

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18039 of 2012
Date of decision : 06.02.2015

Jai Pal Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr.Mohinish Sharma, Advocate
for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

This petition seeks quashing of order dated 02.06.2009 (Annexure P-5), by which the petitioner has been held partly responsible for causing a total loss of Rs. 10.85 lacs to the respondents and a recovery of 30% of the said amount, i.e. amounting to Rs.3,54,184/-, has been ordered to be recovered from him.

2. The petitioner was employed as a driver with the respondent department, till the time of his retirement on 31.03.2008.

On 18.07.2005 he was driving truck No.HRM-8866, which met with an accident with a scooter (HR-11B-185), as a result of which the person riding the scooter died due to the injuries sustained in the accident.

3. Consequent upon the above, firstly, FIR No.137, dated

18.07.2005, was registered against the petitioner in respect of an offence punishable under Sections 279/304-A IPC, at Police Station City Gohana.

Further, a claim petition was instituted by the legal representatives of the deceased S.K. Sharma, before the learned Motor Accident Claims Tribunal, Sonipat, which passed an Award in favour of the claimants, granting them a compensation of Rs.10,85,000/-, with interest @ 6% per annum.

A perusal of the said Award (Annexure P-1 annexed with the petition), shows that it was passed, holding the petitioner negligent in driving, primarily on the basis of the fact that an FIR stood registered against him, and on the basis of the testimony of PW4, who was stated to have been riding pillion on the scooter.

4. Soon after passing of the Award on 10.08.2006, a charge-sheet was issued to the petitioner on 18.10.2006, a copy of which has also been annexed with the petition. The charge-sheet proposed to take action against the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules 1987 (for imposing a major punishment), with the first charge being that, he being incharge of truck No.HRM-8866, allowed the same to be plied without insurance, and as a result of the accident, the department had to pay compensation awarded by the learned MACT.

5. Learned counsel for the petitioner specifically pointed out that there was no a charge against the petitioner that he was negligent in driving the truck, thus leading to the accident.

6. The petitioner submitted his reply to the charge-sheet, after considering which the 3rd respondent imposed a “provisional punishment” of recovering the amount of compensation awarded by the learned MACT,

against the following officials:-

- i) Sub-Divisional Officer - 40% of the loss
- ii) Junior-Engineer - 30% of the loss
- iii) Driver (petitioner) - 30% of the loss

The Sub-Divisional Officer and the JE were also issued charge-sheets on the same basic charge, that due to non-insurance of the vehicle, the department had to bear the liability of payment of compensation to the legal representatives of the victim who unfortunately died in the accident.

The punishment proposed was approved/confirmed by the 5th respondent, i.e. the Superintending Engineer, on 02.06.2009, after the petitioner had retired from service.

7. In the meanwhile, the petitioner was acquitted in the criminal case registered against him, by the trial Court, on 18.07.2005.

8. Learned counsel for the petitioner points out that recovery has been ordered from the petitioner to the extent of 30% of the loss caused, even though, firstly, the vehicle which he was driving did not stand in his name but in the name of the XEN, W.S., Mechanical Division, Karnal, as admitted by respondents in their reply. Thus, the primary responsibility for ensuring that the vehicle was roadworthy in terms of an insurance policy having been purchased in respect of the same and a certificate of fitness having being obtained from the District Transport Officer, was the responsibility of the owner.

Learned counsel for the petitioner further points out that in the reply filed, the respondents have stated that though the XEN was the owner, the charge of the vehicle had been entrusted to the Junior Engineer. He

further points out that, strangely, though the XEN was the registered owner of the vehicle, not even a charge-sheet was issued to him for non-completion of the requisite papers of the vehicle, i.e. the insurance policy and certificate of fitness. Only the SDO, the Junior Engineer and the petitioner were charge sheeted; and the SDO, who was the senior most officer after the XEN, was exonerated by the 1st respondent, i.e. the Financial Commissioner and Principal Secretary to the Government of Haryana, vide order Annexure P-6, which gives no reasons for dropping the charges against him.

Learned counsel further points out that after the above, the Junior Engineer, in whose charge the vehicle in question was entrusted, even as per the reply of the respondents, approached this Court by way of filing CWP No. 19791 of 2010, which was decided in his favour vide order dated 24.02.2012 (Annexure P-7), holding that the said J.E. (one H.C.Arora) has been discriminated against while making recovery from him, whereas the charge-sheet against Sh. R.P.Gupta, SDO, had been dropped.

