

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 27_OF 2017

Mirza Akhatar Baigh S/o Sardar Baig ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr.R.P. Bhumkar, Advocate for Petitioner
Mr.S.G.Karlekar, A.G.P. for Respondent No. 1
Respondent Nos. 2 to 4 served.

**CORAM : S.V.GANGAPURWALA AND
A.M.DHAVAL, JJ.**

DATE: APRIL 24, 2018

PER COURT :

1. The petitioner assails order passed by the Maharashtra Administrative Tribunal dismissing the original application.
2. The present petitioner is under employment in the office of the Executive Engineer, Jaikwadi Project i.e. respondent No. 1 as a driver since 1985. The respondent No.1 started recovery of the amount by deducting Rs. 692/- per month from his salary in view of the decree passed in M.A.C.P. No. 141 of 1998. Aggrieved thereby, the present petitioner had filed original application/Transfer Application No. 1/2010. The same is rejected.

(2)

3. Mr.Bhumkar, the learned counsel for the petitioner submits that on 01.10.1997, the petitioner was on leave and his leave for the period 01.10.1997 to 10.10.1997 is sanctioned. As such, it is erroneous on the part of the respondent to contend that the accident took place on account of rash and negligent driving of the petitioner. Even the said leave is sanctioned. In view of that, the petitioner is not liable. The petitioner was not driving the vehicle.

4. The learned counsel further submits that in M.A.C.P. No. 141 of 1998, the respondent along with the petitioner are made jointly and severally liable. The State has made the payment and honoured the claim of the claimants now it can not be recovered from the petitioner. Petitioner at the most, can be considered to be agent of the Principal and as such, is not liable to pay amount. The learned counsel relies on the Judgment of the Apex Court in case of ***the State of Maharashtra Vs. Kanchanmala Vijaysing Shirke*** reported in ***1995 (5) SCC 659***.

5. The learned A.G.P. submits that the petitioner because of his rash and negligent driving, caused the accident.

6. The claimants filed proceedings for compensation

bearing M.A.C.P. No. 141 of 1998. The present respondent No. 1 and the petitioner are made jointly and severally liable to pay Rs. 1,10,327/- along with the interest. It is because of the petitioner, the liability is incurred upon the respondent/State. The Tribunal has rightly considered the said aspect. The petitioner after having caused accident on 01.10.1997, remained absent till 10th October, 1997.

7. We have considered the submissions. From the Judgment of the Tribunal in M.A.C.P. No. 141 of 1998, it is clear that the petitioner was driving the vehicle owned by the respondent/State. The Tribunal has come to the conclusion that the present petitioner has caused the accident because of the rash and negligent driving, and as such, the State/Respondent has been made vicariously liable to pay the compensation along with the petitioner. The Primary liability is of the petitioner and vicarious liability of the State. In view of that, petitioner and State jointly and severally are made liable to pay the compensation to the claimants in M.A.C.P. No. 141 of 1998. The finding of the Court in M.A.C.P. No. 141 of 1998 has attained finality.

8. The accident has been caused by the act of the petitioner and as such, he cannot absolve himself of the

liability and to repay the loss caused by him of his rash and negligent driving. The petitioner is wrongdoer. The Judgment in a case of *State of Maharashtra Vs. Kanchanmala (supra)* would not be useful to the petitioner inasmuch as the Apex Court held that State would be vicariously liable to pay compensation to the claimants. The Apex Court in the said case has not held that the employee would not be liable even if he is guilty of rash and negligent act and is a wrongdoer. The Tribunal has rightly considered the said aspect. The petitioner had also appeared in the M.A.C.P. but had not contested the case and had accepted findings.

9. The writ petition is accordingly dismissed. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)