

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2019

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15601 of 2007

C.Mathivanan

..Petitioner

-vs-

1. The Superintendent of Police
District Police Office
Salem

2. State of Tamil Nadu
rep.by its Secretary
Home Department
Fort St.George
Chennai 600 009

..Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 13.04.2005 made in Na.Ka.No.J-2/15642/99 and confirming the earlier order dated 30.04.2004 made in DO 384/2004/C.No.J2/15642/99, quash the same and direct the respondents to refund the amount already recovered from the salary of the petitioner.

For Petitioner :: Mr.K.Rajasekaran

For Respondents :: Mr.K.Ravikumar
Additional Government Pleader

ORDER

This writ petition has been filed challenging the correctness of the impugned order dated 13.04.2005 made in Na.Ka.No.J-2/15642/99, confirming the earlier order dated 30.04.2004 made in DO 384/2004/C.No.J2/15642/99, to quash the same with a consequential direction to the respondents to refund the amount already recovered from the salary of the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner was serving as Driver in the Armed Reserve (Motor Wing/Police). While so, on 10.2.95, when he was engaged in the work of patrolling the highways along with his superiors, at about 4.30 early morning, three pedestrians were trying to cross the highway, out of which one dashed against the vehicle bearing Registration No.TN 27 G 1063 driven by the petitioner and fell

down. Immediately he was also rushed to the hospital for first aid. Thereafter, the petitioner also took him in his vehicle and dropped him at his residence and then, he went to Attayampatti Police Station and reported to the Station House Officer about the incident and on the basis of his report, a First Information Report was registered in Crime No.90 of 1995 for the alleged offence under Sections 279, 337 of IPC. Thereafter, the case in Attayampatti Police Station Crime No.90 of 1995 for the offence under Sections 279, 337 of IPC was altered into Section 304-A of IPC, since the victim succumbed to the injuries. After investigation by the Inspector of Police, Kondalampatty, the same was referred to as mistake of fact. In the meanwhile, the legal heirs of the victim also filed a claim petition before the Motor Accidents Claims Tribunal, Salem claiming compensation and the Motor Accidents Claims Tribunal, Salem, by award dated 10.4.2001, held that the claimants in M.A.C.T.O.P.No.578 of 1995 are entitled to receive a sum of Rs.2,06,700/- with interest at the rate of 9% per annum from the Government of Tamil Nadu and the Superintendent of Police, Salem, who were arrayed as the respondents in M.A.C.T.O.P.No.578 of 1995. Based on the same, the Superintendent of Police, Salem, the first respondent herein sent a communication dated 30.4.2004 to the petitioner through the Inspector of Police, Mallur informing him that the Motor Accidents Claims Tribunal had awarded a compensation of Rs.2,06,700/- with interest at the rate of 9% per annum from the date of petition until payment in M.A.C.T.O.P.No.578 of 1995, based on which the Government in G.O.No.1210, Home (Pol.II) Department dated 31.12.2001 also sanctioned a sum of Rs.3,33,821/- in favour of the victim's family.

3. Continuing his arguments, the learned counsel for the petitioner submitted that the first respondent passed the final order dated 30.4.2004 straightaway, without even following the principles of natural justice, for recovering a sum of Rs.3,33,821/- in 168 monthly installments. Thereafter, a memo dated 23.3.2005 was issued by the first respondent calling upon the petitioner to submit his explanation for recovering a sum of Rs.3,33,821/- in 168 monthly installments. Aggrieved by the same, the petitioner also sent his explanation on 5.4.2005 specifically stating that already a final order was passed on 30.4.2004 to recover a sum of Rs.3,33,821/- without even issuing any notice, hence, he requested the first respondent not to recover any amount in future and also to refund the entire amount recovered from him. But this was not considered and finally, rejecting the petitioner's explanation, the order dated 13.4.2005 has been passed confirming the earlier order of recovery. Thereafter, the petitioner also gave a further representation on 27.5.2005 requesting the first respondent not to recover the compensation amount awarded to the victim's family from his salary, for which there was no response.

Therefore, the petitioner was constrained to come to this Court challenging the order dated 13.4.2005. The learned counsel for the petitioner again submitted that when there was a First Information Report registered in Crime No.90 of 1995 for the alleged offence under Sections 279, 337 of IPC, which was subsequently altered to Section 304-A of IPC, and on enquiry and investigation, the case was referred to as mistake of fact, it shows that the petitioner was not responsible for causing the accident. In this connection, a Division Bench of this Court has also held that the driver of the vehicle who is said to have caused the fatal accident, cannot be held liable for payment of compensation without holding a proper enquiry in the manner known to law. On this basis, he sought for allowing the writ petition by quashing the impugned order.

4. A counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents submitted that the communication dated 30.4.2004 issued by the Superintendent of Police, Salem clearly shows that an order for recovering a sum of Rs.3,33,821/- in 168 monthly installments was passed against the petitioner and only after passing this final order, the memo dated 23.3.2005 was issued by the first respondent calling upon the petitioner to submit his explanation for recovering a sum of Rs.3,33,821/- in certain installments, for which the petitioner also sent a communication on 5.4.2005 specifically stating that already a final order has been passed to recover a huge sum of Rs.3,33,821/- without issuing any notice. Therefore, the petitioner requested the first respondent not to recover any amount in future and also to refund the entire amount recovered from him. The learned Additional Government Pleader fairly submitted that only on 23.3.2005 the first memo was issued by the Superintendent of Police, Salem calling upon the petitioner to submit his objection for recovering the amount aforementioned in installments. That means, prior to the order dated 30.4.2004, there was no communication or notice of enquiry issued to the petitioner calling upon the petitioner to submit his reply/objection as to why there should not be a recovery of a sum of Rs.2,06,700/- on the basis of the award dated 10.4.2001 passed in M.A.C.T.O.P.No.578 of 1995 by the Motor Accidents Claims Tribunal, Salem.

