragic accident occurred wherein a pedestrian succumbed to his injuries for which the KSRTC has faced financial loss to pay the ex-gratia to the family of the deceased.

(3) That you have committed an offence which is hazardous to the human lives and dislocation of the operation of the scheduled bus besides causing more inconvenience to the travelling public.

5. An enquiry was held and the Respondent was found guilty by the Disciplinary Authority and an order of dismissal was passed as per Annexure C dated 17.1.1998. The Respondent challenged the dismissal before the Labour Court by filing a claim petition.

6. The Labour Court on a preliminary issue held that the domestic enquiry was fair and proper. The matter was taken up for hearing and the Labour Court passed an award reinstating the workman with back wages and continuity of service.

7. In this case, the learned Counsel for the Petitioner submitted that once the Labour Court has held that the domestic enquiry was fair and proper, it was not necessary to rely on the evidence of MW-1 to hold that the misconduct was not proved.

8. Afterall MW-1 was not an eye witness and went to the scene after the accident. In a case of this type it would not be possible after long lapse of time for the eye witness to be examined to establish that there was a rash and negligent driving on the part of the Respondent.

9. Learned Counsel for the Respondent made two submissions which requires to be answered by this Court. The first submission was that the Criminal Court had acquitted the Respondent. The second submission was that once the Labour Court came to the conclusion that the charges have not proved, the Respondent would be entitled to full back wages, reinstatement with continuity of service.

10. With the consent of parties I have perused the judgment of the Criminal Court. The Trial Court acquitted the accused-Respondent on the ground that the eye witnesses P Ws-1 to 3 are relatives of the deceased and therefore their testimony cannot be entirely relied upon. PW-10, who was the conductor of the bus did not naturally support the prosecution. I have also perused the other records in the criminal case with the consent of parties. There can be no doubt that the Trial Court at best gave the Respondent the benefit of doubt.

11. The learned Counsel for the Respondent Mr. Naik relied on an unreported judgment of the Division Bench of this Court in Writ Appeal No. 1900 of 1989 dated 5th of June, 1991. This Court held that the fact that the accident was gruesome does not lead to the inference that the driver was responsible for the

accident. It was also submitted by Mr. Naik, the learned Counsel for the workman that the workman had no bad antecedents.

12. In a case of this type where the deceased came in contact with the left side of the bumper of the bus it cannot be ruled out that there must have been some carelessness on the part of the driver and such carelessness may not amount to driving the vehicle in a rash and negligent manner. From the very nature of the accident and taking into account that the impact was on the left side bumper I hold that the workman was careless if not rash and negligent.

13. In these circumstances, it would be appropriate to exercise discretion u/s 11-A of the Industrial Disputes Act and limit the backwages to 25%.

14. Accordingly the award is modified. The order of dismissal is set aside and the Respondent shall be reinstated with continuity of service and all other consequential benefits. The Respondent would be entitled to 25% backwages from the date of dismissal till the date of the award. From the date of the award, the Respondent would be entitled to full back wages till the date of his reinstatement.

15. If the Respondent is not reinstated, the Respondent shall be reinstated within six weeks from the date of receipt of this order. The management shall pay the backwages to the Respondent within three months from the date of receipt of this order. The award is modified accordingly. The writ petition is disposed of accordingly. No costs.