



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.12.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD).No.5089 of 2018

and

W.M.P.(MD).No.5071 of 2018

C.Shekkilar

... Petitioner

vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai.

2.The Superintendent of Police,
Theni District,
Theni.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the entire records relating to impugned order passed by the second respondent dated 20.02.2018 in Ma.Aa.No.184/2018, Na.Ka.No.K2/495/34929/2014 and quash the same.

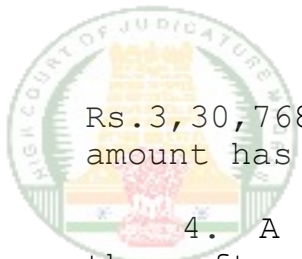
For Petitioner	: Mr.S.Sundarapandian
For Respondents	: Mr.K.S.Selvaganesan Additional Govt. Pleader

O R D E R

The petitioner was working as a Head Constable in the State Police Department. On 24.04.2011, while driving a Bolera Jeep bearing Registration No.TN-60 G-0331 in the capacity of a Police Constable / Driver, the vehicle was involved in an accident with a two wheeler.

2. The rider and the pillion rider were injured and a case came to be registered in Crime No.132 of 2011. Claim petitions came to be filed by the injured before the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.1174 of 2011 and 1176 of 2011 seeking compensation.

3. The criminal case was closed as 'Mistake of Fact'. Insofar as the M.C.O.Ps. are concerned, the Tribunal directed that a sum



Rs.3,30,768/-, be paid by the State Police Department and the entire amount has been paid.

4. A portion of the aforesaid amount ie., Rs.82,692/- was thereafter sought to be recovered from and out of the salary of the petitioner on a monthly basis. This order has been challenged by the petitioner.

5. As far as recovery of compensation paid to an accident victim is concerned, the position stands settled by a series of decisions of this Court, the earliest being decision dated 07.07.1999 in W.P.No.11002 of 1999. A Division Bench of this Court deprecated the action of the State Department in recovering compensation awarded by the Motor Accident Claims Tribunal from the driver of the vehicle, as only the employer is duty bound in law to pay the compensation amount. The recovery of compensation from the employee / driver is, they held, wholly misconceived.

6. The aforesaid order of the Division Bench has been followed in W.P.No.17856 of 2008, allowing the case of a similarly placed employee by order dated 22.08.2008 and setting aside the recovery ordered as against the driver of the police vehicle. The aforesaid order has been confirmed by the Division Bench in the case of *Sevugaperumal v. Superintendent of Police* (2009 (2) MLJ 849) applied yet again in W.P.No.4428 of 2006 by order dated 23.07.2010.

7. It would be appropriate to extract the observations of the Division Bench in the case of *Sevugaperumal*, at paragraph No.14 to the following effect:-

"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*, decided on 22.8.2008 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."

8. Thus, there is absolutely no justification for the State Police department to initiate recovery as has been done in the present case. A distinction has been made by the Division Bench in regard to the recovery made from the employee/driver of that Department itself and recovery in the case of any other person who was not the driver, holding that in the latter case, the Department can recover part of the compensation paid to the victims.

9. This Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

akv

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai.

2.The Superintendent of Police,
Theni District,
Theni.

3. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.SPL GP (SR-37399[F] dated 06/12/2021)

W.P. (MD) .No.5089 of 2018
3.12.2021

SK(CO)

KB(01.02.2022) 3P 5C

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