



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

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

W.P.(MD) No.8694 of 2013
and
M.P.(MD) Nos.2 & 3 of 2013

R.Shanmugam

... Petitioner

-vs-

1. The Director of Family Welfare,
Chennai-600 006.

2. The Deputy Director of Medical & Rural
Health Services and Family Welfare
District Family Welfare Bureau,
Virudhunagar District.

3. The Medical Officer,
Government Primary Health Centre,
M.Reddiapatti,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order of recovery issued by the second respondent in ref.Na.Ka.No.535/Ku.na./A1/2004 dated 05.04.2013 and quash the same.

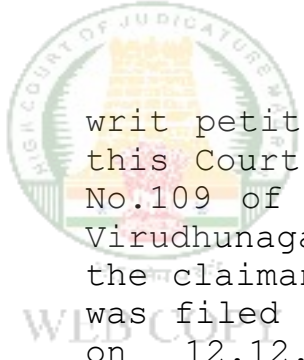
For Petitioner : Mr.S.Ramasamy

For R1 to R3 : Mr.R.Sethuraman
Special Government Pleader

O R D E R

The order of recovery issued by the second respondent vide proceedings, dated 05.04.2013 is under challenge in this writ petition.

2.The writ petitioner joined as a driver on 09.02.1979 in Tamil Nadu Family Welfare Department. While he was working as a driver, an accident took place on 08.06.2004 at 10.30 a.m., in the National Highways Road of Sattur to Virudhunagar. Though, the



writ petitioner claims that he was driving the vehicle carefully, this Court is of an opinion that the case was registered in Crime No.109 of 2004 and the Motor Accident Claims Tribunal/Sub Court, Virudhunagar in M.A.C.O.P.No.215 of 2006 awarded compensation to the claimants. Against the award passed by the Tribunal, an appeal was filed in C.M.A.No.1144 of 2008 and this Court passed an order on 12.12.2008 and the relevant paragraphs are extracted hereunder:-

"6.The learned counsel for the appellant relied on Section 23 of the Traffic Offences Safety and Driving Regulations (Traffic Offences under the Motor Vehicles) Act, 1988, which reads as follows:-

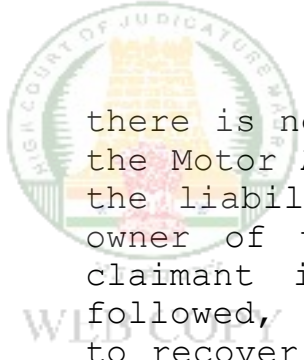
"Distance from vehicles in front:- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision, if the vehicle in front should suddenly slow down or stop."

by relying the above provisions, learned counsel argued that there must be sufficient space between the two vehicles while plying in the road. If really there was a space, certainly the accident would have been avoided. He also relied on the judgments of this Court delivered in C.M.A.No.979 of 2011 dated 03.11.2008 and C.M.A.No.2111 of 2002 dated 07.11.2008, wherein this Court held that since there is no evidence to prove that the accident has taken place because the lorry, which was proceeding in front of the van was suddenly stopped, the driver of the police van which was following the lorry was responsible for the accident.

7.The only point for consideration in this appeal is whether the appellant is liable to pay the compensation?

8.The first respondent's vehicle is a new Qualis. So, the efficiency of brake cannot be suspected and the accident did not occur due to the mechanical defect of the new vehicle. The learned Judge after considering the evidence found that both the drivers are responsible for the accident and I find that there is no reason to interfere with the order of the Tribunal and also the fixation of liability as 50:50, which is correct."

3.The order passed in the Civil Miscellaneous Appeal, the liability of 50% is fixed on the Government Vehicle. Thus, the said liability has to be settled by the Government at the first instance and the same is to be recovered from the driver, who was driving the Government vehicle at the time of causing the accident. Based on the award passed by the Tribunal and the order passed by this Court, the present impugned order is passed imposing the recovery of Rs.1,25,628/- from the writ petitioner. This Court is of an opinion that the compensation paid by the Government has to be recovered from the driver and therefore,



there is no illegality as such in respect of recovery order. When the Motor Accident Claims Tribunal as well as the High Court fixed the liability in respect of the owner of the vehicle, then, the owner of the vehicle is liable to pay the compensation to the claimant immediately. This being the legal principles to be followed, the order of recovery issued by the competent authority to recover the compensation is in accordance with law and there is no illegality as such.

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

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Family Welfare,
Chennai-600 006.
2. The Deputy Director of Medical & Rural
Health Services and Family Welfare
District Family Welfare Bureau,
Virudhunagar District.
3. The Medical Officer,
Government Primary Health Centre,
M.Reddiapatti,
Virudhunagar District.

+ 1 cc TO Mr.S.Ramasamy , Advocate in SR No. 51555
+ 1 cc TO The Special Government Pleader in SR No. 51990

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AE/KKR/SAR3/13.03.2018/3P/6C

W.P. (MD) No.8694 of 2013
26.02.2018