

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2019

Pronounced on : 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.34024 of 2005
and
W.M.P.No.36942 of 2005

A.Murugesan

.... Petitioner

Vs.

1.The Superintendent of Police,
Perambalur District.

2.The Registrar General,
Madras High Court,
Madras.

R2 suo motu impleaded vide order
dated 27/03/2017 made in WP.No.34024/05

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the respondent in connection with the impugned order of recovery issued by the respondent in Na.Ka.No.H1/8512/2004 District Order No.536/2005 dated 23.09.2005 and to quash the same.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.Azhagu Goutham

For Respondent-1 : Mr.S.Suresh Kumar, GA

For Respondent-2 : Mr.Haja Mohideen Gisthi

O R D E R

Heard.

2. The petitioner, a police driver in Jayamkondam Prohibition Enforcement Wing Unit, was involved in an accident on 21.04.2004 by colliding a police Jeep against a tree, resulting in injuries to himself and the occupants of the Jeep, apart from substantial damage to the vehicle. The respondent herein has issued the impugned order dated 23.09.2005 to recover a sum of Rs.35,600/- from the petitioner, which is claimed to be the amount spent for repairing the damaged vehicle.

3. The short ground on which the Writ Petition deserves to be allowed is that the impugned order of recovery is in violation of the principles of natural justice. It is not in dispute that when the order of recovery was issued to the petitioner, he was not called for, to offer his objections to the proposed recovery. Likewise, the impugned recovery order emanates from the report of the Motor Vehicle Inspector, who has opined that the accident was not due to any mechanical defect in the vehicle. This report has also not been served on the petitioner.

4. The learned Senior counsel appearing on behalf of the petitioner submitted that pursuant to the accident, a charge memo was issued on the petitioner on 25.07.2004, to which an explanation was given on 27.08.2005, specifically stating that even prior to the accident, the petitioner had recorded in the vehicle diary that the Jeep was not fit for running and inspite of the same, he was given the duty of driving the vehicle. When such a defence has been taken in the reply to the charge-memo, it could be said that the petitioner may have had valid objections to be raised before the order of recovery.

5. The learned Government Advocate appearing on behalf of the first respondent/Police Department submitted that under G.O.Ms.393, Home (Tr.IV) Department, dated 01.03.1988, the first respondent herein is entitled to recover the amount for pecuniary loss caused to the Government on account of the negligence of the petitioner.

6. Such an objection cannot be sustained, since the aspect of negligence has not been proved in a manner known to law but on a presumption from the Motor Vehicle Inspector's report, that the vehicle did not have any mechanical defect. Above all, the MVI Report, which is the basis for the recovery order has not been furnished to the petitioner. As such, the failure to issue a show cause notice, preceding the recovery order and the non furnishing of the Motor Vehicle Inspector's Report, would amount

to violation of the principles of natural justice. Such an arbitrary conclusion, without establishing the aspect of negligence, can be deemed as unconstitutional. Hence the petitioner is entitled to succeed.

7. Before parting with this case, the incidental and relevant issue that arise for consideration is as to the Authority of the Government to recover the loss from the Government servants on account of damages incurred to Government vehicles involved in accidents. The Government places their reliance to an order in G.O.Ms.393, Home (Tr.IV) Department, dated 01.03.1988 and justify themselves to resort to recovery for the pecuniary loss to repair the damages to the vehicles involved in accidents. The said Government Order reads to the effect that all Government owned vehicles used for Government purposes are exempted from insurance against third party risks and that the Government would settle the claims, if any, arising out of the accidents, in which departmental vehicles are involved, in the same way as the Private Insurance Companies with which private motor vehicles are generally insured. The said Government Order further goes to read that the provisions of the Rule 8(v)(a) of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules provide for recovery from the pay of the Government Servants for any pecuniary loss caused to the Government by the negligence of such Government servants and in view of the same, there is no need for separate provision for effecting token recovery from the drivers of the Government vehicles which involves in an accident.