He thus points out that once the person in whose ownership the vehicle was and in whose charge it had been admittedly entrusted, had been exonerated and no recovery was made from them, even though getting the vehicle insured and fitness certificate issued was their primary responsibility, the petitioner, who was only the driver, cannot be foisted with the liability and no recovery, thus, can be ordered against him.

Though learned State counsel has vehemently opposed the petition, on the ground that it was the petitioners' duty to have the fitness certificate and insurance certificate issued, I cannot agree with what he has

submitted, in view of the fact that a driver cannot be held responsible for non-insurance of a vehicle or non-obtaining of its fitness certificate, which is the responsibility of the owner or of the person to whom it is stated to have been entrusted.

However, upon query as to why the petitioner should not be held liable in view of the fact that the accident was admittedly caused while he was driving the vehicle in question, learned counsel for the petitioner has submitted that, firstly, as already noticed hereinabove, the recovery of the compensation amount has not been ordered against the petitioner as a result of any negligence in driving as is obvious from a perusal of the charge-sheet issued, but only on account of the fact that he was a driver of the vehicle, and as such, as per the respondent, it was his duty to have the same insured, along with the Sub-Divisional Officer and the Junior Engineer, to whom the vehicle was entrusted, even though it was in the ownership of the XEN.

He further submitted that even as per the finding of the trial Court, in the case arising out of the FIR registered against the petitioner, vide its judgment dated 10.01.2008 (Annexure P-2), the complainant and another eye witness turned hostile, stating that they did not know as to which vehicle had caused the accident with the scooter on which the complainant was a pillion rider, while it was driven by the deceased (S.K.Sharma). In view of the above, the petitioner was acquitted of the charges framed against him under sections 279 and 304-A IPC.

He further submitted that, in fact, the complainant, who turned hostile in the criminal proceedings, was the one who had appeared as PW4, before the learned MACT, Sonipat.

9. Having heard learned counsel for the parties and having gone through the pleadings on record, I am of the opinion that this petition deserves to be allowed.

I am in agreement with the contention of learned counsel for the petitioner, to the effect that, admittedly, the punishment of recovery ordered against the petitioner was not on account of any negligence in driving the vehicle, at the time of the accident, but on account of the fact that the liability of paying the compensation came upon the respondents, on account of non-insurance of the vehicle. In fact, that is the specific stand taken by the respondents even in the reply to the petition, wherein the entire defence in favour of the order of recovery against the petitioner, is on account of negligence in not getting the vehicle insured.

10. Thus, in the opinion of this Court, since it is not the case of the respondents at any stage, right from the issuance of the charge-sheet to the reply they have filed to the present petition, that the recovery is being made not on account of any negligence in driving, by the petitioner, that cannot be held to be a cause for recovery from the petitioner, as sought to be argued by learned State counsel, since the petitioner in any case, had no opportunity, in the disciplinary proceedings, to reply to any such allegation, which has only been raised, for the first time, in this Court, by way of oral arguments.

The sole ground for recovery ordered from the petitioner, being on account of non-insurance of the vehicle that he was the driver of, in my opinion, he cannot be foisted that liability, for the reasons already given hereinabove; viz., that he was not the owner of the vehicle nor the person entrusted with responsibility of the same, except to the extent of driving it;

such responsibility, admittedly even as per the reply filed, being that of the Junior-Engineer. Thus, with the XEN (the owner of the vehicle) not having been charge-sheeted at all on this count and the charges against the next officer, i.e. the Sub-Divisional Officer having been dropped by the Government, and the Junior-Engineer having been held not to be liable on account of discrimination, by this Court, in CWP No.19791 of 2010, the petitioner, who is at the lowest rung of the hierarchy, cannot be foisted with responsibility for non-insurance of the vehicle.

11. Consequently, the writ petition is allowed, the impugned order, Annexure-P5, is quashed and the recovery ordered to be made from the petitioner as per the said order is held to be illegal.

The respondents are, therefore, directed to refund the petitioner the sum of Rs.3,54,184/- as has been ordered to be recovered from him, along with the interest @ 6% per annum, within a period of three months from the date of receipt of a certified copy of this order.

06.02.2015

amit rana /dinesh

**(AMOL RATTAN SINGH)
JUDGE**