

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

**CWP No.3438 of 2007
Decided on :06.06.2016**

Swaran Singh

... Petitioner

Versus

State of Punjab and others

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. D.K. Bhatti, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner challenges the order dated 18.12.2002 (Annexure P-1), whereby recovery of ₹42,988/- was ordered to be made by respondent No.3 from the petitioner, who is a retired Station House Officer. Resultantly, the refund of the amount recovered is sought by filing the present writ petition.

The recovery was on the basis that an award had been passed in favour of one Baljit Singh on 19.04.2000 (Annexure P-2), wherein a sum of ₹1,70,169/- was awarded on account of the injuries suffered by the said claimant. The respondents have not filed any reply to controvert the pleadings.

The said claimant was a occupant of the Allywn Nissan No. PB-11B-7826 and the Deputy Commissioner, Fatehgarh Sahib and Senior Superintendent of Police and the SHO, Mullanpur, were arrayed as respondents No.1 to 3, on the ground that respondents No.2 and 3 were the

owners of the vehicle. Resultantly, the respondents were held jointly and severally liable for the payment of compensation. The official respondents in the claim petition by virtue of the award had been given a right to deduct the payment already made or to be made in future on the basis of the bills submitted by Baljit Singh for reimbursement of the medical bills. On the basis of the said award, the impugned order was passed, on the strength of communication dated 17.06.2002 (Annexure P-3). Four shares were made of the awarded amount and strangely the share proportion of the Deputy Commissioner, Fatehgarh Sahib and SSP, Fatehgarh Sahib was got adjusted by the department. The balance amount of ₹85,976/- falling in two shares were to be recovered from the petitioner who was the SHO and the delinquent driver Darshan Singh, who had been arrayed as respondent No.4 in the claim petition.

It is a matter of record that the petitioner was never arrayed as in person, but only in official capacity. The negligence on the part of Darshan Singh could not have been fastened upon him in any manner as is done by the said State by passing the impugned order and the recovery has thus been made in an absolutely illegal manner.

As noticed above, if the recovery was to be done from all officials, then why on what basis the amount was not recovered from the Deputy Commissioner and the SSP. The liability, if any, could have been fixed upon Darshan Singh, since he was the driver of the official vehicle for his rash and negligent act and the State could have recovered the amount from him. But to fix the responsibility upon the petitioner

without him even being a party before the Tribunal is not justified. The recovery in this manner cannot be sustained. He has been condemned unheard only on account of the fact that the vehicle was under his ownership and control in an official capacity and, therefore, the recovery of ₹37488/- vide order dated 18.12.2002 (Annexure P-1) is not justified. It was also noticed vide the said order that the recovery of ₹5,500 had already been made, as per the last pay certificate.

Resultantly, the present writ petition stands allowed. The respondents shall refund the amount of ₹42,988/- to the petitioner alongwith interest @ 10% per annum from the date the amount was recovered. The said amount be paid to the petitioner within a period of 3 months from the receipt of the certified copy of this order.

JUNE 06, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE