



W.P.(MD)No.18315 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18315 of 2016

and

W.M.P(MD)Nos. 13913 & 13914 of 2016

Ravichandran

... Petitioner

Vs.

1. The Director of Health Service,
Sivagangai District – 630561.

2. The Director,
Medical and Rural Health Service,
Anna Salai, Chennai -6.

3. The Chief Medical Officer,
The Government Hospital,
Manamadurai,
Sivagangai District – 630 606.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records pertaining to the recovery proceedings in Na.Ka.No.2303/Pa1/13, dated 24.06.2015 and consequential proceedings in Na.Ka.No.2330/Ki1/2011, dated 01.09.2016 on the file of the 1st respondent and quash the same.



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For Petitioner : M/s.S.A.Ajmal Khan
For Respondents : Mr.P.Thambidurai
Government Advocate

ORDER

This writ petition is filed to quash the impugned order, dated 24.06.2015 in Na.Ka.No.2303/Pa1/13, and consequential proceedings, dated 01.09.2016 in Na.Ka.No.2330/Ki1/2011.

2. Heard M/s.S.A.Ajmal Khan, learned counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the Respondents.

3. The petitioner has joined the service as Dopi in Sivagangai Government Head Quarters Hospital in the year 1988 and thereafter, he was promoted as Hospital Driver, on 27.10.2010. He was driving the Government Hospital Ambulance vehicle bearing Registration No.TN-65-G-0250. On 12.05.2011, when the petitioner was driving the ambulance with patients who were referred from Sivagangai Government Hospital to Madurai Rajaji Hospital.



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Near Sivagangai to Madurai Ring Road Junction, a container lorry bearing Registration No.TN-59-AJ-3165 and one Scorpio car bearing Registration No.TN-22-AX-1848 had dashed the petitioner's vehicle and met with an accident. Due to the rash and negligent driving of the container lorry driver and the Scorpio car, the petitioner's vehicle met with an accident and collapsed. Due to the said accident, the petitioner and his relatives were sustained injuries. Immediately, the petitioner had lodged a complaint on 12.05.2011 in Karupppaurani Police station and the case was registered in Crime No.230 of 2011. One of the injured persons had filed M.C.O.P.No.1250 of 2011 and the Tribunal has granted an award of Rs. 1,58,000/- with 7.5% interest, on 20.12.2012. Likewise, the other injured persons have also filed M.C.O.P. and compensation were awarded. The 1st respondent has issued the impugned order, dated 24.06.2015 stating that the Ambulance was damaged due to the accident and expenditure towards damage which was quantified as Rs.1,43,669/-, which is the loss incurred by the government. Hence the respondents have issued the impugned order of recovery and has also given installments to recover the said amount. Aggrieved over the said recovery order, the petitioner has submitted a representation, dated 06.07.2015. The respondents have declined to consider the same. Hence, writ petitioner is before this Court.



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4. The respondents have filed counter stating that the petitioner did not bring to the knowledge of the higher authorities about the accident, only another driver, namely, Pushpavanam had informed the higher authorities about the accident. The details of the accident were not stated by any witness as well. Therefore, the respondents have come to the conclusion that the accident happened due to the rash and negligence of all the parties. The petitioner had submitted a representation to cancel the recovery order. After consideration, the respondents have rejected the petitioner's claim and directed the authorities to recover the same. Therefore, the respondents submitted that due to the negligence of the petitioner, the said accident has occurred. The Government has incurred expenses to repair the damaged ambulance to the tune of Rs.1,43,669/-. According to the prevailing rules, the said recovery order was passed. Hence, the respondents prayed to reject the writ petition.

5. The first contention that was raised by the petitioner is that without issuing show cause notice the present impugned order was passed, hence the recovery order is liable to be quashed. It is seen from the records that the respondents have straightaway passed the impugned order without issuing any



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notice. Therefore, this Court is of the considered opinion that the impugned order is liable to be interfered and quashed.

6. The next contention that was raised by the petitioner is that in the MCOP, there is a specific finding that the accident has occurred due to rash and negligence driving of the lorry, which means the petitioner has not driven the ambulance in rash and negligent way. The relevant portion is extracted hereunder:

□மனுதாரர் ஜேம்ஸ் தனது உறவினர்களுடன் 12.05.2011ஆம் தேதியன்று காலை 10.15 மணியளவில் சிவகங்கை அரசு தலைமை மருத்துவமனையில் இருந்து மதுரை அரசு மருத்துவமனைக்கு தனது மேல் சிகிச்சைக்காக முதல் எதிர்மனுதாரருக்கு சொந்தமான டி.என்.63-ஜி-0250 TEMO TRUX ஆம்புலன்ஸ் மூலமாக மதுரை நோக்கி வந்து கொண்டிருந்த போது பகல் சுமார் 12.00 மணியளவில் மதுரை-சிவகங்கை ரிங் ரோடு சந்திப்பில் கிழக்கிலிருந்து மேற்கு நோக்கி பயணம் செய்த போது ரிங் ரோட்டில் தெற்கிலிருந்து வடக்கு நோக்கி வந்த 3வது எதிர்மனுதாரருக்கு சொந்தமான டி.எண்.59-ஏ.ஜெ.3165 என்ற லாரியை அதன் ஓட்டுனர் அதிவேகமாகவும், கவனக்குறைவாகவும் ஓட்டி வந்து ரிங் ரோட்டை கடந்து முடிக்கும் நேரத்தில் 1வது எதிர்மனுதாரருக்கு சொந்தமான ஆம்புலன்ஸ் மீது மோதிவிட்டது. இதனால் 1வது எதிர்மனுதாரருக்கு சொந்தமான மேற்படி ஆம்புலன்ஸ் நிலைதடுமாறி மதுரை-சிவகங்கை மெயின்ரோட்டில் நிறுத்தி வைக்கப்பட்டிருந்த



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வாகனங்கள் மோதி கவிழ்ந்துவிட்டது. இதனால் மனுதாரருக்கும் அவருடன் வந்த அவரது உறவினர்களுக்கும் பலத்த காயங்கள் ஏற்பட்டது. இதனால் இம்மனுதாரர் எதிர்மனுதாரர்களிடம் ரூ.1,50,000-கோரியுள்ளார்.□

7. When the tribunal has rendered a specific finding that the petitioner has not driven the vehicle in rash and negligent way the petitioner cannot be liable for such damages. Hence, the recovery order cannot be sustained in law. Hence, this Court is of the considered opinion that the impugned order is liable to be interfered with.

8. The next contention of the petitioner is that the respondents have claimed that the petitioner has not informed the higher authorities about the accident. But the learned counsel appearing for the petitioner submitted that the First Information Report was registered based on the information given by the petitioner alone. On perusal of the First Information Report, it is seen it was registered on the instance of the petitioner alone. Hence, the impugned order is liable to be quashed.



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9. Accordingly, this Writ Petition is allowed. The impugned order, dated 24.06.2015 in Na.Ka.No.2303/Pa1/13, and the consequential proceedings, dated 01.09.2016 in Na.Ka.No.2330/Ki1/2011, are hereby quashed. In spite of interim stay was granted at the time of admission, the respondents have recovered some amount through installments. Therefore, the respondents are directed to repay the same to the petitioner forthwith. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
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05.04.2023

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