5. This Court is able to see that on 10.2.95 at about 4.30 AM, while the petitioner was driving the vehicle bearing Registration No.TN 27 G 1063, one of the pedestrians met with an accident and fell down due to the hit by the vehicle. However, he was rushed to the nearby hospital for first aid. Following the accident, a First Information Report was also registered in Crime No.90 of 1995 for the alleged offence under Sections 279, 337 of IPC on the file of Attayampatti Police Station. Subsequently, after the victim succumbed to the injuries, the

case was altered in Crime No.90 of 1995 from Sections 279, 337 of IPC to Section 304-A of IPC. However, on an investigation conducted by the Inspector of Police, Kondalampatty, it appears that the case was referred to as mistake of fact. Thereafter, the legal heirs of the victim filed a claim petition before the Motor Accidents Claims Tribunal, Salem and after trial, the Motor Accidents Claims Tribunal, by its award dated 10.4.2001, held that the legal heirs of the victim are entitled to receive a sum of Rs.2,06,700/- as compensation from the Government of Tamil Nadu and the Superintendent of Police, Salem, who were arrayed as the respondents in the M.A.C.T.O.P.No.578 of 1995 together with interest at the rate of 9% per annum from the date of petition till the date of realisation. Based on the said award, the Government also issued G.O.No.1210, Home (Pol.II) Department dated 31.12.2001 sanctioning a sum of Rs.3,33,821/- to the victim's family. Thereafter, the Government also sought to take action as per G.O.Ms.No.393, Home (Transport IV) Department dated 1.3.88 for recovery of the amount from the petitioner without even holding any enquiry. In this connection, it is relevant to refer to an order passed by the Hon'ble Division Bench in Writ Appeal (MD) No.277 of 2006 dated 27.9.2006 (S.Krishnasamy v. The Superintendent of Police, Dindigul District), citing the decision of the Hon'ble Apex Court in Punjab State Civil Supplies Corporation Limited v. Sikandar Singh, reported in (2006) 3 SCC 736, holding as follows:-

"18. The appellant is 'State' within the meaning of Article 12 of the Constitution. The terms and conditions of service by and between the appellants and the respondents herein are governed by the service rules and/or terms and conditions of contract. If the respondents herein had committed misconduct they could have been and in fact were departmentally proceeded with. In the said departmental proceedings appropriate punishments had been imposed upon them. So far as Respondent-defendant 1 is concerned, therein his negligence had been held to have contributed to the loss of 2/3rd of the shortages and by way of penalty, he was asked by the Appellant Authority to deposit the requisite number of bags of wheat and/or pay the price thereof. The said order having been complied with and attained finality, it is binding on the appellant. The dispute cannot,

therefore, be permitted to be reopened."

In fact, this decision has been cited out of context on the side of the appellant, as the facts in the cited case are different from the one on hand. Even otherwise, from the cited decision, it is clear that departmental proceedings could be initiated by the employer for the loss caused to him.

12. In the result, the writ appeal is allowed setting aside the order dated 27.06.2006 in W.P.(MD) No.2878 of 2006 and by giving the following directions.

(a) The order of the respondent in R.C.No.J2/26050/1998 (D.O.168/2006) dated 10.03.2006, is quashed. However, it is open for the respondent to initiate appropriate departmental proceedings, complying with the appropriate rules and adhering to the principles of natural justice as envisaged in the maxim 'audi alteram partem'.

(b) The learned Advocate for the appellant prayed for refund of the amount so far recovered from the appellant under the impugned order. In view of this Court quashing the order of the respondent, as a sequel, the respondent/government is ordered to refund the amount recovered, so far, to the appellant."

6. Since this Court has held that if an accident is caused by the negligent driving, which led to the filing of the claim petition before the Motor Accidents Claims Tribunal and finally, if the Motor Accidents Claims Tribunal passes an award holding the driver responsible for the rash and negligent driving and thereupon an award was passed for payment of compensation, only then, on the basis of the finding of negligence against the driver of the offending vehicle, the department could initiate enquiry proceedings only to impose a punishment as per the rules. But the said order passed by the Division Bench makes it clear that no order of recovery can be effected, as the negligent driver was driving the vehicle belonging to the department which is vicariously liable for the act done by the driver. But in the case on hand, when a case was registered against the petitioner by the Attayampatti Police Station in Crime No.90 of 1995 for the alleged offence under Sections 279, 337 of IPC, subsequently, when the victim succumbed to the injuries, it was altered into Section 304-A of IPC. Again when the investigation was continued by the Inspector of Police, Kondalampatty, the same was referred to as mistake of fact. That shows that no protest petition was filed by the aggrieved person.

7. Secondly, the orders dated 30.4.2004 and 13.4.2005 ordering recovery of the amount from the petitioner were also passed without following the principles of natural justice, as held by the Hon'ble Division Bench in its order dated 27.9.2006 passed in Writ Appeal (MD) No.277 of 2006. Therefore, for all these reasons, the writ petition stands allowed quashing the impugned orders with a direction to the respondents to refund the amount already recovered from the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Consequently, M.P.No.2 of 2007 stands closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1.The Superintendent of Police
District Police Office
Salem

2.The Secretary to Government
Home Department
Fort St.George
Chennai 600 009.

+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.10082

+1cc to the Government Pleader, S.R.No.10259.

W.P.No.15601 of 2007

GP(CO)

rrs 06/03/2019

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