



W.P.No.27324 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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- 1.S.Velusamy (Died)
- 2.Indira
- 3.Vasanthkumar
- 4.Maheswari
- 5.Rajeswari
- 6.Vadivambal

(Petitioners 2 to 6 are substituted as legal representatives of deceased as per order dated 23.02.2024 in WMP No.7095/2018 in WP No.27324 of 2011)

...Petitioner

Vs.

1.The Secretary to Government,
Animal Husbandry, Diary, Fisheries Development Department,
Government of Tamil Nadu,
Fort St.George, Chennai 600 09.

2. The Director
Animal Husbandry and Veterinary Services,
Chennai 600 006.

3.The Zonal Deputy Director,
Animal Husbandry Department,
Thanjavur.

4.The Assistant Director,
Animal Husbandry Department,
Thanjavur.



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5.The Veterinary Assistant Surgeon,
Mobile Veterinary Dispensary,
Thanjavur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the proceedings of the 1st respondent dated 24.08.2011 made in GO Ms.No.92 (Animal Husbandry, Diary, Fisheries Development (AH4)) Department dated 24.08.2011 and the consequential proceedings of the 4th respondent dated 19.10.2011 made in Se.Na.Ka.No.3100-A-2011 and quash the same, consequently direct the respondents to drop entire recovery proceedings.

For Petitioners : Mr.S.Thirumavalavan

For Respondents : Mr.D.Gopal
Government Advocate.

ORDER

This Writ Petition has been filed to call for the proceedings of the first respondent, dated 24.08.2011, passed in G.O.Ms.No.92 (Animal Husbandry, Diary, Fisheries Development (AH4)) Department, dated 24.08.2011 and the consequential proceedings of the fourth respondent, dated 19.10.2011, passed in Se.Na.Ka.No.3100-A-2011 and quash the same, consequently, direct the respondents to drop entire recovery proceedings.



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2.This Writ Petition was filed by one S.Velusamy, who was dead during the pendency of the Writ Petition. His legal heirs are impleaded as Petitioners 2 to 6.

2.1.The case of the petitioners is that the deceased petitioner was driving a vehicle bearing registration No.TN 49 G 0040, on 13.04.2005, a pedestrian without noticing the approaching vehicle attempted to cross the road. Despite the deceased petitioner made efforts to avoid the accident by applying break, the accident happened. The traffic police registered a case against the deceased petitioner and the final report was filed in C.C.No.782 of 2005 before the learned Judicial Magistrate, Thanjavur. After trial, the deceased petitioner was acquitted from this case. While that be the case, the fourth respondent issued an order dated 19.10.2011, ordering to recover a sum of Rs.2,140/- per month from his salary for 49 months. Later he came to know that the injured filed a claim petition, on the file of the Motor Accident Claims Tribunal, in MCOP No.801 of 2005, wherein, the Tribunal ordered the Government to pay a sum of Rs.71,500/- along with 7.5% interest per annum from the date of the petition to the claimant. The Government directed the amount



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to be recovered from the driver of the vehicle, namely, the deceased petitioner. The order of recovery was made without giving an opportunity of hearing to the deceased petitioner. Therefore, this petition.

2.2.It is submitted by the learned counsel for the petitioners that the deceased petitioner was not responsible for the accident and that was the reason why he was acquitted from the criminal case. Merely because the victim was ordered to be paid the compensation in MCOP No.801 of 2005, the deceased petitioner cannot be made to pay this amount, moreso, when there is no show cause notice issued with regard to the recovery of this amount.

3.In response, the learned counsel for the respondents submitted that the acquittal in the criminal case does not exonerate the deceased petitioner's civil liability to pay the compensation imposed in MCOP No.801 of 2005. Deceased petitioner was responsible for the accident and that was the reason why the Motor Accident Claims Tribunal ordered to pay the compensation. As the driver of the vehicle and the person responsible for the accident, the Government ordered to recover from the



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deceased petitioner. That cannot be faulted in any way. Thus, he prayed for dismissal of this Writ Petition.

4.Considered the rival submissions and perused the records.

5.From the facts obtained from the pleadings and submissions of the learned counsel appearing for the parties, it is established that the petitioner was acquitted from the criminal case in C.C.No.782 of 2005, which prima facie shows that the petitioner was not responsible for the accident. Only in the criminal cases, proof beyond reasonable doubt is required, where as, in the Motor Accident Claims Tribunal, the question involved is preponderance of probability. When a competent criminal Court found that the petitioner was not responsible for the accident, it is not appropriate for the Government to order recovery of the amount from the deceased petitioner merely on the ground that the Motor Accident Claims Tribunal ordered to pay the compensation to the victim. What is important here is that, before ordering recovery, it appears that no opportunity was given to the deceased petitioner by issuance of the show cause notice. Therefore, the impugned order passed is not proper and in



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accordance with law and liable to be set aside and accordingly set aside and quashed.

6.It is informed that in view of the stay order granted by this Court, there was no recovery made, but a sum of Rs.1,25,000/- was withheld from the deceased petitioner's retirement benefits. If that be so, respondents are directed to immediately release the amount to the petitioners 2 to 6 with interest at the rate of 6% per annum. This exercise has to be completed within a period of three months from the date of receipt of a copy of this order.

7.Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition, if any, is also closed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

12.03.2024

To:



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G.CHANDRASEKHARAN, J.

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