



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.18187 of 2008
and M.P.No.1 of 2008

A.Sekar

... Petitioner

Vs.

The Superintendent of Police,
Perambalur District,
Perambalur.

... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the respondent in his Proceedings Na.Ka.No.C2/13816/2002, Pa.Aa.No.393/2008, dated 29.04.2008 and quash the same.

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.C.Selvaraj
Government Advocate (Civil)

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the respondent in his Proceedings Na.Ka.No.C2/13816/2002, Pa.Aa.No.393/2008, dated 29.04.2008, and quash the same.

2. The petitioner, while working as Police Constable Grade-I, was asked to drive a vehicle belonging to the Police Department on 02.07.2003, which met with an accident, wherein a two wheeler rider succumbed to the accident. For the said incident, departmental proceedings were initiated on 28.11.2003 and ended in punishment of stoppage of increment for three years with cumulative effect from the date of the order i.e. on 13.01.2004.



3. Later, a criminal case was also initiated against the petitioner under Section 304(A) of I.P.C. and he was tried in Crime No.317 of 2003 on the file of the Judicial Magistrate, Perambalur. The criminal Court has held that the charges were not proved and acquitted the petitioner from the criminal case.

4. In the meanwhile, on appeal filed by the petitioner, the punishment of stoppage of increment was set aside by the Director General of Police on 13.08.2007. After this, the respondents issued a show cause notice dated 25.01.2008 calling upon the petitioner as to why 5% of the award of compensation should not be recovered from the salary on the ground that the Government suffered loss through a compensation awarded in favour of the two wheeler rider in the motor accident claim and the petitioner submitted his explanation. However, by way of the impugned order dated 29.04.2008, a sum of Rs.17,681/- was directed to be recovered in 39 installments at the rate of Rs.442/- per month, which is under challenge in the present Writ Petition.

5. The learned counsel for the petitioner would rely on the judgment of the Hon'ble First Division Bench of this Court in W.P.No.11002 of 1999 dated 07.07.1999 wherein, the Hon'ble Division Bench has categorically held that the claim made by the respondents is wholly unsustainable as the Government was in the capacity of employer, who are duty bound to pay compensation payable to the victim and the order of recovery is misconceived. The same view has been followed by the learned single Judge in W.P.No.27962 of 2005, dated 13.04.2006 and in various other judgments of this Court.

6. In this case also, the respondents are vicariously liable to pay the compensation to the motor accident victim. The petitioner had driven the vehicle in his official capacity. Therefore, he is not liable to pay the compensation to the victim, whereas, as held by the Hon'ble Division Bench, the employers are liable to pay the compensation. Therefore, the impugned order of recovery passed by the respondent in Na.Ka.No.C2/13816/2002, Pa.Aa.No.393/2008, dated 29.04.2008, is not sustainable in law and accordingly, the same is set aside.



In the result, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Superintendent of Police,
Perambalur District,
Perambalur.

+1cc to M/s.C.Associates, Advocate Sr.28994
+1cc to the Government pleader Sr.28729

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and W.P.No.1 of 2008

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srg 22/07/2021