

(2016) 08 MAD CK 0069

In the Madras High Court

Case No : W.A. No. 2302 of 2013 and M.P. No. 1 of 2013

The Managing Director

APPELLANT

Vs

E. Maari

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Citation : (2017) 152 FLR 1010 : (2016) LabLR 1150 : (2016) 3 LLJ 763

Hon'ble Judges : Mr. A. Selvam and Mr. P. Kalaiyarasan, JJ.

Bench : Division Bench

Advocate : Mr. P. Paramasiva Doss, Advocate, for the Appellant; Mr. C. Manohar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. A. Selvam, J.—This Writ Appeal has been directed against the order dated 24.06.2013, passed in W.P.No.502 of 2007, by the learned Single Judge of this Court.

2. The first respondent herein, during the relevant period, has served as a driver of the appellant and he caused an accident on 8.3.1999, which resulted in death of three persons and consequently, a domestic enquiry has been conducted, wherein, it is found that the first respondent has committed the offence mentioned in the charge and ultimately, he has been dismissed from service. The dismissal order has been challenged in I.D.No.375 of 2001, on the file of the second respondent herein.

3. The second respondent, after considering the rival evidence available on record, has dismissed I.D.No.375 of 2001. The order passed by the second respondent has been challenged in W.P.No.502 of 2007, on the file of this Court.

4. The learned Single Judge of this Court, after hearing arguments of both sides and after analysing the available records, has allowed W.P.No.502 of 2007 and thereby set aside the dismissal order and ultimately directed the appellant/Management to re-instate the first respondent/writ petitioner, by way of passing

the impugned order and the same is being challenged in the present writ appeal.

5. The learned counsel appearing for the appellant/Management has contended to the effect that after accident, the concerned Motor Vehicle Inspector has inspected the bus which involved in the accident and he has given his report, wherein it is stated that the accident has not happened due to mechanical defect.

6. The main defence put forth on the side of the appellant/Management is that only due to rash and negligent driving of the first respondent/workman, the entire accident has happened and the Labour Court, after considering the available evidence on record, has rightly upheld the dismissal order passed by the Management, but the learned Single Judge, without properly appreciating the available evidence, has erroneously set aside the dismissal order and therefore, the order passed by the learned Single Judge, is liable to be set aside.

7. The learned counsel appearing for the first respondent/workman has contended that in the instant case, on the side of the Management sufficient evidence has not been forthcoming for the purpose of showing that the accident has happened only due to rash and negligent driving of the first respondent/workman and even the Management has suppressed certain material documents and the learned Single Judge, after considering the vital infirmities found on the side of the Management, has rightly set aside the dismissal order and therefore, the order passed by the learned Single Judge, in W.P.No.502 of 2007, is not liable to be set aside.

8. It is an admitted fact that an accident has happened on 8.3.1999 and due to accident, three persons have passed away and consequently, a domestic enquiry has been conducted against the first respondent/workman, wherein he has been found guilty of charges framed against him and thereafter, he has been dismissed from service. The dismissal order has been challenged in I.D.No.375 of 2001, on the file of the second respondent herein.

9. The second respondent, after considering the rival evidence available on record, has upheld the dismissal order passed by the Management. The order passed by the first respondent has been challenged in W.P.No.502 of 2007.

10. The learned Single Judge has given a specific finding to the effect that there is no sufficient evidence for the purpose of proving that the entire accident has happened only due to rash and negligent driving of the first respondent/workman and ultimately set aside the dismissal order.

11. On the basis of rival submissions made on either side, the Court has to look into as to whether the appellant/Management has clinchingly established that the entire accident has happened only due to rash and negligent driving of the first respondent/workman.

12. It is an admitted fact that on the side of the Management, one of the drivers has been examined as M.W.3 and his specific evidence is that on the previous day he found some parts of the bus in disorder condition and the same has been

written in a log-sheet. Further he deposed in his evidence to the effect that he personally reported the same to the concerned officer.

13. Even though, M.W.3 has given such kind of evidence, for the purpose of disproving the evidence given by him, the Management has not filed any relevant log-sheet. Considering the fact that M.W.3 has given categorical evidence to the effect that there is some mechanical defect in the bus, which caused the accident, the entire burden lies upon the Management to prove that at the time of accident there is no mechanical defect.

14. It is true that after accident, the concerned Motor Vehicle Inspector has inspected the bus which caused the accident and he is of the opinion that the accident has not happened only due to mechanical defect. Simply on the basis of report of Motor Vehicles Inspector and also on the basis of some flimsy evidence available on the side of the Management, the second respondent has upheld the dismissal order. But, as pointed out earlier, the Management has wantonly suppressed the material document which has been spoken by M.W.3. Since the Management has suppressed the material document which has been spoken by M.W.3, this Court is of the considered view that the Management has not at all established the alleged fact that the entire accident has happened only due to rash and negligent driving of the first respondent/workman.

15. The learned Single Judge, after considering the vital infirmities found on the side of the appellant/Management, has rightly given a finding to the effect that the Management has not at all established the alleged fact that due to negligence of the workman, such accident has happened. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant and altogether, the present writ appeal deserves to be dismissed.

16. In fine, this Writ Appeal is dismissed. The order passed by the learned Single Judge, in W.P.No.502 of 2007, is confirmed. No cost. Connected miscellaneous petition is dismissed.