(REPORTABLE)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 6765-66/2014

The Management of TNSTC (Coimbatore) Ltd. .....Appellant

Versus

M. Chandrasekaran ....Respondent

J U D G M E N T

A.M. KHANWILKAR, J.

These appeals challenge the decision of the Division Bench of the High Court of Judicature at Madras, dated 22.11.2013, in Writ Appeal Nos. 2082 and 2083 of 2013.

2. Briefly stated, the respondent was employed as a driver by the appellant on 14.04.1986. While on duty on 15.01.2003, on vehicle TN-38-0702, during a trip from Kovai Ukkadam to Pollachi, near Vadakkipalayam he caused an accident with a car bearing No. TMA

4845 coming from the opposite direction resulting in fatal injuries to persons travelling in that car. Disciplinary enquiry was instituted against the respondent inter alia on the charge of driving the bus in a rash and negligent manner. The Enquiry Officer found the respondent guilty of the charges framed in Charge Memo dated 22.01.2003. The Disciplinary Authority after giving opportunity to the respondent passed order of dismissal on 13.10.2003. The appellant then submitted an application, being Approval Petition No. 480 of 2003, under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the Joint Commissioner Labour (Conciliation), Chennai as an industrial dispute was pending for conciliation before him. The Labour Commissioner, after analysing the material placed before him in the said proceeding noted that the Department only examined two witnesses who were also cross-examined by the respondent. The respondent examined himself as defence witness, but was not cross-examined by the Department. The Commissioner, however, found that the enquiry against the respondent was conducted in accordance with the principles of natural justice and also in conformity with the Standing Orders. While dealing with the quality of evidence adduced by the Department, the Commissioner

found that the same, by no standard would substantiate the charges framed against the respondent. The first witness was the Junior Engineer. He had submitted a site inspection report and stated in his evidence that the car came with speed to the left side from Vadakkipalayam branch road to the main road and then came to the centre of the road. His evidence about the occurrence of accident was on presumption. The second witness examined by the Department was the Assistant Manager. He stated that the bus driver as well as car driver had driven their vehicles speedily. He also stated that car was driven in the middle of the road with speed at the time of accident. The defence of the respondent was that when he was approaching Vadakkipalayam branch road, an ambassador car driven by a 17 year old boy named Sivakumar came on the wrong side of the road at a high speed and, after entering the main road went to the left side of the bus in wrong direction. The respondent, therefore, first thought of driving the bus to the left. But, as some pilgrims were going in a procession on the left side of the road and as the car was being driven rashly and had come to the left side of the bus, he was left with no option except to take the bus to the right side to avoid a head on collision. This

averted a fatal accident to pedestrians and minimized the damage to the car coming from the opposite direction on the wrong side. This also ensured the safety of the bus passengers. In substance, the respondent pleaded that the accident was caused due to unavoidable circumstances and in spite of all precautions and applying his best judgment in maneuvering the vehicle.

3. The Commissioner found that the respondent had deposed about these facts as defence witness, but was not cross-examined by the Department. No eye witness was examined by the Department nor the conductor of the bus or passengers travelling in the same bus were examined by the Department. The Commissioner, therefore, concluded that the finding reached by the Enquiry Officer by merely relying on the evidence of the Junior Engineer and the Assistant Manager (who were not eye witnesses), was perverse. In that, the charges were not proved against the respondent by independent legal evidence of eye witnesses. The Commissioner held that the Enquiry Officer's report was vitiated being perverse. The Commissioner also relied on the decision of the Division Bench of Madras High Court in Writ Appeal No. 2238 of

2000 in the case of **A. Mariasundararaj** vs. **Cheran Transport Corporation Ltd**., which had deprecated the practice of not examining eye witness or other relevant evidence during the enquiry in respect of accident cases by the State Transport Corporation, and as it results in not confirming the charges and punishments awarded against its drivers involved in accidents. The Commissioner, therefore, refused to accord approval for dismissal of the respondent.

4. Being aggrieved by this decision, the appellant-Management preferred Writ Petition No. 2425 of 2010. Even the respondent preferred Writ Petition No. 23155/2009 for issuing writ of mandamus against the Corporation to implement the order passed by the Joint Commissioner of Labour, Chennai dated 25.05.2009 in Approval Petition No. 480/2003; and to reinstate him with continuity of service, back-wages and all other attendant benefits. Both the writ petitions were heard analogously by the learned Single Judge. The Single Judge noted the seven reasons recorded by the Commissioner to disapprove the dismissal of the respondent, as follows: -

"a) Except examining witnesses, who are employees of the petitioner Corporation, the petitioner has not examined any independent witness to prove that the accident took place because of the rash and negligent driving of the 2nd respondent resulting in the death of 9 persons.

