



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.10614 of 2014

and

M.P. (MD) .Nos.1 and 2 of 2014

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M.Thangavel

... Petitioner

Vs.

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

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

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent in his proceedings in C.No.C2/13106/2012 B.O.No.217/2014, dated 20.04.2014 and quash the same as illegal and consequently direct the respondents to refund the recovered amount from the petitioner.

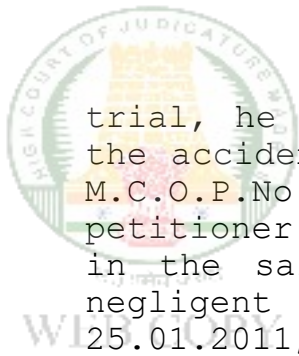
For petitioner : Mr.V.P.Rajan

For respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent, dated 20.04.2014, whereby and whereunder the 2nd respondent imposed a punishment of recovery of the compensation amount of Rs.48,804/- from the petitioner on installment basis.

2. It is the case of the petitioner that the petitioner joined in the Tamil Nadu Police Department on 31.10.1997 and on 24.04.2000 at about 7.30 p.m. when he was driving the Police Van bearing Registration No.TCT-4631, a bullock cart suddenly intervened in the way of the petitioner, due to which an accident had occurred. In the said accident, the rider of the bullock cart sustained simple injuries. In this regard, a criminal case was registered against the petitioner and the same was tried in S.T.C.No.551 of 2001. After

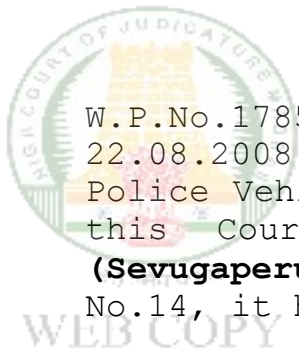


trial, he was acquitted from the criminal case on 08.03.2002. For the accident took place on 24.04.2000, the injured person had filed M.C.O.P.No.1718 of 2005 claiming compensation, in which the petitioner was not arrayed as a party. The respondents took a stand in the said petition that the accident had not occurred due to negligent act of the petitioner. The Tribunal, by order dated 25.01.2011, has awarded a sum of Rs.32,300/- as compensation with 7.5% interest from the date of the petition. While so, the 2nd respondent has passed an order of recovery on 18.09.2011 without giving any opportunity to the petitioner. Hence, the petitioner challenged the said order in W.P.(MD).No.11655 of 2011. This Court, by order dated 13.08.2012, set aside the said impugned order with liberty to the respondents to proceed against the petitioner in accordance with law, after providing sufficient opportunity. Subsequently, the respondents issued a show cause notice dated 04.07.2013, for which the petitioner submitted his explanation. Based on the decision of the Tribunal that the accident had occurred only due to negligence of the petitioner, the 2nd respondent, by the impugned order dated 20.04.2014, has directed recovery of the compensation amount of Rs.48,804/- from the petitioner on installment basis. Challenging the said order, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

4. In this case, it is not in dispute that the petitioner was working as driver at the time of the accident. He was not a party to the proceedings before the Motor Accident Claims Tribunal. However, he was examined as RW1 before the Tribunal, wherein he has categorically stated that the accident was occurred only due to rash and negligent driving of the bullock cart by the injured. The stand of the respondents before the Tribunal is also the same. But, the Tribunal has come to the conclusion that the accident was occurred due to rash and negligent act of the petitioner. The petitioner was acquitted from the criminal case on benefit of doubt. While so, only based on the conclusion arrived by the Tribunal that the accident had occurred due to rash and negligent driving of the petitioner, the 2nd respondent has passed the impugned order of recovery.

5. In similar circumstances, a Division Bench of this Court in W.P.No.11002 of 1999, by order dated 07.07.1999, has held that 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 negated by the Tamil Nadu Administrative Tribunal in O.A.No.6516 of 1996, by order dated 13.08.2012. Following the said order of the Division Bench,



W.P.No.17856 of 2008 was allowed by a learned Single Judge by order dated 22.08.2008 against the recovery ordered against a driver of the Police Vehicle. The said order was approved by a Division Bench of this Court in the decision reported in **(2009) 2 MLJ 849 (Sevugaperumal vs. Superintendent of Police)**, wherein at paragraph No.14, it has been 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, vide order dated 22.08.2008 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 decision of the Division Bench of this Court, a learned Single Judge of this Court in an unreported decision in W.P.No.4428 of 2006 (R.Anbalagan Vs. The Director General of Police, Chennai and others) dated 23.07.2010 has quashed the similar impugned order passed by the respondents therein and directed the respondents therein to repay the amount recovered from the petitioner.

7. In similar circumstances, the Hon'ble Supreme Court in the decision in **State of Punjab and others Vs. Harjit Singh**, reported in **(2002) 10 SCC 178**, has held in paragraph Nos.4 and 5 as follows:

"4. Aggrieved by this action of the appellants, the respondent filed a writ petition before the High Court. The High Court noticed that the respondent was not a party to the proceedings before the Motor Accidents Claims Tribunal as he had been deleted from the array of the parties and in the departmental inquiry held against him, he



had not been clearly found to have driven the vehicle rashly and negligently.

5. In the circumstances, it is clear that the respondent did not have an opportunity to prove his case before the Motor Accidents Claims Tribunal because he had been deleted from the array of the parties. So far as the inquiry is concerned, he was not found guilty of rash and negligent driving. As such, we are not able to understand as to how he could have been held to be liable to make good the amount paid by the appellants to the claimant in question. This is beyond our comprehension. We think no interference is called for in this appeal and the same is dismissed accordingly."

8. The above decision of the Hon'ble Supreme Court is squarely applicable to this case, as in this case also the petitioner was not arrayed as a party before the Motor Accident Claims Tribunal and in the departmental enquiry, there is no clear finding that he had driven the vehicle rashly and negligently. As stated earlier, only based on the conclusion of the Tribunal, the 2nd respondent has passed the impugned order of recovery. In this case, the respondents himself had took a stand before the Tribunal that the accident had not occurred due to rash and negligent driving of the petitioner. Contrary to the same, now they cannot order for recovery of the amount from the petitioner. It is submitted by the learned counsel for the petitioner that now the petitioner is also retired from service and that the recovered amount is with the respondents.

9. In view of the above, the impugned order passed by the 2nd respondent is set aside and the respondents are directed to refund the recovered amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Police,
Madurai City,

<https://hcservices.ecourts.gov.in/hcservices/>



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

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+1 CC to M/s.SPL GP (SR-104204[F] dated 10/12/2019)

+1 CC to M/s.V.P.RAJAN, Advocate (SR-104431[F] dated 11/12/2019)

W.P (MD) No.10614 of 2014
09.12.2019

KK/SAR/30.12.2019/5P-5C/