



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11994 of 2011

and

M.P(MD)Nos.1 of 2011, 1 of 2012 and 1 of 2014

M.Nallathambi

... Petitioner

vs.

1)The Commissioner of Police,
Madurai City,
Madurai.

2)The Commandant,
VI Battalion,
Tamil Nadu Special Police,
Madurai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of the 2nd Respondent passed in Na.Ka.No.C2/8877/06 Batalion Order No.524/2011 dated 03.08.2011 and the consequential order of the 1st respondent passed in Na.Ka.No.F2/43095/506/2011, Ka.Aa.No.1550/2011 dated 05.09.2011 and quash the same.

For Petitioner : Mr.C.Jegannathan
For Respondents : Mr.A.Thiyagarajan
Government Advocate

ORDER

The present writ petition has been filed for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of the 2nd respondent passed in Na.Ka.No.C2/8877/06 Batalion Order No.524/2011 dated 03.08.2011 and the consequential order of the 1st respondent passed in Na.Ka.No.F2/43095/506/2011, Ka.Aa.No.1550/2011 dated 05.09.2011 and quash the same.

2.Learned counsel for the petitioner would submit that the petitioner is working as a Head Constable in the Armed Reserve under the 2nd respondent. When he was working as a Constable cum Driver under the 2nd respondent, he was deputed to duty to drive the vehicle bearing registration No.TCT-4632 on 09.03.1997 and the said vehicle was hit by a motorcycle. Thereafter, disciplinary proceedings were initiated against the petitioner for having caused accident and disciplinary authority imposed a punishment of stoppage of increment



without cumulative effect for one year and the same was modified into let off with a warning by order dated 31.07.2008 of the appellate authority and accordingly, the disciplinary proceedings initiated against the petitioner were closed. While so, the petitioner was served with the impugned orders dated 03.08.2011 and 05.09.2011, directing recovery of Rs.96,559/- from the petitioner's salary towards the compensation awarded in MCOP.Nos.653 and 654 of 1997 on the file of the Motor Accident Claims Tribunal (District Court), Dindigul. Challenging the said orders, the petitioner has filed this writ petition.

3.Learned counsel for the petitioner further contended that if the police vehicle is driven by a driver of the department and caused the accident, the driver cannot be held liable for the compensation paid or part thereof and in support of the said contention, he relied on a decision in W.P.No.4428 of 2006 dated 23.07.2010 (R.Anbalagan vs. The Director General of Police, Chennai and two others), wherein, at paragraphs 5 and 6, it has been held as follows:-

"5.The petitioner was a driver when the accident took place on 31.5.1998. In similar circumstance, the Division Bench of this Court in W.P.No.11002 of 1999 by order dated 7.7.1999 held as follows:

"The Department's action seeking recovery of the amount awarded by the Motor Accident Claims Tribunal from the Driver of the vehicle, is wholly unsustainable as the respondent as the employer, is duty bound in law to pay the compensation amount. It is further stated therein that the recovery proceedings made by the employer is misconceived and the said claim was rightly negatived by the Tamil Nadu Administrative Tribunal in O.A.No.6516 of 1996 by order dated 13.8.1998."

Following the said order of the Division Bench, W.P.No.17856 of 2008 was allowed by me by order dated 22.8.2008 against recovery ordered against a Driver of a Police Vehicle. The said order was approved by the Division Bench of this Court in the decision reported in (2009) 2 MLJ 849 (Sevugaperumal v. Superintendent of Police). In para 14 the Division Bench held as follows:

"14. Before us, the learned counsel for the petitioner has cited two judgments in order to show that in similar cases the Courts have held that compensation amount has to be paid by the department or by the employer concerned. Reliance was first placed on the judgment of a learned single Judge of this Court in the case of R.Nagendra Boopathi v. Superintendent of Police, District Police Office, Salem, decided on 22.8.2008 passed in W.P.No.17856 of 2008. From the facts of that case, it appears that there was a mechanical failure of the vehicle involved and as a result of which there was an accident. Apart from that it also appears in that case that the driver of the vehicle, whose official duty was to drive the said vehicle, was a party before the Motor Accident Claims Tribunal and the Tribunal exonerated the driver."



The Division Bench in the above cited decision held that if the police vehicle is driven by a driver of the Department and caused the accident, the driver cannot be held liable for the compensation paid or part thereof, and if a person has driven the vehicle, who was not the driver, the department can recover part of the compensation paid to the victims.

6. Following the above cited decisions of the Division Bench of this Court and that of mine, I hold that the impugned order is unsustainable and the order of recovery dated 1.7.2005, confirmed in appeal by order dated 18.11.2005, is quashed. The respondents are directed to repay the amount recovered from the petitioner within a period of two weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.''

4. In the light of the above judgment, the impugned orders are not sustainable and accordingly, the impugned orders dated 03.08.2011 and 05.09.2011 are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1) The Commissioner of Police,
Madurai City,
Madurai.

2) The Commandant,
VI Battalion,
Tamil Nadu Special Police,
Madurai.

+1CC TO M/s.VEERA ASSOCIATES IN SR.NO.82051.

+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.82501.

BALA

DS SV SAR-4 05.10.2018 3P/5C

W.P(MD)No.11994 of 2011

03.09.2018