



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM

THE HON'BLE Mr.JUSTICE M.GOVINDARAJ

W.P.No.9519 of 2005

in

O.A.No.4106/2003

1.C.Narayanasamy (Deceased)

2.N.Prema

3.N.Sivakumar

4.N.Ravikumar

5.N.Muralikumar

6.N.Nandakumar

7.N.Tharaselvi

[P2 to P7 are legal representatives of the deceased P1 as per order dated 04.07.2014]

..Petitioners

Vs.

The Executive Engineer
Agriculture Engineering Department,
Tiruvannamalai.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records of the respondent herein in his Pro.No.A3/3934/2001 dated 05.12.2003 and quash the same.

For Petitioners : Mr.M.Ravi

For Respondent : Ms.Janaki

Additional Government Pleader

ORDER

The first petitioner/deceased was working as a Jeep driver under the respondent. For an accident that had happened on 05.09.1996, a charge memo was issued in proceedings No.A3/3934/2001 of the respondent dated 30.05.2003 for the following charges:

- (i)the duty for not explaining the condition of Jeep to the mechanic,
- (ii)not enquiring the details of driving license of the mechanic,
- (iii)not informing the accident to the office as well as to the police,
- (iv)permitting the mechanic to do the test drive and causing loss to the Government.



2. After receiving explanation from the petitioner, by an order dated 05.12.2003, the respondent imposed punishment of recovery of the total quantum awarded by the Motor Accident Claims Tribunal to the tune of Rs.1,04,893/-. Aggrieved over the same, the petitioner approached the Tamil Nadu Administrative Tribunal and obtained an order of interim stay on 18.12.2003. According to the petitioner, the punishment imposed is bad on account of non-application of mind.

3. The respondent filed a detailed counter denying the allegations and the learned Government Advocate effectively defended the action of the respondent on the basis of the counter filed.

4. I have considered the submissions.

5. Admitted facts are that the petitioner while working as a Jeep driver given the Jeep for service. During test drive by mechanic an accident had taken place on 05.09.1996. According to the respondent, i.e., the petitioner was negligent in allowing a mechanic to test drive the vehicle without enquiring as to whether he was licensed to drive the Jeep and that he has not informed the office as well as the concerned Police Station immediately after the accident.

6. It is the usual practice to send the Government vehicles to a certified work shop. The certification would be issued by the Government. All the Government vehicles of that station would be sent to the notified workshop. It is not the case of the respondents that the petitioner had given the vehicle to an unknown workshop on personal acquaintance. It is also usual that on production of vehicle, the mechanic will test drive, find out the defects and repair the same. In that process, the mechanic will naturally drive the vehicle to ascertain the defects of the vehicle. In the instant case, before and after the repair, the mechanic had driven the vehicle. During the test drive of the vehicle, the said accident has taken place. From this, it is very clear that the petitioner was not involved in rash and negligent act of causing the accident nor given the vehicle to a stranger. Admittedly, the petitioner had accompanied the mechanic during test drive of the Jeep. If any accident happens during that time, the employer is vicariously liable to pay the compensation to the victims. It is also very clear that the driver and mechanic have not gone on private spree without discharging the duties of the State. In that case, no liability can be passed on to them.

7. It is also submitted by the learned counsel for the petitioner that before the Motor Accident Claims Tribunal, the respondent has taken a stand that neither the driver nor the



mechanic were negligent or responsible for the accident. Therefore, as per the decision of the Division Bench of this Court, reported in 2008 (1) MLJ 694 [Tamil Nadu State Corporation (Kumbakonam Dn-II) Ltd., rep.by its Managing Director, Tiruchirapalli and Another Vs. P.Karuppusamy], the respondent cannot turn around and state the petitioner was negligent. Since the petitioner has not directly contributed to the accident, the recovery cannot be made from him and the Government is liable to pay the compensation to the victims for the Government vehicle involved in the accident.

8. Secondly, the accident has taken place in the year 1996. If at all disciplinary action should have been taken, it should have been taken within a reasonable period. For the accident of the year 1996, a charge memo was issued in the year 2003 based on the award passed by the Motor Accident Claims Tribunal. Viewing from other angle, had the claim before the Tribunal got dismissed, there would not been any charge against the petitioner. In order to save his skin, the respondent had issued a charge memo after period of seven years. Delay in issuing the charge memo by itself is bad. The petitioner would not be in a position to get witnesses to support his case in the domestic enquiry conducted after 7 years of the accident and may not be having computer like memory to recall the entire incident and names of the person connected to the same. Hence, the punishment imposed on the petitioner after a period of seven years amounts to violation of principles of natural justice. Further more recovery of compensation awarded by a Motor Accident Claims Tribunal is contrary to principles of law of torts. Hence the impugned order does not stand the test of judicial scrutiny and accordingly set aside.

9. During the pendency of the writ petition, the writ petitioner died and his legal heirs are impleaded as parties. Hence, a direction is given to the respondent to disburse all the dues and other terminal benefits in favour of the petitioners 2 to 7 within a period of twelve weeks from the date of receipt of a copy of this order.

10. In the result, the impugned order of the respondent Pro.No.A3/3934/2001 dated 05.12.2003, is set aside and the writ petition is allowed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

The Executive Engineer
Agriculture Engineering Department,
Tiruvannamalai.

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+1 cc to M/s.M.Ravi, Advocate Sr.No. 486
+1 cc to The Government Pleader Sr.No. 937

AKM/16.03.2020/4P- 4C/

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