8. What the Government Order has lost sight of is that, the Rules provided for recovery of such pecuniary loss, whenever there is "negligence on the part of the Government servants". But, in order to effect such a recovery, the aspect of negligence requires to be established through a mechanism, which neither the Rules nor Government Order provide for. Unless such a mechanism is provided by framing of relevant rules, there would always be uncertainty and without establishing the liability of these Government servants to repay the pecuniary loss, any recovery made would not only be illegal and perverse, but also illegal and unconstitutional.

9. Under Section 146(2) of the Motor Vehicles Act, 1939, all vehicles owned by the Central Government or State Government and used for Government purposes, unconnected with any commercial enterprise are exempted from any insurance. G.O.Ms.393, Home (Tr.IV) Department, dated 01.03.1988, requires the Government to settle the claims of third parties in accident cases. The said Government Order also makes a reference to the effect that the Government had considered the question of insuring the State Government vehicles and had at that point of time consulted the

Director, Motor Vehicles Maintenance Department, who opined that Government vehicles need not be covered by insurance policies against third party risks, since it will involve payment of huge amounts as premium. The Government had accepted the views of the Director of the Motor Vehicles Maintenance Department and had directed the present procedure laid down in Rule 22 of the Tamil Nadu Department Vehicles Control Rules, 1976 be adopted for settling the claims by the Government itself.

10. It appears that over a period of 30 years from the date of issuance of this Government Order, the accident claims seems to have substantially increased. As such, it is a high time that the Government should have a re-look into the order and consider liberating themselves from exemption under Section 146 (2) of the MV Act and consider to insure the Government vehicles.

11. In case, such a decision is not feasible, the framing of appropriate rules touching upon framing of a mechanism to determine the liability of the Government drivers, could be considered. Such a decision would also protect many irreproachable Government drivers from unfounded recoveries. It is the wish and desire of this Court that the observations made above, be considered by the Government in the right perspective.

12. Now that, this Court has found that recovery of any amount towards pecuniary loss caused to the Government on negligence on the part of the petitioner based on G.O.Ms.393 dated 01.03.1988, without establishing the negligence on the part of the Government Servants is illegal and unconstitutional, the Government of Tamil Nadu shall refrain from effecting any recovery from the drivers of the Government vehicles which is involved in an accident, without establishing the negligence aspect, unless and until appropriate mechanism is introduced for establishing the negligence.

13. The status of the vehicles owned by the Madras High Court is akin to the vehicles owned by the Government, which are also not insured against the third party risks and since the observations made in this order may also have reliance to the vehicles standing in the name of the Registrar General, Madras High Court, the Registrar General of the Madras High Court has been Suo-Moto impleaded as second respondent in this Writ Petition.

14. The learned Standing counsel appearing for the Registrar General, Madras High Court submitted that there are no separate rules governing the drivers of the vehicles registered in the name of the Registrar General. It is needless to point out that all the vehicles which are registered in the name of the Registrar General belongs to the Government and it is deemed to be a Government owned vehicle. As such, the liability to settle any claim arising from an accident involving the vehicle standing in the name of the Registrar General requires to be settled by the Government as provided in G.O.Ms.393, Home (Tr.IV) Department, dated 01.03.1988, insofar as the recovery of any pecuniary loss that may occur to the Government in connection with the accident, since the Government Order does not provide for a mechanism to prove the negligence of the driver and till such time, appropriate Rules are framed for deriving a mechanism to establish the negligence, such a liability for recovery, should not be mulcted on these drivers, as held in the case of all other Government drivers.

15. For all the foregoing reasons, the impugned order in Na.Ka.No.H1/8512/2004 District Order No.536/2005 dated 23.09.2005, on the file of the first respondent herein is hereby quashed and the Writ Petition stands allowed. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Superintendent of Police,
Perambalur District.

2.The Registrar General,
Madras High Court,
Madras.

+1cc to Mr.N.Muthappan, Advocate sr.37569

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spd(co)
nr 21/10/2019