b) The Engineer's report, which was marked as Ex. A2 shows that the car came fast from the branch road to the main and came to the centre of the road and the bus was coming on the right side of the road instead of the left side on high speed. The report fixed prime responsibility on the bus driver and part responsibility on the car driver. Though the Junior Engineer, who gave this report, deposed that the car and the bus came with speed, he was not an eye witness to the occurrence and he had described the occurrence only on presumption.

c) P.W.1, the Assistant Manager of the petitioner Corporation, though deposed that the bus driver as well as the car driver had driven the vehicles in high speed, he was also not an eye witness to the occurrence and hence, his evidence also cannot be taken into consideration to fix the responsibility on the 2nd respondent.

d) The conductor of the bus, who could have been examined on the side of the petitioner Corporation, had not been examined.

e) Not even a single passenger of the bus was examined to prove or establish that the 2nd respondent, the driver of the bus, had driven the vehicle in a rash and negligent manner.

f) The Enquiry Officer had relied on the evidence of the Engineer and the Assistant Manager, who were not eye witnesses to the

> *occurrence and their evidence was uncorroborated by any independent witness.*
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> *g) The 2nd respondent had denied that he was responsible for the accident and stated that the ambassador car, which took a left turn from the branch road and came driving to its right side, suddenly turned to the left and therefore, the accident had occurred. However, the 2nd respondent was not subjected to cross-examination."*

5. The Single Judge then opined that the view so taken by the Commissioner was well founded and did not warrant any interference. Reliance was also placed on an un-reported decision of Division Bench of the same High Court in Writ Appeal No. 2238 of 2000 in the case of **A. Mariasundararaj** (Supra). The relevant dictum in that decision has been reproduced in paragraph 7 by the Single Judge, as follows:-

> *"We have to point out that when we come across such accident case, where disciplinary actions are initiated by the State Transport Corporations, invariably except the statement of the inspecting official, the sketch and photographs, no other evidence is placed before the Inquiry Officer. It is also repeatedly being pointed out that in the absence of such independent evidence before the Court, it is difficult for the Court to confirm the punishment awarded as against such erring drivers."*

6. Accordingly, the Single Judge dismissed the writ petition preferred by the appellant and allowed the writ petition preferred by the respondent and issued direction to the appellant Corporation to reinstate the respondent with back-wages and continuity of service and all other attendant benefits.

7. Being aggrieved, the appellant preferred Letters Patent Appeal bearing Writ Appeal Nos. 2082 and 2083 of 2013. The Division Bench affirmed the view taken by the Single Judge. The Division Bench distinguished the decision of this Court in the case of **Cholan Roadways Ltd.** Vs. **G. Thirugnanasambandam**[1] which was pressed into service by the appellant, on the principle of *res ipsa loquitur*. The Division Bench held that merely on the basis of evidence of the Assistant Manager and the Engineer, who were not the eye witnesses, the charges against the respondent remained unsubstantiated. Hence, the writ appeals came to be dismissed.

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1 (2005) 3 SCC 241

This decision is the subject matter of challenge in the present appeals.

8. According to the appellant, the evidence produced by the Department was sufficient to bring home the charge of rash and negligent driving by the respondent on the day of accident. The Commissioner exceeded his jurisdiction in recording a contrary finding while refusing to accord approval to the order of dismissal of the respondent passed by the Department, considering the fact that the accident admittedly caused fatal injuries to passengers travelling in the car. It is contended that considering the seriousness of the charges and the fact that the respondent was driving the bus in a rash and negligent manner, the approach of the Commissioner was hyper-technical. That is not only a manifest error but has also resulted in grave injustice. The respondent on the other hand contends that the Commissioner has applied the well settled legal position that there can be no presumption of misconduct by the employees. That, charge must be proved by the Department during the inquiry. Non- examination of the material witnesses such as eye witnesses present on the spot, conductor and

passengers, travelling on the same bus was fatal. For, it entails in not substantiating the charges against the respondent and failure to discharge the initial onus resting on the Department to prove the charge as framed. According to the respondent, no fault can be found with the tangible reasons recorded by the Commissioner as noticed by the Single Judge (reproduced above); and resultantly, the conclusion of the Commissioner of not according approval to the order of dismissal is just and proper. It is submitted that the Single Judge was justified in allowing the writ petition preferred by the respondent and issuing direction to the appellant to reinstate him with back-wages and continuity of service and all attendant benefits accrued to him.

