

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7399 of 2018

and

W.M.P.No.9188 of 2018

K.Swaminathan

..Petitioner

vs

1.The District Collector,
Nilgiris District, Uthagaimandalam

2.The Project Director,
Hill Side Development Project,
Nilgiris District,
Nilgiris.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, directing the Respondents to call for the records on the file of the 2nd respondent in his Pro.Saa.Mu.Na.Ka.R3.No.210/2017 dated 28.02.2018(served on 23.03.2018) and quash the same.

For Petitioner : M/s.A.Baskaran

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The order of recovery issued by the 2nd respondent in proceedings dated 28.02.2018 to recover the amount of compensation awarded by the Motor Accidents Claims Tribunal in M.C.O.P.No.55 of 2016 is under challenge in this writ petition.

2.The writ petitioner is a driver and was driving the Government Jeep bearing Registration No.TN51/G 0472. The said vehicle met with an accident and a claim petition was filed by an injured person before the Motor Accidents Claims Tribunal,

Nagapattinam in M.C.O.P.No.55 of 2016. The Motor Accidents Claims Tribunal passed an Award of compensation of Rs.20,000/- (Rupees Twenty Thousand only) at the rate of 7.5% per annum from 01.06.2015. The findings of the award in M.C.O.P.No.55 of 2016 is unambiguous that the driver of the Government Jeep is liable for the accident. In other words, the negligence on the part of the writ petitioner, who was driving the Government Jeep was established before the Motor Accidents Claims Tribunal. This being the factum of the case, the Department has imposed recovery in order to recover the awarded compensation.

3.The learned counsel appearing on behalf of the writ petitioner states that the criminal case registered against the writ petitioner ended with an order of acquittal. Further, the Motor Accidents Claims Tribunal held that the Government officials as well as the writ petitioner are jointly liable to pay the compensation and therefore the entire amount cannot be recovered from the writ petitioner. Thirdly, the learned counsel referred the judgment of the Division Bench rendered in the case of Sevugaperumal Vs. Superintendent of Police, reported in (2009) 2 MLJ 849. It is contended that in the above Division Bench judgment, it is categorically held that the award of compensation cannot be recovered from the driver. Relying on these grounds, the learned counsel for the petitioner states that the order of recovery is liable to be scrapped.

4.The learned Additional Government Pleader appearing on behalf of the respondents states that the writ petitioner was a driver of the Government Jeep which met with an accident, causing injury to a third person. This apart, the Motor Accidents Claims Tribunal held that the driver of the Government Jeep was responsible for the accident and liable to pay compensation. Such being the fact of the case, the writ petitioner cannot be exonerated from the payment of compensation and ultimately, the Department has to recover from the award amount from the Jeep driver, who was wholly responsible for the Motor Accident.

5.This Court is of an opinion that it is an admitted fact that the writ petitioner was a respondent in the Motor Accidents Claims Tribunal application. The writ petitioner contested the case before the Tribunal. The Tribunal has made categorical finding that the writ petitioner as a driver, is responsible for the accident. Thus, the writ petitioner was held negligent while driving the Government vehicle, which resulted in an accident. Under these circumstances, the Department has to recover the compensation from the driver alone. If the negligence of the driver, who was driving the Government vehicle

is established, then the Government authorities cannot pay the compensation from and out of the tax payers money. If the negligence is established, then, the person who has committed negligence alone to be held liable for the purpose of settling the compensation amount awarded by the Motor Accidents Claims Tribunal.

6.The Division Bench judgment is not applicable in respect of the facts and circumstances of this case, and the Division Bench has categorically held that the Motor Accidents Claims Tribunal has exonerated the driver. Therefore, the Hon'ble Division Bench came to the conclusion that the driver cannot be held liable for the compensation in view of the particular case. However, the facts and circumstances cannot be equated with the present writ petition.

7.If the drivers who are driving the Government vehicles are exonerated in a routine manner and the same will set a wrong precedent. It is to be considered whether the driver, who was driving the Government vehicle is held liable or committed any negligence while driving the vehicle. If the Motor Accidents Claims Tribunal comes to the conclusion that the driver is negligent and accordingly, held liable for compensation, then the competent authority has to recover the award amount from the driver alone. If the negligence part of the accident is established in respect of the driver, who had driven the vehicle, then, the tax payers money cannot be paid by way of compensation to the victims. The State Ex-Chequer cannot be penalized in respect of the offences or mistakes or negligence committed by the Government employees. In any case, the compensation awarded to be paid to the victims by the Department without any delay and the same is to be recovered from the driver, who had driven the vehicle at the time of accident. Therefore, this Court is of the opinion that the driver is not exonerated from liability by the Motor Accidents Claims Tribunal. Therefore, the State Ex-Chequer cannot pay a compensation amount awarded by the Tribunal and accordingly, the driver alone is liable to pay the amount.

8.In respect of the issuance of show cause notice, this Court is of the opinion that issuance of show cause notice cannot be an empty formality. The writ petitioner in the present case on hand, was a party respondent in the Motor Accidents Claims Application, he had participated and defended his case before the Tribunal. Therefore, the question of providing or issuing another show cause notice is not a point to be considered and such a notice is certainly unnecessary and will not serve any purpose in view of the fact that the writ

petitioner had completely participated in the adjudication before the Motor Accidents Claims Tribunal and he is very well aware of the award amount granted. This being the factum of the case, no further adjudication is required in respect of the other grounds raised in this writ petition.

9. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The District Collector,
Nilgiris District, Uthagaimandalam

2. The Project Director,
Hill Side Development Project,
Nilgiris District, Nilgiris.

+ 1 cc to Mr. A. Baskaran, Advocate Sr.No. 24417

+ 1 cc to The Government Pleader Sr.No. 24626

W.P.No. 7399 of 2018

RJ(CO)

RRI 18/04/2018

सत्यमेव जयते

WEB COPY