

CWP No.8049 of 2012

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.8049 of 2012
Date of decision:18.03.2015**

Harwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.K.Aurora, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner has challenged the validity of the orders dated 09.09.2009 and 22.02.2010 while seeking issuance of a writ in the nature of *certiorari* and prayed for a direction to the respondents to refund the recovered amount of ₹1,00,000/- from gratuity along with interest @ 12% per annum.

In brief, the petitioner was employed as a driver in the Punjab Roadways. He was driving the bus bearing registration no.PJG-1961 which met with an accident with Car No.CHF-3113 at Pandoga in which two persons were injured. They filed their claim petition which was allowed by

CWP No.8049 of 2012

[2]

the Motor Accident Claims Tribunal (here-in-after referred to as the “Tribunal”) vide order dated 27.05.1993 as per which the Transport Department had to pay compensation of ₹19,884/- to injured Bala Dutt and ₹95,442/- to Prithi Pal Singh along with interest @ 12%. A departmental inquiry was initiated against the petitioner for causing financial loss to the department. The Inquiry Officer held the petitioner liable to pay the amount of claim and on the basis thereof, the impugned order dated 09.09.2009 was passed for recovery of ₹1,00,000/- from the gratuity of the petitioner on the recommendation of the Committee, which has been maintained by the Appellate Authority while dismissing the appeal filed by the petitioner vide the impugned order dated 22.02.2010.

It is alleged by the petitioner that in the past also, while he was driving the bus bearing registration No.PB12-8309 from Nangal to Hoshiarpur, on 20.12.1999, an accident took place near Chak Sadhu in which the driver of the scooter and a woman died. An FIR No.292 dated 20.12.1999 was registered against the petitioner under Sections 279 and 304-A IPC in which he was acquitted by the learned trial Court vide judgment dated 01.02.2001. In the present case also, the SDJM dismissed the criminal case registered against the petitioner on 13.01.1992.

Counsel for the petitioner has argued that one criminal case registered against the petitioner vide FIR No.225/1990 dated 15.08.2010, under Sections 279/337/338 IPC was dismissed by the SDJM on 13.01.1992 and in the other criminal case registered vide FIR No.292 dated 20.12.1999, he was acquitted. It is further submitted that in the present case, the

CWP No.8049 of 2012

[3]

accident took place due to rash and negligent driving of the Maruti car by its owner but still the penalty of ₹1,00,000/- has been imposed upon him which has already been recovered from the amount of his gratuity. In support of his submissions, he has relied upon a judgment of this Court in the case of **Kulwant Singh Driver v. Municipal Corporation, Amritsar and another**, 2011(3) R.C.R. (Civil) 552.

On the other hand, counsel for the respondents has submitted that in two separate accidents, caused due to rash and negligent driving of the petitioner, the State had to pay the amount of ₹19,884/-, ₹95,442/-, ₹2,59,859/- and ₹1,93,386/- along with interest. It is alleged that the liability of the driver is joint and several along with the owner of the vehicle and as per Rule 2.33 of Chapter IX, Vol. 1 of Punjab Financial Rules, every government servant is personally responsible for the loss sustained by the Government on account of negligence of employees. The said Rule 2.33 is also reproduced in para 2 of the reply filed by the respondents, which reads as under:-

“Whether loss suffered by Department as a result of payment of compensation can be wholly or part recovered by the employer from the employees on the plea that the employee was negligent – held Yes”.

In support of his submission, counsel for the respondents has relied upon a Division Bench Judgment of this Court in the case of **Sampuran Singh v. The State of Punjab and another**, 2009(3) SCT 137.

It is also submitted that the inquiry was properly held and the

CWP No.8049 of 2012

[4]

impugned orders have been passed in accordance with law. It is further argued that the decision in the criminal case is not binding on the decision of the Civil Court.

Counsel for the petitioner has submitted that the decision in the case of **Sampuran Singh's case (supra)** has been considered by the Single Bench of this Court in **Kulwant Singh Driver's case (supra)** in which it has been held that acquittal of the employee of the charges under Section 304-A IPC should have been considered to hold as to whether the act of negligence causing accident constitutes misconduct or not, making the employee liable for punishment.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that the petitioner has been held negligent by the Tribunal for causing the accident. It is also not disputed that a regular inquiry was conducted by the department against the petitioner for driving the bus rashly and negligently, causing financial loss to the Government. The Inquiry Officer found the petitioner guilty in his report. The Government constituted a Committee vide letter dated 20.03.2002 for looking into the guilt of the employees in which the case of the petitioner was considered by the Committee in the meeting held on 21.09.2007 and recommended recovery of ₹1,00,000/- from the amount of gratuity of the petitioner for causing financial loss to the Government. On the recommendation of the Committee, a show cause notice was issued to the petitioner on 29.07.2009 under Rule 3 of the Punjab Civil Services

CWP No.8049 of 2012

[5]

(Punishment and Appeal) Rules, 1970 (here-in-after referred to as the “Rules”) . The petitioner was heard on 09.09.2009 and the recommendation of the Committee was upheld by the Director, State Transport Punjab, Chandigarh for the recovery. The petitioner preferred appeal against the order dated 09.09.2009 which has also been dismissed by a detailed order by the Secretary, Transport Department on 08.02.2010, which was conveyed to the petitioner on 22.02.2010. It is also not in dispute that the petitioner has not challenged the instructions dated 21.03.2002 and Rule 5 of the Rules, which are reproduced as under:-

Rule 5 of the Rules

“Rule 5. Penalties:- The following penalties may, for good and sufficient reasons, and as hereinafter, be imposed on a Government employee namely:-

Minor Penalties

- (i) Censure;
- (ii) Withholding of his promotions;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) withholding increments of pay without cumulative effect.”

