

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34115 of 2004
and
WPMP.No.41241 of 2004

A. Subramanian

..Petitioner

Vs.

1. The Secretary,
Health Department,
Fort St.George,
Chennai - 9.

2. Director of Medical and Rural
Health Services,
Chennai - 6.

3. The Joint Director of Health Services,
Kancheepuram.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the impugned order of the third respondent dated 27.09.2004 in Ref.No.14860/E1/95 and quash the same and consequently direct the respondents to pay the compensation claimed in respect of the accident that occurred on 06.04.1995 and the claim made in MACTOP.No.144/95 and 146/96 on the file of the Additional District Judge, Fast Track Court No.II, Kancheepuram.

For Petitioner : Mr.S. M.Loganathan

For Respondents : Mr.M.Elumalai,
Government Advocate

O R D E R

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order of the third respondent dated 27.09.2004 in Ref.No.14860/E1/95 and quash the same and consequently direct the respondents to pay the compensation claimed in respect of the accident that occurred on 06.04.1995 and the claim made in MACTOP.No.144/95 and 146/96 on the file of the Additional District Judge, Fast Track Court No.II, Kancheepuram.

2. The case of the petitioner is that the petitioner joined the Government services and has been working as a driver in the Government Head Quarters Hospital, Kancheepuram. While the petitioner/driver was on duty on 06.04.1995, the vehicle bearing Regn.No.TMG 4300 plying on the Madras Bangalore High Road near sunguvarchathiram, some of the students, who came in an opposite direction, quarrelled among themselves which resulted in the dashing of the vehicle against them, out of which, two students sustained injuries. The injured students have filed petitions in MCOP.Nos.144/1995 and 146/1995 before the Additional District Court, Fast Track Court II, Kancheepuram. Thereafter, on instruction of the third respondent, the petitioner was summoned by the Department which directed the petitioner to appear before Court for defence side evidence. However, the Court has awarded a compensation of Rs.10,000/- in respect of MCOP.No.144/1995 and Rs.4,39,200/- in respect of MCOP.No.146/1995. Thereafter, as per the opinion of the learned Government Advocate, the 3rd respondent did not make an appeal against the award since the award in claim petition made by one of the claimants is very normal. However, it fixed the liability on the petitioner to pay a sum of Rs.10,024/-

3. Learned counsel for the petitioner would submit that the petitioner is not liable to pay any amount since it is for the employer to pay the amount and the respondents vicariously liable to pay the compensation amount. The employer cannot compel the petitioner to pay the amount. In support of his decision, he relied upon the judgement in the case of State of Maharashtra and Others Vs.Kanchanmala Vijaysing Shirke and Others reported in (1995) 5 SCC 659. The relevant portion in paragraph No.19 of the decision reads as follows:

19. The crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the

vehicle had been fully authorised to driver the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which State Government, who was also going on an official duty, to driver the jeep, when the accident took place. Once it is established that negligent act of the driver and respondent was "in the course of employment", the appellant-State shall be liable for the same."

4. On perusal of the judgement and the present case on hand before this court which is similar to the one where the employer is vicariously liable for the authorised act i.e., in the course of employment. Accordingly, the employer is liable to pay compensation to the victim applying the ratio laid down in Hon'ble Supreme Court. Therefore, I am inclined to interfere with the order passed by the third respondent dated 27.09.2004 and accordingly, the recovery order is set aside.

In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gv
To

1. The Secretary,
Health Department,
Fort St. George,
Chennai - 9.

2. Director of Medical and Rural
Health Services,
Chennai - 6.

3. The Joint Director of Health Services,
Kancheepuram.
+1 CC to Govt. Pleader sr 70619.

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SKS (CO)
sp (24/10/2017)