9. The moot question is about the jurisdiction of the Joint Commissioner of Labour (Conciliation) whilst considering an application for approval of order of punishment under Section 33(2)(b) of the Industrial Disputes Act, 1947. It is well settled that the jurisdiction under Section 33(2)(b) of the Act is a limited one. That jurisdiction cannot be equated with that of the jurisdiction under

Section 10 of the Industrial Disputes Act. This Court in the case of ***Cholan Roadways*** (Supra) observed thus:

> *"18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. Vs R.N. Banerjee (AIR 1958 SC 79). While exercising jurisdiction under Section 33(2) (b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In Martin Burn's case (supra) this court stated:*
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> > *"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham & Carnatic Co. Ltd. Vs The*

Workers of the Company (1952) Lab. AC 490 (F).""

(emphasis supplied)

This judgment was relied by the appellant before the Division Bench. The Division Bench, however, brushed it aside by observing that the principle of *Res ipsa loquitur* is not applicable to the case on hand. That approach, in our opinion is untenable. In that, the said decision not only deals with the principle of *Res ipsa loquitur* but also with the scope of jurisdiction of the Commissioner under Section 33(2)(b) of the Act. It also delineates the extent of scrutiny to be done at this stage to ascertain whether prima facie case is made out for grant or non-grant of approval to the order of punishment. In doing so, the Commissioner could not substitute his own judgment but must only consider whether the view taken by the Disciplinary Authority is a possible view on the evidence on record.

10. In the present case, the sole reason which weighed with the Commissioner was that no independent witness was produced - not even a single passenger of the bus was examined by the

Department. The decision relied by the appellant squarely deals even with this reasoning. It has been held that, in the case of ***State of Haryana & Others Vs. Rattan Singh***[2] the Court held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the Disciplinary Authority invalid. Similar view has been taken in the case of ***Divisional Controller KSRTC (NWKRTC)*** *vs.* ***A.T. Mane***[3]**.** Both these decisions have been noticed in the reported decision relied by the appellant. The burden to prove that the accident happened due to some other cause than his own negligence, is on the employee, as expounded in the case of ***Thakur Singh*** *vs.* ***State of Punjab***[4] referred to in the reported decision. In the reported case relied by the appellant, it has been noted as under:

> *"34. .....In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It*

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2 (1977) 2 SCC 491

3 (2005) 3 SCC 254

4 (2003) 9 SCC 208

> *is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."*

11. Applying the principle stated in ***Cholan Roadways Ltd.*** ***(****Supra),* what needs to be considered is about the probative value of the evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the respondent rashly or negligently. The material relied by the Department during the enquiry supported the fact that the respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the impact was so severe that the two vehicles were extensively

damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied by the Department, as a result of which the doctrine of *Res ipsa loquitur* came into play and the burden shifted on the respondent who was in control of the bus to establish that the accident did not happen on account of any negligence on his part. Neither the Commissioner nor the High Court considered the matter on that basis nor posed unto themselves the correct question which was relevant for deciding the application under Section 33(2)(b). On the other hand, the order of punishment dated 13th October, 2003, *ex facie*, reveals that the report of the Enquiry Officer referring to the relevant material established the factum and the nature of accident warranting an inference that the respondent had driven the bus rashly and negligently. Further, the observation in the unreported decision of the Division Bench of the same High Court was not relevant for deciding the application under Section 33(2)(b). Significantly, the order of punishment also adverts to the past history of the respondent indicative of respondent having faced similar

departmental action on thirty two occasions, including for having committed minor as well as fatal accidents while performing his duty.

12. In our opinion, the Commissioner exceeded his jurisdiction in reappreciating the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority. It was not a case of no legal evidence produced during the enquiry by the Department, in relation to the charges framed against the respondent. Whether the decision of the Disciplinary Authority of dismissing the respondent is just and proper, could be assailed by the respondent in appropriate proceedings. Considering the fact that there was adequate material produced in the Departmental enquiry evidencing that fatal accident was caused by the respondent while driving the vehicle on duty, the burden to prove that the accident happened due to some other cause than his own negligence was on the respondent. The doctrine of *Res ipsa loquitur* squarely applies to the fact situation in the present case.

13. Ordinarily, we would have remitted the matter back to the Commissioner for consideration afresh, but as the matter is

pending for a long time and as we are satisfied that in the fact situation of the present case approval to the order of punishment passed by the appellant against the respondent should have been granted, we allow the application under Section 33(2)(b) preferred by the appellant but with liberty to the respondent to take recourse to appropriate remedy as may be available in law to question the said order of dismissal dated 13th October, 2003.

14. Accordingly, we set aside the impugned decisions of the High Court as well as of the Joint Commissioner. The appeals are allowed in the above terms with no order as to costs.

.....**CJI**
(T.S.Thakur)

.....**J.**
(A.M. Khanwilkar)

New Delhi,
September 2, 2016