



WEB COPY



W.P.No.12202 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12202 of 2015
and M.P.No.1 of 2015

K.Sadagopan

... Petitioner

-Vs-

1.The District Collector,
Villupuram District,
Villupuram.

2.The Block Development Officer (VP),
Chinnasalem Town Panchayat,
Villupuram District.

3.The Assistant Director(Audit),
Kallakurichi,
Villupuram District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent Na.Ka.No.B1/2056/2011 dated 06.01.2015, and consequent order by third respondent in Na.Ka.No.A1/197/2015 dated 13.02.2015, quash the same and consequently direct respondents to refund the amount already recovered from the petitioner with interest.



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For Petitioner : Mr.D.Murugan
for Mr.R.Kumaravel

For R1 : Mr.S.Gunasekaran

For R2 and R3 : Mr.T.M.Rajangam
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 06.01.2015 and the order passed by the third respondent dated 13.02.2015, thereby directed to deduct a sum of Rs.65,086/-.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was appointed as Driver in the year 02.01.2002 and he was assigned to drive TATA Sumo vehicle bearing Registration No.TN 32 R 4794 in the office of the second respondent till 05.05.2013. On 05.11.2011, while the petitioner was driving the said vehicle on official duty, a two wheeler bearing Registration No.TN 07 AD 7035 had suddenly crossed the road and as such, both the vehicles dashed each other. Hence, the rider of the motor cycle sustained injury. In pursuant to the said accident, FIR was registered in Crime No.547 of 2011 for the offences under Sections 279 ad 337 of IPC. After filing



final report, the Trial was conducted in which, the petitioner was acquitted by the Criminal Court. The injured filed a claim petition before the Tribunal in M.C.O.P.No.265 of 2013 on the file of the MACT/Sub Court II, Villupuram for compensation for the injury sustained due to the accident. The Tribunal passed an award, thereby awarded compensation for a sum of Rs.1,06,000/- payable by the petitioner as well as the employer viz., the third respondent herein, jointly and severally. Therefore, the third respondent paid the entire compensation amount to the victim. In view of the payment, the second respondent passed an order to recover 50% of the compensation viz., Rs.65,089/- in 36 installments from the salary of the petitioner.

4. A perusal of the counter filed by the second respondent revealed that only on the negligent driving of the petitioner, the accident had happened and as such, the Tribunal passed an award and awarded the amount payable by the petitioner and the third respondent jointly and severally. Aggrieved by the same, the petitioner also failed to file any appeal. Even then, the petitioner failed to deposit 50% of the award amount before the Tribunal. Therefore, the second respondent ordered to recover 50% of the award amount by 36 equal installments from the petitioner.



5. In this regard, the learned counsel for the petitioner relied upon the Judgment of this Court held in ***W.P.No.4428 of 2006*** in the case of ***R.Anbalagan Vs The Director General of Police, Mylapore, Chennai-600 004 and others***, in which this Court referred the Hon'ble Division Bench of this Court W.P.No.11002 of 1999 dated 07.07.1999 held as follows:-

"5. The petitioner was a driver when the accident took place on 31.5.1998. In similar circumstance, the Division Bench of this Court in W.P.No.11002 of 1999 by order dated 7.7.1999 held as follows:

"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 13.8.1998."

Following the said order of the Division Bench, W.P.No.17856 of 2008 was allowed by me by order dated 22.8.2008 against recovery ordered against a Driver of a Police Vehicle. The said order was approved by the Division Bench of this Court in the decision reported in (2009) 2 MLJ 849 (Sevugaperumal v. Superintendent of Police). In para 14 the Division Bench 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, 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



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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 cited decisions of the Division Bench of this Court and that of mine, I hold that the impugned order is unsustainable and the order of recovery dated 1.7.2005, confirmed in appeal by order dated 18.11.2005, is quashed. The respondents are directed to repay the amount recovered from the petitioner within a period of two weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed."*

6. In view of the above decision rendered by the Hon'ble Division Bench of this Court, the orders impugned in this writ petition are unsustainable and are liable to be quashed. Accordingly, the order passed by the second respondent in Na.Ka.No.B1/2056/2011 dated 06.01.2015, and consequent order passed by the third respondent in Na.Ka.No.A1/197/2015 dated 13.02.2015 are hereby quashed. The respondents are directed to refund the amount recovered from the petitioner, if any, within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.

30.08.2023

Internet : Yes

Index : Yes/No



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Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

mn

To

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Villupuram District,
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