Instructions dated 21.03.2002

“No.14/148/2001-1FEI/2601
GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(FINANCE EXPENDITURE-I BRANCH)

CWP No.8049 of 2012

[6]

Dated, Chandigarh, the 21.3.2002

All Heads of Departments,
Commissioners of Divisions,
Registrar, Punjab & Haryana High Court,
District & Session Judges and
All Deputy Commissioners in the State.

Subject: Payment of half of compensation money by
the driver of the Government vehicle
responsible for an accident.

Sir,

I am directed to refer to the subject noted
above and to say that in order to safeguard public
interest, it is made mandatory that in case any court
comes to the conclusion that the driver of a Government
vehicle was squarely responsible for an accident, the
concerned driver will have to pay atleast half of the
compensation money awarded by the Court.

Sd/-

Under Secretary Finance(c).”

The petitioner has solely relied upon the decision of this Court
in **Kulwant Singh Driver's case (supra)**. In the said case, Kulwant Singh
was an employee of the Punjab Roadways, Amritsar Depot. He was on
deputation with the Municipal Corporation, Amritsar since the year 1975.
On 18.08.1983, while driving the bus bearing registration No.PYE-5506,
belonging to the Municipal Corporation, Amritsar, he met with an accident
with a cyclist, namely, Kartar Singh, who received injuries and subsequently
died. The legal heirs of Kartar Singh instituted a claim before the Tribunal
which was allowed on 16.01.1987 to the tune of ₹36,000/- along with

CWP No.8049 of 2012

[7]

interest @ 12% per annum from the date of filing of the petition till the actual date of payment. The employer along with the driver was held jointly and severely liable to satisfy the award and in the execution thereof, the Municipal Corporation, Amritsar paid ₹51,120/- to the widow and daughter of the deceased Kartar Singh towards discharge of the claim. The employer of the driver Kulwant Singh served a notice to him on 12.05.1989 to show cause as to why the amount be not recovered from his salary @ ₹500/- per month. After taking his reply, the order was passed for deducting ₹500/- per month from the salary of the driver to recover the loss. The said order was challenged by Kulwant Singh before the High Court by way of writ petition.

It was, *inter alia*, argued by counsel for Kulwant Singh that once the Municipal Corporation was taking a plea in the written statement before the Tribunal that the driver was not negligent and even in the appeal filed before the High Court against the order of the Tribunal that Kulwant Singh was not negligent, the liability should not have been imposed upon him. The decision of the Division Bench of this Court in **Sampuran Singh's case (supra)**, relied upon by counsel for the respondents in this case as well, was also referred to and it was ultimately held that the instructions dated 21.03.2002 cannot be relied upon because it was not in vogue when the accident took place. It was also observed that the finding of the Tribunal *ipso facto* should not have been relied upon for imposing a punishment of recovery as it was incumbent upon the employer to hold as to whether the act of negligence or error of judgment which caused accident,

CWP No.8049 of 2012

[8]

constituted misconduct or not, making the employee liable for punishment of recovery. It has also been observed that the past conduct of the employee should also be taken into consideration.

In **Sampuran Singh's case (supra)**, the petitioner was serving as a driver in the Punjab Police. He was deputed on 26.04.2003 to take CBI staff from Patiala to Nabha. On the way, the accident took place between the official jeep bearing registration No.PB-11S-7220 being driven by the petitioner therein and the scooter bearing registration No.PB-11S-1880 being driven by one Manju Bala with a pillion rider. In the accident, occupants of the scooter suffered injuries and a criminal case was registered against the driver. The Tribunal allowed the claim petition and awarded a sum of ₹2,65,000/- as compensation to the injured. The department served a show cause notice to the driver to recover 50% amount of the compensation from his salary. It was sought to be argued that the State, being owner of the vehicle, should have got the vehicle insured against third party risk. This Court, while relying upon Rule 5 Part (III) of the Rules and instructions dated 21.03.2002, held the driver liable to pay 50% amount of the compensation.

In the present case as well, the petitioner was involved in the accident twice and has caused loss to the State. There is no challenge either to the Rule 5 of the Rules or the instructions dated 21.03.2002 and the recovery has been ordered after a regular inquiry conducted by the department in which the negligence of the petitioner has been proved. The recovery has been ordered to be effected by a duly constituted Committee

CWP No.8049 of 2012

[9]

and a finding of fact recorded in the inquiry report has been upheld in appeal.

Thus, to my mind, the judgment relied upon by counsel for the petitioner in **Kulwant Singh Driver's case (supra)** is not applicable as in that case no departmental inquiry was held to hold negligence of the driver and the recovery was ordered only on the basis of the finding recorded by the Tribunal and the Court had held that acquittal of the driver from the criminal case should have been considered. In that case also, there was no challenge to the instructions dated 21.03.2002 or Rule 5 of the Rules but the learned Single Judge has held that the judgment in **Sampuran Singh's case (supra)** would not be applicable because the accident took place before issuance of the the instructions on 21.03.2002, whereas in **Sampuran Singh's case (supra)** the Court has relied upon Rule 5 of the Rules besides the instructions dated 21.03.2002 and after a regular inquiry.

In view of the aforesaid, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

March 18, 2015
vinod*

(**Rakesh Kumar Jain**)
Judge